



November 18th 2020, The Hague.

Position on the notification of the German “22nd Ordinance amending the (German) Consumer Goods Ordinance” or the so called German “Mineral oil Ordinance”.

TRIS 2020/510/D dated 17 August 2020

Who we are and what we represent:

Corrugated Benelux Association (CBA): is the Belgium/Netherlands branche organisation representing the corrugated carton packaging industry, the most sustainable packaging for more than 70% of the dry food and fruit and vegetables in Europe.

GroentenFruit Huis (GFH) of Fresh Produce Centre: represents the interests of businesses involved in the sale and marketing of fresh fruit and vegetables as well as the interests of trading companies in the fruit and vegetables industry. Its 350 members account for over 80% of total sales of fruit and vegetables in the Netherlands, which are worth around €15 billion (including growers' associations). All Fresh Produce Centre members are producing with the lowest environmental impact as possible to serve European citizens demands.

The Federation of the Dutch Food Industry (FNLI): is the umbrella organization for over 500 companies and 18 trade associations active in the Dutch food and drink industry and directly employs more than 149,000 people in the Netherlands. The annual turnover in the entire food industry is approximately 76 billion euros, the export value is 40.8 billion euros.

Our main objections against this Ordinance:

We press for a renunciation of this German measure (TRIS 2020/510/D), in order to protect the European level playing field and the free movement of goods within the single market. The **essence of our objection** against this German ordinance is:

- That it is addressed to paper & board used for food contact packaging, made of recycled paper.
- A functional barrier is required and only some exemptions are possible under specific conditions.
- Obliging the use of composite material (with barrier) will hamper packaging circularity as required under the European Commission's new Circular Economy Action Plan (CEAP) as mentioned in paragraph 3.3.
- This Ordinance is applicable to all foodstuff and concerns migration of MOAH (aromatic fraction) with chain length C 16 to C 35.
- Two (strict) limits for MOAH are proposed: 0,5 mg/kg into food or 0,15 mg/kg into food stimulant.
- It disturbs the internal EU market and the imports of processed food and fresh fruit and vegetables into the EU.

Preference for EU Community level legislation:

There is currently an ongoing EU wide monitoring program on the possible presence of mineral oil in

food and the results are input for EFSA's risk assessment for MOAH. The timing of the notification of this draft German "Mineral oil ordinance", now issued by the German Federal Ministry of Food and Agriculture (BMEL), is therefore unfortunate. Also it is pursuing an outdated and unjustified unilateral approach. The legal basis of this mineral oil ordinance of the BMEL is lacking a preliminary observation (13) of the EU Regulation 1935/ 2004. In this Regulation it is mentioned that differences between national regulations concerning the safety assessment and authorisation of substances used in the manufacture of articles intended to come into contact with food, can cause unequal conditions of competition and thus impede free movement of goods. Therefore, such regulations should be defined in an authorization procedure at (EU) Community level. Instead of introducing national measures, the European Union should set EU-wide levels on products causing unsafe human exposure to mineral oil, based on the outcome of the ongoing EFSA risk assessment.

Mineral oil results from many sources and is omnipresent.

Mineral oil contamination can result from many sources. Among them are animal feed, harvesting machines, machine oils, chemical preparations and agents for food processing, atmospheric pollution from industry and traffic and from food itself. Due to the fact that there are many sources of possible intake of MOAH, the German ordinance of Mineral Oil inadmissibly reverse the burden of proof and creates an obstacle for the free trade of goods. In almost every Member State of Europe the burden of proof rests upon the one who makes the allegation.

Ignoring the current level of knowledge:

The German ordinance project ignores the current level of knowledge and good manufacturing practices (GMP) of the food and food packaging industry. The complex routes of entry for mineral oil (MOAH) all over the production chains call for many differentiated solutions and not for sweeping measures only relating to paper and cardboard packaging. Effective toolboxes exist for the treatment of all potential routes of entry of MOAH into food, raw materials, packaging materials and components at all relevant stages of the value added chain, which have led to proven success in minimization of "MOAH benchmark levels" which have been established and recommended by business, food control and inspection organizations are up to date and recognized as a basis for assessment.

A detailed description was made in the study on current developments in the field by the Dutch RIVM study on Mineral Oil (June, 2018) concluding that paper and carton packaging is no source of mineral oil in foods.

In summary, we believe are of the opinion that the German ordinance should be rejected and we request the European Commission for a renunciation of this German measure in order to protect the European level playing field and the free movement of goods within the single market.

For additional information we are available.

Best regards, signed,

Drs. P.M.M. van Ostaijen.
Corrugated Benelux Association (CBA). (mobile: 00 31 (0) 6 515 33 053).

Dr Nicolette Quaedvlieg,
GroentenFruit Huis (GFH). (mobile: 00 31 (0) 6 418 16 887).

Drs. Hylke Brunt,
Federatie Nederlandse Levensmiddelen Industrie (FNLI). (mobile: 00 31 (0) 6 211 77 346).