17 November 2020

**Freshfel Europe response to Twenty-second Ordinance amending the Consumer Goods Ordinance**

Freshfel Europe, the European Fresh Produce Association, welcomes the opportunity to comment on the German Twenty-second Ordinance amending the Consumer Goods Ordinance as regards mineral oils in Food contact materials made of paper, paperboard or cardboard with a proportion of recycled paper.

In the view of Freshfel Europe, which represents approximately 200 companies, national associations and retailers, the proposal of the German Authorities is disproportionate. Please find below the arguments of the fresh produce industry:

**EU level legislation**

There is currently ongoing EU monitoring and the EFSA risk assessment for MOAH. Therefore, instead of introducing national measures, the European Union should set EU-wide levels on those products causing the highest human exposure based on the outcome of the EFSA assessment. EU-wide levels would prevent disruption of international and intra EU trade, while national measures would result in damage for the sector.

Mineral oil contamination can result from many sources. Among them, as recognised by EFSA, are animal feed, harvesting machines, machine oils, chemical preparations and agents for food processing, atmospheric pollution from industry and traffic, and last but not least from food itself. Most of these potential sources of contamination are even out of control of the growers.

Due to the fact that there are many sources of possible intake of MOAH, the German ordinance of Mineral oil inadmissibly reverses the burden of proof and creates an obstacle for the free trade of goods. The origin of the potential problem of MOAH cannot currently be clearly defined and further study and monitoring is necessary. Therefore, a European-wide decision is essential in order to cover all possible sources of contamination with a focus on the sources with the highest risk.

**Not in line with sustainable and environmental friendly packaging**

The obligation of the German legislation to use a functional barrier in the production/placing on the market of food contact materials and articles made of recycled paper or cardboard goes against the principle of circular design. It is well known in waste management that composite materials are more difficult to recycle. Mono-material products are preferred as they are highly recyclable and therefore more circular in design as they can be retained in the value chain. The European Green Deal calls for an increased European sustainability ambition for the EU to be climate neutral by 2050. The European Green Deal recognises that one pathway to climate neutrality is facilitating circularity and creating sustainable products that are inherently circular by design.

Increasing product circularity is further called for in the European Commission's new Circular Economy Action Plan (CEAP), which is a key policy in implementing the European Green Deal's sustainability and environmental ambitions. Specifically the CEAP recalls that half of Member States are at risk of non-compliance with the Waste Framework Directive's (Directive 2008/98/EC) 2020 target to recycle 50% of municipal waste (including at least paper), and additional efforts are necessary to reach this target. Without doubt, obliging the use of composite material will hamper reaching this goal.

**Applicability of measure**

The measures proposed by the German Authorities should not be generalised and be applicable to all food commodities. Fresh fruit and vegetables are exceptionally low risk products, because:

- Fruit and vegetables are perishable products and therefore the contact time is limited compared to other food commodities.
- Fruit and vegetables are stored in low temperatures which prevents degassing of MOAH in the food product.
- Fruit and vegetables have low fat content.
- Relatively small contact surface compared to other food commodities

The industry has already intensively carried out a risk analysis for fresh fruit and vegetables. The only commodities with a slightly increased risk could be:

- Products with a long shelf life and long storage times (e.g. apples and pears), however these commodities are not stored in boxes of recycled paper, paperboard or cardboard but are packed in paper-based packaging right before they are sold in retail. Also, they are stored and transported in low temperature.
- Products that are stored at higher temperatures (e.g. bananas). Bananas are stored at temperatures of 12 degrees and above. Nonetheless they are wrapped in a thick plastic foil for transport and storage, which prevents the migration of MOAH from the carboard packaging.
- Products with a higher fat content.

The industry has already implemented measures to minimise the risk of contamination with these products. This includes adjustment of the type of printing inks used on packing and application of food grade oils on machinery.

Due to the very low number of findings and the lack of sustainability of packaging solutions with a barrier, a ban on packaging based on recycled paper without a barrier would be a highly disproportionate measure for the fresh fruit and vegetables sector.

Though the legislation already gives the possibility to exclude certain packaging or products due to low risk, the conditions for these exceptions are not made clear. In this context we would like to point out, that it would not be possible to provide proof of the contamination risk for every fruit-packaging-storage combination. The risk depends on many parameters which would have to be evaluated separately for each individual combination. Fruit and vegetables are natural products that can have very different characteristics even within the same variety (e.g. based on surface of fruit or vegetable or fat content).

Once again, instead of introducing national measures, the European Union should set EU-wide levels on those products causing the highest human exposure based on the outcome of the EFSA assessment.

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