

## General Food Law 178/2002/EC

### Ten years of General Food Law in The Netherlands

*About the application of the General Food Law (or problems with it) in the past ten years in The Netherlands.*

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In the past ten years, food safety has become – as in the rest of Europe – an important public topic in The Netherlands. In this context, we will discuss the functioning of the RASFF alert system in practice and point out the cases that have stirred up the Dutch public the most. Furthermore, although there is not many case law in The Netherlands, we will mention a couple of distinctive examples that point out the issues on the Dutch food market in the past decade. But in general, let us first take a look at the role of the Netherlands Food and Consumer Product Safety Authority (NVWA). The NVWA approaches her role as supervisor in a unique way using a pyramid structure for its enforcement policy.

### The pyramid structure of the NVWA

The NVWA is the Dutch Authority that controls the whole production chain. It monitors food and consumer products to safeguard the public health. All notifications under the GFL must be done here as well. Since 2008 the NVWA applies new enforcement criteria regarding hygiene and food safety procedures.<sup>2</sup> The focus is now on notorious offenders. Companies that structurally fall short of food safety compliance must follow a defined step-by-step-plan and show over a longer time that they do comply with the regulations. A lack of compliance, means the NVWA can shut down a company (without intervention of the public prosecutor). Today, the NVWA still follows this procedure successfully.

The enforcement policy is based on ten principles and is called “*enforcement with reason and feeling*”.<sup>3</sup> On the basis of this approach lies the thought that the business itself is primary responsible, in line with the principles of the GFL. The NVWA assists in being compliant (entrepreneurs can even call a service number) and supports self-control. When the self-control system proves to be effective, the NVWA supervises less intensively. It is all about the degree of being compliant, a strategy that is designed in the following pyramid structure:

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<sup>2</sup> Due to the European regulations since 2006, which gave authorities broader powers to monitor and enforce.

<sup>3</sup> See: <http://www.vwa.nl/onderwerpen/werkwijze-food/dossier/handhaven-met-verstand-en-gevoel/wat-betekent-handhaven-met-verstand-en-gevoel-voor-bedrijven> (only in Dutch)



Following this pyramided structure and the specific enforcement policy, the NVWA operates in the most effective way possible, keeping the principles of the GFL in mind. More concrete examples of how the NVWA functions in practice become clear in the specific cases mentioned hereafter.

#### **Rotten meat localized and destroyed thanks to a RASFF Alert**

An example of the functioning of the RASFF alert system came up in 2006. The NVWA got a notification in January about rotten meat from Germany. The notification was not yet clear about the amount and where the meat entered the food chain. In September 90 tons of rotten meat were seized from two distributors in Germany. The meat, which was four years past the expiry date, was destined for restaurants in Germany, The Netherlands and six other European countries. The NVWA supervised the destruction of the meat and localized 20 kilos of diced chicken breast that was exported to The Netherlands. The owner was urged to destroy the batch and the meat did not enter the consumer food market. In Germany, this incident led to the introduction of a law to improve the supervision on meat traders.

#### **Breakfast cereals enriched with iron**

In 2009 the Dutch media spoke about pulverized nails or iron filings in breakfast cereals. This caused a lot of commotion. People thought the breakfast cereals were unsafe and a threat to public health. The NVWA intervened. It clarified that adding iron into cereals is allowed, only up to a certain limit. Consumption of products enriched with iron within this limit does not cause any risk to the public health. In the television program that first mentioned the iron in cereals, the impression was made that adding iron to consumer foods was prohibited in Denmark. This is incorrect, stated the NVWA. In Denmark, as in other Member States, it is allowed with

permission from the authorities. The European Union leaves it up to the Member States to determine the limit, in accordance with the eating pattern of the population.

The cases mentioned above caused much commotion in The Netherlands and generated lots of publicity. Another notable case was the dioxin incident in the beginning of 2006. The Dutch government evaluated this case and confirmed the incident was settled in accordance with the GFL.

### **The evaluation of the dioxin incident**

In January 2006 the NVWA discovered an excessive level of dioxin in pig feed. From that moment on companies that were involved in this food chain took immediate action. In a short period of time the source and cause of the feed contamination with dioxin were traced by the responsible parties. Quickly, there came an overview of companies that had received the contaminated feed and which animals had possibly eaten it. All this happened in close consultation with the Dutch government.

In the evaluation, the Dutch government emphasized that the most characteristic part of approaching the dioxin incident was that primary responsibility was taken by the food business. On the one hand, this was reflected in the fact that the producers of the pig feed had samples available. This, in combination with the details about the purchasers, made it possible to trace down the source of the contamination. The extent of the problem was made clear in a short period of time, which made the further approach easier. In the whole process, the government functioned as a sparring partner for the food business. Both parties took on the actions needed to be taken by them and this resulted in the best possible allocation of tasks.

Finally, two cases are worth mentioning regarding the application of the GFL in Dutch case law. There is very few case law that covers the subject. The cases mentioned hereafter are the most distinctive.

### **Import ban on Salinomycin 12% ganular**

In 2010 the NVWA imposed an order to a Dutch company, Pricor B.V, to return a batch of Salinomycin 12% granular, because it did not have a license to import this antibiotic food supplement into the Community. Pricor made objections to this decision. In the end, it was up to the Trade and Industry Appeals Tribunal (CBb) to decide on this matter.<sup>4</sup> The NVWA stated that the import ban of article 11 GFL was applicable. According to Pricor this article was not applicable at all, because in this case it was not a matter of "*food and feed imported into the Community for placing on the market*". Pricor thought this point of view was supported by article 12 GFL. In connection with article 12 GFL the authorities were consulted by Pricor and it

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<sup>4</sup> LJN: BM3324, Trade and Industry Appeals Tribunal, AWB 07/339 AWB 07/340

occurred that animal feed containing Salinomycin was allowed for export outside the Community. On that basis, Pricor drew the conclusion that import of the supplement, with the intention of processing it into a final export product, was also allowed. The CBb did not consider this line of argumentation, because importing the supplement was in the first place not allowed in accordance with article 3 of Regulation (EC) No 1831/2003.

#### **Counter-expertise on tuna batch not adequate**

The second case, was ruled by the Court of Rotterdam in 2011.<sup>5</sup> In that year the European Commission had issued a RASFF Alert regarding an excessive amount of mercury in a batch of tuna that was imported via Greece. The NVWA had brought this alert under the attention of Mirafood, a Dutch company. Mirafood did not undertake any action and stated that the batch of tuna was safe according to her own counter-expertise. The NVWA found this was contrary to article 19 GFL. The judge followed the NVWA and decided that the counter-expertise was not adequate. Allowing individual parties to make their own counter-expertise would undermine the useful effects of the European food safety system.

In general, it can be concluded that the GFL did not led to many problems applying the regulation in The Netherlands and matters were not often taken to court. There already were similar policies regarding food safety, but the GFL made these policies current law. In that way, the GFL helped to materialize the existing policies and improved the processes to maintain food safety in The Netherlands.

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<sup>5</sup> LJN: BU3661, District Court of Rotterdam, AWB 11/4803 VBC-T2