Message 201

Communication from the Commission - TRIS/(2024) 2293

Directive (EU) 2015/1535

Notification: 2024/0289/BE

Forwarding of the response of the Member State notifying a draft (Belgium) to comments (5.2) of European Commission.

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1. MSG 201 IND 2024 0289 BE EN 02-09-2024 29-08-2024 BE ANSWER 02-09-2024

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4. 2024/0289/BE - C50A - Foodstuffs

5.

6. Please find below Belgium's response to the observations made by the European Commission on notification 2024/0289/B:

General Food Law

The draft decree has been established following a Court case issued at the national Council of State. The Court considered that our royal decree is not limited to foodstuffs. As the purpose of the European legislator was not to enlarge the scope of the Directive 2002/46/EC to other products, we decided to precise the scope of the royal decree and limit it to foodstuffs. This is the reason we explicitely introduce the European definition of “food”, including what is excluded from this definition. There is no intention of translating/transposing the European regulation into a national legislation (as the definition is extracted from the General Food Law – Regulation 178/2002).

We interpreted that the second alinea of article 2 of Regulation 178/2002 is just a small list of examples as the products mentioned (drink, chewing gum and any substance, including water) fall under the concept of ‘substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans’. This is the reason we did not include this part of the definition. However, we understand your comment and propose to change the text of the definition of food as follows:

“Food: as defined by article 2 of Regulation 178/2002.
‘Food’ shall not include:

1° feed;
2° live animals unless they are prepared for placing on the market for human consumption;
3° plants prior to harvesting;
4° medicinal products;
5° cosmetics;
6° tobacco and tobacco products;
7° narcotic or psychotropic substances;
8° residues and contaminants;
9° medical devices."

Food supplements

We have well noted that the definition of 'other substances' is not the same as the EU definition. This is the reason why we include a specific definition on 'other substances' in the Belgian royal decree, which was proposed/accepted during the TRIS-procedure back in 2005. We would like to remind the Commission that the Belgian decree excludes plants and plant preparations from 'other substances' as there is a specific national legislation for plants since 1997, far before the EU Regulation. The reference to Regulation 1925/2006 is clearly indicated in the royal decree of plants (and also in the royal decree on other substances). As the conditions for plants and other ingredients are very different, it would be far less understandable for food business operators to merge these royal decrees. The royal decrees and their modifications on plants and on other substances have been notified for more than 15 years via the TRIS procedure, so we are rather surprised to receive this comment now. Food business operators are currently applying these royal decrees and the Regulation correctly, so it doesn't seem to cause any confusion. For these reasons, we are not in favour of changing the current draft text.

We hope that these explanations and proposals properly address the concerns.

Finally, we would like to take this opportunity to mention that the belgian authorities consider that an update of the EU directive 2002/46/EC is necessary, particularly in terms of definitions in order to take into account new market developments.

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