COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 523 final - SYN 379

Brussels, 13 February 1992

Proposal for a

COUNCIL REGULATION (EEC)

laying down Community procedures for contaminants in food

(presented by the Commission)

EXPLANATORY MEMORANDUM

Contaminants may enter food by incorporation during the growth of organisms which are used as food and at all subsequent stages of processing and marketing.

Contaminants are substances in general present in the environment and that result in food as a consequence of the production or preparation of the food and not intentionally added to it. Contaminants are substances that should not be present in foodstuffs, if possible, or else be kept at minimum levels. The presence of a contaminant in food has normally a residual character. In most of the cases contaminants are very difficultly removed from the foodstuff even after applying normal operations involved in processing, (washing, filtering or, in general, purification or separation techniques.

However, the presence of a contaminant does not render automatically a food unfit for human consumption or unwholesome. On the other hand, there are undesirable substances that are naturally present in certain foods, like natural toxicants, and they are not contaminants. These natural toxicants are normally eliminated during the preparation (in particular cooking) of foods.

The best way of avoiding the presence of contaminants in food is acting at the sources to limit their presence in the environment. The Community has already a wide variety of measures aiming at eliminating or limiting the presence of dangerous substances in the environment that may enter the food chain as contaminants.

An example of the effectiveness of the policy of taking preventive measures at source for environmental contaminants is the decrease of the presence of lead as a contaminant in food following the progressive introduction of lead free petrol.

Raw materials with levels of contaminants that could render the food dangerous for the public health or unwholesome should not be used for the manufacture of foodstuffs. The entry into the food chain of contaminants can therefore be avoided by monitoring at the early stages in the food chain, e.g. the raw materials.

Advances in scientific knowledge are not only enabling the effect of these substances on public health and their origins in food to be better understood, but also are enabling them to be detected at decreasingly lower levels.

Many of the existing rules on contaminants which are laid down at Member State level are the result of an historical evolution of measures adopted to deal with specific situations and as such may differ. These differences can constitute an obstacle to the common market in foodstuffs which has to be achieved by 1992.

In assessing the tolerable level of a contaminant in food it is necessary from toxicological studies to define a tolerable daily intake. Since the same contaminant may occur in a variety of foods it is necessary when defining the tolerable level to consider all the likely sources of the contaminant and to define the tolerable levels in the light of the contribution of various foods to the diet.

It is therefore inappropriate to lay down contaminant levels in vertical legislation for specific food groups without taking into consideration its presence in other foods. A flexible instrument is envisaged which enables decisions to be made in view of the general toxicological objectives to be achieved and taking into account all aspects of food production and processing.

Water is, however, a special case since it is not only consumed directly and used as a food ingredient but is also used for washing and processing foodstuffs.

Rules for pesticides and veterinary medical products derive directly from their use in agriculture and allowable residues form part of the considerations relating to their use.

Similarly, contaminants arising from migration from materials in contact with food are best controlled by regulating the material in contact rather than by fixing limits in the foodstuff itself.

The occurrence of natural radioactivity in foods is the result of a natural distribution of radioactive isotopes in the biosphere including the human organism. It is therefore necessary only to regulate the presence of radioactivity in foodstuffs in relation to nuclear incidents and following the occurrence at Chernobyl; the Community has adopted a permanent regulation to this effect.

Microbiological contamination will be the subject of separate general provisions.

Once this framework Regulation is adopted, the Commission intends to examine existing national rules on contaminants in the light of modern toxicological assessment with a view to adopting Community rules where appropriate. The Commission has already requested the communication of national rules in order that work may be started on the scientific assessment. Subsequent national measures will be notified under the procedure of Council Directive 83/189/EEC which provides for a delay period for national implementation, permitting appropriate action to be taken at Community level.

In carrying out this work the Commission intends to give priority to those contaminants of special concern such as heavy metals.

Action may be generated directly at Community level as a result of scientific research, of cooperation on food scientific assessment or information arising from public controls, or from the food rapid alert system.

Proposal for a Council Regulation (EEC)
laying down Community procedures for contaminants in food

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 A thereof,

Having regard to the proposal from the Commission(1), and in cooperation with the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Whereas it is important to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the differences in rules adopted by the Member States may hinder the functioning of the common market and whereas it is necessary to lay down a procedure for the adoption of harmonized Community rules;

Whereas contaminants may enter into food at any stage from production to consumption ;

Whereas it is essential, in the interest of public health protection, to keep these contaminants at levels which are toxicologically acceptable ;

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(1)
(2)
(3)

Whereas further restrictions should be observed whenever they are achievable through good professional practices ; whereas the compliance with such good practices can be efficiently controlled by public authorities, given the professional training and experience of their agents ;

Whereas this regulation should apply without prejudice to the provisions adopted in the context of more specific Community rules ;

Whereas Member States are required to notify draft technical standards and regulations in foodstuffs to the Commission, including those on contaminants, through Council Directive 83/189/EEC(4), as last amended by Council Directive 88/182/EEC(5), and whereas the notification procedure in that directive shall continue to apply to foodstuffs;

Whereas the Scientific Committee for Food shall be consulted on all questions which may have an effect on public health;

(4) OJ N° L 109 of 26.04.83, p. 8.
(5) OJ N° L 81 of 26.03.88, p. 75.

HAS ADOPTED THIS REGULATION :

Article 1

1. This Regulation lays down the procedure for establishing rules on contaminants in foodstuffs.

2. This Regulation shall apply without prejudice to the provisions adopted in the context of more specific Community rules.

Article 2

For the purposes of this Regulation "contaminant" means any substance not intentionally added to food, which is present in such food as a result of the production, manufacture, processing, preparation, treatment, packing, packaging, transport or storage of such food or as a result of environmental contamination.

Article 3

1. No foodstuff shall be marketed if it contains a contaminant in an amount which is toxicologically unacceptable.

2. Furthermore, contaminants shall be kept at levels which are as low as reasonably achievable through good practices during all stages mentioned in Article 2.

3. Where necessary to implement paragraph 1, maximum tolerances for specific contaminants shall be estalished in accordance with the procedure laid down in Article 8.

   These tolerances shall be adopted in the form of a non-exhaustive Community list and may include :

   - different limits for the same contaminant in different foodstuffs
   - analytical detection limits
   - a reference to the method of sampling and analysis to be applied.

Article 4

In derogation of Article 10 of Council Directive 83/189/EEC of 28 March 1983[6] laying down a procedure for the provision of information in the field of technical standards and regulations, as last amended by Council Directive 88/182/EEC[7], notification of draft technical standards and regulations on contaminants shall continue to be made using the procedure of Articles 8 and 9 of that Directive.

Article 5

Provisions that may have an effect upon public health shall be adopted after consultation with the Scientific Committee for Food.

Article 6

1. Where a Member State, as a result of new information or of a re-assessment of existing information, has detailed grounds for considering that a contaminant in food, although complying with this Regulation or specific Regulations adopted pursuant to this Regulation, endangers human health, that Member State may temporarily suspend or restrict application of the provisions in question in its territory. It shall immediately inform the other Member States and the Commission thereof and give reasons for its decision.

2. The Commission shall examine the grounds given by the Member State referred to in paragraph 1 as soon as possible within the Standing Committee on Foodstuffs, and shall then deliver its opinion forthwith and take the appropriate measures.

(6) OJ N° L 109 of 26.04.83, p. 8.
(7) OJ N° L 81 of 26.03.88, p. 75.

Article 7

Member States shall not prohibit or restrict trade in foods which comply with this Regulation or specific Regulations adopted pursuant to this Regulation for reasons related to aspects covered by the provisions of this Regulation.

Article 8

1. Where the procedure laid down in this Article is to be followed, the Commission shall be assisted by the Standing Committee on Foodstuffs, set up under Decision 64/414/EEC(8) acting in an advisory capacity, hereinafter referred to as "the Committee".

2. The Chairman shall submit to the Committee a draft of measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

4. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 9

This Regulation shall enter into force on 1 January 1993.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at .....

For the Council
The President

(8) OJ N° L 291 of 19.11.1969, p. 9.

ISSN 0254-1475

COM(91) 523 final

DOCUMENTS

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Catalogue number : CB-CO-91-597-EN-C

ISBN 92-77-78982-4

Office for Official Publications of the European Communities
L-2985 Luxembourg