

COMMISSION IMPLEMENTING DECISION (EU) 2022/101**of 24 January 2022****concerning a draft Decree by the Kingdom of the Netherlands on toddler drinks and toddler milk notified in accordance with Article 12 of Regulation (EC) No 1925/2006 of the European Parliament and of the Council***(notified under document C(2022) 313)***(Only the Dutch text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods ⁽¹⁾, and in particular Article 11(2)(b) and 12 thereof,

Whereas:

- (1) Regulation (EC) No 1925/2006 on the addition of vitamins and minerals and of certain other substances to foods provides, in the absence of Community provision, for the notification and the assessment of national new provisions concerning, inter alia, the prohibition or restriction on the use of certain other substances in the manufacture of specified foods.
- (2) In accordance with the procedure provided for in Article 12 read in conjunction with Article 11(2)(b) of Regulation (EC) No 1925/2006, the Dutch authorities notified the Commission on 28 July 2020 of a draft decree containing rules on foods based on cow or goat milk protein, to which at least one or more vitamins, minerals or other substances have been added, and which are intended to be used as a drink for young children between the ages of one and three years (Commodities Act Decree on toddler drink and toddler milk).
- (3) Article 1 of the draft decree lays down a definition for 'toddler drink' and for 'toddler milk'.
- (4) Articles 3 and 4 of the draft decree establish requirements on the composition of 'toddler drink' and 'toddler milk', including restrictions on the use of certain other substances in the sense of Article 2(2) of Regulation (EC) No 1925/2006.
- (5) In particular, Article 3 of the draft decree provides for minimum compositional requirements for proteins, lipids and carbohydrates as laid down in Annex II to Commission Delegated Regulation (EU) 2016/127 ⁽²⁾.
- (6) Furthermore, Article 4 of the draft decree provides that with regard to certain other substances, the compositional requirements laid down in Annex II to Delegated Regulation (EU) 2016/127 apply.
- (7) The Dutch authorities consider that the draft measure is justified on the ground of protection of human health. More precisely, the Dutch authorities argue that in order to ensure that safe quantities of 'other substances' are consumed by young children, 'toddler milk' and 'toddler drinks' should comply with the same compositional requirements for 'other substances' as those laid down in the harmonised legislation for follow-on formulae.

⁽¹⁾ OJ L 404, 30.12.2006, p. 26.

⁽²⁾ Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding (OJ L 25, 2.2.2016, p. 1).

- (8) In accordance with Article 12 of Regulation (EU) No 609/2013 of the European Parliament and of the Council ⁽³⁾, which required the Commission to analyse if specific provisions for milk-based drinks and similar products intended for young children are necessary, the Commission adopted a report on 31 March 2016 ⁽⁴⁾. This report concluded that there is no necessity for specific provisions for this category of foods as the correct and complete application of the general framework of European Union food law can adequately regulate the composition of milk-based drinks for young children and the communication of the characteristics of the products. Such conclusions were based on the scientific advice of the European Food Safety Authority (hereafter 'the Authority') issued on young child formulae in 2013 ⁽⁵⁾ in which it noted that these products have 'no unique role' and 'cannot be considered as a necessity to satisfy the nutritional requirements of young children' when compared to other foods that may be included in their normal diet.
- (9) Therefore, as of 20 July 2016, milk-based drinks for young children are considered normal foods and are thus exclusively covered by horizontal rules of European Union food law.
- (10) In the case where a Member State erects an obstacle to trade this should be without prejudice to the Articles 34 and 36 of the Treaty and appropriate and proportionate to the justifiable aim to be achieved. As to proportionality, the measure should not go beyond what is necessary in order effectively to protect the justifiable aim.
- (11) The Dutch authorities do not provide any scientific evidence in support of their argument that additional rules shall be enacted at national level and fail to demonstrate and substantiate any risk to human health that would arise if 'toddler drinks' and 'toddler milk' would not comply with such compositional requirements. Instead, they explain that the Dutch Health Council is currently conducting research on dietary standards and research into the diet of children between birth and two years of age, and that on the basis of these results and advice, adaptation of the draft decree may be considered.
- (12) Moreover, the Dutch authorities did not provide scientific evidence that would put into question the scientific advice provided by the Authority in 2013 ⁽⁶⁾ and on which the Commission based its conclusions in its report adopted in 2016. The conclusions of the 2016 Commission Report on milk-based drinks and similar products intended for young children found that there is no necessity for specific provisions on compositional requirements such as contained in the notified draft for food consumed by young children.
- (13) Therefore, the Dutch authorities fail to provide any scientific justification that would substantiate the need to lay down specific compositional requirements with regard to 'other substances' for the products marketed as 'toddler drinks' and 'toddler milk'.
- (14) In accordance with the provisions of Article 12(2) of Regulation (EC) No 1925/2006, the Commission consulted on 5 October 2020 the Standing Committee on the Food Chain and Animal Health.
- (15) In the light of these observations, the Commission delivered on 27 January 2021 a negative opinion pursuant to Article 12(3) of Regulation (EC) No 1925/2006 on the notified draft, in particular regarding Articles 3 and 4 thereof, and has to engage the procedure laid down in Article 12(3) of that Regulation.

⁽³⁾ Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35).

⁽⁴⁾ Report from the Commission to the European Parliament and the Council on young child formulae (COM(2016) 169 final).

⁽⁵⁾ EFSA Panel on Dietetic Products, Nutrition and Allergies, 2013, Scientific Opinion on nutrient requirements and dietary intakes of infants and young children in the European Union, *EFSA Journal* 2013;11(10):3408.

⁽⁶⁾ *Ibid.*

- (16) The Dutch authorities should accordingly be requested not to adopt Articles 3 and 4 of the draft decree in question since based on the observations above they failed to provide the necessary justifications for their adoption and those Articles have been subject to a Commission negative opinion from 27 January 2021.
- (17) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Sole Article

The Kingdom of the Netherlands shall, based on the observations of the Commission in its negative opinion and this Decision, not adopt Articles 3 and 4 of the draft Commodities Act Decree on toddler drinks and toddler milk, which it notified to the Commission pursuant to Article 11(2)(b) of Regulation (EC) No 1925/2006, and which was subject to a Commission negative opinion notified to Dutch authorities on 27 January 2021.

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 24 January 2022.

For the Commission
Stella KYRIAKIDES
Member of the Commission
