



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Single Market Enforcement

Notification of Regulatory Barriers

Notification Number : 2023/0750/NL (Netherlands)

# Amendment of the Commodities Act Decree on the preparation and treatment of foodstuffs and the Commodities Act Decree on hygiene of foodstuffs in connection with the modification of microbiological requirements for food and drink products and requirements for raw milk and raw cream

Date received : 22/12/2023

End of Standstill : 27/03/2024

## Message

Message 001

Communication from the Commission - TRIS/(2023) 3688

Directive (EU) 2015/1535

Notification: 2023/0750/NL

Notification of a draft text from a Member State

Notification – Notification – Notifizierung – Нотификация – Oznámení – Notifikation – Γνωστοποίηση – Notificación – Teavitamine – Ilmoitus – Obavijest – Bejelentés – Notifica – Pranešimas – Paziņojums – Notifika – Kennisgeving – Zawiadomienie – Notificação – Notificare – Oznámenie – Obvestilo – Anmälan – Fógra a thabhairt

Does not open the delays - N'ouvre pas de délai - Kein Fristbeginn - Не се предвижда период на прекъсване - Ne zahajuje prodlení - Fristerne indledes ikke - Καμία έναρξη προθεσμίας - No abre el plazo - Viivituste perioodi ei avata - Määräaika ei ala tästä - Ne otvara razdoblje kašnjenja - Nem nyitja meg a késések - Non fa decorrere la mora - Atidējimai nepradedami - Atlikšanas laikposms nesākas - Ma jiftaħ il-perijodi ta' dewmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Nu deschide perioadele de stagnare - Nezačína oneskorenia - Ne uvaja zamud - Inleder ingen frist - Ní osclaíonn sé na moilleanna

MSG: 20233688.EN

1. MSG 001 IND 2023 0750 NL EN 22-12-2023 NL NOTIF

2. Netherlands

3A. Ministerie van Financiën, Dienst Douane Noord, CDIU.  
(cdiu.notificaties@belastingdienst.nl 050 5232135)

3B. Ministerie van Volksgezondheid, Welzijn en Sport  
Directie Wetgeving en Juridische Zaken

4. 2023/0750/NL - C50A - Foodstuffs

5. Amendment of the Commodities Act Decree on the preparation and treatment of foodstuffs and the Commodities Act Decree on hygiene of foodstuffs in connection with the modification of microbiological



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requirements for food and drink products and requirements for raw milk and raw cream

6. Microbiological requirements for food and drink products and requirements for raw milk and raw cream intended for direct human consumption

7.

8. Articles I and II of the draft Decree may contain technical requirements. The Commodities Act Decree on the preparation and treatment of foodstuffs is amended in order to add a microbiological criterion for Shiga toxin-producing *E. coli* (hereinafter: STEC). The presence of STEC in food can have serious public health consequences. Due to the lack of specific European or national regulations, the NVWA (Netherlands Food and Consumer Product Safety Authority) has established intervention policy with regard to the presence of STEC in food. With this amendment, the requirement that STEC is not demonstrable in 25 g or ml based on the NVWA intervention policy is included in the Commodities Act Decree on the preparation and treatment of foodstuffs.

The Commodities Act Decree on the hygiene of foodstuffs is amended to take amended requirements for raw milk and raw cream intended for direct human consumption into account. The reason for this is the opinion of the Office for Risk Assessment & Research (hereafter: BuRO) of the NVWA to enhance the safety of raw drinking milk and raw cream. In addition, rules for raw milk are also declared applicable to raw cream and to milk from animal species other than cows.

For the sake of completeness, it is noted that Article 13d of the Commodities Act contains a mutual recognition clause. The mutual recognition principle entails that an EU Member State shall not ban in its own territory the sale of goods that have been legally brought onto the market in another EU Member State on the grounds that the goods do not meet its own national regulations. It is important here that goods from another EU Member State offer at least an equivalent level of protection. The marketing of goods with an equivalent level of protection originating from other EU Member States falling within the scope of this regulation is therefore not prohibited on the basis of requirements laid down in this regulation.

9. Prohibition of discrimination

The proposed amendment is applied without discrimination. The microbiological requirements of the Commodities Act Decree on the preparation and treatment of foodstuffs apply to all food operators in the Netherlands. The rules for raw milk and raw cream intended for direct human consumption apply to all operators selling raw milk and raw cream to consumers in the Netherlands.

Necessity

The proposed amendment is justified in view of an overriding reason in the public interest, namely: the protection of public health. The presence of STEC in food can have serious public health consequences. Due to the lack of specific European or national regulations, the NVWA has established intervention policy with regard to the presence of STEC in food (1). The inclusion of this specific microbiological criterion in a policy of the NVWA was a good way to address a legislative gap swiftly and specifically. However, including microbiological criteria in the legislation is preferable. This amendment therefore includes the requirement that STEC is not demonstrable in 25 g or ml based on the intervention policy in the Commodities Act Decree on the preparation and treatment of foodstuffs. This is necessary to ensure food safety, and thus to protect public health.

In the Netherlands, it is permitted to supply raw cow's milk to the consumer, subject to conditions. In addition to raw cow's milk, however, raw milk from animals other than cows is also offered in the Netherlands. Raw cream is also delivered directly to the consumer. Raw milk can already contain pathogens in quantities that are harmful to health immediately after production. Taking a low dose of these pathogens can already lead to a food-borne infection. The risk of food-borne infection from pathogenic bacteria, such as campylobacter and salmonella, can be adequately reduced if milk undergoes heat treatment. Although when selling raw milk has always been the obligation to inform consumers that this milk must be cooked prior to consumption, practice shows that this is often not done. The supply of raw milk to consumers, for example directly from the milk tank,



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through milk vending machines from which consumers can draw milk themselves and by sending to consumers following sale over the internet, appears to increase and pose additional foods-safety risks. In two opinions (2, 3), the Risk Assessment & Research department of the NVWA (hereinafter: BuRO), in view of the practice of consumption of raw milk and raw cream, recommends tightening the existing hygiene requirements and storage requirements for raw milk and raw cream for consumer sales. In addition, due to the food safety risks of consuming raw milk and cream, BuRO advises obtaining insight into companies that produce and supply these products to consumers. With the amendment of the Commodities Act Decree on the hygiene of foodstuffs, these opinions are almost all adopted. The requirements for raw milk and raw cream intended for direct human consumption shall be extended to include raw milk and raw cream from both cows and other milking animals. In addition, the requirements are tightened to reduce the risk of food infections due to the consumption of raw milk or raw cream. The amendment of rules for the sale of raw milk or raw cream to consumers is necessary in the interests of protecting public health, given the food-safety risks posed by consumption of raw milk or raw cream.

### Proportionality

The amendment of the Commodities Act Decree on the preparation and treatment of foodstuffs and the Commodities Act Decree on hygiene of foodstuffs is an appropriate measure for protecting public health. The Commodities Act Decree on the preparation and treatment of foodstuffs already lays down microbiological criteria for food and drink products. Adding a standard for the presence of STEC in food in these regulations is therefore an appropriate measure in order to prevent food from being unsafe. The Commodities Act Decree on the hygiene of foodstuffs already lays down hygiene rules for the sale of raw cow's milk to consumers. Tightening and extending these hygiene requirements to raw cream and milk from animals other than cows is therefore an appropriate measure for protecting consumers from food-safety risks resulting from consuming raw milk or raw cream.

In addition, the measure does not go beyond what is necessary. There is no less-restrictive measure to ensure food safety than by laying down legal microbiological requirements and hygiene requirements. Consumers should be able to trust that the food they consume is safe. In this case, measures less restrictive than regulatory measures are not appropriate for the public interest, namely: to ensure adequate protection of public health.

(1) NVWA: Policy line: Intervention on presence of STEC in food. 14 April 2014.

(2) NVWA BuRO, 2017. Dairy chain risk assessment (including annexes). NVWA/BuRO/2017/266.

Netherlands Food and Consumer Product Safety Authority, Office for Risk Assessment & Research, Utrecht.

(3) NVWA BuRO, 2022. Risk assessment of food-safety risks of raw drinking milk during the storage phase. TRCVWA/2022/2887. Netherlands Food and Consumer Product Safety Authority, Office for Risk Assessment & Research, Utrecht.

10. Numbers or titles of basic texts:

11. No

12.

13. No

14. No

15. No

16.

TBT aspects: No

SPS aspects: No



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European Commission

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