

## INTERGRAF POSITION TRIS NOTIFICATION 2022/4/F

### French order on the substances contained in mineral oils prohibited for use on packaging and for printed matter distributed to the public February 2022

Intergraf is concerned about the notification 2022/4/F of France on the restriction of substances contained in mineral oils used in printing inks and its impacts on the functioning of the European Single Market.

Intergraf represents 21 national printing federations in 19 countries in Europe. The printing industry provides jobs to 640,000 Europeans active in over 110,000 companies and generates a turnover of approximately € 82 billion. The industry throughout Europe consists mainly of small enterprises, as 90% of them employ fewer than 20 persons.

Our comments address both categories of products that are in scope of the notified text (printed publications and printed packaging) as our companies are active in both markets. They relate to the restriction of the free movement of goods within the European Union, as well as the compatibility of the measure with the necessity and proportionality principles.

### **Restriction of the free movement of goods**

#### Impact on imported packaged goods

The notified text does not specify to what extent imported products packaged in printed paper and board packaging (or imported products accompanied with printed manuals) and placed on the French market are covered. It is not clear how European and international producers and traders will have to prove compliance for the packaging or for the printed documentation accompanying the product they place on the French market.

The impact on imported packaged goods and the procedure to demonstrate compliance for European producers and traders are not explained and detailed and therefore leave them with a significant legal uncertainty.

If packaged goods are covered, this implies that all products already packaged or for which the packaging has already been produced according to applicable EU legislation will no longer be able to enter the French market as of 1 January 2023, i.e. in less than a year.

#### Adaptation of production processes for one national market

The notified text will force manufacturers to adapt their production process when producing for the French market. The change of an ink formulation requires the adaptation of the printing machines to the new ink. Printers will therefore have to organise their production line to adapt to the requirements specific to the French market. Producers will have to segregate their production according to the final destination of the product.

The measure will discriminate economic operators producing for the whole EU market from those exclusively producing for the French market. It will give a competitive advantage to the latter as this will require less adaptation of production processes.

The proposed measure is also discriminatory against European SMEs aiming at delivering the French market. In Europe, 90% of printing companies have less than 20 employees. It is more burdensome for SMEs to change their production process to adapt to a national measure. The implementation of the French law will create a barrier to European SMEs to produce for the French market.

## **Compatibility with the necessity and proportionality principles**

The Treaty on the Functioning of the European Union states that the rules must be necessary in order to attain legitimate objectives and be in conformity with the principle of proportionality, which requires that the least restrictive measure be used.

### **Necessity of the measure to attain legitimate objectives**

The statement of grounds indicates that the objective of the notified text is to *improve the recyclability of products placed on the French market and promote the use of materials from recycled packaging or paper*.

The measures of the notified text will fail to meet its intended objectives. The paper and board recycling market in Europe is a well-performing market. In 2020, the [European paper recycling rate](#) reached 73.9%. The paper and board value chain works together within the [European Paper Recycling Council \(EPRC\)](#). The industry self-initiative does not only commit to reaching an increasing recycling target but also work on qualitative measures to improve recyclability. One of the key elements was the development of the [EPRC Deinkability Scorecard](#), which supports an efficient functioning of the circular economy by ensuring that products can be recycled to similar quality levels as the original products. It is a recognised standard widely used in Europe. Current printing inks, including mineral oil-based printing inks, demonstrate good deinking performances, thereby contributing to a well-functioning paper recycling market in Europe. Alternative printing inks meeting the proposed thresholds, if available, would need to be tested for their deinking performance before being able to conclude that they will *improve the recyclability of products on the French market*. Should they fail to meet appropriate deinking performances, they may even disrupt the paper recycling market in Europe.

### **Proportionality of the measure**

Intergraf is concerned that the impact of the measure and proposed thresholds has not fully been assessed in comparison to the pursued objectives. The measure is put in place for all types of printed products regardless of their potential to actually end up in food packaging. Books or board games would fall under the scope of the notified text. Those are printed products that are typically reused and have less chance to end up in the recycling loop. The proposed measure and related administrative burden to demonstrate compliance are disproportionate for these types of products.

Moreover, the measure is disproportionate in so far as it does not distinguish between printing technologies and the way the mineral oil content behaves during the printing process. Heatset processes for instance will allow for most of the mineral oil content to evaporate during the ink drying process.

Even for inks formulated without mineral oil, the French draft law will require producers to prove compliance using an analytical methodology that is not specified in the draft and has still to be developed. It will impose a disproportionate administrative and financial burden to demonstrate compliance. Moreover, it is expected that the levels of the thresholds can be assimilated to impurities levels, which may cause technical challenges.

A more proportionate measure should be considered to avoid excessive requirements on all printed products and all printing processes.

## **Economic considerations**

Printing companies in France and in Europe are not given any guarantee by their ink suppliers that printing inks meeting the thresholds will be available by 1 January 2023. Should they be made available, printers do not have any guarantee that these inks will be able to run on their machines as no technical tests have been carried out.

Moreover, the cost implications of the use of alternative inks have also not been assessed and risk to severely impact already vulnerable printing markets, i.e. publications like magazines and newspapers.

Should no technically and economically viable alternative printing inks meeting the thresholds of the French law be available, printing companies dependent on the supply of the French market, in particular French printing companies, will no longer be able to operate and will have to shut down.

## **Technical considerations**

Intergraf refers to the contribution of its German member federation bvdm (Bundesverband Druck und Medien e. V.) for the technical considerations of the notified text. Indeed, German printing companies have run tests with mineral oil free inks (although with less strict thresholds) and gained valuable experience to comment on the notified text.

## **Relevance of an EU approach on mineral oil**

As indicated in the statement of grounds, the aim of the proposed law is to *improve the recyclability of products placed on the French market and promote the use of materials from recycled packaging or paper, linking it to the risk of migration from packaging containing recycled paper or cardboard to foodstuffs*.

With the proposed German ordinance on mineral oils – already notified to the EU - and the text notified by France, we see two Member States taking two different approaches to achieve the same objective. Food packaging producers, who are generally producing for the European market, will be subject to already two distinct national measures. This goes against securing an efficient internal market.

Moreover, the evaluation of the Food Contact Material Framework regulation 1935/2004 is ongoing. The [study](#) supporting this exercise acknowledges the urgent need of harmonising non-harmonised materials, including paper and board as one of the priority areas. This is the appropriate framework to address the conditions of use of recycled paper and board for food contact applications. This will also provide the benefit to take a holistic approach on the issue of mineral oil migration and look at the different sources and routes of migration, as acknowledged in the [EFSA scientific opinion mineral oil hydrocarbons in food](#).

Completing the current European regulatory framework on food contact materials should be prioritised over regulating single aspects at national level.

**Intergraf calls on the European Commission and Member states to comment and raise a detailed opinion during the TRIS procedure to provide France with the opportunity to explain how it intends to address the above-mentioned issues.**