

## German Recommendation for paper and board for food contact (BfR 36) reviewed.

At its meeting the 14/07, the ECMA Food Safety Committee had a preliminary discussion on the new version of the BfR 36 Recommendation, publicly released in June.

<https://bfr.ble.de/kse/faces/resources/pdf/360.pdf>

<https://bfr.ble.de/kse/faces/resources/pdf/360-english.pdf>

The following main changes were reported:

For BPS the same limit as for BPA (0,05 mg/kg food) has been introduced for recycled paper and board. The limit for aluminium stayed as it was at 1 mg/kg of food, but is now only applicable for moisty foods and not for fatty food anymore.

The limits for the phthalates were not adapted and not aligned with the limits in the Plastics Regulation 10/2011.

Despite the other messages from the BfR (See FC update 15/07), the PFAS substances previously allowed are still included.

A number of new substances are now part of the positive list, no substances were delisted.

An important development to be aware of, is that BfR 36 is now presented as an overall measure.

The final article needs to be compliant with the included limits. Before carton makers had to obtain a declaration from the board supplier on the compliance of the board with BfR 36. Now the carton maker has to perform further compliance work to check if the article is fulfilling the included limits.

The assessment made is that if compliance certificates are obtained, not all chemicals need to be checked again, the main part will be covered but for certain categories of substances, there may be an issue, for instance the biocides. The same biocides present in the P&B substrate may also appear in the used inks. The other related recommendations, such as BfR 36/2 on baking papers, boards and paperboards have also been reviewed.

## German Ink Ordinance

In a letter dated the 27<sup>th</sup> August, the Federal Ministry of Food and Agriculture (BMEL) informed the industry associations on the forwarding for approval of the Ink Ordinance to the Bundesrat, the Federal Council in which the Länder are participating in the legislative process.

Submitted draft: <https://dserver.bundestag.de/brd/2021/0655-21.pdf>

In essence the Ordinance contains a positive list with all evaluated substances which can be used for manufacturing FCM inks and the limits to respect.

Other substances can also be used, if not in direct contact with food, the substances are not classified as CMR and the migration is not detectable (0,01 mg/kg).

This forwarding to the Bundesrat means, an agreement has been obtained among the federal ministries concerned, which so far could not be reached with the Federal Ministry of Economics.

The BMEL letter explains further how in the compromise negotiations between the ministries, the included transitional period has been extended to 4 years for food contact materials and for articles printed with certain pigments with foreseeable direct contact to 5 years. It has also been agreed, the transition period may be adapted if the European Commission presents a legal regulation on printing inks or printed food contact materials.

With this step in the adoption process, the German Government is overruling the clear objections which have been presented in recent years in the hearing process, by the other Member States and the EU Commission.

The FFI circular letter earlier this week providing more background, explains the submitted text - compared to the previous versions - contains now also provisions regarding NIAS (Not Intentionally Added Substances) in analogy to the Plastics Regulation 10/2011.



## **German Mineral Oil Ordinance**

### **Reply to the comments received with regard to the WTO notification.**

On demand we can share a copy of the detailed reply from the German Ministry, obtained from BPIF Cartons.

#### In summary:

- The reply explains the Ordinance was comprehensively coordinated with all federal ministers and that the proceeding and the notifications were initiated with their consent.
- In absence of harmonised EU Regulations, the Member States are free to develop own legislation in view of consumer protection and this has happened and - due to the slow legislative process at the EU level - is happening, not only in Germany, also e.g., in the Netherlands, France and Denmark. The German barrier approach when using food contact materials/articles made of recycled paper, is not new. Denmark, Austria and Switzerland introduced similar regulations and recommendations.
- It is recognised specific national safety requirements can create difficulties in retail, but consumer health protection is of particular relevance. A mutual recognition clause is not included in the Ordinance, but the universally applicable rule of mutual recognition is contained in the German Food and Feed legislation (LFGB).
- There are indeed many sources for mineral oil contaminations and the draft ordinance therefore does not in any way claim to completely solve the issue of mineral oil hydrocarbon /MOAH contamination solely through this measure alone. The rules on food contact materials/articles made of recycled paper and board are no more than a first step.
- It is correct that the investigations on mineral oils were conducted some time ago and the MOAH exposure due to FCM has decreased since then. According to the BMEL this can however amongst others been attributed to the discussion around legal provisions and the anticipated implementation of the prescribed solutions. This market adoption proves the solutions are workable.
- The waiver declaration is by industry considered as disproportionate. In such a declaration the food manufacturer who uses the FCM can declare they will ensure that the MOAH migration remains below the detection limit, and in such a case it is allowed to put recycled paper and board FCM on the market without a functional barrier. The BMEL leaves flexibility on how such a waiver declaration should look like, but argues this type of communication should already exist between the FCM supplier and the food customer.
- The provided exemptions offer sufficient flexibility, thus avoiding an unnecessary expansion of the scope. For example, a functional barrier is not required if in view of the nature of the raw materials used there is no reason to expect any detectable MOAH migration.
- It is recognised the mineral oil testing is challenging. According to the insights available at present, it can however be assumed that a limit of quantification of 0,5 mg/kg food is achievable in all food matrices that are relevant to cardboard packaging.
- In relation to the different limits in food (0,5 mg/kg food) and in food simulants (0,15 mg/kg) the provided reply states that in the light of the possible carcinogenic potential, the objective should generally be to achieve a limit of detection significantly lower than 0,5 mg MOAH per kg of food. This is currently not possible in all foods.
- From the sustainability perspective, the Ordinance contributes to securing the option of a continued use of recovered paper and board in food packaging. According to the provided BMEL reply barriers should be designed so that they can be well separated from the paper and board.

All this, confirms the German Authorities intend to go on, also with this national measure.

