



REGULATION (EU) 2016/426 ON APPLIANCES BURNING GASEOUS FUELS (GAR)

GUIDANCE DOCUMENT IN RELATION TO POINT 3.7 OF ANNEX I – MATERIALS AND PARTS OF APPLIANCES/FITTINGS IN CONTACT WITH FOOD AND WATER INTENDED FOR HUMAN CONSUMPTION

I. The legal framework under Regulation (EU) 2016/426

A. The evolution of the legal framework

Directive 2009/142/EC	Regulation (EU) 2016/426
<p>3.7. Foodstuffs and water used for sanitary purposes</p> <p>Without prejudice to the Community rules in this area, materials and components used in the construction of an appliance, which may come into contact with food or water used for sanitary purposes, must not impair their quality.</p>	<p>3.7. Contact with food and water intended for human consumption</p> <p>Without prejudice to Regulations (EC) No 1935/2004⁽⁴⁾ and (EU) No 305/2011⁽⁵⁾ of the European Parliament and of the Council, materials and parts used in the construction of an appliance which may come into contact with food or water intended for human consumption as defined in Article 2 of Council Directive 98/83/EC⁽⁶⁾, shall not impair quality of the food or water.</p>

B. Other EU legislation referred to in point 3.7 of Annex I to the GAR

1. In relation to materials/parts of the appliance/fitting in contact with food

- Regulation (EC) No 1935/2004 on materials and articles intended to come into contact with food¹ and all implementing acts adopted pursuant to Article 5(1) thereof such as:
 - Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food²; and
 - Commission Regulation (EC) No 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food³

¹ Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC, *OJ L 338*, 13.11.2004, p. 4–17.

² Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food, *OJ L 12*, 15.1.2011, p. 1–89.

³ Commission Regulation (EC) No 2023/2006 of 22 December 2006 on good manufacturing practice for materials and articles intended to come into contact with food, *OJ L 384*, 29.12.2006, p. 75–78.

2. In relation to materials/parts of the appliance/fitting in contact with water intended for human consumption

- Directive 98/83/EC on the quality of water intended for human consumption⁴ (hereinafter “the Drinking water Directive”).

N.B. State of play of the revision of the Drinking water Directive by 30 September 2020

On 1 February 2018, the Commission adopted a proposal for a revision of the Drinking water Directive.⁵

The European Parliament proposed amendments to the Commission proposal at its plenary on 23 October 2018.

On 5 March 2019, the Council adopted its position on the proposal to revise the Drinking water Directive.

The Parliament and the Council reached a provisional agreement in the trilogues on 18 December 2019. Members States' ambassadors (Coreper) confirmed the agreement on 5 February and the ENVI Committee gave its endorsement on 18 February 2020.

The confirmation of the political agreement was submitted to the Environment Council meeting on 5 March 2020. After legal-linguistic revision, the Council is expected to formally adopt the text as its first reading position, after which the file will return to Parliament for final adoption in second reading.

For further information c.f. <https://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-revision-of-the-drinking-water-directive>

Point 3.7. of Annex I to the GAR refers specifically to the definition of “water intended for human consumption” provided by Article 2 of the Drinking water Directive according to which “*all water either in its original state or after treatment, intended for drinking, cooking, food preparation or other domestic purposes, regardless of its origin and whether it is supplied from a distribution network, from a tanker, or in bottles or containers*”.

The GAR itself does not contain any additional elements of definition of the concept of “water intended for human consumption” and simply refers to the definition provided by the Drinking water Directive.

Furthermore, Article 2 of the Drinking water Directive defines the “domestic distribution system” as “*the pipework, fittings and appliances which are installed between the taps that are normally used for human consumption and the distribution network but only if they are not the responsibility of the water supplier, in its capacity as water supplier, according to the relevant national law.*”

- Regulation (EU) No 305/2011 on the marketing of construction products⁶

⁴ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, *OJ L 330, 5.12.1998, p. 32–54*

⁵ COM/2017/0753 final - 2017/0332 (COD).

II. Types of appliances or fittings concerned

The essential requirement laid down in point 3.7. of Annex I to the GAR is particularly relevant for certain types of gas appliances, whose operation is directly associated with the contact of food and water intended for human consumption.

A non-exhaustive list of examples would extend to a number of cooking appliances such as barbecues, espresso machines, grills, hot plates, rotisseries, griddle, camping equipment (for food) and for hot water boilers, combi-boilers and (instantaneous) water heaters for water. Also, this requirement is relevant for those parts of heat exchangers which might come in contact with water for human consumption (depending of the type, primary/secondary heat exchanger, instantaneous or storage principle).

III. Application of the Essential Requirement 3.7. – manufacturers and notified bodies

The GAR establishes a total harmonisation in relation to all aspects covered by it. Hence, as far as the aspects covered by the GAR are concerned, no additional requirements may be introduced in relation to gas appliances and fittings bearing the CE marking.

Point 3.7. of Annex I to the GAR requires that the materials and parts of gas appliances and fittings do not impair quality of food or water. Therefore, this aspect counts among those which have been totally harmonised by the GAR. Consequently, no additional requirements in relation to the potential impairment of the quality of food or water can be imposed on gas appliances and fittings which bear the CE marking.

Essential Requirement 3.7 covers risks for human health and safety due to materials or parts used to the construction of gas appliance/fittings, such as metals, plastics, paints. The risks in question could potentially materialise due to the contact of such materials or parts of the appliance/fitting with food or water intended for human consumption due for example to hazardous substances that may be emitted from those materials or parts of the appliance/fitting when they are in contact with food or with water.

This aspect has therefore to be taken into account by the manufacturer when performing the risk assessment of the appliance or fitting. When performing the risk analysis, the manufacturer of the appliance or fitting has to identify if this aspect is relevant for the type of the appliance and examine how to reduce or eliminate hazards due to the possibility that materials/parts of his product under normal conditions of use, may enter into contact with food or water intended for human consumption.

As far as possible, such risks due to materials or parts of the appliance or fitting can be eliminated or reduced by designing the appliance or fitting in such a way so as to incorporate non-hazardous materials or parts. The related supporting documents must be part of the technical documentation to be submitted to the GAR notified body which will perform the EU type-examination.

By indicating that the application of the GAR is “without prejudice” to the Regulations (EC) No 1935/2004 and (EU) No 305/2011, Point 3.7. of Annex I to the GAR grants primacy of application to these two legal frameworks. Consequently, should a manufacturer of a gas appliance or fitting chose to incorporate materials which fall within the scope of either one of the above-mentioned

⁶ Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, *OJ L 88, 4.4.2011, p. 5–43.*

Regulations, the manufacturer will be required to comply with all the relevant requirements of the specific EU legal framework.

In the light of the above, a manufacturer of gas appliances and fittings is faced with the following options in order to demonstrate compliance with Essential Requirement 3.7. of the GAR:

- a) **In case the material that the manufacturer has incorporated into the appliance or fitting is covered by either of the two EU legal frameworks referred to above** (as for example it is the case for some plastic materials and articles intended to be in contact with food): should this be the case, the manufacturer needs to demonstrate to the notified body that the appliance or fitting complies with the requirements provided for by the respective EU legal act.

The notified body should ask for all the relevant documents, which may be required under those EU legal acts and take them into consideration.

If the compliance with the said requirements is established, then the appliance or fitting will be considered to also comply with Essential Requirement 3.7. of the GAR;

- b) **In case the material that the manufacturer has incorporated into the appliance or fitting is not covered by any of the two EU legal frameworks referred to above** (e.g. for metallic materials and parts): should this be the case, then the GAR remains the exclusive reference framework. In this case and in the light of the "New approach" principles on which the GAR is based, the manufacturer should demonstrate that the material which has been incorporated complies with the Essential Requirement 3.7. of the GAR.

One possibility for the manufacturer to demonstrate this compliance would be to rely on the presumption of conformity pursuant to Article 13 of the GAR. In order to do so, manufacturers should demonstrate compliance with any relevant hEN developed under a GAR mandate, which covers Essential Requirement 3.7.

For example, EN 26:1997 on "Gas-fired instantaneous water heaters for the production of domestic hot water" and EN 89:1999 on "Gas-fired storage water heaters for the production of domestic hot water" contain detailed requirements on this aspect.

IV. Application of the Essential Requirement 3.7. – Member States' authorities

The Member States' authorities are entrusted with the responsibility to ensure the correct implementation of the GAR, both by ensuring that the notified bodies perform the conformity assessment procedures correctly and also by conducting market surveillance.

Pursuant to Article 29 of the GAR, the Member States' respective notifying authorities are required to take the appropriate measures if a notified body fails to perform correctly its obligations or to comply with the requirements imposed on it.

On the other hand, in case a Member State considers that an appliance or fitting does not comply with Essential Requirement 3.7 of Annex I to the GAR (as also with any other essential requirement), it should take the appropriate warnings/restrictive measures pursuant to the provisions of Chapter V of the GAR.