August 2024

Notification Number: 2024/0307/NL (Netherlands) Amendment of the Commodities Act Regulation on packaging and consumer products

Steel for Packaging Europe unites the major producers of steel for packaging in Europe: Acciaierie d'Italia in AS, ArcelorMittal, Tata Steel Packaging, thyssenkrupp Rasselstein and U.S. Steel Košice.

Steel for Packaging Europe's membership accounts for the total European production of Electrolytic Tinplate (ETP) and Electrolytic Chromium Coated Steel (ECCS). In total, the member companies that comprise the Steel for Packaging Europe employ 200,000 people in Europe with an estimated 15,000 workers directly in steel for packaging activities. The main sites for steel for packaging are located in France, Germany, Belgium, Slovakia, Spain, Italy, the Netherlands, Luxembourg and the UK.

Steel for Packaging, as a material, contributes in a positive way to the advancement of the European Green Deal and other sustainability goals of the European Union. Furthermore, it has been for many years, and continues to remain, the most recycled food packaging material within Europe with average recycling rates of 80.5 %.

As the Dutch national legislation is widely used as a reference outside of the Netherlands, we, as Steel for Packaging Europe, feel that it is appropriate that there is a European sectoral response to the proposals for the proposed update of some Specific Release Limits on metals as notified to the European Commission with Notification Number : 2024/0307/NL (Netherlands).

In discussion with our supply chain we have identified some potential challenges for our sector with the introduction of the updated Specific Release Limits (SRL) that may cause new technical barriers to trade being created.

1. **Electro chemical reactions differ fundamentally from physical migration**
   Metal pick up in food from metal food contact materials differs from thermoplastic and thermoset polymer food contact materials. Metal release into food is an electro chemical reaction and not just physical migration, which is the case for thermoplastic food contact materials. Consequently, the regulatory framework for plastic food contact material is not directly applicable. The precise internal environment of the can (oxygen and other oxidant levels and the chemical composition of the food) plays a vital role in determining the rate and level of release. The vast majority of food cans are coated in an organic lacquer meaning that unless the coating and or the can is in some way damaged, there will not be contact between the foodstuff and the can. In addition, cans have been used for more than a century for the packaging of foodstuffs without any negative human health impact. Consequently, the reduction in the SRLs as proposed, while potentially posing challenges from the perspective of the materials suppliers and manufacturers, does not necessarily result in increased protection for human health.

2. **Scope shall be limited to uncoated metallic food cans**
   Highest pick up of tin in food is for uncoated applications for food products such as pineapple, apricots, peaches, etc. Maximum pick up of tin in these food products is 200 mg/kg food. Consequently, the pick up of impurities in tin is also at its highest in these applications. Metallic impurities in tin are determined by the supplier and source of the tin.

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3. **Further data collection required before implementation of all proposed limits**
   Based on available data, for most of the metals with new limits, these limits do not create any issues however for Be, Ba, Li, V, Tl (thallium) there are potential challenges. This is because for these metals there is not enough data from pack tests and analysis of the food itself as these are minor impurities in tin and are, therefore, below the current detection limits, for example, current thallium detection limits are above the proposed limit.

4. **Risk management needs to be more practical, transparent and precise**
   Compliance to any limits needs to be based on real world data with the determination of the pick up of metals through pack test. Testing with citric acid, or other simulants, does not reflect realistic test conditions and provides unreliable results for tinplate and therefore should not be used to demonstrate compliance.

5. **European legislation advocated**
   Practically all canned fruits packed in uncoated cans are imported into the Netherlands as there is an insignificant amount of canning of fruits there. As the market for tinplate is a global market, these cans will be manufactured by several suppliers globally, inside and outside of the EU. Consequently, we feel that there needs to be a more wholistic approach to this issue at a European Union level and not national level to ensure a level playing field for all stakeholders.

6. **Proposed limit for arsenic deemed too strict**
   In relation to arsenic, the current SRL for arsenic in the Commodities Act Regulation on packaging and consumer products in the Netherlands is 0.01 mg/kg. The proposed update would lower this to 0.002 mg/kg, a reduction in the order of x5.

   In the report "Assessment of the dietary exposure to arsenic, cadmium, lead and mercury of the population of the EU Member States"[1] it is stated that the main source of arsenic in food comes from fish sources, with more than 50 % of dietary arsenic coming from this source. In addition, it is further stated that the type of water in which the fish are caught is of major importance to the level of arsenic in the food. The estimated total daily intake for an average adult from seafood being in the order of 1 mg.

   As stated previously, the vast majority of canned food is stored in coated cans, with all fish packed in steel for packaging being in coated cans, this coating being an organic coating. The concentration of arsenic in tin is further controlled through standards.[2] Consequently, the potential pick-up or transfer of arsenic from either tinplate or electrolytic chromium coated steel is, in a conservative estimation, minimal.

   The reduction as proposed is, therefore, not only unnecessary but could lead to potential concern for our sector as such low levels would not be easily detectable nor would it be possible to attribute from where the arsenic is coming from – either the food or the packaging itself. Consequently, the producers of steel for packaging would not be in a position to state categorically that arsenic is, or is not, transferring from our packaging into the food at the proposed new levels.

   Furthermore, in discussion with the producers of tin, they stated that arsenic naturally occurs in the presence of the tin minerals that are extracted. While refining does reduce the levels of arsenic present in the tin, it

[1] https://food.ec.europa.eu/system/files/2016-10/cs_contaminants_catalogue_scoop_3-2-11_heavy_metals_report_en.pdf

[2] Flat Steel Products intended for use in contact with foodstuffs, products and beverages for human and animal consumption – Tin coated steel (tinplate) EN10333 and Tin and tin alloys – Ingot tin EN610

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has been noted that, assuming complete dissolution of the tin into the foodstuff, reduction of tin in the raw materials to a level that would facilitate a proposed updated SRL of 0.002 mg/kg would prove technically challenging, if it is at all possible.

In summary, Steel for Packaging Europe supports all efforts by Member States and the European Commission to improve food safety and food risk management. Consequently, we believe that a better way to address metals as food contact materials would be an over-arching regulation at European level that would standardise the process in all member states and ensure a level playing field.

In the absence of specific regulation at EU-level, impurity limits in metals can be regulated and controlled through standardisation with limits on metals in food as sold rather the control of impurities in the raw materials.

We believe that the modifications as proposed in the current Dutch update to the “Warenwet” will potentially cause undue and unneeded challenges in the steel for packaging supply chain. Therefore, we urge you to reassess the proposed SRL, especially for arsenic, within the proposal and welcome a discussion to explain the background and need for the changes.

We remain at your disposal to discuss these issues with you.

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