Statement

Statement about the "22nd amendment to the regulation about materials and articles intended to come into contact with food" – "national mineral oil regulation" ("4th draft", date: 07. March 2017) proposed by the German Ministry of Food and Agriculture

10. April 2017

STATEMENT ON BEHALF OF THE GERMAN AND EUROPEAN FOLDING CARTON INDUSTRY

PRELIMINARY REMARKS

What is now the 4th draft of a national mineral oil regulation compiled by the German Ministry of Food and Agriculture includes major changes to the previous drafts as regards the regulatory concept on which it is based. The draft specifies that the migration of mineral oil aromatic hydrocarbons (MOAH) from materials and articles intended to come into contact with food that are produced with the help of recovered paper fibre is to be restricted to a detection limit – that is feasible at the present time – of 0.5 mg MOAH per kilogram of food/food simulant, in order to protect consumers against possible health hazards. It is stipulated that the use of a "functional barrier" is mandatory in order to reach this migration limit.

However, like the previous drafts, the 4th draft fails once again to eliminate legal uncertainties for the folding carton industry. The points that the folding carton industry criticises about the 4th draft of the regulation are therefore outlined below.

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The FFI (Association of the German Folding Carton Industry) is making this statement about the 4th draft of a national mineral oil regulation on behalf not only of the German folding carton industry but also of the entire European folding carton industry. For this purpose, this statement has been agreed with our central European association ECMA (European Carton Makers Association).

In addition to this, the FFI is in agreement with the contents of the statement compiled by the law firm Bird & Bird LLP, Düsseldorf / Germany, on behalf of Graphic Packaging International Bremen GmbH, Bremen / Germany – a corporate member of the FFI – and requests that the arguments presented there are also taken into consideration.

We share the positions adopted in the statements issued by the VDP and the BLL too.

We draw attention specifically to the following:

1. NO ISOLATED NATIONAL ACTION

With the drafts it has presented so far for a national printing ink regulation and a national mineral oil regulation, the German government deserves credit for making the European institutions aware of the debate about materials and articles intended to come into contact with food for which specific rules have not yet been issued (cf. Annex 1 of the Regulation EC 1935/2004[1]) and the responsibility these institutions have for specifying such rules. In other member states different substances and/or components of materials intended to come into contact with food have been debated initially in the national context in other member states (e.g. France: Bisphenol A, Denmark: perfluorinated carbon compounds) and have – or certainly will – inevitably find their way onto Europe's political agenda. Although

[1] Regulation (EC) No. 1935/2004 of the European Parliament and the Council of 27. October 2004 about materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC.

they were hesitant at first, the European institutions now seem to be focussing on these issues after all, in order – sensibly enough – to review and/or initiate their inclusion in regulatory concepts for Europe as a whole.

Harmonised European action is essential in order to protect consumers and to maintain uniform competitive conditions for all business enterprises in Europe. In other words, the basic objectives pursued in health, social, economic and environmental policy make a patchwork of isolated national measures in the area of materials and articles intended to come into contact with food unthinkable!

In view of this, it is surprising that the 4th draft of a German mineral oil regulation has been published by the German Ministry of Food and Agriculture, since the European Commission only a short time before (in January 2017) published its Recommendation[2] on the pan-European monitoring of mineral oil hydrocarbons in food and in materials and articles intended to come into contact with food. In this context, the official food control authorities in the member states are to be supported by the food industry and the manufacturers, processors and distributors of materials and articles intended to come into contact with food. In order to guarantee the uniform collection and comparability of the data from the member states, guidelines have to be compiled beforehand, however – an assignment that the Joint Research Centre of the EU Commission still has to carry out. After an assessment has been made of the actual exposure of European consumers to mineral oil hydrocarbons from the various sources – which are in the meantime known (food and materials and articles intended to come into contact with food) – the European legislators can take sensible, appropriate and reasonable measures.

With this in mind, the German Ministry of Food and Agriculture should abandon its national project, for which there is – by the Ministry's own account – not even consensus within the German government, and support harmonised action, if there is sufficient justification for such action.

[2] COMMISSION RECOMMENDATION (EU) 2017/84 of 16. January 2017 on the monitoring of mineral oil hydrocarbons in food and in materials and articles intended to come into contact with food.

2. MINERAL OIL REGULATION DISPROPORTIONATE – VIOLATION OF ART. 7 OF THE BASIC REGULATION

The FFI is convinced that the 4th draft of the regulation in addition again violates Art. 7 of Regulation (EC) 178/2002 (basic regulation). In this respect, we repeat here the criticism we expressed in the FFI statement about the 3rd draft.

It needs to be taken into consideration that insufficient data continues to be available about the toxicity of the MOAH group. Although the European Food Safety Authority (EFSA) also confirms that individual compounds which are included in this group are questionable, this does not justify the general suspicion implied by the mineral oil regulation and the application of the principle of preventive consumer protection. Results of research projects carried out by industry are in the meantime available which demonstrate that health safety would still be guaranteed even if higher limits were specified. EFSA (2012) has not issued a clear statement either about the level from which MOAH might have a toxicological or even just pharmacological impact. While the German Institute for Risk Assessment (BfR) still says that MOAH in food is "undesirable" (rather than "harmful to health") too. In its report (2011), The British Food Safety Agency (FSA) also states that consumers cannot expect their health to be harmed in spite of the traces of mineral oil found in food and that consumers do not therefore need to change their eating habits.

This means that the national mineral oil regulation is based on what is merely the suspicion of a hazard (albeit one that must be taken seriously).

However, application of the principle of proportionality always needs to be guaranteed too when problematic new regulations are being introduced. This principle is specified as follows for preventive measures in Art. 7 of Regulation (EC) 178/2002 (basic regulation):

> *(1) In specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the Community may be adopted, pending further scientific information for a more comprehensive risk assessment.*
> *(2) Measures adopted on the basis of paragraph 1 shall be proportionate and no more restrictive of trade than is required to achieve the high level of health protection chosen in the Community, regard being had to technical and economic feasibility and other factors regarded as legitimate in the matter under consideration. The measures shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment.*

The conditions outlined above are not satisfied here; the planned regulation is neither provisional or proportionate nor does it take technical and economic feasibility into consideration. In addition to this, the approach adopted here represents one-sided and unjustified discrimination against one single, possible source (recovered paper). It is therefore important to draw attention to the fact that the draft regulation fails to take other possible sources of MOAH migration into consideration. It is a well-known fact that there are many sources of MOAH migration into food (lubricants from food manufacturing equipment, exhaust gases from harvesting machinery or mineral oils that are used as lubricants or release agents in production and packaging processes, BfR-FAQ of 30. November 2012 / 26. November 2015). It is not therefore justified to specify limits solely for the migration of MOAH from recovered paper fibre without reliable and verifiable data about other possible sources of migration.

3. NO EMPIRICAL PROOF OF THE NEED FOR A MINERAL OIL REGULATION

The German Ministry of Food and Agriculture refers to the project[3] it carried out in 2012 to help it in its decision-making process as evidence of the need for regulation of the migration of MOAH into food from materials and articles intended to come into contact with food. The report containing the results was presented in mid-2012. The samples were taken in the 2nd quarter of 2010.

Due to the time when the samples were taken, the results of the investigation and the conclusions drawn by the authors definitely needed to be treated with a certain amount of scepticism even at the time when they became available. The samples were, for example, taken at a time when the emerging debate about mineral oil had only just reached a very limited number of economic players. Alongside the regular use of folding carton board that was manufactured with the help of recovered paper fibre, it was more of an exception up to then to use what are known as low-migration printing inks that are free of mineral oil. It was precisely this combination of folding carton board containing recovered paper and printing inks based on mineral oil that many experts felt led to the definite increase in levels of mineral oil hydrocarbons in the "119 foods".

Since then, the situation has changed fundamentally and drastically, however. The use of mineral oil-free, low-migration printing inks and lacquers is standard practice in the production of folding cartons for food applications. Apart from this, numerous changes have been made to the packaging concepts on the basis of individual risk assessments of food products with "gas phase contact" packaged in folding cartons. Folding cartons manufactured from recycled board have, on the one hand, been replaced by cartons produced from virgin fibre, while existing inner bags have been provided with an additional barrier against mineral oil hydrocarbons (cf. e.g. the presentation by T.J. Simat et al., "Recycled Fiber in Food Contact Trends in the Market"; at: BLL – Die Zukunft der Papierverpackung, Berlin, 15. Nov. 2013).

[3] Extent of the migration of undesirable substances from packaging materials made from recycled paper into food – extra report about the analysis of "119 foods" to determine undesirable substances from recycled paper, funding number 2809HS012.

It must therefore be assumed that the materials and articles intended to come into contact with food on the market today that are made from board are hardly comparable at all to those in circulation in 2010, on which the study was based – due to comprehensive risk assessment of individual orders by the packaging manufacturer in the light of his bidirectional communication with customers on the one hand and suppliers on the other hand as well as the submission and obtainment of specifications.

In its official justification (P. 9f) of the draft regulation, the German Ministry of Food and Agriculture itself confirms this development:

> *"The problem of the contamination of food by mineral oil components of materials and articles intended to come into contact with food has been known for a lengthy period of time. A number of packs have therefore already been changed by, for example, intermediate bags, coatings or virgin fibres being used instead of fibres based on recovered paper."*

The German Ministry of Food and Agriculture does not, however, provide proof of exactly how large a proportion of the packs has been changed, when it claims that "a number of packs have ... already been changed". The same is true of the unproven assumption that "changes" will "now also be necessary for a significant proportion of materials and articles intended to come into contact with food" due to the mineral oil regulation.

The German Ministry of Food and Agriculture does not therefore reveal whether it has access to newer empirical studies about the migration into food of mineral oil hydrocarbons from materials and articles intended to come into contact with food that are manufactured from recovered paper fibre. There is as a result a complete lack of reliable empirical data about exposure that can be taken as the basis for introducing a national mineral oil regulation. We therefore repeat our argument that the European monitoring project is completed first of all.

4. REGULATION ABOUT MOAH FROM MATERIALS AND ARTICLES BASED ON RECOVERED PAPER THAT ARE INTENDED TO COME INTO CONTACT WITH FOOD IS OBSOLETE

The tests carried out in recent years by various consumer protection organisations (Stiftung Warentest, Ökotest, Foodwatch) and the official food control authorities about migration of mineral oil hydrocarbons into food have also demonstrated a substantial reduction in migration to the average of the detection range that is specified in the 3rd draft of the regulation.

Thanks to self-regulation by the folding carton and food industries, there has therefore in recent years been a drastic reduction in the potential MOAH exposure of consumers from folding carton board that contains recovered paper and from printing inks that contain mineral oil. There is of course no disputing the fact in this context that progress in this process of self-regulation has been accelerated by the prospect of imminent regulation and media coverage of the issue.

The conclusion that has also been expressed by representatives of the German states at public events – that the current market situation with respect to migration of MOAH from materials and articles intended to come into contact with food that contain recovered paper is not in line with the planned regulation (any more) and/or does not justify the regulation – can therefore most definitely be shared. In view of the information available on the market about the amount of MOAH reaching food from materials and articles intended to come into contact with food that are produced with the help of recovered paper fibre, there is no need for regulation. A national mineral oil regulation in relation to this source is obsolete.

The assessment given by the regulatory authorities in letter "C. Alternatives" of the preliminary remarks about the planned regulation must therefore be refuted. The self-regulatory action taken by the board, folding carton and food industries in the past 5-7 years has proved to be an alternative to government regulation.

5. IGNORING THE MULTIPLE SOURCES DISCRIMINATES AGAINST FOLDING CARTONS AND BOARD

The intention of the German Ministry of Food and Agriculture with the mineral oil regulation is to protect consumers against possible dangers to their health due to the migration into food of MOAH from materials and articles intended to come into contact with food that are produced with the help of recovered paper fibre. Although the European Food Safety Authority EFSA (2012) has determined that food packaging based on recovered paper fibre can be a major contributor to exposure to mineral oil hydrocarbons from food, it goes without saying that what is involved here is not the only source of mineral oil hydrocarbons that are found in food.

The mineral oil regulation nevertheless focusses in its application area exclusively on materials and articles intended for contact with food that are produced with the help of recovered paper fibre. Printing inks which contain mineral oil that can be used to print folding cartons are the only other possible source of mineral oil hydrocarbons in food which is mentioned. The large number of other paths by which mineral oil hydrocarbons reach food – something about which there is no dispute among experts in the meantime – are ignored in the draft regulation. This means that the mineral oil regulation represents one-sided discrimination against folding cartons and folding carton board that consist of recycled fibre.

6. CONTAMINATION APPROACH INSTEAD OF MIGRATION APPROACH

The range of different possible and actual complex sources of MOAH in food demonstrates clearly, however, that only a contamination approach and not a migration approach should be adopted – if action is necessary.

The German Ministry of Food and Agriculture is in actual fact aware of this need, even if it does not explicitly mention the other possible sources. It does, however, confirm the relevance of the multiple sources indirectly by relating the detection limit for MOAH in food to recycled board alone:

> *"The detection limit of 0.5 mg/kg of food that is specified in this regulation in connection with the functional barrier relates in addition solely to migration into food of MOAH from materials and articles intended to come into contact with food that are covered by the application area for this regulation and does not represent a general limit for MOAH in food."*

7. MINERAL OIL REGULATION DOES NOT PROTECT CONSUMERS AGAINST MOAH

Although there is no doubt that the mineral oil regulation is aimed at a specific substance group, the alleged exposure of consumers to substances containing these compounds is restricted to this one possible source alone. All the other source paths mentioned by the EFSA are disregarded in the focus and application area of the regulation. This means that the official food control authorities would need to make distinctions between the source paths for mineral oil hydrocarbons in food in carrying out their duties, i.e. only the content that comes from board packaging which contains recovered paper would have to be taken into consideration in their assessment when determining the compliance with the regulation of a material or article intended to come into contact with food. The MOAH content from other sources would need to be ignored when determining food compliance.

It would therefore be legal in accordance with the mineral oil regulation to bring food into circulation that has board packaging containing recovered paper and equipped with a functional barrier which meets the specifications of the mineral oil regulation but that itself contains MOAH from other sources (e.g. food production) in amounts above the limit stipulated in the mineral oil regulation.

This leads to the paradoxical situation that the German government provides consumers with protection against MOAH from board packaging containing recovered paper, while failing at the same time to protect them against exposure from other sources.

The folding carton industry strongly criticises this one-sided regulation of recycled board in the form of a packaging material and a type of packaging as what is alleged to be the sole source of mineral oil hydrocarbon migration. This suggests to consumers and the press in general that the packaging industry alone is responsible. Reporting – which is often inadequate (cf. the Advent calendar case) – and prejudicial judgement are encouraged by the German government introducing such a restriction of the application area for the mineral oil regulation.

8. DISASTROUS CONSEQUENCES FOR RISK COMMUNICATION

Consumer protection organisations will continue to test food packaged in cartons for mineral oil content in future and will detect migration into food in this context that is due to sources of migration that are not covered by the regulation. This means that they will continue to generate maximum publicity by confronting brand manufacturers, retailers, politicians and administrators with the fact that consumers are not being protected against mineral oil hydrocarbons in food in spite of the existence of a mineral oil regulation.

9. IDENTICAL MOAH COMPOUNDS, DIFFERENT RISK MANAGEMENT?

The migration approach on which the concept behind the regulation is based can be considered downright absurd: the reason that the German government gives for the mineral oil regulation is preventive consumer protection, because it cannot be ruled out that individual compounds from the MOAH group migrate into food from materials and articles intended to come into contact with food that are made

from board containing recovered paper and because it cannot be ruled out that these compounds are potentially carcinogenic.

The limit for MOAH migration from board containing recovered paper is attributable to alleged toxicity. However, the potential toxicity only applies to the application area of "board containing recovered paper". If the same compounds from the MOAH group were attributable to other packaging materials or types of packaging and/or to the food processing operations themselves, the same toxic potential would be permitted by the draft published by the German Ministry of Food and Agriculture. This means that the German government is in actual fact justifying the draft regulation on the basis not of the danger to consumers but of the source path, which is not in our opinion legally tenable.

10. INAPPROPRIATE DISTRIBUTION OF RESPONSIBILITY BETWEEN DISTRIBUTORS AND RAW MATERIAL MANUFACTURERS

The draft regulation is directed at and imposes legal obligations on the distributors of the materials and articles intended to come into contact with food (i.e. folding carton manufacturers that supply packaging to the food industry as well as food manufacturers and retailers (in the case of own brands) as downstream players).

The regulation is not, on the other hand, directed at and does not therefore impose legal obligations on the upstream players in the supply chain, i.e. the distributors of the components of the subsequent materials and articles intended to come into contact with food (defined in the European context as "food contact materials"), such as folding carton board made from recovered paper fibre, printing inks, lacquers, adhesives etc.

In view of their status as (the first) distributors of the materials and articles in the supply chain, full responsibility (including complete responsibility for testing) is inflicted on folding carton manufacturers.

Among other things, they are responsible for checking whether the requirements of § 6a paragraphs 1 and 5 of the new regulation about materials and articles intended to come into contact with food are met.

This is not acceptable to the folding carton industry. It is not, first of all, possible for folding carton manufacturers to rely solely on the information supplied by the suppliers of the raw materials (food contact materials) – i.e. board manufacturers, for example – in their satisfaction of the requirements of § 6a paragraphs 2 and 5 of the new regulation about materials and articles intended to come into contact with food. Because even if the paper and board manufacturers have already tested their materials and articles and guarantee that they comply with § 6a paragraph 2 of the new regulation about materials and articles intended to come into contact with food (e.g. folding carton board with a functional barrier), this does not apply automatically to the finished material and article.

Folding cartons are manufactured from the folding carton board raw material in a multi-stage production process, with the raw material generally being processed in sheet form. Folding cartons are created by cutting individual blanks out of sheets of board that have been printed beforehand. During the cutting operation, the individual blanks are at the same time creased at the places that represent the subsequent edges of the folding cartons. So that the folding cartons can be erected smoothly and automatically on fast-running packaging lines during the subsequent packaging process in food manufacturers' plants, they are also folded along the crease lines and, in most cases, glued on folding carton gluing machines at the folding carton manufacturer's facility after being cut and creased. For environmental, logistic and, therefore, economic reasons, the finished folding cartons are then supplied to the food manufacturer as flat blanks.

Due to wood fibres that are the natural raw material for the folding carton board product, what is involved here is a "non-engineered product" that is subjected to considerable physical forces during the cutting, creasing and folding operations. The same forces are also applied to the barrier coating of this

specially finished folding carton board and therefore have an impact on the integrity of the functional barrier.

Migration thus depends not (only) on the raw material used and its barrier properties but also on the specific way it is processed.

The borderline – which is inappropriate from the point of view of liability law – that defines the distributor as legally specified in the German regulation about materials and articles intended to come into contact with food and forms the basis for application of this regulation does, however, lie exactly between two stages of the supply chain – the board manufacturer and the folding carton manufacturer! This leads to a burden for the folding carton industry, which is dominated by medium-sized companies, that is economically unacceptable and disproportionate.

11. PROVISION OF PROOF NOT POSSIBLE

Apart from this, it is likely to be impossible in practice to provide reliable proof that MOAH migration from a material and article intended to come into contact with food made from paper or board that has been manufactured with the help of recovered paper fibre is up to a detection limit of 0.5 milligram. If a level above the detection limit of 0.5 milligram is found in food, this does not mean that the food cannot be brought into circulation. In practice, however, distributors, manufacturers and, possibly, food companies are responsible for demonstrating that there has been no migration above the limit from the material and article intended to come into contact with food.

In practice, this will cause considerable problems, because the draft regulation does not take other possible sources of MOAH into consideration and does not include limits either for migration from other sources or for the final product. If a higher level than the detection limit of 0.5 milligram is found in food

or a food simulant, the distributor will have to explain and prove that there has been no migration above this limit from the material and article intended to come into contact with food.

It is notoriously difficult to prove the non-existence of a fact.

This is even more true of limits close to what is possible to measure. However, if the fact that a limit has been exceeded can be due to several different sources but there is only a limit for one of these sources, it is probably the case in practice that the player to whom the limit close to what is possible to measure applies will be unable to prove reliably that the substance measured is not attributable to him. Particularly in cases where the limit is exceeded in food, there is plenty of reason to assume that the documentation kept to prove that the limit has been observed by the folding carton manufacture will in addition be questioned. However, since the burden of proof lies precisely with the folding carton manufacturer, he will in the doubtful cases that can be expected be made responsible in practice for things that he has neither caused nor has a way to control.

12. ONLY A GROUP APPROACH IS PRACTICABLE FOR RISK ASSESSMENT

The fact that complete responsibility is assumed by the folding carton manufacturer as the distributor is made even more demanding by the legal specification that individual risk assessment of every single product that is brought into circulation has to be documented. The companies along the supply chain always adopt a group-based approach, however – for practicability and thus economic reasons. What this means is that typical configurations are identified for food products of the same kind and with the same packaging systems – configurations that permit conclusions and deductions to be made about the other packaging projects in the group in question, following risk assessment and migration tests involving model calculations and worst-case scenarios.

It is for the economic reasons mentioned above that this group approach will also be applied in the use of folding carton board containing recovered paper that is provided with a functional barrier. For economic and logistic reasons, carrying out migration testing to determine compliance with the detection limit in individual cases at the level of the specific article and for every single article that is brought into circulation is not acceptable.

A number of research institutions are therefore currently working on projects to choose suitable simulants to estimate MOAH migration, to develop test assemblies for determining migration on erected and glued folding cartons, to process barrier cartons and to specify suitable folding carton designs for barrier cartons that are covered by the mineral oil regulation.

13. LEGAL UNCERTAINTY DUE TO TEST METHOD

These developments are, however, taking place in a context in which the test method for determining migration and/or for measuring mineral oil hydrocarbon content in food has still not been perfected and/or validated. What are still striking are the substantial fluctuations between laboratories that provide mineral oil hydrocarbon testing on the market and/or carry out such testing officially.

In addition to this, there continues to be no general convention about interpretation of the quantitative migration readings (chromatograms). Until the recent past, explanations have been presented and theories have been expressed at conferences about what signals from the chromatograms need to be evaluated in what way with respect to migration that is tolerable or undesirable. This is attributed to the lack of a laboratory standard for the interpretation of readings. It is therefore essential that such a convention is included in the stipulations of the regulation. A further requirement in this connection would then be that private laboratories need to be required to obtain accreditation of their compliance with the convention. This is vital, because it would not otherwise be possible to implement the current version

of the mineral oil regulation, since it is not in a position to guarantee legal certainty to those covered by the regulation due to its vagueness as regards the way the test results are interpreted.

14. ONE-SIDED SANCTIONS AGAINST THE FOLDING CARTON INDUSTRY

The risk of sanctions (under criminal law or by authorities) does in addition lie exclusively with the folding carton industry and the downstream players, whereas the manufacturers of the raw materials can only be committed to observe certain parameters *contractually* at the level of private law (since they are habitually not distributors of materials and articles intended to come into contact with food) and whereas those who actually cause the problem, i.e. the players that feed the mineral oil components into the recovered paper chain, have no sanctions whatsoever to fear.

The FFI is aware that it is not possible to distribute risk reasonably in any other way via the regulatory approach chosen by the German government and that the authorisation basis in question here only allows commitment of the distributors of materials and articles intended to come into contact with food. The fact remains, however, that distribution of risk in this way is an unreasonable burden on folding carton manufacturers.

In the context of other regulations, the European regulatory authorities have recognised this problem and have already taken action to solve it to some extent. In Art. 15 paragraph 1 of the European regulation 10/2011[4], for example, upstream suppliers are also required to make declarations of compliance available for "the substances intended for the manufacturing of those materials and articles". The present national draft regulation does not include a provision stipulating a share of responsibility for upstream suppliers. This means that there is a discrepancy between German law about materials and

[4] Commission Regulation (EU) No. 10/2011 of 14. January 2011 on plastic materials and articles intended to come into contact with food

articles intended to come into contact with food and Community law in the case of the mineral oil regulation.

In view of this too, the FFI suggests once again that the draft regulation is not pursued any further and that a European solution is sought instead that is more effective at tackling the complexity of the problem and distributes the burdens better – by making the manufacturers of the upstream products of folding carton production share the responsibility with respect to their *food contact materials*.

15. MINERAL OIL REGULATION CONTRADICTS OBJECTIVES OF THE GERMAN GOVERNMENT'S ENVIRONMENTAL POLICY

Objectives of environmental policy are, finally, strong arguments against implementation of the mineral oil regulation. The collection and recycling of recovered paper fibre are a feature of environmental policy and are economically viable. Resource consumption is reduced and waste is avoided as a result; recycling of the materials is cost-efficient too.

The current mineral oil regulation, which specifies the use of barriers with folding carton board that contains recovered paper, contradicts the objectives of the German government's environmental policy. It can be expected that food manufacturers will prefer the inner bag alternative – since it is perceived as being less critical – because of the complex challenges that have to be tackled in the processing of cartons with an integrated functional barrier. This will be the case particularly when an existing packaging solution already has an inner bag (e.g. made of PE for "dust protection"), that is upgraded functionally with additional barrier properties. Such a multifunctional inner bag does of course cost more, which will put considerable pressure on food manufacturers and the retail trade (in the case of own brands) to substitute the fibre-based board packaging by a bag solution (with a barrier) made out of plastic.

From the point of view of overall waste production, it is therefore likely that there will be a shift in volume from (recyclable) board packaging to plastic packaging. The latter is only recyclable via downgrading, as a result of which the materials are, however, no longer available for materials and articles intended to come into contact with food.

CONCLUSION

In view of all the above, we strongly suggest that the draft regulation is not pursued any further.

Instead of this, the FFI and ECMA think that the monitoring results of the EU project should be collected and evaluated first. If it is necessary, action should then be taken on this basis to introduce an EU regulation.

ALTERNATIVE TO THE REGULATION

A more preferable solution as an alternative to government regulation would, however, be to support the supply chain for materials and articles intended to come into contact with food that are made from board in its process of self-regulation, that has been in progress for years now. The official food control authorities would continue to support and control the developments in this context. Within the framework of their tests, they could play a constructive role in advising and assisting the companies in the supply chain as they carry out their compliance activities.