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Subject: Notification 2024/003/IT

The draft Inter-ministerial Decree repealing and replacing the Decree of 21 September 2005 of the Minister of Productive Activities and of the Minister of Agricultural and Forestry Policies concerning the production and sale specifications for certain cured meat products.

Delivery of a detailed opinion and comments pursuant to Articles 6(2) and 5(2) of Directive (EU) 2015/1535.



1. THE NOTIFICATION

Within the framework of the notification procedure laid down in Directive (EU) 2015/1535¹, the Italian authorities notified to the Commission on 3 January 2024 the *draft Inter-ministerial Decree repealing and replacing the Decree of 21 September 2005 of the Minister of Productive Activities and of the Minister of Agricultural and Forestry Policies concerning the production and sale specifications for certain cured meat products* (Notification 2024/003/IT), (hereinafter ‘the notified draft’).

According to the notification message, the notified draft aims to consolidate in a single text the amendments made to the Ministerial Decree of 21 September 2005 and to incorporate new regulatory provisions which have become necessary for the needs of the production sector, ensuring that consumers are fully informed on the charcuterie products covered. The notified

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 (codification), OJ L 241, 17.9.2015, p. 1.

draft contains provisions concerning two additional cured meat products: ‘bresaola’ and ‘speck’.

The examination of the notified draft has prompted the Commission to issue the following detailed opinion and comments.

2. DETAILED OPINION

Article 10a of the notified draft on the presence of added water provides the following:

1. *The provision on the presence of added water set out in point 6 of Part A of Annex VI to Regulation (EU) No 1169/2011 does not apply to products covered by this Chapter, as they are already subject to the technological limitations referred to in Articles 4, 8 and 9.*

Article 4 of the notified draft lays down the moisture content of cooked ham, whereas Articles 8 and 9 provide for the use of the descriptions ‘*selected cooked ham*’ and ‘*high quality cooked ham*’ respectively.

In addition, the preamble of the notified draft notes that *point 6 of Part A of Annex VI to Regulation (EU) No 1169/2011 provides that, for meat products and preparations in the form of cuts (including roasts), slices, portions of meat or carcasses, the name of the food shall include an indication of the presence of added water if the latter represents more than 5 % of the weight of the finished product, but distinguishes the case of cooked ham, by providing that in the case of cooked ham, the presence of added water is made necessary by the specific production technique and does not mislead the consumer.*

The Commission notes that according to Article 17(5) of Regulation (EU) No 1169/2011, in conjunction with Annex VI, Part A, point 6, in the case of meat products and meat preparations which have the appearance of a cut, joint, slice, portion or carcass of meat, the name of the food shall include an indication of the presence of added water if the added water makes up more than 5 % of the weight of the finished product. The indication of the presence of added water is therefore fully harmonized under the above provisions of Regulation (EU) No 1169/2011 and applies in all cases where the added water makes up more than 5% of the weight of the finished product as mandatory particular accompanying the name of the meat products.

Therefore, Article 10a of the notified draft, as elaborated in the Preamble to the notified draft, is not compatible with Article 17(5) of Regulation (EU) No 1169/2011, in conjunction with Annex VI, Part A, point 6 therein, insofar as it requires the indication of presence of added water in cases where omission of such information could mislead the consumer and not in all cases where the added water makes up more than 5% of the weight of the finished product, as required under EU law.

For the above reasons, the Commission delivers a detailed opinion provided for in Article 6(2) of Directive (EU) 2015/1535 to the effect that Article 10a of the notified draft would be in breach of Regulation (EU) No 1169/2011, were it to be adopted without giving due consideration to the above observations.

The Commission would remind the Italian Government that under the terms of Article 6(2) of the above-mentioned Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State, which has drawn up the draft technical regulation concerned, to postpone its adoption for six months from the date of its notification.

This deadline therefore comes to an end on 4 July 2024.

The Commission further draws the attention of the Italian Government to the fact that under this provision the Member State which is the addressee of a detailed opinion is obliged to inform the Commission of the action which it intends to take as a result of the detailed opinion.

Should the Italian Government not comply with the obligations provided in Directive (EU) 2015/1535 or should the text of the draft technical regulation under consideration be adopted without account being taken of the above-mentioned objections or be otherwise in breach of EU law, the

Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

The Commission invites the Italian authorities to take the above observations into account.

3. COMMENTS

The Commission notes that the sixth citation of the notified draft lists several pieces of legislation relevant for the products at stake. This list includes Regulation (EC) No 1334/2008 of the European Parliament and the Council⁽²⁾ and Regulation (EC) No 1333/2008 of the European Parliament and the Council³ ‘as amended by Commission Regulation (EU) No 1129/2011’. However, it omits other pieces of legislation that would be equally relevant, for instance Commission Regulation (EU) 2023/2108 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards food additives nitrites (E 249-250) and nitrates (E 251-252)⁴ or Commission Implementing Regulation (EU) No 872/2012 adopting the list of flavouring substances⁵.

While it might not be indispensable to list the Commission acts having amended Regulation (EC) No 1334/2008 and Regulation (EC) No 1333/2008, the fact that one relevant Commission Regulation is listed, but not others could create uncertainty as to the applicable legislation. The Italian authorities are invited to clarify the references to EU law in the citations of the notified draft.

The Commission further notes that Article 18 of the notified draft excludes the use of colours for salami:

“It is permitted to use wine, vinegar (including balsamic vinegar), brandy and other spirits, honey, truffle, cheese, nuts, pepper, garlic, spices and aromatic plants, sugar, dextrose, fructose, lactose, lean milk powder, milk proteins, microbial cultures for fermentation, flavourings, additives allowed except colourants.”

Food categories for the purposes of EU food additives legislation are listed in Part D of Annex II to Regulation (EC) No 1333/2008.

It appears that ‘salami’ described under Article 18 of the notified draft falls within the food category 08.3.1 ‘Non-heat-treated meat products’.

In Part E of Annex II to Regulation (EC) No 1333/2008 the use of several colouring additives is allowed, in food category 08.3.1, for ‘sausages’.

Therefore, unless ‘salami’ constitutes a different category than ‘sausages’, the restriction to the use of colourants in ‘salami’ is not in line with Union law.

It is true that, in accordance with Article 2(4) of Regulation (EC) No 1333/2008, that Regulation ‘shall apply without prejudice to any specific Community rules concerning the use of food additives: (a) in specific foods; (b) for purposes other than those covered by this Regulation.’ This provision is

² Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34). ELI: <http://data.europa.eu/eli/reg/2008/1334/oj>

³ Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16). ELI: <http://data.europa.eu/eli/reg/2008/1333/oj>

⁴ Commission Regulation (EU) 2023/2108 of 6 October 2023 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards food additives nitrites (E 249-250) and nitrates (E 251-252), OJ L, 2023/2108, 09.10.2023.

⁵ Commission Implementing Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council, introducing it in Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 1565/2000 and Commission Decision 1999/217/EC, OJ L 267, 2.10.2012, p. 1.

to be understood as a reference, for example, to products falling under the scope of a quality scheme or protected geographical indication, in line with Regulation (EU) No 1151/2012⁶ and related Delegated and Implementing regulations.

Furthermore, Article 20 of Regulation (EC) No 1333/2008 allows Member States to '*continue to prohibit the use of certain categories of food additives in the traditional foods produced on their territory as listed in*' Annex IV to that Regulation.

However, 'Salami' does not appear, as such, to fall under any of the two above-listed cases.

It is the position of the Commission that Member States can reserve to products with certain characteristics (among them, the absence of additives) a specific designation which is not the generic designation commonly used in the territory of the Union for that foodstuff but, nonetheless, allow the production and marketing under the commonly used designation of products with food additives and, on the other hand, ensure the mutual recognition of products from other Member States bearing the same specific designation⁷.

Therefore, the Italian authorities are invited to clarify the language used in the notified draft, to avoid creating legal uncertainty as to the use for 'salami' of colourants allowed for 'sausages' by Part E of Annex II to Regulation (EC) No 1333/2008, insofar as 'salami' is understood as a generic designation, rather than a specific one, different than that commonly used in the territory of the Union for that foodstuff.

The Commission furthermore invites the Italian 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.

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



For the Commission

Stella Kyriakides
Member of the Commission

⁶ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, OJ L 343, 14.12.2012, p. 1–29.

⁷ See, in this regard, judgement of 14 June 2018, Asociación Nacional de Productores de Ganado Porcino, C-169/17, ECLI:EU:C:2018:440, paragraphs 25 and 28.