



Food Fraud in EU Food Law

Bernd van der Meulen



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Bernd van der Meulen

Who am I?

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Food Legal Consultant

Professor within EU Food Law University of Copenhagen

Professor of Comparative Food Law at Renmin University of China School of Law

Member of the board of the Global Harmonization Initiative (GHI)

www.globalharmonization.net

Volunteer at the Food Bank in Amsterdam:

www.amsterdam.voedselbank.org/english/

Director of the European Institute for Food Law www.food-law.nl



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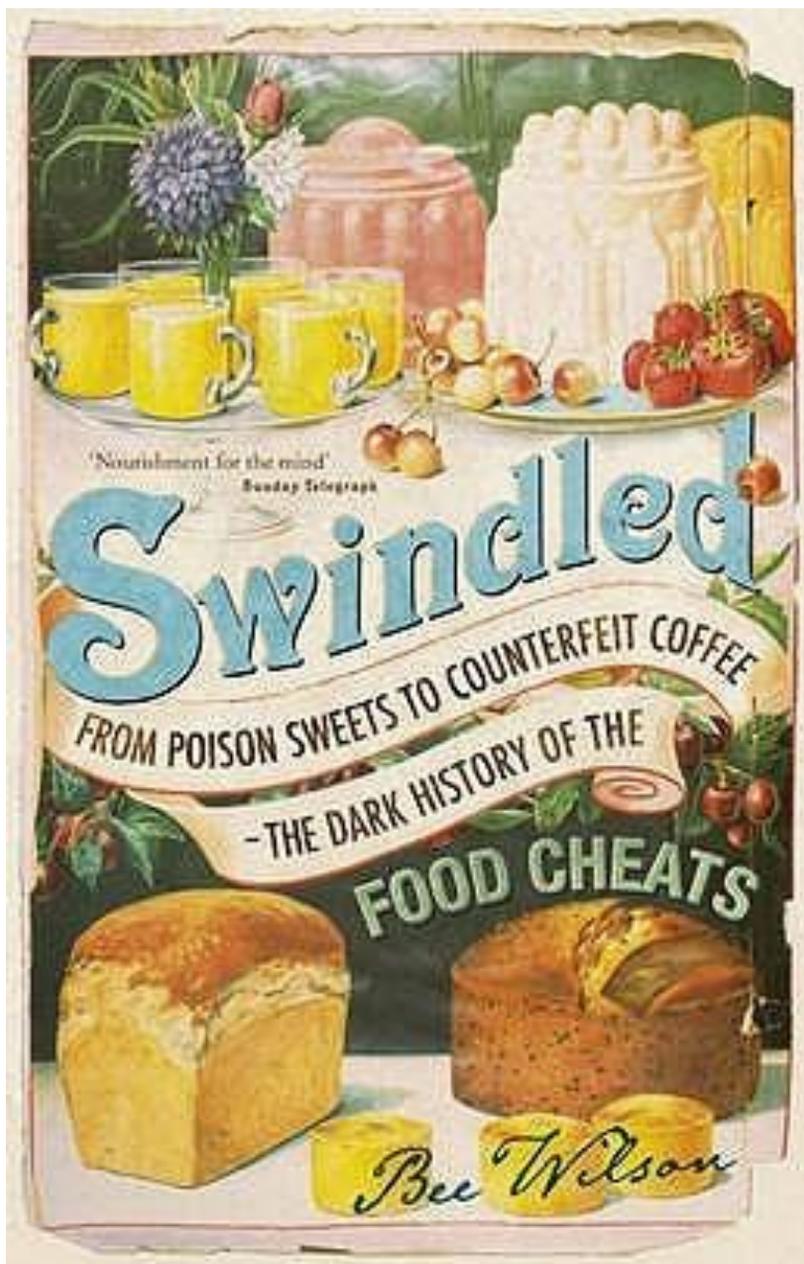
On the plate



- Food fraud in history
- Initial legislative responses
- The role of standards
- The demise of standards
- Full labelling
- A blind stop in the General Food Law?
- Fighting microorganisms or fighting people?
- The human factor
- Do we have the instruments?
- Horses. A wake-up call
- How to define food fraud in legislation
- Fraud in the new Official Controls Regulation
- Questions, concerns and experience
- Q&A



Bee Wilson, Swindled



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A TREATISE
ON
ADULTERATIONS OF FOOD,
AND
Culinary Poisons,
EXHIBITING
THE FRAUDULENT SOPHISTICATIONS
OF
BREAD, BEER, WINE, SPIRITUOUS LIQUORS, TEA, COFFEE,
Cream, Confectionery, Vinegar, Mustard, Pepper, Cheese, Olive Oil, Pickles,
AND OTHER ARTICLES EMPLOYED IN DOMESTIC ECONOMY,
AND
Methods of detecting them.

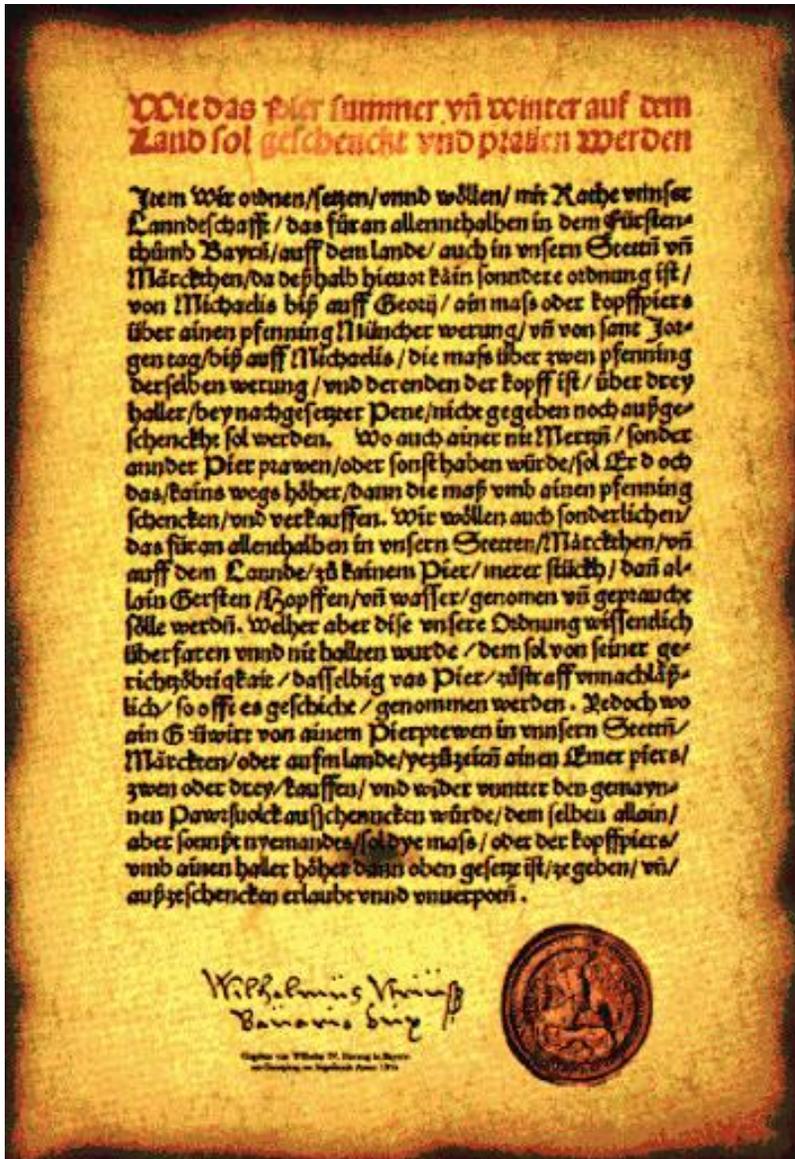


THE FOURTH EDITION.

BY FREDRICK ACCUM,

Operative Chemist, Lecturer on Practical Chemistry, Mineralogy, and on Chemistry applied to the Arts and Manufactures; Member of the Royal Irish Academy; Fellow of the Linnean Society; Member of the Royal Academy of Sciences, and of the Royal Society of Arts of Berlin, &c. &c.

Reinheitsgebot



“Cassis de Dijon”

ECJ 20 February 1979
case C-120/78

Rewe-Zentral AG v
Bundesmonopol-
verwaltung für
Branntwein

ECLI:EU:C:1979:42



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Directive 79/112/EEC the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer

- Article 6

5. (a) The list of ingredients shall include all the ingredients of the foodstuff, in descending order of weight, as recorded at the time of their use in the manufacture of the foodstuff. It shall appear preceded by a suitable heading which includes the word 'ingredients'.

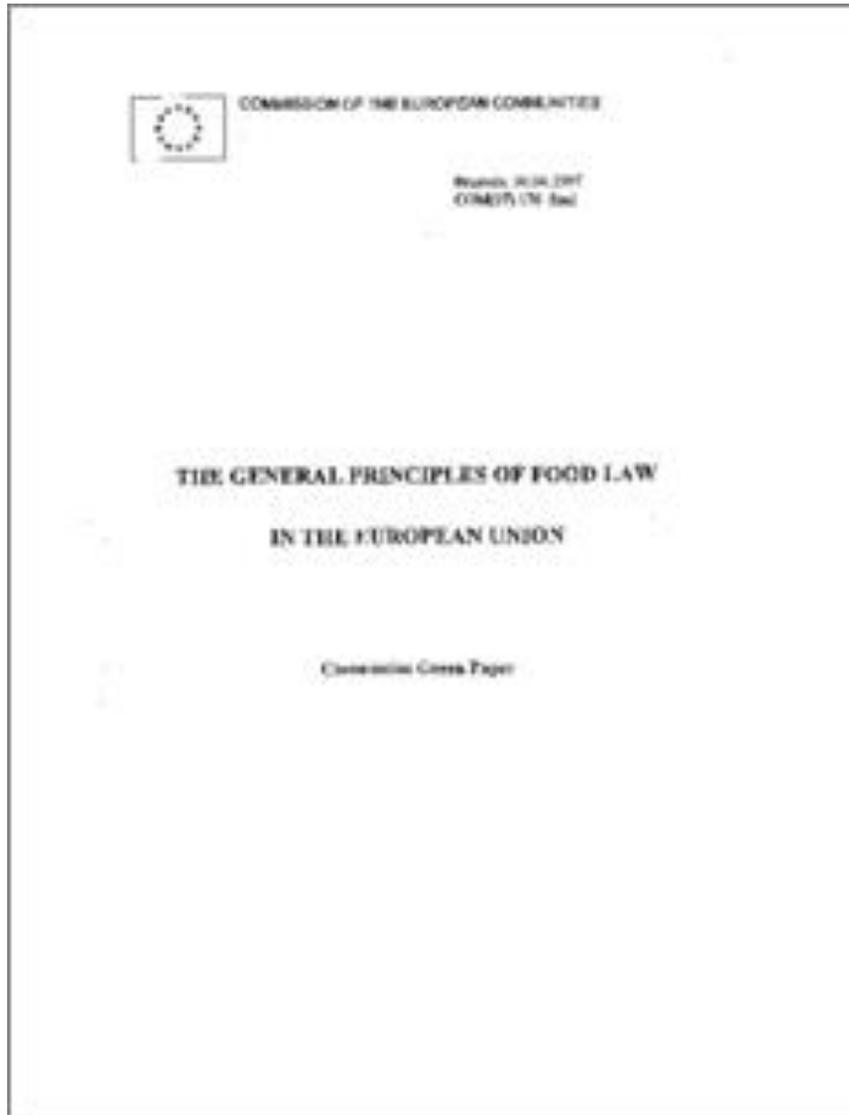


FMD



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Green Paper



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White Paper



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Action Plan on Food Safety³

No	Action	Objective	REF. IN WP	Adoption by Commission	Adoption by Council/ Parliament
I. Priority measures					
1.	Proposal for setting up a European Food Authority	To set up an independent European Food Authority.	29	September 2000	December 2001
2.	Proposal for laying down procedures in matters of food safety	To introduce a comprehensive safeguard measure covering the whole food chain, including feed. To establish a comprehensive Rapid Alert System covering all feed and food emergencies with harmonised requirements and procedures, including third countries on the basis of reciprocity.	80 18	September 2000	December 2001
3.	Proposal for a General Food Law Directive	To establish food safety as the primary objective of EU food law. To lay down the common principles underlying food legislation (in particular: scientific basis, responsibility of producers and suppliers, traceability along the food chain, efficient controls and effective enforcement).	67	September 2000	December 2001

No	Action	Objective	REF. IN WP	Adoption by Commission	Adoption by Council/ Parliament
		To increase transparency, consistency and legal security.			
4.	Proposal for a Regulation on official food and feed safety controls	To establish a Community framework for official controls on all food and feed safety aspects along the feed and food chain by: -merging and completing existing rules for national controls and Community controls and inspections within the EU, at the borders and in third countries. -integrating existing monitoring and surveillance systems so as to establish a comprehensive and effective food safety monitoring and surveillance system from farm to table. -establishing a framework for organising consolidated annual programs for controls of foodstuffs. -merging existing Community rules on mutual assistance and administrative co-operation. -creating a Community approach towards a financial support for official controls.	Ch. 6	December 2000	December 2001
5.	Proposal for a Regulation on feed	To establish animal and public health as the primary objective of EU feed legislation To lay down common principles underlying feed legislation (in particular: scientific basis, responsibility of producers and suppliers, systematic implementation of hazard analysis and	69	December 2001	December 2002



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(Acts whose publication is obligatory)

**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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Articles 37, 95, 133 and Article
152(4)(b) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Having regard to the opinion of the Committee of the
Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) The free movement of safe and wholesome food is an essential aspect of the internal market and contributes significantly to the health and well-being of citizens, and to their social and economic interests.
- (2) A high level of protection of human life and health should be assured in the pursuit of Community policies.
- (3) The free movement of food and feed within the Community can be achieved only if food and feed safety requirements do not differ significantly from Member State to Member State.
- (4) There are important differences in relation to concepts, principles and procedures between the food laws of

the Member States. When Member States adopt measures governing food, these differences may impede the free movement of food, create unequal conditions of competition, and may thereby directly affect the functioning of the internal market.

- (5) Accordingly, it is necessary to approximate these concepts, principles and procedures so as to form a common basis for measures governing food and feed taken in the Member States and at Community level. It is however necessary to provide for sufficient time for the adaptation of any conflicting provisions in existing legislation, both at national and Community level, and to provide that, pending such adaptation, the relevant legislation be applied in the light of the principles set out in the present Regulation.
- (6) Water is ingested directly or indirectly like other foods, thereby contributing to the overall exposure of a consumer to ingested substances, including chemical and microbiological contaminants. However, as the quality of water intended for human consumption is already controlled by Council Directives 80/778/EEC ⁽⁵⁾ and 98/83/EC ⁽⁶⁾, it suffices to consider water after the point of compliance referred to in Article 6 of Directive 98/83/EC.
- (7) Within the context of food law it is appropriate to include requirements for feed, including its production and use where that feed is intended for food-producing animals. This is without prejudice to the similar requirements which have been applied so far and which will be applied in the future in feed legislation applicable to all animals, including pets.
- (8) The Community has chosen a high level of health protection as appropriate in the development of food law, which it applies in a non-discriminatory manner whether food or feed is traded on the internal market or internationally.

⁽¹⁾ OJ C 96 E, 27.3.2001, p. 247.

⁽²⁾ OJ C 155, 29.5.2001, p. 32.

⁽³⁾ Opinion delivered on 14 June 2001 (not yet published in the Official Journal).

⁽⁴⁾ Opinion of the European Parliament of 12 June 2001 (not yet published in the Official Journal), Council Common Position of 17 September 2001 (not yet published in the Official Journal) and Decision of the European Parliament of 11 December 2001 (not yet published in the Official Journal). Council Decision of 21 January 2002.

⁽⁵⁾ OJ L 229, 30.8.1980, p. 11. Directive repealed by Directive 98/83/EC.

⁽⁶⁾ OJ L 330, 5.12.1998, p. 32.



General Food Law

Article 8

Protection of consumers' interests

Food law shall aim at the protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume. It shall aim at the prevention of:

- (a) fraudulent or deceptive practices;
- (b) the adulteration of food; and
- (c) any other practices which may mislead the consumer.



General Food Law Article 3(9)

'risk' means a function of the probability of an adverse health effect and the severity of that effect, consequential to a **hazard**



General Food Law Article 3(14)

'hazard' means a **biological, chemical** or **physical** agent in, or condition of, food or feed with the potential to cause an adverse health effect



General Food Law

Article 19(1)

If a food business operator considers or has reason to believe that a food which it has imported, produced, processed, manufactured or distributed is **not in compliance with the food safety requirements**, it shall immediately initiate procedures to **withdraw** the food in question **from the market** where the food has left the immediate control of that initial food business operator and inform the competent authorities thereof. Where the product may have reached the consumer, the operator shall effectively and accurately inform the consumers of the reason for its withdrawal, and if necessary, **recall from consumers** products already supplied to them when other measures are not sufficient to achieve a high level of health protection.



European Parliament



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0434/2013

4.12.2013

REPORT

on the food crisis, fraud in the food chain and the control thereof
(2013/2091(INI))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Esther de Lange

RR\1012306EN.doc

PE519.759v03-00

EN

United in diversity

EN



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Definition food fraud

EP quoting:

Spink & Moyer

'Food fraud is a collective term used to encompass the **deliberate** and **intentional** substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging; or false or misleading statements made about a product **for economic gain**'.

Drawing on from this definition the key characteristics of food fraud are:

- 1) non-compliance with food law and/or misleading the consumer,
- 2) which is done **intentionally** and
- 3) for reasons of **financial gain**.



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Old Official Controls Regulation

30.4.2004 EN Official Journal of the European Union L 165/ 1

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(Acts whose publication is obligatory)

**REGULATION (EC) No 882/2004 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 29 April 2004**

on official controls performed to ensure
the verification of compliance with feed and food law,
animal health and animal welfare rules

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 37, 95 and 152(4)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ¹,

Having regard to the Opinion of the Committee of the Regions ²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ³,

¹ OJ C 234, 30.9.2003, p. 25.

² OJ C 23, 27.1.2004, p. 14.

³ Opinion of the European Parliament of 9 March 2004 (not yet published in the Official Journal) and Council Decision of 26 April 2004.



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New Official Controls Regulation

7.4.2017

EN

Official Journal of the European Union

L 95/1

I

(Legislative acts)

REGULATIONS

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)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), Article 114 and Article 168(4)(b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The Treaty on the Functioning of the European Union (TFEU) requires a high level of protection of human and animal health and of the environment to be ensured in the definition and implementation of Union policies and activities. The achievement of that objective should, inter alia, be pursued via measures in the veterinary and phytosanitary fields which have as their final objective the protection of human health.

⁽¹⁾ OJ C 67, 6.3.2014, p. 166

⁽²⁾ OJ C 114, 15.4.2014, p. 96

⁽³⁾ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 19 December 2016 (not yet published in the Official Journal). Position of the European Parliament of 15 March 2017 (not yet published in the Official Journal).



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Antonia Corini



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Dr. Antonia Corini

“The human factor”

Criminal intent to
infringe on food legal
requirements



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Regulation (EU) 2017/625

Recital 90

For financial penalties applicable to violations of the rules perpetrated through **fraudulent or deceptive practices** to be sufficiently deterrent, they should be set at a level which seeks to **exceed the undue advantage** for the perpetrator resulting from those practices.



Regulation (EU) 2017/625

Article 139(2)

Member States shall ensure that financial penalties for violations (...) perpetrated through **fraudulent or deceptive practices**, reflect, (...), at least either the **economic advantage** for the operator or, as appropriate, a percentage of the operator's **turnover**.



Letter to Dutch Parliament

Ministerie van Volksgezondheid,
Welzijn en Sport

> Retouradres Postbus 20350 2500 EJ Den Haag

De Voorzitter van de Tweede Kamer
der Staten-Generaal
Postbus 20018
2500 EA DEN HAAG

Bezoekadres
Parnassusplein 5
2511 VX Den Haag
www.rijksoverheid.nl

Kenmerk
1639667-201090-VGP

Bijlage(n)
-

Uw brief

Datum 23 januari 2020
Betreft Omzetgerelateerde boete Warenwet

*Correspondentie uitsluitend
richten aan het retouradres
met vermelding van de
datum en het kenmerk van
deze brief.*

Geachte voorzitter,

Tijdens het Algemeen Overleg Voedselveiligheid op 16 januari 2020 heb ik toegezegd uw Kamer te informeren zodra een eerste omzetgerelateerde boete op grond van de Warenwet is opgelegd. Hierbij meld ik u dat de Nederlandse Voedsel- en Warenautoriteit (verder: NVWA) op 17 januari 2020 een omzetgerelateerde boete op grond van de Warenwet heeft opgelegd. De boetebeschikking is op die dag aan het betrokken bedrijf verzonden.

De NVWA heeft een vleesverwerkingsbedrijf een boete opgelegd van ruim 500.000 euro. Het bedrijf heeft in 2018, ondanks aandringen van de NVWA, onvoldoende maatregelen getroffen om varkensvlees dat mogelijk besmet was met Salmonella Goldcoast, uit de handel te nemen. Op 5 december 2018 heb ik uw Kamer over dit incident geïnformeerd.¹

Het bedrijf heeft meerdere overtredingen van de Warenwet begaan. Zo heeft het vleesverwerkingsbedrijf zijn afnemers verzocht de instructie van de NVWA, om producten uit de handel te halen, te negeren.

De NVWA heeft besloten een omzetgerelateerde boete op te leggen vanwege de ernst van deze feiten. Met het oog op de voedselveiligheid en vanwege het feit dat er sprake was van opzettelijk handelen is het mogelijk een omzetgerelateerde boete op grond van Artikel 2 van het Warenwetbesluit bestuurlijke boeten op te leggen. Voor het bedrijf staat tegen het besluit van de NVWA de gebruikelijke weg voor bezwaar en beroep open.

Hoogachtend,

de minister voor Medische Zorg
en Sport,

Bruno Bruins

¹ Kamerstukken II 2018/19, 26991, nr. 535.



Thank you for
your kind
attention

Q&A

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www.Food-Law-Academy.com



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