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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 64/2013

of 24 January 2013

amending Regulation (EC) No 2535/2001 as regards the management of the WTO tariff quotas for New Zealand cheese and butter

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 144(1) and Article 148(c), in conjunction with Article 4 thereof,

Whereas:

- (1) Section 1 of Chapter III of Title 2 of Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas ⁽²⁾ sets out the rules on the management of import quotas by certain third countries listed in Annex III.B to that Regulation. Those rules provide for the issuing of an import licence upon presentation of a corresponding inward-monitoring arrangement (IMA 1) certificate.
- (2) The experience as regards the management of the tariff quotas for New Zealand cheese (quota numbers 09.4514 and 09.4515) proved that an equally efficient management of those quotas could also be achieved through a system which entails less administrative burden for importers and the licences issuing bodies of the Member States. Under that system the functions of the IMA1 certificate to prove the origin and the eligibility of the goods at import are kept but the issuing of import licences is no longer subject to the presentation of that certificate. It is therefore appropriate to submit those quotas to the rules of Chapter I of Title 2 of Regulation (EC) No 2535/2001.
- (3) With the view to prevent speculation while ensuring a maximum utilisation of the tariff quotas for New Zealand

cheese, licence applications should be limited to 25 % of the relevant quota available.

- (4) Taking into account the seasonality of the dairy production in New Zealand, the evolution of the prices and the time necessary to ship the products concerned to the Union, it is appropriate to provide for a third allocation round of import licences in September for the quotas referred to in Part K of Annex I and Part A of Annex III.
- (5) Regulation (EC) No 2535/2001 should therefore be amended accordingly.
- (6) In order to give sufficient time to the applicants, the competent authorities and the Member States to comply with the new rules, it is appropriate that those rules apply from the quota year 2014.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1***Amendment of Regulation (EC) No 2535/2001**

Regulation (EC) No 2535/2001 is amended as follows:

- (1) in Article 5, the following point is added:

‘(k) the quotas referred to in Part K of Annex I’;
- (2) in Article 6, the first paragraph is replaced by the following:

‘Annex I sets out the tariff quotas, the duties to be applied, the maximum quantities to be imported each year, the import tariff quota periods and their division into subperiods.’;
- (3) in Article 13, paragraph 2 is replaced by the following:

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 341, 22.12.2001, p. 29.

'2. Licence applications shall relate to at least 10 tonnes and no more than the quantity available under the quota for the subperiod as referred to in Article 6.

However, licence applications shall relate:

- (a) in the case of the quotas referred to in point (a) of Article 5, to no more than 10 % of the quantity available;
- (b) in the case of the quotas referred to in point (k) of Article 5, to no more than 25 % of the quantity available.;

(4) in Article 14, the following paragraph 1a is inserted:

'1a. For the quotas referred to in Part K of Annex I, licence applications may be lodged only:

- (a) from 20 to 30 November, for imports during the period from 1 January to 30 June following;
- (b) from 1 to 10 June, for imports during the period from 1 July to 31 December following;
- (c) from 1 to 10 September, for imports during the period from 1 October to 31 December following.;

(5) in Article 19, the following paragraph 3 is added:

'3. For the quotas referred to in Part K of Annex I, the reduced rate of duty shall be applied on:

- (a) acceptance of the declaration of release for free circulation;
- (b) presentation of the import licence; and
- (c) presentation of an IMA 1 certificate as set out in Annex IX, issued by an issuing body listed in Annex XII and containing the relevant particulars set out in Annex XI, which proves the eligibility requirements and the origin of the product covered by the declaration of release for free circulation.

Customs authorities shall indicate the serial number of the IMA 1 certificate on the import licence.

Article 37(2), (3) and (4) shall apply *mutatis mutandis*.;

(6) in Article 34, paragraph 4 is replaced by the following:

'4. Annex III.A sets out the tariff quotas, the duty to be applied, the maximum quantities to be imported each year, the import tariff quota periods and their division into subperiods.;

(7) Article 34a is replaced by the following:

'Article 34a

1. The quotas shall be divided into two parts as referred to in Annex III.A:

- (a) quota No 09.4195 (hereafter called Part A) shall be distributed among Union importers who are approved according to the provisions of Article 7 and who can prove that they have imported under one of the quotas 09.4195 or 09.4182 in the course of the 24 months prior to the month of November preceding the quota year;
- (b) quota No 09.4182 (hereafter called Part B) shall be reserved for applicants:
 - (i) who are approved according to the provisions of Article 7; and
 - (ii) who can prove that during the 12-month period prior the month of November preceding the quota year that they imported into and/or exported from the Union at least 100 tonnes of milk or milk products covered by Chapter 04 of the Combined Nomenclature in at least four separate operations.

2. Applications for import licences may be lodged only:

- (a) from 20 to 30 November, for imports during the period from 1 January to 30 June following;
- (b) from 1 to 10 June, for imports during the period from 1 July to 31 December following;
- (c) from 1 to 10 September, for imports during the period from 1 October to 31 December following.

3. To be admissible, applications for import licences may cover, per applicant:

- (a) for Part A, no more than 125 % of the quantities that they have imported under the quotas 09.4195 or 09.4182, in the course of the 24-month period prior to the month of November preceding the quota year;
- (b) for Part B, not less than 20 tonnes and no more than 10 % of the available quantity for the subperiod and provided they are able to prove to the satisfaction of the competent authority of the Member State concerned that they fulfil the conditions laid down in point (b) of paragraph 1.

Subject to complying with the eligibility conditions, applicants may apply simultaneously under both parts of the quota.

The applications for import licences must be separate for Part A and for Part B.

4. Applications for import licences may be lodged only in the Member State where the approval pursuant to Article 7 has been granted, and must bear the importer's approval number.

5. The proofs referred to in paragraphs 1 and 3 shall be furnished in accordance with the second subparagraph of Article 5 of Regulation (EC) No 1301/2006.

Those proofs shall be submitted at the time the applications for import licences are lodged and shall be valid for the relevant quota year.;

(8) in Annex I, a new Part K is added, the text of which is set out in Annex I to this Regulation;

(9) Part A of Annex III is replaced by the text which is set out in Annex II to this Regulation;

(10) in Part B of Annex III, the entries concerning quota numbers 09.4514 and 09.4515 are deleted.

Article 2

Entry into force and application

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the quota year starting on 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 January 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX I

I.K

TARIFF QUOTAS UNDER THE GATT/WTO AGREEMENTS SPECIFIED BY COUNTRY OF ORIGIN: NEW ZEALAND

Quota number	CN code	Description	Country of origin	Annual quota from 1 January to 31 December (in tonnes)	Quantity from 1 January to 30 June (in tonnes)	Quantity from 1 July to 31 December (in tonnes)	Quantity from 1 October to 31 December (in tonnes)	Import duty (EUR/100 kg net weight)
09.4515	0406 90 01	Cheese for processing ⁽¹⁾ .	New Zealand	4 000	4 000	—	—	17,06
09.4514	ex 0406 90 21	Whole Cheddar cheeses (of the conventional flat cylindrical shape of a net weight of not less than 33 kg but not more than 44 kg and cheeses in cubic blocks or in parallelepiped shape, of a net weight of 10 kg or more) of a fat content of 50 % or more by weight in the dry matter, matured for at least three months.	New Zealand	7 000	7 000	—	—	17,06

⁽¹⁾ Utilisation for this particular purpose will be monitored by applying the Union provisions laid down on the subject. The cheeses concerned are considered as processed when they have been processed into products falling within subheading 040630 of the Combined Nomenclature. Articles 291 to 300 of Regulation (EEC) No 2454/93 apply.

ANNEX II

III.A

TARIFF QUOTA UNDER THE GATT/WTO AGREEMENTS SPECIFIED BY COUNTRY OF ORIGIN: NEW ZEALAND
BUTTER

CN code	Description	Country of origin	Annual quota from 1 January to 31 December (in tonnes)	Quantity from 1 January to 30 June (in tonnes)	Quantity from 1 July to 31 December (in tonnes)	Quantity from 1 October to 31 December (in tonnes)	Import duty (EUR/100 kg net weight)
ex 0405 10 11 ex 0405 10 19	Butter, at least six weeks old, of a fat content by weight of not less than 80 % but less than 85 % manufactured directly from milk or cream without the use of stored materials, in a single, self-contained and uninterrupted process.	New Zealand	74 693	Quota 09.4195 Part A: 20 540,5	Quota 09.4195 Part A: 20 540,5	Quota 09.4195 Part A: —	70,00'
ex 0405 10 30	Butter, at least six weeks old, of a fat content by weight of not less than 80 % but less than 85 %, manufactured directly from milk or cream without the use of stored materials, in a single, self-contained and uninterrupted process which may involve the cream passing through a stage where the butterfat is concentrated and/or fractionated (the processes referred to as "Ammix" and "Spreadable").			Quota 09.4182 Part B: 16 806	Quota 09.4182 Part B: 16 806	Quota 09.4182 Part B: —	

COMMISSION IMPLEMENTING REGULATION (EU) No 65/2013**of 24 January 2013****amending Annex III to Regulation (EC) No 826/2008 laying down common rules for the granting of private storage aid for certain agricultural products**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO' Regulation) ⁽¹⁾, and in particular Article 43(j) in conjunction with Article 4 thereof,

Whereas:

- (1) Part A of Annex III to Commission Regulation (EC) No 826/2008 ⁽²⁾ stipulates that Member States must send to the Commission certain data on olive oil and table olives for the different marketing years and sets out time limits for the submission of those data. It also establishes common rules for the communication of data to the Commission by the competent authorities of the Member States.
- (2) In order to reinforce the monitoring of the market situation and having regard to the experience gained in the matter, it is necessary to simplify, specify, add or cancel some of the communication obligations of the Member States laid down in Part A of Annex III to Regulation (EC) No 826/2008.
- (3) To that end, it is necessary to add an obligation concerning the communication of data on the total amount of olive oil used and on end-of-year stocks and to cancel the obligation concerning data on table olives.
- (4) Annex III to Regulation (EC) No 826/2008 should therefore be amended accordingly.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Part A of Annex III to Regulation (EC) No 826/2008 is amended as follows:

(1) point (b) is replaced by the following:

'(b) Before 15 September the Member States shall send to the Commission for the preceding marketing year data on the final production figures and the total internal consumption of olive oil and on end-of-year stocks.

Before 15 October and before 15 April they shall send to the Commission for the current marketing year an estimate of the total production of olive oil and an estimate of the internal consumption and end-of-year stocks.';

(2) point (c) is replaced by the following:

'(c) From September to May of each marketing year, the Member States shall send to the Commission, no later than the 15th day of each month, a month-by-month estimate of the quantities of olive oil produced since the start of the marketing year in question up to and including the preceding month.'

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 January 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 223, 21.8.2008, p. 3.

COMMISSION IMPLEMENTING REGULATION (EU) No 66/2013**of 24 January 2013****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral trade negotiations, the criteria whereby the

Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 January 2013.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	64,4
	TN	68,9
	TR	120,3
	ZZ	84,5
0707 00 05	EG	200,0
	JO	182,1
	MA	158,2
	TR	165,1
	ZZ	176,4
0709 91 00	EG	119,3
	ZZ	119,3
0709 93 10	EG	105,4
	MA	89,8
	TR	144,3
	ZZ	113,2
0805 10 20	EG	58,0
	MA	60,3
	TN	53,4
	TR	63,9
	ZA	46,1
	ZZ	56,3
0805 20 10	MA	92,5
	ZZ	92,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	95,5
	KR	138,1
	MA	158,2
	TR	81,9
	ZZ	118,4
0805 50 10	EG	87,0
	TR	72,4
	ZZ	79,7
0808 10 80	CN	102,2
	MK	38,5
	US	145,5
	ZZ	95,4
0808 30 90	CN	51,8
	US	132,9
	ZZ	92,4

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) No 67/2013**of 24 January 2013****on the minimum customs duty for sugar to be fixed in response to the first partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 36/2013**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 186, in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 36/2013 ⁽²⁾ opened a standing invitation to tender for the 2012/2013 marketing year for imports of sugar of CN codes 1701 14 10 and 1701 99 10 at a reduced customs duty.
- (2) In accordance with Article 6 of Implementing Regulation (EU) No 36/2013, the Commission is to decide, in the light of the tenders received in response to a partial invitation to tender, either to fix a minimum customs duty or not to fix a minimum customs duty per eight digit CN code.
- (3) On the basis of the tenders received for the first partial invitation to tender, a minimum customs duty should be fixed for sugar falling within CN codes 1701 14 10 and 1701 99 10.

- (4) In order to give a rapid signal to the market and to ensure efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.

- (5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For the first partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 36/2013, in respect of which the time limit for the submission of tenders expired on 23 January 2013, a minimum customs duty has been fixed as set out in the Annex to this Regulation for sugar falling within CN codes 1701 14 10 and 1701 99 10.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 January 2013.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 16, 19.1.2013, p. 7.

ANNEX

Minimum customs duties

(EUR/tonne)

Eight digit CN code	Minimum customs duty
1	2
1701 14 10	195,00
1701 99 10	240,00

(—) no minimum customs duty fixed (all offers rejected)

(X) no offers

DECISIONS

COUNCIL DECISION

of 22 January 2013

authorising enhanced cooperation in the area of financial transaction tax

(2013/52/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 329(1) thereof,

Having regard to the requests made by the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia and the Slovak Republic,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Article 3(3) of the Treaty on European Union (TEU), the Union shall establish an internal market.
- (2) Pursuant to Article 113 of the Treaty on the Functioning of the European Union (TFEU) the Council shall adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.
- (3) In 2011, the Commission took note of a debate which was ongoing at all levels on additional taxation of the financial sector. This debate originates from the desire to ensure that the financial sector fairly and substantially contributes to the costs of the crisis and that it is taxed in a fair way vis-à-vis other sectors for the future, to disincentivise excessively risky activities by financial institutions, to complement regulatory measures aimed at avoiding future crises and to generate additional revenue for general budgets or specific policy purposes.
- (4) Against this background, on 28 September 2011, the Commission adopted a proposal for a Council Directive

on a common system of financial transaction tax and amending Directive 2008/7/EC ⁽¹⁾. The main objective of that proposal was to ensure the proper functioning of the internal market and to avoid distortion of competition.

- (5) At the Council meeting of 22 June 2012, it was ascertained that there was no unanimous support for a common system of financial transaction tax (FTT) as proposed by the Commission. The European Council concluded on 29 June 2012 that the proposed Directive would not be adopted by the Council within a reasonable period. At the Council meeting of 10 July 2012, reference was made to persisting and essential differences in opinion as regards the need to establish a common system of FTT at the Union level and it was confirmed that the principle of harmonised taxation on financial transactions will not receive unanimous support within the Council in the foreseeable future.
- (6) In these circumstances, 11 Member States, namely Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia, addressed requests to the Commission by letters received between 28 September and 23 October 2012 indicating that they wished to establish enhanced cooperation between themselves in the area of FTT. These Member States requested that the scope and objectives of the enhanced cooperation be based on the Commission proposal for a Directive of 28 September 2011. Reference was also made in particular to the need to avoid evasive actions, distortions and transfers to other jurisdictions.
- (7) The enhanced cooperation should provide the necessary legal framework for the establishment of a common system of FTT in the participating Member States and ensure that the basic features of the tax are harmonised. To the extent possible, incentives for tax arbitrage and allocation distortions between financial markets, as well as possibilities for double or non-taxation, as well as evasive actions, should thereby be avoided.
- (8) The conditions laid down in Article 20 TEU and Articles 326 and 329 TFEU are fulfilled.

⁽¹⁾ COM(2011) 594 final of 28 September 2011.

- (9) It was recorded at the Council meeting on 29 June 2012 and confirmed on 10 July 2012 that the objective to adopt a common system of FTT cannot be attained within a reasonable period by the Union as a whole. Consequently, the requirement set out in Article 20(2) TEU that enhanced cooperation may be adopted only as a last resort is fulfilled.
- (10) The substantive area within which enhanced cooperation would take place, namely, the establishment of a common system of FTT within the Union, is an area covered by Article 113 TFEU and therefore by the Treaties.
- (11) Enhanced cooperation in the area of the establishment of a common system of FTT aims at ensuring the proper functioning of the internal market. At the scale of this cooperation, it avoids the coexistence of differing national regimes and thus an undue fragmentation of the market, as well as ensuing problems in the form of distortions of competition, deflections of trade between products, actors and geographical areas, and incentives for operators to avoid taxation through operations with little economic value. Such issues are of particular relevance in the area concerned, which is marked by highly mobile tax bases. Thus, it furthers the objectives of the Union, protects its interests and reinforces its integration process in accordance with Article 20(1) TEU.
- (12) The establishment of a common harmonised system of FTT is not included in the list of areas of exclusive competence of the Union set out in Article 3(1) TFEU. Since it serves the functioning of the internal market, in accordance with Article 113 TFEU, it falls under the shared competences of the Union within the meaning of Article 4 TFEU and is thus within the framework of the Union's non-exclusive competence.
- (13) Enhanced cooperation in the area concerned complies with the Treaties and Union law, in accordance with the first paragraph of Article 326 TFEU. In line with the second paragraph of Article 326 TFEU, it will not undermine the internal market or economic, social and territorial cohesion, nor constitute a barrier to or discrimination in trade between Member States or distort competition between them.
- (14) Enhanced cooperation in the area concerned respects the competences, rights and obligations of non-participating Member States, in accordance with Article 327 TFEU. Such system would not affect the possibility for non-participating Member States to keep or introduce an FTT on the basis of non-harmonised national rules. The common system of FTT would attribute taxing rights to the participating Member States only on the basis of appropriate connecting factors.
- (15) Subject to compliance with any conditions of participation laid down in this Decision, enhanced cooperation in the area referred to therein is open at any time to all Member States willing to comply with the acts already adopted within this framework in accordance with Article 328 TFEU,
- HAS ADOPTED THIS DECISION:
- Article 1*
- The Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia and the Slovak Republic are hereby authorised to establish enhanced cooperation between themselves in the area of the establishment of a common system of financial transaction tax, by applying the relevant provisions of the Treaties.
- Article 2*
- This Decision shall enter into force on the day of its adoption.
- Done at Brussels, 22 January 2013.
- For the Council*
The President
M. NOONAN

COUNCIL IMPLEMENTING DECISION

of 22 January 2013

authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax

(2013/53/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In a letter registered with the Secretariat-General of the Commission on 21 June 2012, Belgium requested authorisation to introduce a special measure derogating from Article 285 of Directive 2006/112/EC allowing Belgium to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than EUR 25 000. Through that measure, those taxable persons would be exempted from all or some of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 13 September 2012 of the request made by Belgium. By letter dated 17 September 2012, the Commission notified Belgium that it had all the information necessary to consider the request.

(3) Under Article 285 of Directive 2006/112/EC, Member States, which have not made use of Article 14 of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, structure and procedures for application of the common system of value added tax ⁽²⁾, may exempt taxable persons whose annual turnover is no higher than EUR 5 000. Belgium has requested that this threshold be increased to EUR 25 000.

(4) A higher threshold for the special scheme for small enterprises is a simplification measure in that it may significantly reduce the VAT obligations of the smallest businesses. The special scheme is optional for taxable persons.

(5) In its proposal of 29 October 2004 for a Directive amending Directive 77/388/EEC, now Directive 2006/112/EC, with a view to simplifying value added tax obligations, the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating that amount each year. The request submitted by Belgium is in line with that proposal.

(6) The derogating measure will have only a negligible effect on the overall amount of the tax revenue of Belgium collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, the Kingdom of Belgium is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000.

The Kingdom of Belgium may raise that ceiling in order to maintain the value of the exemption in real terms.

Article 2

This Decision shall take effect on the day of its notification.

It shall apply from 1 January 2013 until the date of entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or until 31 December 2015, whichever date is earlier.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ OJ 71, 14.4.1967, p. 1303/67.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 22 January 2013.

For the Council
The President
M. NOONAN

COUNCIL IMPLEMENTING DECISION

of 22 January 2013

authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax

(2013/54/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Secretariat-General of the Commission on 30 July 2012, Slovenia requested authorisation to introduce a special measure derogating from point 15 of Article 287 of Directive 2006/112/EC, allowing Slovenia to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than EUR 50 000.
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 18 September 2012 of the request made by Slovenia. By letter dated 19 September 2012, the Commission notified Slovenia that it had all the information necessary to consider the request.
- (3) Under Article 287 of Directive 2006/112/EC, certain Member States which acceded to the Union after 1 January 1978 may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision. Slovenia has requested that its corresponding threshold, which is established at EUR 25 000 pursuant to point 15 of Article 287, be increased to EUR 50 000.
- (4) A higher threshold for the special scheme for small enterprises is a simplification measure, as it may significantly reduce the VAT obligations of small businesses. The special scheme is optional for taxable persons.

(5) In its proposal of 29 October 2004 for a Directive amending Directive 77/388/EEC, now Directive 2006/112/EC, with a view to simplifying valued added tax obligations, the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating that amount each year. The request submitted by Slovenia is in line with that proposal.

(6) The derogating measure will have only a negligible effect on the overall amount of the tax revenue of Slovenia collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from point 15 of Article 287 of Directive 2006/112/EC, the Republic of Slovenia is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000.

Article 2

This Decision shall take effect on the day of its notification.

It shall apply from 1 January 2013 until the date of entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or until 31 December 2015, whichever date is earlier.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 22 January 2013.

For the Council
The President
M. NOONAN

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

COUNCIL IMPLEMENTING DECISION

of 22 January 2013

amending Implementing Decision 2009/1008/EU authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(2013/55/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Secretariat-General of the Commission on 20 April 2012, Latvia requested authorisation to continue to apply a measure derogating from the provisions of Directive 2006/112/EC governing the person liable for the payment of the value added tax (VAT) to the tax authorities.
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Latvia in letters dated 30 and 31 July 2012. By letter dated 2 August 2012, the Commission notified Latvia that it had all the information that it considered necessary for appraisal of the request.
- (3) The timber market in Latvia remains dominated by small local companies and individual suppliers. The nature of the market and the businesses involved has given rise to tax fraud which the tax authorities have found difficult to control. In order to combat that fraud, a special provision was included in Latvian VAT legislation, such that, as regards timber transactions, the person liable to pay tax is the taxable person for whom the taxable supply of goods or services is carried out. That provision derogates from Article 193 of Directive 2006/112/EC, which provides that, under the internal system, the taxable person supplying goods or services is usually liable for the payment of the tax.
- (4) The legal and factual situation which justified the application of the derogating measure under Council Implementing Decision 2009/1008/EU of 7 December 2009 authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax ⁽²⁾ has not changed and continues to exist. On the basis of information provided by Latvia,

it appears that the risk level for VAT fraud in the sector remains high. Latvia should therefore be authorised to apply the derogating measure during a further limited period.

- (5) In case Latvia would consider another extension of the derogating measure beyond 2015, it should by 31 March 2015, submit a report on the application of the measure to the Commission together with its request for an extension.
- (6) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT.
- (7) Implementing Decision 2009/1008/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2009/1008/EU is hereby amended as follows:

- (1) in Article 2, the date '31 December 2012' is replaced by that of '31 December 2015';
- (2) the following article is inserted:

'Article 2a

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2015 and shall be accompanied by a report on the application of that measure.'

Article 2

This Decision shall take effect on the day of its notification.

It shall apply from 1 January 2013.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 22 January 2013.

For the Council
The President
M. NOONAN

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ OJ L 347, 24.12.2009, p. 30.

COUNCIL IMPLEMENTING DECISION

of 22 January 2013

amending Implementing Decision 2010/39/EU authorising the Portuguese Republic to apply a measure derogating from Articles 168, 193 and 250 of Directive 2006/112/EC on the common system of value added tax

(2013/56/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Secretariat-General of the Commission on 18 April 2012, Portugal requested authorisation to continue to apply a measure that was previously granted by Council Implementing Decision 2010/39/EU ⁽²⁾, derogating from the provisions of Directive 2006/112/EC governing the right of deduction, the person liable to pay the tax and the obligation to submit a value added tax (VAT) return.
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 1 June 2012 of the request made by Portugal. By letter dated 6 June 2012, the Commission notified Portugal that it had all the information necessary to consider the request.
- (3) The derogating measure pursued by Portugal deviates from the provisions of Directive 2006/112/EC, as it allows for the application of a special optional scheme concerning particular firms acting in the doorstep sales business that fulfil specific conditions, where authorised by the competent tax authorities ('authorised firms'). Those authorised firms apply a particular business model by selling their products directly to interposed resellers who, in turn, sell the same products directly to the final consumers.
- (4) The measure derogates from Article 168 of Directive 2006/112/EC, which governs a taxable person's right to deduct VAT charged on goods and services supplied to him for the purposes of his taxed transactions, by granting authorised firms the right to deduct the VAT payable or paid by their resellers for the corresponding goods that have been supplied to those resellers.
- (5) The measure derogates from Article 193 of Directive 2006/112/EC, which governs the liability to pay the VAT, by establishing authorised firms to which the scheme applies as the person liable for the VAT borne on their resellers' supplies of goods to final consumers.
- (6) The measure derogates from Article 250 of Directive 2006/112/EC, which governs the obligation to submit a VAT return, by transferring to authorised firms the obligation to submit a VAT return relating to the goods which they have supplied to the reseller and relating to the supply of those goods to the final consumers.
- (7) The derogating measure may only be applied to firms whose total turnover is derived from doorstep sales made by resellers acting in their own name and on their own account, provided that all products sold by the firm appear in a pre-established list of the prices applicable at the final consumption stage and the firms sell their products directly to resellers who, in turn, sell them directly to final consumers.
- (8) The derogating measure has the effect of ensuring that the VAT collected at the retail sale stage on sales of products coming from authorised firms is actually paid to the Treasury, thereby helping to prevent tax fraud. It also facilitates the tax administration by simplifying the arrangements for collecting VAT and reducing the resellers' obligations in relation to VAT.
- (9) According to the information provided by Portugal, the legal and factual situation which justified the application of the derogating measure has not changed and continues to exist. Portugal should therefore be authorised to apply that measure during a further period, but limited in time in order to allow for a review of the necessity and effectiveness of the derogating measure.
- (10) Where Portugal considers a further extension beyond 2015 necessary, a report on the application of the derogating measure should be submitted to the Commission together with the extension request by 31 March 2015 in order to reserve sufficient time for the Commission to examine the request and, in case the Commission would come forward with a proposal, for the Council to adopt it.
- (11) The derogating measure will have only a negligible effect on the overall amount of the tax revenue of Portugal collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ OJ L 19, 23.1.2010, p. 5.

- (12) Implementing Decision 2010/39/EU should therefore be amended accordingly,

Article 2

This Decision shall take effect on the day of its notification.

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2010/39/EU is hereby amended as follows:

It shall apply from 1 January 2013.

Article 3

This Decision is addressed to the Portuguese Republic.

- (1) In second paragraph of Article 4, the date '31 December 2012' is replaced by that of '31 December 2015';

- (2) The following article is inserted:

Done at Brussels, 22 January 2013.

'Article 4a

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2015 and shall be accompanied by a report on the application of that measure.'

For the Council
The President
M. NOONAN

COUNCIL DECISION
of 22 January 2013
appointing a German member and a German alternate member of the Committee of the Regions
(2013/57/EU)

THE COUNCIL OF THE EUROPEAN UNION,

a) as member:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

— Ms Regina POERSCH, *Mitglied des Schleswig-Holsteinischen Landtags*

Having regard to the proposal of the German Government,

Whereas:

and

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

b) as alternate member:

— Mr Peter LEHNERT, *Mitglied des Schleswig-Holsteinischen Landtags*.

(2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Niclas HERBST.

Article 2

This Decision shall enter into force on the day of its adoption.

(3) An alternate member's seat has become vacant following the end of the term of office of Mr Rolf FISCHER,

HAS ADOPTED THIS DECISION:

Done at Brussels, 22 January 2013.

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

For the Council

The President

M. NOONAN

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION
of 22 January 2013
appointing two Dutch members of the Committee of the Regions
(2013/58/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

The following are hereby appointed to the Committee of the Regions as members for the remainder of the current term of office, which runs until 25 January 2015:

Having regard to the proposal of the Dutch Government,

— Ms Annemieke TRAAG, *member of the Executive Council of the Province of Gelderland,*

Whereas:

— Mr A. GILSBERTS, *member of the Executive Council of the Province of Flevoland.*

Article 2

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 22 January 2013.

(2) Two members' seats on the Committee of the Regions have become vacant following the end of the terms of office of Mr J.C. (Co) VERDAAS and Ms A.E. (Anne) BLIEK-DE JONG,

For the Council
The President
M. NOONAN

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION
of 22 January 2013
appointing a Swedish member of the Committee of the Regions
(2013/59/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

The following is hereby appointed as member to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

Having regard to the proposal of the Swedish Government,

— Ms Helene FRITZON, *Ledamot i kommunfullmäktige, Kristianstads kommun.*

Whereas:

Article 2

- (1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 22 January 2013.

- (2) A member's seat on the Committee of the Regions has become vacant following end of the term of office of Mr Uno ALDEGREN,

For the Council
The President
M. NOONAN

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION
of 22 January 2013
appointing two Austrian alternate members of the Committee of the Regions
(2013/60/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

The following are hereby appointed to the Committee of the Regions as alternate members for the remainder of the current term of office, which runs until 25 January 2015:

Having regard to the proposals from the Austrian Government,

— Mr Wolfgang WALDNER, *Landesrat beim Amt der Kärntner Landesregierung*,

Whereas:

— Dr Gabriele NUSSBAUMER, *Landtagspräsidentin*.

Article 2

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 22 January 2013.

(2) Two alternate members' seats on the Committee of the Regions have become vacant following the end of the terms of office of Mr Achill RUMPOLD and Ms Bernadette MENNEL,

For the Council
The President
M. NOONAN

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION
of 22 January 2013
appointing a German alternate member of the Committee of the Regions
(2013/61/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the German Government,

Whereas:

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

(2) An alternate member's seat on the Committee of the Regions has become vacant following the appointment of Ms Dagmar MÜHLENFELD as member ⁽³⁾,

Article 1

The following is hereby appointed as alternate member to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

— Ms Helma OROSZ, *Oberbürgermeisterin der Stadt Dresden*.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 22 January 2013.

For the Council
The President
M. NOONAN

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

⁽³⁾ OJ L 287, 18.10.2012, p. 11.

COUNCIL DECISION**of 22 January 2013****appointing a Portuguese member and a Portuguese alternate member of the Committee of the Regions**

(2013/62/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

Having regard to the proposal of the Portuguese Government,

(a) as member:

— Mr Vasco Ilídio ALVES CORDEIRO, *Presidente do Governo Regional dos Açores*

Whereas:

and

(b) as alternate member:

— Mr Rodrigo VASCONCELOS DE OLIVEIRA, *Subsecretário Regional da Presidência para as Relações Externas.*

Article 2

This Decision shall enter into force on the day of its adoption.

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

(2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Carlos CESAR.

Done at Brussels, 22 January 2013.

(3) An alternate member's seat has become vacant following the end of the term of office of Mr André BRADFORD,

For the Council
The President
M. NOONAN

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COMMISSION IMPLEMENTING DECISION

of 24 January 2013

**adopting guidelines for the implementation of specific conditions for health claims laid down in
Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council**

(Text with EEA relevance)

(2013/63/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾ and in particular Article 10(4) thereof,

Whereas:

- (1) Article 10(4) of Regulation (EC) No 1924/2006 provides for a possibility to adopt guidelines for the implementation of that Article on specific conditions for health claims.
- (2) Both national control authorities and food business operators have raised questions about the implementation of paragraphs 2 and 3 of Article 10 of Regulation (EC) No 1924/2006. In order to ensure consistency in the application of those provisions and to facilitate the work of the control authorities and ensure greater clarity and certainty for economic operators, it is appropriate to issue guidelines.
- (3) The guidelines set out in the Annex to this Decision should be taken into account by the national control authorities and food business operators. Interested

parties, in particular food business operators and consumer groups, have been consulted on 12 October 2012.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health ⁽²⁾.

HAS ADOPTED THIS DECISION:

Article 1

The guidelines for the implementation of Article 10 of Regulation (EC) No 1924/2006 are set out in the Annex to this Decision.

*Article 2*This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 24 January 2013.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ http://ec.europa.eu/food/committees/regulatory/scfcah/general_food/index_en.htm

ANNEX

Guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006**Introduction**

The following guidelines are addressed to the national control authorities and food business operators as regards the implementation of Article 10 of Regulation (EC) No 1924/2006 on nutrition and health claims made on foods ('the Regulation'). A health claim is any voluntary commercial message or representation in any form such as words, statements, pictures, logos, etc. which states, suggests or implies that a relationship exists between the food that is the subject of the claim and health.

Article 10 lays down specific conditions for the permitted use of authorised health claims. It should be observed together with the general principles and requirements for all claims (e.g. Article 3 of the Regulation and provisions of Directive 2000/13/EC of the European Parliament and of the Council ⁽¹⁾ and Council Directive 84/450/EEC ⁽²⁾ that operators using health claims must also respect), with the conditions for the use of nutrition and health claims set in Article 4 and with the general conditions for all claims provided in Article 5 as well as with the specific conditions of use foreseen in the list of permitted health claims. For example, in the case of 'reduction of disease risk' health claims referred to in point (a) of Article 14(1), additional information is required in Article 14(2). It is important to note that even authorised health claims may not be used unless their use fully complies with all the requirements of the Regulation. Accordingly, even where a claim is authorised and included in the lists of permitted health claims, national authorities should take action if its use does not comply with all the requirements of the Regulation.

It would be easier to achieve compliance with the provisions of the Regulation and in particular Article 10, if the food business operator is able to demonstrate due diligence and steps taken to comply with each part of the Regulation.

1. Prohibition of unauthorised health claims and of health claims the use of which does not comply with the Regulation – Article 10(1)

Article 10(1) provides that all health claims are prohibited unless: a) authorised by the Commission and b) their use complies with the provisions of the Regulation. Health claims must have been authorised under the appropriate procedure provided in the Regulation and been inserted in one of the lists of permitted health claims referred to in Article 13(3) and Article 14(1). Health claims which are not authorised (not inserted in one of the lists of permitted health claims) and health claims which have been authorised (inserted in one of the lists of permitted health claims) but their use does not comply with the rules set out in the Regulation are prohibited.

2. Mandatory information accompanying authorised health claims – Article 10(2)**2.1. Distinction of three cases for the implementation of Article 10(2)**

In order to comply with the Regulation, Article 10(2) requires two, or where appropriate, four pieces of mandatory information to be provided to the consumer when using a health claim. The information laid down in points (a) to (d) of Article 10(2) must be given in the labelling of the food, or in its presentation and advertising if no such labelling exists. This provision should be understood in the light of the objective of the legislator to ensure a high level of consumer protection by providing accurate and truthful information to help consumers make an informed choice.

'Labelling', is defined in point (a) of Article 1(3) of Directive 2000/13/EC and point (j) of Article 2(2) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council ⁽³⁾. That definition states that "labelling" means any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such food". In the Union law there is a definition of 'advertising' ⁽⁴⁾, but no definition of 'presentation', which should therefore be understood in the light of the explanation provided for in point (a) of Article 2(3) of Directive 2000/13/EC and point (b) of Article 7(4) of Regulation (EU) No 1169/2011.

⁽¹⁾ OJ L 109, 6.5.2000, p. 29.

⁽²⁾ OJ L 250, 19.9.1984, p. 17.

⁽³⁾ OJ L 304, 22.11.2011, p. 18.

⁽⁴⁾ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising states: 'advertising' means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations (OJ L 376, 27.12.2006, p. 21).

A health claim can be made on the 'labelling' which can mean more than just the label, since it encompasses all the information to the consumer about the food which it accompanies or refers to. The distinction between 'labelling' and 'advertising' is that 'labelling' is concerned with the delivery of the food to the final consumer, while 'advertising' is about the promotion of the supply of food by the food business operator.

- (a) In order to comply with Article 10(2), it is necessary to include the mandatory information in the labelling of the food for which the health claim is made.
- (b) Where no 'labelling' exists, the mandatory information shall be given in the 'advertising' and 'presentation' of the food for which the health claim is made. For example, where a health claim is used in a generic advertising for a food (e.g. olive oil, dairy, meat, etc.) which does not link it to a specific product which would have 'labelling', then the mandatory information must also be given in the 'advertising' and 'presentation' of that food.

Article 12 of Regulation (EU) No 1169/2011 establishes a principle that the consumer should always have the mandatory information when making a decision about a purchase of a food. Special mention must be made as regards Article 14 of Regulation (EU) No 1169/2011 on distance selling. Mandatory information shall be available to the consumer before purchase and in the cases of distance selling where access to the 'labelling' is restricted, mandatory information must be included in the presentation and advertising of the food, in the material supporting the distance selling whether this is a website, a catalogue, a leaflet, a letter, etc.

- (c) An exemption exists in Article 1(2) of the Regulation for non-prepacked foodstuffs put up for sale to the final consumer or to mass caterers and foodstuffs packed at the point of sale at the request of the purchaser or pre-packed with a view to an immediate sale. That exemption means that the mandatory information listed in points (a) and (b) of Article 10(2) is not required. On the contrary, where appropriate, the information required under points (c) and (d) of Article 10(2) is always required.

2.2. Four pieces of mandatory information

While allowing certain flexibility to food business operators as regards how to express mandatory information, the Regulation foresees that the following four pieces of information must be provided when a permitted health claim is used:

- (a) *'A statement indicating the importance of a varied and balanced diet and a healthy lifestyle'*

The purpose of this provision is to help the consumer understand the specific beneficial effect of the food bearing the health claim. It underlines that consumers should be made aware that consumption of this particular food should be part of a varied and balanced diet and not eaten excessively or against good dietary practice (recital 18) in order to achieve healthy outcomes and that consumption of the food bearing the health claim in the context of a varied and balanced diet is only one aspect of a healthy lifestyle;

- (b) *'The quantity of the food and pattern of consumption required to obtain the claimed beneficial effect'*

The provision relates to the information that a food business operator should provide, based on the composition of the food, to ensure that the claimed effect can be delivered. The way the food is consumed is important and communicating that to the consumer may also be a requirement of the specific conditions of use set for health claims by the Commission when authorising and listing them in the Union Register⁽¹⁾. However, that provision must ensure that for all health claims the consumer is fully informed of how much of the food is required and how it should be consumed during the day. For example, information should be given whether the claimed effect is likely to be achieved by consuming the food just once or several times over the course of the day. In addition, that information must not encourage or condone excess consumption of a food as provided in point (c) of the second paragraph of Article 3. Where that is not possible, the health claim should not be made;

- (c) *'Where appropriate, a statement addressed to persons who should avoid using the food'; and*

- (d) *'An appropriate warning for products that are likely to present a health risk if consumed to excess'.*

Some claims may be authorised with restrictions on their use, or in the case of some substances other provisions specific to categories of foods may foresee additional labelling requirements. All such requirements are cumulative and operators should respect all the relevant provisions applying to foods and claims. However, food business operators should assume their responsibilities under general food law and comply with the fundamental requirement to market food which is safe and not harmful to health and utilise such statements on their own recognisance.

⁽¹⁾ The Union Register is published on the official website of the European Commission, DG Health and Consumers <http://ec.europa.eu/nuhclaims/>

3. Reference to general, non-specific health benefits – Article 10(3)

Article 10(3) allows the use of easy, attractive statements which make reference to general, non-specific benefits of a food for overall good health or health-related well-being, without prior authorisation, subject to specific conditions. The use of such statements could be helpful to consumers as they would convey more consumer-friendly messages. However, they could be easily misunderstood and/or misinterpreted by consumers, possibly leading to imagine other/better health benefits of a food than those that actually exist. For this reason, when referring to general, non-specific health benefits, it is required to accompany such references by a specific health claim from the lists of permitted health claims in the Union Register. For the purposes of the Regulation, the specific authorised health claim accompanying the statement making reference to general non-specific health benefits, should be made 'next to' or 'following' such statement.

The specific claims from the lists of permitted health claims should bear some relevance to the general reference. As this reference becomes broader, e.g. 'for good health', more health claims from the permitted lists could be eligible to accompany it. Still, attention should be paid to the fact that Article 10 sets rules as regards the context in which health claims are used and given that Article 10 specifically refers to the rules of Chapters II and IV, those rules should also be taken into account if operators wish to comply with the requirement laid down in Article 10(3). Therefore, to avoid misleading consumers, food business operators have the responsibility to demonstrate the link between the reference to general, non-specific benefits of the food and the specific, accompanying, permitted health claim.

Some claims submitted for authorisation during their scientific assessment were judged to be too general or non-specific for evaluation. These claims could not be authorised and can therefore be found in the list of the non-authorised claims of the Union Register of nutrition and health claims. This does not exclude that those claims could benefit from the provisions laid down in Article 10(3) and can therefore be lawfully used when they are accompanied by a specific claim from the list of permitted health claims in accordance with that Article.

2013/62/EU:

- ★ **Council Decision of 22 January 2013 appointing a Portuguese member and a Portuguese alternate member of the Committee of the Regions** 24

2013/63/EU:

- ★ **Commission Implementing Decision of 24 January 2013 adopting guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council ⁽¹⁾** 25



⁽¹⁾ Text with EEA relevance

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