FEVIA'S POSITION on the Netherlands policy rule on PAL

Fevia, the Belgian federation that represents and supports the Belgian Food Industry, welcomes the opportunity to react on the notification 2024/0678/NL of the Dutch policy rule on precautionary allergen labelling (PAL).

Please note that Fevia encourages the idea of creating a legal framework around PAL but believes this should be at European level. While doing so, certain literature should be considered such as the Belgian SciCom advice 08-2022, FDE paper on PAL – A risk-based approach including Quantitative Risk Assessment (QRA), FAO/WHO Risk Assessment of Food Allergens, etc.

As member of FoodDrinkEurope, kindly note that Fevia fully supports their comments as well. On top of that, we would like to invite you to withhold our comments listed below.

Fevia's comments

1. General appeal for a European legal framework on PAL

Since Belgium is a small country and shares a common language with the Netherlands, Belgian producers label their products with the aim of marketing them both in Belgium and the Netherlands. Therefore, it cannot be ruled out that Belgian operators could be forced to follow the Dutch policy (which we believe are not in line with European regulations) and must use separate and specific labels in order to keep selling their products in the Netherlands.

Conflicting (national) legislations would impact the free movement of goods and result in unnecessary cost increases especially for Belgian operators due to the common Dutch language.

We therefore urge that the policy explicitly defines its scope and includes the mutual recognition clause as outlined in the notification message. The policy should apply solely to food business operators in the Netherlands and only to full Dutch-language labels intended for the Dutch market, in order to avoid trade barriers.We are aware that Art.39 of Reg. (EU) n° 1169/2011 allows Member States to adopt measures requiring additional mandatory particulars for specific types or categories of foods, justified on grounds of at least one of the following: (a) the protection of public health; (b) the protection of consumers.

However, we would like to remind the Commission that Art. 38 of FIC already established that national measures may not prohibit, impede or restrict the free movement of goods. Therefore, we ask to take the necessary steps to prevent free trade from being compromised and to provide a harmonized framework on EU level, applicable to all Member States.

2. Non-compliance with Annex I Chapter 3.7 Allergens of the COMMISSION NOTICE (2022/C 355/01)

The Dutch authorities equate an allergen unintentionally present with an intentionally added allergenic ingredient if the allergen is found in 100% of samples in the raw material and cannot be avoided. As a result, this allergen is included in the list of ingredients and designated as an allergen there, regardless of its quantity.

This interpretation contradicts good hygiene practice as described in 'Annex I - Chapter 3.7 Allergens' of the Commission Notice (2022/C 335/01) and could lead to the label being deemed illegal in other member states, such as Belgium.

The Belgian Federal Agency for the Safety of the Food Chain (FASFC) removed Q&A n°12 regarding this subject in their FAQ on Allergen and Cross-contamination, from which we can only conclude that FASFC does not consider cross-contamination as an intentionally added allergenic ingredient. Therefore, it cannot be classified as an ingredient and, in other words, cannot be included in the list of ingredients.

3. Strict regulation on wording of PAL

According to Dutch regulation, the labelling of PAL can only be done in two ways; 'May contain xxx' ('Kan xxx bevatten') or 'Not suitable for xxx' ('Niet geschikt voor xxx'). This restriction could lead to illegal PAL declaration in the Netherlands as in other member states, such as Belgium, different wordings for PAL declarations are also accepted. We therefore plead for a more flexible approach, allowing at least the same wording in a different order, such as 'Kan bevatten: xxx'.

4. Threshold levels set on ED05

We welcome the idea of setting an unambiguous threshold to strengthen confidence in the PAL statement. However, this should be regulated at European level as not to jeopardize the principle of free movement of goods.

It should also be considered that the reference dose, set on ED05, for certain food allergens, can never be achieved in certain sectors. Those products have therefore an absolute need to have a PAL statement regardless of its quantity.

For example, in chocolate and confectionery ED05 for milk protein can only be guaranteed on fully segregated dark production lines while the vast majority of all production lines in the whole sector is used to produce milk and dark chocolate (mixed lines). Meaning that there is a high variability in cross contact between products and within batches. There is also a high switch sequence in recipes produced on mixed lines throughout the whole sector and therefore it is not feasible nor with any added value to sample and analyse every product to be able to indicate the allergen cross contact quantity on the product specification sheet.

5. No unification in Reference Doses for mustard and lupin

The reference doses (RD) proposed by the Netherlands are not in line with the latest FAO/WHO recommendations. At this point we understand that the Dutch Ministry recognizes these differences and therefore we would like to ask a correction to align them. This would also resolve the difference with Belgium where SciCom suggested in their advice 08-2022 to modify the RD as recommended by FAO/WHO.

We would like to underline the importance of using the same reference dose across the EU. Applying different levels for PAL will inevitably lead to a situation where products intended for multiple countries will bear different PAL statements. This could confuse and mislead consumers.

6. No standardized analytical methods

It should be noted that there are yet no standardized analytical methods (different limitations in terms of sensitivity, specificity and precision) and this could represent a real challenge if all the accumulated uncertainties are not taken into account in the control policy that the authorities could apply.

7. Short adaptation time for businesses

We would like to draw attention to the short adaptation time for businesses, giving the timing of the publication in an international context. Therefore, we urge that the transition period be extended if the policy were to come into force in 2026.

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