

**Amendment to EU
Regulation (EC) No.
853/2004, in Chapter
VII, Section VIII on
stiffening of smoked
fillets**

Update 30.01.2024

**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**

The meeting on November 30th

On November 30th, 2023, Polish sector representative met with Mr. Eric Thevenard and Mr. Paolo Caricato, at the DGs premises.

1. Subject of the meeting:

discussion over the circumstances, which have never been subject of the discussion during the process of regulating of the stiffening procedure.

2. The COM was given the clarification that:

- In the production of the smoked/marinated and sliced salmon the **whole EU industry** can not avoid the use of **the buffering/queueing** of the processed salmon fillets; either prior to slicing and the immediate dispatch (used in the hard-slicing case) or upon slicing prior to dispatch extended in time (used in the soft-slicing case).
- In both cases the temperature of buffered product is continuously maintained within the range closest to the temperature range maintained during the slicing procedure (from -10°C to -2°C).

3. The COM was reminded that ESSA Guide classifies:

- Product stiffened in the temperature range of -14°C/ -2°C as NEVER FROZEN
- The buffering upon slicing, prior to dispatch ("Sub 0°C Chilling"), is storage in the temperature range -2°C /-3°C- which is different than the storage temperature, for fishery products, of either melting ice 0°C /+2°C (chilled) or -18°C(frozen)-requested by the COM

The time duration of the Sub 0°C Chilling storage is not indicated/not limited.

4. The COM was presented the list of the questions, where the most relevant were:

The meeting on November 30th The questions to the COM

Q3: Is the COM aware that the European Smoked Salmon Producers Association European (ESSA) Guide to Good Practice for Smoked and/or Salted and/or Marinated Fish advises storage of the sliced salmon fillets (for the period upon slicing and prior to dispatch,) in the temperature range $\leq -2^{\circ}\text{C}$ and $\geq -3^{\circ}\text{C}$, for undefined duration of time? This is called “*Sub 0°C Chilling*” storage.

A: „The Commission is aware of this guidance document, prepared by an industry organisation and not relevant for the interpretation, implementation and application of Union law. Irrespective of any publications by self-organisations of the industry, the applicable provisions of Union law (cfr. notably art 123 of Comm Impl Reg 456/1789) are that storage of frozen products must be at -18°C . „

Q4: Is the COM aware of the legal and/or scientific grounds of this practices?

A: „This is not relevant, see reply to question 3. The Union law provisions according to which frozen fish must be stored at -18°C were established on the basis of Codex standards. „

Q5: Is the COM aware that in the French national document “Instruction technique DGAL/SDSSA/2014-281” of 9 April 2014, in Chapter II, A.1., page 3, the French administration allows its sector to store smoked salmon fillets in temperatures between -3°C and -2°C for an undefined time period?

A: “The Commission is not aware of this document but will follow up with the French authorities. „

Q 6. Is the COM aware of the legal and/or scientific grounds of this advice and such permission?

„See above.”

What do we face?

What about the principle of the playing level field?

France vs all other EU salmon processing sectors?

Polish sector not breaching the EU law

Conclusions for today:

1. While ESSA recommends storage of the sliced salmon fillets (for the period upon slicing and prior to dispatch,) in the temperature range $\leq -2^{\circ}\text{C}$ and $\geq -3^{\circ}\text{C}$, for undefined duration of time (sub 0°C Chilling)

The Com indicates that, in the light of the current text of the Delegated Regulation, immediately upon publishing the amended regulation 853/2004, the Sub 0°C Chilling storage, used in soft slicing, **will be illegal. This will affect whole EU salmon processing sector, without any transition period.**

2. While French authorities allows its sector to store smoked salmon fillets in temperatures between -3°C and -2°C for an undefined time period.

The COM admitted that they may fall into a legal dispute with French administration; It may result in situation that only French sector will continue its storage practices, in the "third temperature"- based on the domestic instruction. For the time being.

4. COM admits that is not aware about the practices of storage of **the stiffened smoked salmon fillets** in France, recommended, to its sector, by the French national authorities (since at least year 2014)

At the same time accuses the Polish sector for the breach and the circumvent of the EU law, by queueing/ buffering of **the stiffened smoked salmon fillets** - which in reality is the unavoidable part of the technological process and although, as proven by the production statistics, is maintained in the limited time and not used for the storage.

Key dates and current state of play

Option 1: No objection; Delegated Regulation is adopted

Option 2: Objection raised and decided by the majority of the Parliament Members; Commission Delegated Regulation is revoked.

First objection period: 2 months
Council and Parliament can object

The Council: on Jan 29th the Delegated Regulation was objected by PL, DK, AT. Delivery of the positions to the Coreper , by the Feb 7th 2024.



COM submits, to the ENVI Com and Council of the EU, the Commission Delegated Regulation amending Annexes II and III to Regulation (EC) No 853/2004

12 Jan is the time line for delivery of the opinion by the ENVI Members

Thirteen Members of the Parliament **(from EPP,SD, ECR)** raises a formal objection to the Delegated Regulation, together with the request to extend the scrutiny period by 2 months

On 18 Jan 2024, the scrutiny period was extended by 2 months- on the EU Parliament request.

The timeline, for the ENVI Com Members, to raise objections

Exchange of views and voting in the ENVI Com, regarding the Parliament objection

„As established by the Common Fisheries Policy, the MAC provides advice to the European Commission and EU Member States on matters relevant for the market of fishery and aquaculture products”

The action to be considered:

With regards to above and to the principle of transparency and making of good law -would MAC share its, unanswered, letter and questions, from Nov 22nd 2023, with the Members of the ENVI Commission and with the Council of the EU (via the Presidency) - before February 2nd 2024?

1. The proposed Commission Delegated Regulation misses the necessary scientific opinion from the European Food Safety Authority and any scientific evidence to support rigid time duration of 96 hours
2. COM explains to the Parliament and the Council that proposed measures are based on the recommendations of the so-called "Good Practice Guide" of ESSA, prepared by an organization that, according to the EC, represents whole EU industry. Meanwhile ESSA -the lobbying self-organization of the industry brings together and represents commercial companies and corporations from Egypt, Thailand, UK, Finland, France, Portugal, Italy and Spain.
3. The only one EU-recognized European Association of the Fish Processors (AIPCE), was not invited to the process of providing the opinion of the EU processing sector, at all.
4. Questions worked out and submitted, on AIPCE own initiative, to DG Sante remain unanswered.
5. Public consultations (online) results were ignored: the vast majority of the opinions were against the amendment.
6. Questions addressed, by the Food Law Working Group of the Market Advisory Council addressed to the DG Sante, on November 23rd 2023, remain unanswered, over two months already.

Will they ever be answered?

With regards to the ongoing legislative procedure of adoption of the Commission Delegated Regulation (EU) .../... of 14.12.2023 amending Annexes II and III to Regulation (EC) No 853/2004 of the European Parliament and of the council as regards specific hygiene requirements for certain meat, fishery products, dairy products and eggs,

the Market Advisory Council wishes to provide to the attention of the honourable Members of the Envi Commission and honourable Members of the Council of the EU its letter addressed to Director -General of the DG Mare and to Director -General of the DG Sante.

The letter submitted on November 23rd, 2023, remains unanswered.