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Mr José Manuel Albares Bueno
Minister for Foreign Affairs,
European Union and Cooperation
Ministry of Foreign Affairs, European
Union and Cooperation
Plaza del Marqués de Salamanca, 8.
28006 Madrid
Spain

Subject: Notification 2023/114/E

Draft Royal Decree on processing aids used in food processing and production processes

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Sir,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535⁽¹⁾ the Spanish authorities notified on 17 March 2023 the **Draft Royal Decree on processing aids used in food processing and production processes** (hereafter: ‘the notified draft’) under notification 2023/114/E.

According to the notification message, the notified draft regulates the *processing aids used to process and produce different types of food and their conditions of use*. The notified draft *includes the labelling requirements that must be met by processing aids placed on the market in Spain, without prejudice to the indications provided for in other legislation that may be applicable, and the conditions to be met by companies engaged in manufacturing, packaging or distributing processing aid*.

Examination of the notified draft prompted the Commission to issue the following comments.

¹) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (Text with EEA relevance), OJ L 241, 17.9.2015, p. 1.

Article 4 of the notified draft lays down rules for the labelling of processing aids. It provides for the mandatory labelling requirements to be indicated on the packaging/containers of the processing aids listed in Annex I Part B of the notified draft.

The list of mandatory labelling particulars laid down in Article 4 of the notified draft does not fully correspond to the list of mandatory labelling particulars set out in Article 9 of Regulation (EU) No 1169/2011 on the provision of food information to consumers ⁽²⁾. In particular, Article 4 of the notified draft provides that the following information shall be indicated on the packaging/containers of processing aids, in addition to the mandatory labelling requirements mentioned in Article 9 of Regulation (EU) No 1169/2011: the statement “*intended for food*”, or “*restricted use in food*”, or a more specific reference to its intended use in food; the words ‘*not intended for sale to the final consumer*’, where appropriate; information on the effect of the processing aid on the food in question.

In a request for clarification sent to the Spanish authorities on 17 April 2023, the Commission noted that the list of processing aids set out in Annex I Part B of the notified draft includes different types of substances and asked the Spanish authorities to clarify whether the labelling requirements set out in Article 4 of the notified draft would also apply to processing aids intended for sale to final consumers. The Commission asked the authorities to consider their reply in light of the fact that Regulation (EU) No 1169/2011 on the provision of food information to consumers harmonises the labelling of foods intended for supply to the final consumer or to mass caterers and Article 9 thereof lays down a list of mandatory labelling particulars which shall appear on food labels.

In their reply, the Spanish authorities clarified that the labelling requirements laid down in Article 4 of the notified draft apply to processing aids marketed in Spain, whether or not intended for sale to final consumers and mass caterers.

The Spanish authorities further noted that in order to avoid any misleading information, they suggested an amended wording for Article 4 of the notified draft, which distinguishes between the labelling requirements of:

(a) processing aids intended for supply to the final consumer or mass caterers, which shall be in accordance with Regulation (EU) No 1169/2011 on the provision of food information to consumers, and

(b) processing aids not intended for supply to the final consumer or mass caterers, which shall also include information on the elements included thereto.

The Commission welcomes the Spanish authorities’ clarifications and invites them to ensure that the suggested amended wording of Article 4 will be introduced in the notified draft prior to its adoption.

²) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, OJ L 304, 22.11.2011, p. 18.

The Spanish authorities are invited to take into account the above-mentioned comments.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Thierry Breton
Member of the Commission