



EUROPEAN COMMISSION

Brussels,
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Minister Hanke Bruins Slot
Minister van Buitenlandse Zaken
Bezuidenhoutseweg 67
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Subject: Notification No 2023/0750/NL
Amendment of the Commodities Act Decree on the preparation and processing of foodstuffs and the Commodities Act Decree on the hygiene of foodstuffs in relation to changes in microbiological requirements for food and beverages and requirements for raw milk and raw cream
Delivery of comments pursuant to Articles 5(2) of Directive (EU) 2015/1535

Dear Madam,

Within the framework of the notification procedure laid down in Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services¹, the Dutch authorities notified to the Commission on 22 December 2023 a draft **amendment of the Commodities Act Decree on the preparation and processing of foodstuffs and the Commodities Act Decree on the hygiene of foodstuffs in relation to changes in microbiological requirements for food and beverages and requirements for raw milk and raw cream** (hereinafter the notified draft).

According to the notification message, the notified draft intends to add a microbiological criterion for shiga toxin producing *E. coli* (hereinafter: STEC), considering that the presence of STEC in foodstuffs can have serious consequences for public health. The notified draft also intends to amend requirements for raw milk and raw cream intended for direct human consumption, in order to increase the safety level of those products.

The examination of the notified draft has 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, OJ L 241, 17.9.2015, p. 1.

Article 4 of the Dutch Commodities Act – Decree on the preparation and treatment of foodstuffs (hereinafter the basic act) currently provides that:

‘1 Pathogenic micro-organisms shall be absent in food and drink in quantities which may be harmful to human health, on the understanding that:

- a. Salmonella is not detectable in 25 g or ml;*
- b. Campylobacter is not detectable in 25 g or ml;*
- c. the number cultivable Staphylococcus aureus does not exceed 100.000 per g or ml;*
- d. the number cultivable Clostridium perfringens does not exceed 100.000 per g or ml;*
- e. the number cultivable Bacillus cereus does not exceed 100.000 per g or ml.*

2 The first paragraph shall not apply to the extent that microbiological criteria are laid down in Reg. (EC) 2073/2005.

3 In addition, paragraph 1 shall not apply to:

- a. raw food and drink; and*
- b. processed food and drink products which: 1° have not undergone a germinating treatment; and*
- 2°. during normal use, are fit for human consumption only after heating by the final user.’*

Article I of the notified draft amends Article 4 of the the basic act in the following way:

‘1. In paragraph 1(c), the words ‘cultivable Staphylococcus aureus’ are replaced by ‘coagulase positive staphylococci (Staphylococcus aureus and other species)’.

2. Subsections (c) to (e) [of paragraph 1] are renumbered to (d) to (f), and a subsection is inserted, which reads:

‘c. Shiga toxin producing E. coli (STEC) is not detectable in 25 g or ml’;

3. Paragraph 3 now reads:

‘3. Paragraph 1 shall also not apply to food and drink products that have not undergone germ-reducing treatment and are consumed under normal use only after the end-user has applied heating or other processing that reduces pathogenic micro-organisms to non-harmful quantities’.

Therefore, the notified draft, read together with the basic act, would require the absence of pathogenic micro-organisms from food and drink in quantities exceeding those indicated above. The notified draft introduces detection limits in particular for *Shiga toxin producing E. coli* in food products. It appears thus that the Dutch authorities intend to lay down additional food safety criteria to those listed in Annex I to Regulation (EC) No 2073/2005².

Article 3(1) of Regulation (EC) No 2073/2005 provides that *food business operators shall ensure that foodstuffs comply with the relevant microbiological criteria set out in Annex I.*

² Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs, OJ L 338, 22.12.2005, p. 1.

Furthermore, Article 4(1) of the same Regulation establishes that *‘Food business operators shall perform testing as appropriate against the microbiological criteria set out in Annex I, when they are validating or verifying the correct functioning of their procedures based on HACCP principles and good hygiene practice.’*

Annex I of that Regulation lays down a list of microbiological criteria, which does not include those introduced by Article I of the notified draft to Art. 4(1) of the basic act.

It should be noted that, as mentioned in section 8 of the notification message, Article 13 of the Commodities Act contains a mutual recognition clause, which is, however, subject to the requirement that goods lawfully marketed in another EU Member States need to provide an equal level of protection as that laid down in Dutch legislation.

The Commission notes that food safety criteria regarding micro-organisms, their toxins or metabolites other than those listed in Annex I to Regulation (EC) No 2073/2005, can be adopted by Member States only insofar as they do not constitute unjustified barriers to the free movement of goods in the internal market, in line with Articles 34 and 36 of the Treaty on the Functioning of the European Union.

Therefore, the Commission invites the Dutch authorities to ensure that the notified draft does not have the effect to create an unjustified barrier to the free movement of goods lawfully placed on the market in other EU Member States.

The Commission invites the Dutch authorities to take the above comments into account.

The Commission furthermore invites the Dutch Government to communicate the adoption of the definitive text of the draft technical regulation concerned, in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Sandra GALLINA
Directorate-General for Health and
Food Safety