

Summary (press)

Investigation fipronil in table eggs

In July 2017 fipronil has been detected in Dutch and Belgian table eggs. A Dutch business, Chickfriend, had used fipronil at poultry farms to combat red mite. Fipronil is not authorised for the purpose of controlling pests. The NVWA (Netherlands Food and Consumer Products Safety Authority) blocked farms and required them to recall their eggs after the determination has been made for these eggs to contain residues of fipronil above MRL. As fipronil is also found in concentrations possibly being harmful for the health of children if ingested daily, supervisory authority NVWA decides to take the precautionary measure of blocking some 200 farms. Not just the eggs, also chickens and manure are not allowed to leave the yard. The sales of table eggs declined dramatically, also in Germany a large importer of eggs produced in the Netherlands. The contamination with fipronil has major financial consequences for poultry farms and other businesses in the egg chain.

In August 2017 it transpired that the NVWA already received hints in November 2016 regarding the illegal use of fipronil in combatting red mite.

The comprehensive contamination of table eggs with fipronil and the response of the NVWA caused agitation in the food industry and uncertainty among consumers. In response, the then minister of VWS (Ministry for Public Health, Wellbeing and Sports) and the then vice-minister of EZ (Ministry of Economic Affairs) asked Mrs. Winnie Sorgdrager to investigate the events and to provide recommendations.

The assignment for the investigation by the commission fipronil in eggs, focused on the lessons to be learned from the fipronil-incident. The commission included questions proposed by the House of Representatives and civil society organisations in its investigation. The events regarding the fipronil-incident were reconstructed as accurately as possible and an inventory was made on how food safety should be safeguarded in accordance with laws and regulations. Based on the events in the fipronil-incident, the commission investigated how the system of ensuring food safety functions in practice and which improvements need to be implemented.

The commission concludes that the system supposed to guarantee food safety in the egg sector, is complex and unclear.

The role of private schemes for food safety

According to European legislation, the primary responsibility for food safety lies with the businesses producing, distributing, processing and marketing food. These businesses have the obligation to actively ensure not to introduce products onto the markets not complying with statutory regulations and therefore not fit for consumption (self-monitoring obligation). The safeguards implemented by those businesses in the egg chain are insufficient, according to the

commission. The commission concludes a lack of awareness and knowledge of statutory requirements. Among other things, this is evident from the reactions of poultry farmers and representatives of the sector during the incident. The commission furthermore concludes that many farms assess the risks for food safety insufficiently. The red mite issues and the associated risk when applying unauthorised means to combat it, were known in the sector. However, the risks were assessed inadequately or even ignored. The factual control of table eggs for residues and critical substances is currently too limited. The chain quality system IKB Ei (Integrated Chain Management Egg) fails to offer sufficient guarantees on the points mentioned. That system, in which nearly 90 percent of all laying-hen farms participates voluntarily, is intended to monitor the quality of eggs and egg-containing products. The scope of this scheme is too limited in terms of food safety. Moreover, it is insufficiently compatible with the food safety systems of the food industry and the retail sector. The quality system for poultry service companies IKB PSB, related to IKB Ei, does not impose any requirements on the participating farms with regard to food safety.

The board responsible for both quality systems have shown a lack of ambition in the past to make the schemes contribute as much as possible to ensure food safety. Following a critical assessment of IKB Ei by ketenborging.nl, a Dutch quality label for chain quality systems, no improvements were implemented. The commission reaches the conclusion that the management boards of both IKB Ei and IKB PSB were inadequate in taking their responsibility to improve the quality of both certificates.

Compliance with chain quality systems, such as IKB Ei, is monitored by private companies, so-called certification bodies. The certifying authorities for IKB Ei are ISACert and Kiwa VERIN. The inspections performed by certifying authorities mainly have an administrative nature. Company visits are announced in advance which impairs the effectiveness and credibility of the inspections. It also makes the chance of detecting fraud or misrepresentation small.

With regard to the sector, the commission concludes that businesses do not pay the level of attention needed to ensure food safety.

After the outbreak of the incident, it became clear that most farms were not prepared for a food safety incident. The sector appeared to be unable to act in a chain-context and to take the measures necessary to ban or withdraw contaminated eggs from the market. Businesses and branch representatives mainly focused on limiting the economic damage caused by the contamination. They repeatedly call into question the statutory standards, publicly query the enforcement policy of the NVWA and, with that, damage the credibility of the actions of the NVWA. Up to 2018, laying-hen farms, packing stations and supermarkets have been unsuccessful in banning eggs from the trade that are, according to law, unfit for consumption. Fipronil-eggs repeatedly penetrated the shelves of the supermarkets showing that food safety is insufficiently ensured by private parties.

The public supervision of food safety and the role of the NVWA in the fipronil-incident

Official controls of food safety is a duty assigned to the Netherlands Food and Consumer Products Safety Authority, NVWA. The NVWA is an agency of the Ministry of Agriculture, Nature and Food Quality (LNV). It has a comprehensive package of duties and numerous working areas. The NVWA monitors the food safety commissioned by the departments of Public Health, Wellbeing and Sports (VWS) and Agriculture, Nature and Food Quality (LNV). The supervisory authority has its own Intelligence and Investigation Service (IOD) conducting criminal investigations under the auspices of the Public Prosecution Services. An independent scientific advisor of the ministers of VWS and LNV, the Bureau for Risk Analysis and Research (BuRO), is also part of the NVWA. BuRO has to assess the hazards for food safety, product safety, animal welfare, animal and plant health and nature.

It is peculiar when it comes to monitoring the egg sector that the public supervision for a large part – and especially the aspect of food safety – is designated to a semi-private organisation: the Dutch Control Authority for Eggs (NCAE). The NCAE is part of the Central Body for Quality Issues in Dairy (COKZ), a privately managed, independent administrative body. A third supervisory authority is added in case organic eggs are produced, distributed and traded. The Foundation Skal Biocontrole is commissioned by the Ministry of LNV to supervise the compliance with, among other things, European Regulations for organic production.

The NVWA played a central role during the occurrence and handling of the fipronil-incident. In November 2016, the supervisory authority was provided three intimations containing concrete indications about the combatting of red mite at poultry farms using a prohibited substance. One of these intimations came up during IOD investigations. The two other eventually also ended up with this service. The commission concludes that the indications were forwarded to the IOD without recognisable further assessment of the hazards potentially involved with the violation reported. With this course of events, the NVWA did not follow its internal procedures which resulted in the follow-up on these hints ending up in the criminal process.

The commission is of the opinion that at the end of 2016, based on the information available at that time, enforcement actions would have been possible pursuant to the Plant Protection Products and Biocides Act (Wgb).

During an assessment of the indications by the IOD and the Public Prosecution Services in December, the question was raised whether the violation reported identified an acute risk for public health. BuRo was consulted in order to answer this question. BuRo rendered its oral judgment at the end of January concluding there was no acute risk for public health but that a proper assessment of the question would only be possible when more information was available about the extent of exposure. The commission concludes that no investigation to the latter aspect was conducted and all parties involved were satisfied with a risk assessment not recorded in writing by BuRO in January 2017 which, according to BuRO itself, was based on incomplete information. The same applies to the end of April 2017 when the IOD and the Public Prosecution

Services finally decide to start a criminal investigation. There was still no clarity regarding the question whether the use of fipronil also involves a risk for public health. The commission has sufficient indications to establish that parts of the organisation knew in January 2017 of the possible occurrence of fipronil in eggs.

Due to lack of capacity, the criminal investigation was not started in April, May or June. This course of affairs at the NVWA in this phase shows that the IOD and the supervisory divisions collaborate insufficiently and that parts of the organisation have no clarity on the factual restrictions that criminal law imposes on sharing information included in investigation files. Decisions were inadequately documented, and responsibilities not clearly assigned.

The commission concludes that the NVWA has inadequately realised its duty as inspector in the field of food safety in the phase leading up to a report submitted by the Belgian supervisory authority FAVV.

After fipronil was detected in eggs in Belgium, the Belgian supervisory authority FAVV requested the NVWA on 28 June 2017 to conduct an investigation on the company Chickfriend. Following a first visit of inspectors of the NVWA on 7 July, during which two tonnes of non-authorized biocides were found, the business was sealed on 22 July. When the extent of the fipronil contamination became apparent from the seized administration of Chickfriend, the NVWA formally declared the case on 18 July to be an “incident” and an incident organisation was established. The NVWA blocked 258 farms in the following weeks from transporting and placing on the market eggs, chickens and manure. The commission concludes that the NVWA was not well prepared for a food safety incident or crisis. Communication with the NVWA was not unambiguous which has contributed to insecurity for the persons directly involved and for consumers. Partly because of that communication, the application of its own standard to warn the public and the choice for application of a correction on the measurement uncertainty, rise was given to doubt the credibility of the enforcement actions.

The NVWA based its intervention policy partially on the precautionary principle. This was justified in the opinion of the commission given the uncertainties one had to deal with. The commission concludes that the intervention policy of the NVWA was in line with applicable regulations and has been suitable, appropriate and proportionate.

The role of the ministries of VWS and EZ/LNV

The central government bears the responsibility for the proper functioning of the system of guarantees for food safety. Both the Ministry of VWS and the Ministry of LNV (until recently EZ) are responsible for food safety.

The ministries have underestimated the impact of the incident and were late to acknowledge the numerous policy-related questions that had to be answered in order to handle the incident. Earlier directions hereon as well as on the communication to the public would have been necessary. The

ministries had much trouble recapitulating the correct information. Letters sent to the House of Representatives in August 2017 were incomplete and provided a distorted picture of the situation.

The division of the political and policy-related responsibility for food safety between two ministries leads to confusion, a division of the knowledge of chains and sectors between two departments, additional moments of alignment, double commissioning towards the supervisory authority and double control of the broad outlines.

The commission considers that both ministries apply a too restricted view of their own role in safeguarding food safety. This results in policy-related issues and executional duties ending up at the NVWA. This does not only lead to overburdening the NVWA; it also impedes an incisive interpretation of its role as final element of guarantees for food safety.

Private and public supervision

The supervision by private and public bodies together does not form a conclusive system of guarantees. It lacks cohesion and the activities do not supplement each other. The certification in the egg sector currently does not meet the conditions for an adjusted, clarified system of public supervision. According to the Inspector-General of three government inspectorates, the preceding also applies to other certificates besides those in the egg sector. Statements made by politicians that public supervisory authorities are able to step down once companies are certified, are therefore unfounded.

The division of the public supervision on the egg chain between two organisations, NVWA and NCAE, is unnecessary complex and leads to less effective and less efficient supervision.

Recommendations

Businesses, their trade organisations and representatives, policymakers and directors as well as the supervisory authorities have to better acknowledge and take on their responsibility and role in ensuring food safety. Food safety must be given the highest priority when establishing their work activities and processes.

The commission recommends companies and directors in the egg sector to take care of a credible system of self-regulation in which food safety is the key priority. To that end, the recommendations of the Working-group reinforcement self-regulation egg chain should be implemented promptly, the risk assessment designed independently and competently, and more attention has to be paid to food fraud by improving the controls.

The commission is of opinion that the NVWA has to ensure that food safety is considered the highest priority in all its departments. Food safety has to be integrated visibly and unambiguously within the organisation. Indications must be assessed integrally and in a timely

manner so that maximum clarity on the risks and the social impact of violations is obtained prior to making a decision on an administrative or criminal approach. A criminal approach should not interfere with actual enforcement to safeguard food safety. Notifications and hints must be handled in cohesion and be easy to trace for supervision, enforcement and detection. The commission furthermore appeals to the NVWA to devote more effort to proper management and adequate distribution of knowledge at all levels. Besides knowledge, also the courage to take responsibility is an important point of attention in further professionalisation of the employees.

The commission urges politics and administration to actively support the supervisory authority with its own policy, among other things by promoting self-regulation in the sectors. The political and policy-related responsibility for food safety, as well as the management of the NVWA, has to be integrated clearly and conclusively. Adequate equipment is necessary for the NVWA to properly execute its role as final element of food safety.

It is furthermore recommended to have an investigation conducted on the quality and functioning of certificates and certifying authorities. The legislator is urged to take care of an orderly arrangement regarding the sharing of enforcement information within supervisory organisations.