Commission Regulation (EU) 2019/343 of 28 February 2019 providing derogations from Article 1(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on food for the use of certain generic descriptors (Text with EEA relevance)

COMMISSION REGULATION (EU) 2019/343

of 28 February 2019

providing derogations from Article 1(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on food for the use of certain generic descriptors

(Text with EEA relevance)

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 1(4) thereof,

Whereas:

(1) Pursuant to Regulation (EC) No 1924/2006, any claim made on food which states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health is to be considered as a health claim and therefore must comply with that Regulation.

(2) Article 1(4) of Regulation (EC) No 1924/2006 provides for a possible derogation from the rules applicable pursuant to Article 1(3) of that Regulation for generic descriptors (denominations) which have traditionally been used to indicate a particularity of a class of foods or beverages which could imply an effect on human health.

(3) Applications for a term to be used as generic descriptor may be submitted by food business operators to the national competent authority of a recipient Member State.

(4) Pursuant to Commission Regulation (EU) No 907/2013[(2)] setting the rules for applications concerning the use of generic descriptors (denominations), a valid application should be transmitted to the Commission and to all Member States; Member States concerned by the application shall provide the Commission with their opinions thereon.

(5) Following receipt of a valid application and the opinions of Member States concerned the Commission may initiate the procedure of approval of the generic descriptor pursuant to Article 1(4) of Regulation (EC) No 1924/2006.

(6) On 13 April 2015, the Austrian competent authority provided the Commission with an application from the Austrian Food Industries' Association, submitted pursuant to

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Article 1(4) of Regulation (EC) No 1924/2006, for the terms 'Hustenbonbon' and 'Hustenstopper' to be used as generic descriptors in Austria.

(7) On 13 April 2015, the Austrian competent authority provided the Commission with an application from Drapal GmbH, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the term 'Hustenzuckerl' to be used as generic descriptor in Austria.

(8) On 19 May 2015, the German competent authority provided the Commission with an application from the Association of the German Confectionary Industry, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the term 'Brust-Caramellen' to be used as generic descriptors in Germany and in Austria.

(9) On 29 May 2015, the German competent authority provided the Commission with an application from SOLDAN Holding + Bonbonspezialitäten GmbH and from the Association of the German Confectionery Industry, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the term 'Hustenmischung' to be used as generic descriptor in Germany.

(10) On 8 June 2015, the German competent authority provided the Commission with an application from SOLDAN Holding + Bonbonspezialitäten GmbH, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the term 'Hustenperle' to be used as generic descriptor in Germany.

(11) On 18 June 2015, the German competent authority provided the Commission with two applications from SOLDAN Holding + Bonbonspezialitäten GmbH and the Association of the German Confectionery Industry, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the terms 'Halsbonbon' and 'keelpastille' to be used as generic descriptors in Germany ('Halsbonbon') and in the Netherlands ('keelpastille').

(12) On 18 November 2015, the German competent authority provided the Commission with three applications from SOLDAN Holding + Bonbonspezialitäten GmbH, Josef Mack GmbH & Co. KG and the Association of the German Confectionery Industry, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the terms 'Hustenbonbon', 'hoestbonbon', 'rebucados para a tosse', and 'cough drops', to be used as generic descriptors in Germany and in Austria ('Hustenbonbon'), in the Netherlands ('hoestbonbon'), in Portugal ('rebucados para a tosse') and in the United Kingdom ('cough drops').

(13) The Austrian and German competent authorities provided all other Member States with the applications. The competent authorities of Member States concerned provided the Commission with their opinions on the applications.

(14) The terms 'Hustenbonbon', 'Hustenstopper', 'Hustenzuckerl', 'Brust-Caramellen', 'Hustenmischung', 'Hustenperle''Halsbonbon', 'keelpastille', 'hoestbonbon', 'rebuçados para a tosse', and 'cough drops' fall into the scope of Regulation (EC) No 1924/2006, because they can imply a relationship between the foods bearing these terms and health.

(15) However, evidence has been provided that these terms have been traditionally used in Germany and in Austria ('Hustenbonbon', 'Brust-Caramellen'), in Germany

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('Halsbonbon', 'Hustenmischung' and 'Hustenperle'), in Austria ('Hustenstopper' and 'Hustenzuckerl'), in the Netherlands ('keelpastille', and 'hoestbonbon'), in Portugal ('rebuçados para a tosse') and in the United Kingdom ('cough drops') in the meaning of Article 1(4) of this Regulation, as generic descriptors to describe a class of sweets based on sugars as well as sugar-free and calorie-reduced variants based on sweeteners (polyols and/or intense sweeteners) containing extracts of herbs, fruit or other plant substances, such as menthol, honey or malt.

(16) In particular, the terms 'Hustenbonbon', 'Brust-Caramellen', 'Halsbonbon', 'Hustenmischung', 'Hustenperle', 'Hustenstopper', 'Hustenzuckerl', 'keelpastille', 'hoestbonbon', 'rebuçados para a tosse' and 'cough drops' have neither been used in Germany, in Austria, in the Netherlands, in Portugal and in the United Kingdom respectively, with the aim to indicate a health effect of this class of food nor are understood by an average consumer as claiming a health effect of this class of food.

(17) Derogation from Regulation (EC) No 1924/2006 should therefore be granted for the use of the generic descriptors 'Hustenbonbon' and 'Brust-Caramellen' in Germany and in Austria, 'Halsbonbon', 'Hustenmischung' and 'Hustenperle' in Germany, 'Hustenstopper' and 'Hustenzuckerl' in Austria, 'keelpastille' and 'hoestbonbon' in the Netherlands, 'rebuçados para a tosse' in Portugal and 'cough drops' in the United Kingdom when used in the respective Member State on sweets based on sugars as well as sugar-free and calorie-reduced variants based on sweeteners (polyols and/or intense sweeteners) containing extracts of herbs, fruit or other plant substances, honey or malt.

(18) On 12 January 2017, the Finnish competent authority provided the Commission with an application from the Finnish Food Industries' Association, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the term 'kurkkupastilli/halspastill' to be used as generic descriptor in Finland.

(19) The Finnish competent authority provided all other Member States with the application; it also provided the Commission with its opinion on the application.

(20) The term 'kurkkupastilli/halspastill' falls into the scope of Regulation (EC) No 1924/2006, because it can imply a relationship between foods bearing this term and health. However, evidence has been provided that this term has been used traditionally in Finland, in the meaning of Article 1(4) of this Regulation, as generic descriptor to describe a class of sweets based on sugars as well as sugar-free and calorie-reduced variants based on sweeteners (polyols and/or intense sweeteners).

(21) In particular, the term 'kurkkupastilli/halspastill' has neither been used in Finland with the aim to indicate a health effect of this class of food nor is understood by an average consumer as claiming a health effect of this class of food.

(22) Derogation from Regulation (EC) No 1924/2006 should therefore be granted for the use of the generic descriptor 'kurkkupastilli/halspastill' when used in Finland on hard sweets based on sugars as well as sugar-free and calorie-reduced variants based on sweeteners (polyols and/or intense sweeteners).

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(23) On 13 April 2015, the Austrian competent authority provided the Commission with an application from Drapal GmbH, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the term 'Hustensirup' to be used as generic descriptor in Austria.

(24) The Austrian competent authority provided all other Member States with the application; it also provided the Commission with its opinion on the application.

(25) The term 'Hustensirup' falls into the scope of Regulation (EC) No 1924/2006, because it can imply a relationship between foods bearing this term and health. However, evidence has been provided that this term has been used traditionally in Austria, in the meaning of Article 1(4) of this Regulation, as generic descriptor to describe a class of confectionery products made of solutions of sugar, starch syrup, inverted sugar and/or honey with the addition of herbal ingredients, 'Hustensirup' referring to a class of products in the form of a syrup.

(26) In particular, the term 'Hustensirup' has neither been used with the aim to indicate a health effect of this class of food nor is understood by an average consumer as claiming a health effect of this class of food in Austria.

(27) Derogation from Regulation (EC) No 1924/2006 should therefore be granted for the use of the generic descriptor 'Hustensirup' when used in Austria on confectionery products made of solutions of sugar, starch syrup, inverted sugar and/or honey with the addition of herbal ingredients in the form of syrup.

(28) Definitions for sugars intended for human consumption have been laid down in point A of the Annex to Council Directive 2001/111/EC[3]. In order to ensure legal certainty, those definitions should also apply for the purpose of this Regulation.

(29) On 2 April 2015, the UK competent authority provided the Commission with an application from the British Soft Drinks Association, submitted pursuant to Article 1(4) of Regulation (EC) No 1924/2006, for the term 'tonic' (in English) used as part of the descriptive name of a beverage in the form of 'tonic water', 'Indian tonic water' or 'quinine tonic water' and substituted in the same descriptive names with 'tonique' (in French), 'tónico' or 'tonica' (in Italian, Spanish, and Portuguese), 'τονωτικό' or 'tonotiko' (in Greek), 'tonik' (in Croatian, Czech, Hungarian, Polish, Slovak and Slovenian), 'тоник' (in Bulgarian), to be used as generic descriptor in all Member States except in Romania.

(30) On 30 September 2015, the Romanian competent authority provided the Commission with an application from the Romanian Soft Drinks Association, submitted pursuant Article 1(4) of Regulation (EC) No 1924/2006, for the term 'tonic' (in English) used as part of the descriptive name of a beverage in the form of 'tonic water', 'Indian tonic water' or 'quinine tonic water' and substituted in the same descriptive names with 'tónico', 'tonică' or 'tonica' (in Romanian), to be used as generic descriptor in Romania.

(31) The UK competent authority and the Romanian competent authority provided all other Member States with the applications; Member States have provided the Commission with their opinions on these applications.

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(32) The Greek competent authority considers that the term 'τονωτικό' and 'tonotiko' ('τονωτικό' with Latin characters) are considered as health claims within the meaning of Regulation (EC) No 1924/2006. The Greek competent authority further considers that for non-alcoholic beverages containing quinine, the term 'tonic' used as part of the customary name of the food is traditionally widely used in Greece.

(33) The German competent authority and the Austrian competent authority consider that the term 'tonic' used as part of 'tonic water', 'Indian tonic water' or 'quinine tonic water' is part of a customary name of the beverage and as such out of the scope of Regulation (EC) No 1924/2006.

(34) The French competent authority considers that the term 'tonique' is not used to describe a non-alcoholic carbonated beverage containing the bittering agent quinine.

(35) Certain competent authorities consider that when the term 'tonic' (in English) is substituted by 'tonik' in Croatian, Hungarian, Polish and Slovenian, it is not considered as a health claim in those respective Member States within the meaning of Regulation (EC) No 1924/2006; therefore in their views these terms are out of the scope of the Regulation.

(36) The term 'tonic' and the equivalent linguistic forms, namely, 'tonik', 'tónico', 'tónica' and 'tonică', when they are used as part of the descriptive name of a beverage, fall into the scope of Regulation (EC) No 1924/2006, because they can imply a relationship between a food bearing this term and health. However, evidence has been provided that these terms have been used traditionally, in the meaning of Article 1(4) of this Regulation, as generic descriptors to describe a class of beverages, namely, a non-alcoholic carbonated beverage containing the bittering agent quinine in the form of the flavourings FL 14.011, FL 14.152 or FL 14.155 as referred to in the Union list of flavourings laid down in Regulation (EC) No 1334/2008 of the European Parliament and of the Council[(4)] on flavourings and certain food ingredients with flavouring properties for use in and on foods.

(37) In particular, the terms 'tonic' and the equivalent linguistic forms, namely, 'tonik', 'tónico', 'tónica' and 'tonică', when they are used as part of the descriptive name of a beverage, have neither been used with the aim to indicate a health effect of this class of beverages nor are understood by an average consumer as claiming a health effect of this class of beverages.

(38) Derogation from Regulation (EC) No 1924/2006 should therefore be granted for the use of the generic descriptor 'tonic' (in English), when used as part of the descriptive name of a non-alcoholic carbonated beverage containing the bittering agent quinine in the form of the flavourings FL 14.011, FL 14.152 or FL 14.155 as referred to in the Union list of flavourings as laid down in Regulation (EC) No 1334/2008. The term 'tonic' (in English) may be substituted in the descriptive name by 'тоник' (in Bulgarian), 'tonik' (in Czech and in Slovak), 'tónica' (in Spanish and in Portuguese) 'tonica' (in Italian), or 'tonică' (in Romanian).

(39) On 23 April 2015, the Italian competent authority provided the Commission with an application from Monviso SpA, submitted pursuant to Article 1(4) of Regulation (EC)