III

(Other acts)

EUROPEAN ECONOMIC AREA

RECOMMENDATION No 93/13/COL OF THE EFTA SURVEILLANCE AUTHORITY

of 21 February 2013

concerning a coordinated control plan with a view to establish the prevalence of fraudulent practices in the marketing of certain foods

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area, and in particular Article 109 and Protocol 1 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, and in particular Article 5(2)(b) and Protocol 1 thereof,

Having regard to the Act referred to at point 54zzzi of Chapter XII of Annex II to the EEA Agreement (Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on the official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules), as corrected and amended, and in particular Article 53 thereof,

Having regard to Decision 75/13/COL of the EFTA Surveillance Authority of 19 February 2013 empowering the competent College Member to adopt the final Recommendation as approved by the EFTA Veterinary and Phytosanitary Committee (Event No 663341),

Whereas:

(1) Article 53 of Regulation (EC) No 882/2004 empowers the EFTA Surveillance Authority (the Authority) to recommend coordinated plans where considered necessary, organised on an ad hoc basis, in particular with a view to establishing the prevalence of hazards in feed, food or animals.

(2) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [1] sets out EEA rules on food labelling applicable to all foods.

(3) According to Directive 2000/13/EC, the labelling and methods used should not mislead the consumer, particularly as to the characteristics of the food, including its true nature and its identity. Furthermore, in the absence of specific EEA or national rules, the name under which a food is sold should be the name customary in the EEA State in which it is sold, or a description of the food which is clear enough to let the purchaser know its true nature.

(4) Moreover, all ingredients must be mentioned on the label of pre-packaged foodstuffs intended for the final consumer or mass caterers. In particular, foods containing meat as an ingredient, when intended for the final consumer or mass caterers, must also indicate the animal species from which the meat originates directly on the package or on a label attached thereto. If an ingredient is mentioned in the name of the food, its quantity expressed as a percentage must also be provided in the list of ingredients in order to avoid the consumer being misled as regards the identity and the composition of the food.

(5) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin [2] provides for additional labelling requirements applicable to specific foods. In particular, it provides that packages intended for supply to the final consumer containing minced meat, amongst others, from solipeds are to bear a notice indicating that such products should be cooked before consumption, if, and to the extent that, national rules in the Member State in the territory of which the product is placed on the market so require.

[1] Act referred to at point 18 of Chapter XII of Annex II to the EEA Agreement

[2] Act referred to at point 6.1.17 of Chapter I of Annex I to the EEA Agreement

(6) Section III of Annex II to Regulation (EC) No 853/2004 requires the food business operators operating slaughterhouses to request, receive, check and act upon food chain information in respect of all animals, other than wild game, sent or intended to be sent to the slaughterhouse. The relevant food chain information is to cover, in particular, veterinary medicinal products administered to the animals within a relevant period and with a withdrawal period greater than zero, together with their dates of administration and withdrawal periods. Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption [1] requires *inter alia* the official veterinarian to perform auditing and inspection tasks. In particular, the official veterinarian is to check and analyse relevant information from the records of the holding of provenance of animals intended for slaughter, including food chain information and to take account of the documented results of this check and analysis when carrying out ante- and post-mortem inspection.

(7) Following official controls being carried out since December 2012 in a number of European Union Member States, it appeared that certain pre-packaged products contained horse meat, which was not declared in the list of ingredients appearing directly on the package or on a label attached thereto. Instead, the name of certain such foods and/or the accompanying list of ingredients misleadingly referred solely to the presence of beef.

(8) In accordance with Article 17 of Regulation (EC) No 178/2002 of the European Parliament and 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 [2], food business operators at all stages of production, processing and distribution within their businesses under their control must ensure that foods satisfy the requirements of food law which are relevant to their activities and must verify that such requirements are met.

(9) Horses are animal species that can be 'food producing' or 'non-food producing'. Phenylbutazone is a veterinary drug whose use is allowed only in non-food producing animals pursuant to Commission Regulation (EU) No 37/2010 of 22 December 2009 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origins [3]. Accordingly, non-food producing horses, which have been treated with phenylbutazone at some point in their life, cannot enter the food chain. Considering the fraudulent practices relating to the unlabelled presence of horse meat in certain food products, it is appropriate, for preventive purposes, to ascertain whether non-food producing horses treated with phenylbutazone have entered the food chain.

(10) It is therefore necessary for the Authority to recommend to Norway and Iceland to carry out a coordinated control plan with a view to establish the prevalence of fraudulent practices in the marketing of certain foods for a period of one month. This period may be extended by an additional period of two months.

(11) The recommended control plan should consist of two actions.

(12) The first action should consist of appropriate controls carried out at retail level, on foods destined for the final consumer or mass caterers, which are marketed and/or labelled as containing beef. These controls could also be extended to other establishments (e.g. cold stores). The objective of these controls would be to establish whether such products contain horse meat, which is not properly labelled on the packaging or, in the case of non pre-packaged foodstuffs, information relating to its presence is not made available to the consumer or mass caterers. Such controls should be carried out on a representative sample.

(13) Reliable methods exist which allow with a sufficient degree of accuracy the detection of the presence of proteins of undeclared species in a sample. The European Union Reference Laboratory for animal proteins in feedstuffs can provide useful advice on those methods and their use. The competent authorities of Norway and Iceland should be invited to rely on the advice of that laboratory as to the methods that can be used.

(14) The second action should consist of appropriate controls being carried out in establishments handling horse meat destined for human consumption, including foods originating from third countries, for the detection of phenylbutazone residues. These controls should also be carried out on a representative sample, taking into account production and import figures. It is appropriate in this case to refer to methods provided for by Commission Decision 2002/657/EC implementing Council Directive 96/23/EC concerning the performance of analytical methods and the interpretation of results [4].

(15) Norway and Iceland should communicate the results of these controls to the Authority on a regular basis, in order to assess the findings and decide on an appropriate course of action. These results will be transmitted to the European Commission.

[1] Act referred to at point 1.1.12 of Chapter I of Annex I to the EEA Agreement

[2] Act referred to at point 54zzzc of Chapter XII of Annex II to the EEA Agreement

[3] Act referred to at point 13 of Chapter XIII of Annex II to the EEA Agreement

[4] Act referred to at point 7.2.19 of Chapter I of Annex I to the EEA Agreement

The measures provided for in this Recommendation are in accordance with the opinion of the EFTA Veterinary and Phytosanitary Committee assisting the Authority,

HAS ADOPTED THIS RECOMMENDATION:

Norway and Iceland should apply a coordinated control plan, in accordance with the Annex to this Recommendation, consisting of the following actions:

(a) official controls on foods destined for the final consumer or mass caterers, which are marketed and/or labelled as containing beef; and,

(b) official controls on horse meat destined for human consumption to detect phenylbutazone residues.

Done at Brussels, 21 February 2013.

For the EFTA Surveillance Authority

Sverrir Haukur GUNNLAUGSSON
College Member

Xavier LEWIS
Director

ANNEX

Coordinated control plan with a view to establish the prevalence of fraudulent practices in the marketing of certain foods

I. ACTIONS AND SCOPE OF COORDINATED CONTROL PLAN

The coordinated control plan should consist of two actions:

ACTION 1: Controls of foods marketed and/or labelled as containing beef

A. *Product scope*

1. Foodstuffs marketed and/or labelled as containing beef (e.g. minced meat, meat products, and meat preparations) falling within the following categories:

   (a) Pre-packaged foodstuffs destined for the final consumer or mass caterers, which are labelled as containing beef;

   (b) Foodstuffs offered for sale to the final consumer or to mass caterers without pre-packaging and foodstuffs packaged on the sales premises at the consumer's request or pre-packaged for direct sale, which are marketed and/or otherwise indicated as containing beef.

2. For the purpose of this coordinated control plan, the definition of 'prepackaged foodstuffs' in Article 1(3)(b) of Directive 2000113/EC shall apply.

3. For the purpose of this coordinated control plan, the definitions of 'minced meat', 'meat preparations' and 'meat products' in points 1.13, 1.15 and 7.1 of Annex I to Regulation (EC) No 853/2004 shall apply.

B. *Objective*

The competent authorities of Norway and Iceland should carry out official controls in order to establish whether the products referred in point A contain horse meat, which is not properly labelled on the packaging or, in the case of non pre-packaged foodstuffs, information relating to its presence is not made available to the consumer or mass caterers, in accordance with EEA law and, where appropriate, national provisions.

C. *Sampling points and procedure*

1. The sample should be representative of the products concerned and covering a variety of products.

2. The sampling of the products should be carried out at retail level (e.g. supermarkets, smaller shops, butchers) and could also be extended to other establishments (e.g. cold stores).

D. *Sample numbers and modalities*

The table below gives an overview on the indicative recommended minimum number of samples to be taken within the period provided in Section II. The competent authorities of Norway and Iceland are invited to take more samples when possible. The distribution of samples per country is based on population figures with a minimum number of 10 samples of the products concerned per country per calendar month as indicated in Section II.

Foodstuffs marketed and/or labelled as containing beef	
Country of sale	Indicative monthly recommended sample numbers
Norway	50
Iceland	10

E. *Methods*

The competent authorities of Norway and Iceland should preferably use the method(s) recommended by the European Union Reference Laboratory for animal proteins in feedstuffs.

ACTION 2: Controls of horse meat destined for human consumption

A. *Product scope*

Meat of horses, asses, mules or hinnies, fresh chilled or frozen, classified under the Combined Nomenclature Code 0205 and which are destined for human consumption.

B. *Objective*

The competent authorities of Norway and Iceland should carry out official controls in order to detect the possible presence of phenylbutazone residues in the products referred to in point A.

C. *Sampling points and procedure*

The sampling of the products should be carried out in establishments handling the products referred to in point A (e.g. slaughterhouses, border inspection posts).

D. *Sample numbers and modalities*

The recommended minimum number of samples to be taken within the period provided in Section II should be set at 1 sample every 50 tonnes of the products referred to in point A, with a minimum of 5 samples per country.

E. *Methods*

The competent authorities of Norway and Iceland should use methods validated according to Commission Decision 2002/657/EC. Such methods are available at the website of the European Reference Laboratory for the residues of veterinary medicines and contaminants in food of animal origin for residues listed in Annex I, Group A (5) and Group B (2)(a), (b), (e) to Directive *96/23/EC* [1].

II. DURATION OF COORDINATED CONTROL PLAN

The coordinated control plan should be carried out for a period of one month starting from the date of adoption of this Recommendation or at the latest by 1 March 2013.

III. REPORTING OF RESULTS

1. The competent authorities of Norway and Iceland should report the summary of the following information for each of the actions referred to in Section I of this Annex:

   (a) number of samples taken, per category of products;

   (b) the method(s) used for the analysis and the type of analysis performed;

   (c) number of positive findings;

   (d) follow-up controls performed with respect to positive findings in products referred to in point A under Action 1 in cases where the detected presence of horse meat exceeds 1 %;

   (e) follow-up controls performed with respect to positive findings in products in point A under Action 2;

   (f) results of follow-up controls;

   (g) with respect to positive findings in products referred to in point A under Action 2, the country where the animal concerned was certified for slaughter.

   The report should be communicated to the Authority within 15 days from the end of the one-month period referred to in Section II.

   The report should be presented in accordance with the format to be provided by the Authority.

2. The competent authorities of Norway and Iceland should immediately report to the Authority any positive results of the official controls carried out with respect to Actions 1 and 2 mentioned in Section I through the Rapid Alert System for Food and Feed.

3. The competent authorities of Norway and Iceland should also report to the Authority the results of any own checks carried out at their request by food business operators. Such information should be accompanied by the details referred to in point 1 and presented in accordance with the format to be provided by the Authority.

---

[1] Act referred to at point 2 of Part 7.1 of Chapter I of Annex I to the EEA Agreement