

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 January 2004

on emergency measures regarding chilli and chilli products

(notified under document number C(2004) 68)

(Text with EEA relevance)

(2004/92/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 ⁽¹⁾, and in particular Articles 53 and 54 thereof,

Whereas:

- (1) According to Regulation (EC) No 178/2002 the Commission is to suspend the placing on the market or use of a food or feed that is likely to constitute a serious risk to human health, or take any other appropriate interim measure when such risk cannot be contained satisfactorily by means of measures taken by the Member States concerned.
- (2) On 9 May 2003, France sent initial information through the rapid alert system for food and feed relating to discovery of the dye Sudan I in hot chilli products originating from India. There is no evidence that products of Community origin are concerned by such findings.
- (3) Decision 2003/460/EC ⁽²⁾ on emergency measures regarding hot chilli and hot chilli products was adopted by the Commission on 20 June 2003.
- (4) In implementation of Decision 2003/460/EC, Member States have carried out checks on the presence of the substance concerned and related substances in chilli and

chilli products. There have been findings of Sudan I in chilli and chilli products. Other substances such as Sudan II, Sudan III and Scarlet Red (Sudan IV) have also been found in chilli and chilli products. A number of chilli products such as curry powders are concerned. All findings were notified through the rapid alert system for food and feed in compliance with Article 50 of Regulation (EC) No 178/2002.

- (5) Sudan I, Sudan II, Sudan III and Scarlet Red (Sudan IV) have been classified as category 3 carcinogens by the International Agency for Research on Cancer (IARC).
- (6) The findings initially reported by France and confirmed by other findings in the European Union point to an adulteration constituting a serious health risk.
- (7) Given the seriousness of the health threat and the positive findings, it is necessary to maintain and extend the measures established by Decision 2003/460/EC. Moreover, account should be taken of potential triangular trade, especially for products for which there is no official certification of origin. In order to protect public health, it is appropriate to require that consignments of chilli and chilli products imported into the Community in whatever form, intended for human consumption, should be accompanied by an analytical report provided by the importer or food business operator concerned demonstrating that the consignment does not contain Sudan I, Sudan II, Sudan III or Scarlet Red (Sudan IV). For the same reason, Member States should carry out random sampling and analysis of chilli and chilli products which are being imported or are already on the market.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1. Regulation as amended by Regulation (EC) No 1642/2003 (OJ L 245, 29.9.2003, p. 4).

⁽²⁾ OJ L 154, 21.6.2003, p. 114.

(8) It is appropriate to order the destruction of adulterated chilli and chilli products to avoid their introduction into the food chain.

(9) Since the measures provided for in this Decision have an impact on the control resources of the Member States, the results of these measures should be evaluated at the latest after 12 months in order to assess whether they are still necessary for the protection of public health.

(10) That evaluation should take account of the results of all analyses carried out by the competent authorities.

(11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision 'chilli and chilli products' means

- (a) fruits of the genus *Capsicum*, dried and crushed or ground within CN code 0904 20 90, in whatever form, intended for human consumption, and
- (b) curry powder within CN code 0910 50, in whatever form, intended for human consumption

Article 2

Conditions for import of chilli and chilli products

1. Member States shall prohibit the import of chilli and chilli products unless an analytical report accompanying the consignment demonstrates that the product does not contain any of the following chemical substances:

- (a) Sudan I (CAS number 842-07-9);
- (b) Sudan II (CAS number 3118-97-6);
- (c) Sudan III (CAS number 85-86-9);
- (d) Scarlet Red or Sudan IV (CAS number 85-83-6).

2. The competent authorities in the Member States shall check that each consignment of chilli and chilli products presented for importation is accompanied by an analytical report as provided for in paragraph 1.

3. In the absence of such an analytical report as provided for in paragraph 1, the importer established in the Community shall have the product tested to demonstrate that it does not contain one or more of the chemical substances referred to in paragraph 1. Pending availability of the analytical report, the product shall be detained under official supervision.

Article 3

Sampling and analysis

1. Member States shall take appropriate measures, including random sampling and analysis of chilli and chilli products presented for importation or already on the market in order to verify the absence of the chemical substances referred to in Article 2(1).

Member States shall inform the Commission through the rapid alert system for food and feed of all consignments which are found to contain those substances.

Member States shall report to the Commission on a quarterly basis on the consignments which were found not to contain those substances. These reports shall be submitted before the end of the month following each quarter.

2. Any consignment subjected to official sampling and analysis may be detained before release onto the market for a maximum period of 15 working days.

Article 4

Splitting of a consignment

If a consignment is split, a certified copy of the analytical report provided for in Article 2(1) shall accompany each part of the split consignment.

Article 5

Adulterated consignments

Chilli and chilli products that are found to contain one or more of the chemical substances referred to in Article 2(1) shall be destroyed.

Article 6

Recovery of costs

All costs resulting from analysis, storage or destruction pursuant to Article 2(1) or (3) and Article 5 shall be borne by the importers or food business operators concerned.

Article 7

Review of the measures

This Decision shall be reviewed by 31 January 2005 at the latest.

Article 8

Repealing

Decision 2003/460/EC is repealed.

*Article 9***Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 21 January 2004.

For the Commission

David BYRNE

Member of the Commission
