



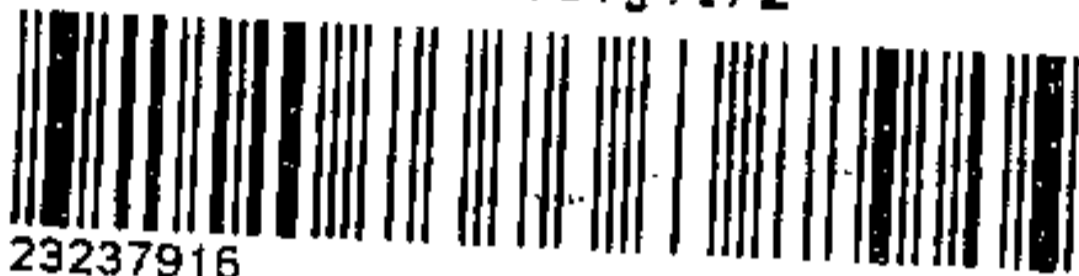
*Ministero del Lavoro della Salute e delle
Politiche Sociali*

Dipartimento per la Sanità Pubblica Veterinaria, la Nutrizione
e la Sicurezza degli Alimenti
Direzione Generale della Sicurezza degli Alimenti e della
Nutrizione - Uff. 7°

Ministero della Salute

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Roma

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**SEGRETERIA COMMISSIONE CONSULTIVA
PRODOTTI FITOSANITARI**

- SEDE

Alle Associazioni di Categoria

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Oggetto: Regolamento (EC) n° 396/2005 – Articolo 49 (1) riguardante le misure transitorie

Si trasmette per opportuna conoscenza, in allegato alla presente, la nota esplicativa del Servizio Giuridico del Comitato Permanente della Catena Alimentare e della Salute Animale, in merito all'articolo 49 comma 1 del Regolamento (CE) n° 396/2005, pervenuta allo scrivente Ufficio in data 4 agosto 2008, in seguito alle recenti richieste di chiarificazione da parte delle delegazioni di diversi Stati Membri e di Imprese del settore alimentare.

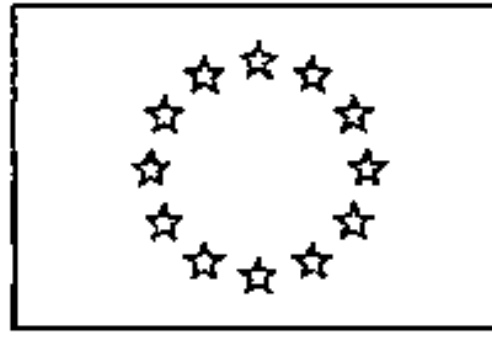
Pertanto l'articolo 49 comma 1 del Regolamento (CE) n° 396/2005 si legge come segue: "I criteri stabiliti dal Capo III non si applicheranno ai prodotti alimentari legalmente prodotti o importati nella Comunità prima della data riportata al secondo paragrafo dell'articolo 50 del suddetto Regolamento, ovvero a partire dal 1° settembre 2008".

Con l'occasione si fa presente che tale indicazione conferma quanto era stato disposto dallo scrivente Ufficio nei decreti ministeriali di recepimento delle direttive comunitarie sui residui dei prodotti fitosanitari, relativamente alla non retroattività dei limiti dei residui.

Si pregano codeste Amministrazioni ed Associazioni a voler dare massima diffusione al contenuto della presente nota, per gli aspetti di competenza, alle proprie strutture territoriali interessate:

Si ringrazia per la collaborazione

IL DIRETTORE GENERALE
(Dr. Silvio BORRELLO)



EUROPEAN COMMISSION
HEALTH AND CONSUMERS DIRECTORATE-GENERAL

Directorate E – Safety of the food chain
E3 - Chemicals, Contaminants, Pesticides

SANCO

04. 08. 2008

Brussels,
SANCO/E3/FA/sf (2008) D/530712

**NOTE TO THE STANDING COMMITTEE ON THE FOOD CHAIN AND ANIMAL HEALTH
SECTIONS PESTICIDE RESIDUES AND PLANT PROTECTION PRODUCTS-LEGISLATION**

Subject: Regulation (EC) No 396/2005 – Article 49(1) concerning transitional measures.

The Commission recently received requests of clarification from several Member States delegations and from the food business sector, regarding the transitional measures laid down in Article 49(1) of Regulation (EC) No 396/2005.

Article 49(1) of Regulation (EC) No 396/2005 reads as follows:

"The requirements of Chapter III shall not apply to products lawfully produced or imported into the Community before the date referred to in the second paragraph of Article 50.

However, in order to ensure a high level of consumer protection, appropriate measures concerning those products may be taken. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 45(5)."

In particular, the Commission was asked to clarify the following issues:

- 1) Meaning of the sentence "products lawfully produced or imported".
- 2) Legislative provisions applicable to products falling under the transitional measures.

1. "Products lawfully produced or imported"

It is the Commission's view that transitional measures apply to products treated with pesticides either in Europe or in third countries before 1 September 2008. Typically, this situation applies to processed or frozen products, but also to raw agricultural commodities that, although treated before 1 September 2008, may be harvested after that date and/or stored for months or even years.

In fact, Article 2(1) of Regulation (EC) No 396/2005 provides that it applies to "[...] products of plant and animal origin or parts thereof covered by Annex I to be used as fresh, processed and/or composite food or feed [...]". Thus, the Regulation clearly states that products can be used either as fresh or processed commodities or as composite food or feed. Furthermore, the wording of Article 49(1) does not restrict, either explicitly or implicitly, the transitional measures to products, which have been actually harvested or physically imported before 1 September 2008.

2. Rules applicable to products falling under the transitional measures

Article 49(1) expressly covers transitional measures and plainly provides that for products falling under this provision (cf. subheading 1 above), Chapter III of the Regulation (EC) No 396/2005 does not apply. Instead, the legislation in place before 1 September 2008 should apply.

This would mean in practice that for pesticide residues harmonised under Regulation (EC) No 396/2005 but not harmonised under the old regime, the Member States should continue to apply their present national provisions. For the other pesticides, the provisions of directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC would continue to apply.

As a direct consequence, as long as products falling under the scope of Article 49(1) are placed on the market, Member States should keep in place their present legislation on pesticide residues, in order to deal with these products at enforcement level. This would not prevent them from taking action in case of intake concern.

In this context, I would like to draw your attention to the second subparagraph of Article 49(1), which provides that "[...] in order to ensure a high level of consumer protection appropriate measures concerning those products may be taken in accordance with [the regulatory procedure]" (emphasis added). Such measures might be considered when an intake concern for a certain active substance would make it impossible to enforce old national MRLs, which are higher than the new, harmonised ones.

Finally, I would like to remind you that, in case of disagreement, only the Court of Justice is entitled to decide on the interpretation of Community legislation.



Patricia Brunko
Head of Unit