

II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/334

of 23 February 2021

concerning a draft order notified by Romania as regards information on the surface treatment of fruit and vegetables with pesticides

(notified under document C(2021) 1096)

(Only the Romanian 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 (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 ⁽¹⁾, and in particular Article 45(4) thereof,

Whereas:

- (1) In accordance with Article 45(1) of Regulation (EU) No 1169/2011, the Romanian authorities notified to the Commission on 5 March 2020 a draft order regarding the additional mandatory labelling requirement within the meaning of Article 39(1) for economic operators to inform consumers about the surface treatment of fruit and vegetables with pesticides ('the draft order').
- (2) Regulation (EU) No 1169/2011 establishes the general principles, requirements and responsibilities governing food information, and in particular food labelling. In this regard, Article 9(1) and Article 10 of Regulation (EU) No 1169/2011 list all particulars that are to be provided on foods, in accordance with Articles 10 to 35 and subject to the exceptions contained therein.
- (3) Article 39(1) of Regulation (EU) No 1169/2011 provides that in addition to the mandatory particulars referred to in Article 9(1) and in Article 10, Member States may, in accordance with the procedure laid down in Article 45, adopt measures requiring additional mandatory particulars for specific types or categories of food, justified on one of the grounds of the protection of public health, the protection of consumers, the prevention of fraud or the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition.

⁽¹⁾ OJ L 304, 22.11.2011, p. 18.

- (4) By laying down national measures requiring to inform the consumers about the post-harvest surface treatment of the fruit and vegetables with pesticides, the draft order establishes additional mandatory particulars for specific categories of foods within the meaning of Article 39(1) of the Regulation (EU) No 1169/2011. Therefore, it is necessary to examine its compatibility with the above mentioned requirements of that Regulation and the provisions of the Treaty on the Functioning of the European Union.
- (5) Article 1 of the draft order establishes the conditions that economic operators must meet to ensure that consumers are correctly, fully and precisely informed about the surface treatment of fruit and vegetables with pesticides.
- (6) Article 2 of the draft order provides that economic operators are required to inform consumers, by means of clearly visible labelling, of the fact that the fruit and vegetables being placed on the market have been surface treated with pesticides and to provide clear information regarding the correct way to handle/use the products, mentioning, where necessary, that consumption of the peel of the products in question should be avoided.
- (7) Article 3 of the draft order sets out that the operators are to provide this information by displaying the text provided for in the Annex to the draft order immediately next to the fruit and vegetables, on the shelf in the premises in which they are being marketed. The Annex to the draft order requires the provision of the following information: a warning 'these products have been surface treated with a pesticide', 'name of the pesticide' to be completed by economic operator, a warning that 'consumption of the peel of these products should be avoided', and 'handling/usage conditions' to be completed by economic operator.
- (8) Following a request for clarification from the Commission by letter of 6 February 2020, the Romanian authorities clarified by letter of 5 March 2020 that the draft order refers to the presence of pesticides on the surfaces of fruit and vegetables offered for sale when the operators apply a post-harvest surface treatment with pesticides on them in order to preserve their freshness.
- (9) Regulation (EC) No 1107/2009 of the European Parliament and of the Council ⁽²⁾ provides for rules governing plant protection products and the active substances contained in those products. In accordance with Article 28 of Regulation (EC) No 1107/2009, plant protection products, including those that are intended for post-harvest surface treatment, need to be authorised in order to be placed on the market and used in the Member States. In this context, they are subject to a thorough safety assessment, with a view to ensure, inter alia, the protection of human health, which includes consumers' safety. The use of plant protection products must meet the requirements set out in Article 55 of Regulation (EC) No 1107/2009.
- (10) In order to ensure the safety of foods, which have undergone treatment with plant protection products, the level of pesticide residues in such products, including fruit and vegetables, are not to exceed the maximum residue levels laid down in Regulation (EC) No 396/2005 of the European Parliament and of the Council ⁽³⁾. Another principle of Regulation (EC) No 396/2005 is that the maximum residue levels are not to be set at higher levels than those needed according to Good Agricultural Practices, in other terms not higher than what is necessary to fight a certain pest, and that they must be safe for consumers.
- (11) According to Article 14(1) of Regulation (EC) No 178/2002 of the European Parliament and of the Council ⁽⁴⁾ food is not to be placed on the market if it is unsafe.
- (12) Pursuant to Regulation (EU) 2017/625 of the European Parliament and of the Council ⁽⁵⁾, Member States have the obligation to take enforcement actions when the maximum residue levels are exceeded.

⁽²⁾ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

⁽³⁾ Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).

⁽⁴⁾ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

⁽⁵⁾ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ L 95, 7.4.2017, p. 1).

- (13) Commission Implementing Regulation (EU) No 543/2011 ⁽⁶⁾ sets out the specific labelling provisions related to the use of preserving agents or other chemical substances on citrus fruit.
- (14) Food commodities that meet the requirements of Regulation (EC) No 178/2002 that are treated with plant protection products that meet the requirements of Regulation (EC) No 1107/2009, leaving residues within maximum residue levels set in accordance with Regulation (EC) No 396/2005, are to be considered safe for the health of consumers. Member States are responsible to ensure that fruit and vegetables placed on their markets meet the Union requirements as regards maximum residue levels of pesticides on food and feed. In this regard, the Romanian authorities have not explained why the appropriate control and enforcement measures, which are currently in place, are not considered sufficient to ensure the safety of the fruit and vegetables in question.
- (15) Based on the harmonized Union requirements on authorisation and use of plant protection products and on their maximum residue levels in fruit and vegetables, which include a thorough scientific assessment of the safety of the plant protection products, and in view of the enforcement and surveillance rules to be respected by the competent authorities of the Member States, there is no justified need for additional national mandatory requirements concerning food information or labelling as regards residues of pesticides on grounds of the protection of public health.
- (16) In view of the abovementioned elements, the draft order is not justified on the grounds of protection of public health as referred to in Article 39(1)(a) of Regulation (EU) No 1169/2011.
- (17) With regard to the justifications provided on the protection of consumers, the measures of the draft order do not respect the principle of proportionality as they go beyond what is necessary to fulfil the objective of consumer protection.
- (18) In addition, the labelling requirement of the draft order to 'mention, where necessary, that consumption of the peel of the products in question should be avoided' creates a wrong impression to the consumers about the safety of the fruit and vegetables, by imposing the idea that the products are safe only under that specific condition of use, that is when the product is peeled. It wrongly suggests that it would suffice to inform the consumers, instead of taking off the market the food that does not comply with the food safety requirements. The proposed labelling requirement in question would result in misleading the consumers, and would create unjustified prejudice to the detriment of all fruit and vegetables on the market labelled in accordance with the draft order. Such labelling requirement would therefore be contrary to Article 7 of the Regulation (EU) No 1169/2011. In addition, the wording of that requirement is imprecise, and it is not clearly stated under what criteria it applies.
- (19) Furthermore, the fact that Implementing Regulation (EU) No 543/2011 only sets out the specific labelling provisions related to the use of preserving agents or other chemical substances on citrus fruit, while pursuing the objective of the protection of consumers, speaks to the conclusion that the setting up of such labelling requirements for all types of fruit and vegetables is not necessary in order to achieve that objective.
- (20) In view of the abovementioned elements, the draft order is not justified on the grounds of the protection of consumers as referred to in Article 39(1)(b) of Regulation (EU) No 1169/2011.
- (21) It follows from the above assessment that the Romanian authorities failed to justify under at least one of the grounds of Article 39(1) of Regulation (EU) No 1169/2011 that the additional mandatory particulars set out in the draft order are necessary.
- (22) In light of these observations, the Commission has delivered a negative opinion on the draft order, on 4 June 2020, pursuant to Article 45(3) of Regulation (EU) No 1169/2011. The Commission notified the negative opinion to Romanian authorities on 5 June 2020.
- (23) The Romanian authorities should accordingly be requested not to adopt the notified order.
- (24) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽⁶⁾ Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157, 15.6.2011, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

Romania shall not adopt the draft order notified on 5 March 2020 as regards the requirement for economic operators to inform consumers about the surface treatment of fruit and vegetables with pesticides.

Article 2

This Decision is addressed to Romania.

Done at Brussels, 23 February 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission
