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**No.: 511252324776-05**

Chairman: Uwe Vogel

7 January 2020

**Re: TRIS notification 2019/551/HU — Hungarian draft Decree on the mandatory requirements of the Codex Alimentarius Hungaricus, here: smoked ground paprika**

Dear Sir/Madam,

The CleanSmokeCoalition is the European trade association for healthy, sustainable and innovative smoking of food.

We are keenly interested in the functioning of the internal market in foodstuffs and smoked products in particular and hence the compatibility of national laws with the free movement provisions of the Treaty and Union law overall.

With this submission we would like to comment on the projected Hungarian law defining quality criteria and labelling requirements for smoked ground paprika. We do this within the framework of the Technical Regulation Information System (TRIS)<sup>1</sup> as we have reasons to believe that the law adopted without a number of necessary amendments could present a technical barrier to trade between Member States. We are, in particular, anxious to avoid the establishment in law of notions of “smoke” and “smoking” that do not reflect the complex reality of smoking of food.

Thank you for considering our observations and bringing them to the attention of the Member States.

Yours faithfully,

Uwe Vogel  
– Chairman –

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<sup>1</sup> <http://ec.europa.eu/growth/tools-databases/tris/en>

## PURPOSE AND SCOPE OF THE DECREE

The Hungarian legislator sees the need to define “smoked ground paprika” and its quality parameters in law as these are currently lacking in both national law and Union law. What constitutes a food product as “smoked ground paprika” is projected to be described in detail by Decree and may in the future only be applied if the product meets the requirements set forth therein.

In order to further consumer protection, the Decree is adding to the mandatory particulars for pre-packed food established by Regulation (EU) No 1169/2011 on the provision of food information to consumers.<sup>2</sup> It namely requires:

- limiting the designation of “smoked ground paprika” to products complying with the Decree
- requiring the designation of the “growing region” of the paprika
- requiring the indication of the pungency of the paprika

Such measures fall under Article 39 of Regulation (EU) No 1169/2011 and need to be notified in keeping with Article 45 of Regulation (EU) No 1169/2011.

The Decree is not applicable to paprika products protected by quality regulations (Regulation (EU) No 1151/2012). Currently, four product designations are protected: Szentesi paprika PGI, Kalocsai fűszerpaprika-őrlemény PDO, Szegedi fűszerpaprika-őrlemény/Szegedi paprika PDO and Paprika Žitava/Žitavská paprika PDO, all of which are Hungarian with the exception of the last one which is Slovenian.

Products from other Member States marketed in Hungary “need not comply with the technical provisions defined in this regulation if the provisions governing consumer protection offer a level of protection equivalent to those laid down in this regulation.”

## GENERAL OBSERVATIONS

The CSC is fully supportive of the draft Decree’s objective to protect a smoked food product cherished in national culture (also to improve its chances on the market) and to define smoking processes so as to clearer frame the regulatory framework for the smoking of food, a basis Union law is currently lacking (and which the EU legislator should tackle as a project). However, the CSC believes that the Decree, in some key provisions, could be more precisely phrased in order to avoid misconceptions about the smoking of food.

## NOTION OF ‘SMOKING’

The draft Decree amending the Codex Alimentarius Hungaricus reads (extract):

“Smoking: an operation aimed at lending a smoked taste and colour to the product and establishing the character of the product using smoke. Smoking is achieved by the imperfect, direct burning of hardwood. Smoking can be carried out in the following manners:

Cold smoke smoking: This is done at temperatures not exceeding 40 °C. Depending on the duration of the smoking, it can be:

- traditional long cold smoking, in the course of which the product is smoked periodically with dilute, lighter smoke for a longer period;
- short cold smoking process, in the course of which the product – to achieve proper reddening – is smoked over the course of a few days with dense, cold smoke.

Hot smoking: This is done at temperatures ranging from 40 to 60 °C.”

<sup>2</sup> OJ L 304 of 22/11/2011, p. 18

The CSC would like to comment as follows.

### Background

In the smoking of food, there are basically seven areas of application or production steps to be distinguished:

- Smoking with combustion smoke - direct<sup>3</sup> (conventional smoking)
- Smoking with combustion smoke - indirect<sup>4</sup> (conventional smoking)
- Smoking with friction smoke (conventional smoking)
- Steam smoke (conventional smoking)
- Production of primary smoke products (basic material for pre-cleaned smoke and smoke flavourings)
- Smoking with purified smoke (CleanSmoke)
- Use of smoke flavourings

All but the last are smoking processes. This scaling is accompanied by improved consumer health and environmental protection. The production of primary smoke products and their use as purified smoke and smoke flavourings are recognised as the Best Available Techniques (BAT) for emission control.<sup>5</sup>

As a principle, maximum levels (MRLs) for polycyclic aromatic hydrocarbons (PAHs) have to be respected. MRL-PAH may be exceeded for traditionally smoked products where Union law allows a number of Member States (Hungary is not among them) to exempt certain food products<sup>6</sup>. Smoked paprika is a unique case as recital 7, 3<sup>rd</sup> and 4<sup>th</sup> sentence of Commission Regulation (EU) 2015/1933<sup>7</sup> provides for an exception *carte blanche* that makes it possible to virtually ignore residue levels otherwise deemed mandatory.<sup>8</sup>

### Proposals

Given that the Decree, by defining the notion of “smoked ground paprika”, also defines in law the notions of “smoking”, “cold smoke” and “hot smoke”, great care should be applied to associate these terms with the smoking technology as it stands, both time-honoured and advanced.

On its website the CleanSmokeCoalition provides for a Glossary of Terms that could be referred to for smoking nomenclature.<sup>9</sup>

A definition of “smoking” would clearly encompass more than just “an operation aimed at lending a smoked taste and colour to the product and establishing the character of the product using smoke” as the draft Decree suggests. Smoking is about a multitude of factors: it is certainly taste, colour and what can be called the product’s “character”, but also, for instance, about conservation (microbiological surface stability, inhibition of yeast and mould cultures), texture and the improvement of organoleptic features. Smoking can be applied directly but also indirectly as well by use of combustion smoke, by friction smoke, steam smoke and purified smoke.

<sup>3</sup> „Altonaer Ofen“

<sup>4</sup> Smouldering smoke

<sup>5</sup> Commission Implementing Decision (EU) 2019/2031 of 12 November 2019 establishing best available techniques (BAT) conclusions for the food, drink and milk industries, under Directive 2010/75/EU (OJ L 313 of 4/12/2019, p. 60)

<sup>6</sup> Commission Regulation (EU) 2020/... amending Regulation (EC) 1881/2006 as regards maximum levels of polycyclic aromatic hydrocarbons (PAHs) in traditionally smoked meat and meat products and traditionally smoked fish and fishery products and establishing a maximum level of PAHs in powders of food of plant origin used for the preparation of beverages (adoption postponed in Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) - Section “Novel Food and Toxicological Safety of the Food Chain” meeting 26/9/2019). The CSC makes reference to its position paper of July 2019 issued in the Commission’s feedback mechanism (“Have Your Say”), easy to access by search engine using the words “European Commission feedback mechanism CleanSmokeCoalition”

<sup>7</sup> Commission Regulation (EU) 2015/1933 amending Regulation (EC) No 1881/2006 as regards maximum levels for polycyclic aromatic hydrocarbons in cocoa fibre, banana chips, food supplements, dried herbs and dried spices (OJ L 282 of 28/10/2018, p. 11).

<sup>8</sup> Quote: “Traditional smoking and processing methods applied to smoked paprika and cardamom result in high levels of PAHs. Given that the consumption of these spices is low and to enable these smoked products to remain on the market, it is appropriate to exempt these spices from the maximum levels.”

<sup>9</sup> <http://clean-smoke-coalition.eu/public-affairs/glossary-of-terms>

A preferable definition of “smoking” would be “a process of flavouring, colouring and preserving food by exposing it to a smoke cloud” or, even better, “a process of intentionally exposing food to smoke.”

A general understanding of “cold smoke” would mean smoke applications in the temperature range of about 15 to 28 °C. Temperatures up to 40 °C exceed the heat range that the sector would qualify as “cold”.

In relation to “long” and “short” cold smoking we do not hold any particular views.

A general understanding of “warm smoke” and “hot smoke” would mean smoke applications in the temperature range of about 30 °C and above. Smoking processes for cooking/drying of food sometimes are also referred to as hot smoke.

## PUNGENCY

The draft Decree requires that the product’s designation includes “a reference to the pungency of the product using the term “non-pungent” or “sweet”, “slightly pungent”, “pungent” or “strongly pungent””, expressed on the product packaging in a pictogram.

The CSC suggest a reference is made in the Decree to the well-established Scoville scale as a recognised organoleptic test to measure the pungency for dried peppers. Reference is made to the Scoville scale in the single document protecting the Szentesi paprika PGI. This allows for comparison between Hungarian smoked ground paprika and comparable products of other Member States.

It is not clear from the draft Decree what pictograms should be used to designate pungency (Article 9(2) of Regulation (EU) No 1169/2011).

## CONCLUSION

The initiative of the Hungarian legislator is to be open to lending precision to the as of yet legally undefined notions of “smoking”, “cold smoke” and “hot smoke”. However, in filling this gap in law (also due the lack of appropriate definitions in Union law), it should be done factually right and technically in a way that avoids unwanted barriers to trade. The venerated name of the Hungarian Codex Alimentarius of 1891 that bequeathed its name to first the Codex Alimentarius Europaeus 1958 and then the Codex Alimentarius 1961/3 as an offshoot of the United Nations should be an encouragement to establish a nomenclature that is “state of the art”.

**About us.** The CleanSmoke Coalition (CSC) is a stakeholder organisation representing producers, traders and users of smoke flavourings (flavourings), smoke generated using purified primary products for the smoking of food (purified smoke) as well as other forms of innovative smoking (conventional smoke). Most of the license holders for primary smoke products count among our members. It was called into being to work with EU institutions to help shape the emerging regulatory framework surrounding the innovative smoking of foods, which makes smoking healthier, is environmentally more sustainable, is safer to use and is SME-friendly. Please refer to our website which explains who we are and what we stand for (<http://clean-smoke-coalition.eu>).