Commission Regulation (EU) No 907/2013 of 20 September 2013 setting the rules for applications concerning the use of generic descriptors (denominations) (Text with EEA relevance)

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(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 Article 1(4) of Regulation (EC) No 1924/2006 specific 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 health may be exempted from the application of that Regulation following an application by the food business operators concerned.

(2) In order to ensure that applications on generic descriptors are dealt with transparently and within a reasonable time, Article 1(4) of Regulation (EC) No 1924/2006 requires the Commission to adopt and make public the rules according to which such applications shall be made.

(3) The rules should ensure that the application is compiled in a way which presents and provides all the necessary information for the assessment of the application. Furthermore they should not prevent the Commission from requiring supplementary information, where appropriate and depending on the nature of the generic descriptor and the extent of the derogation applied for.

(4) It is appropriate to allow trade associations representing specific food sectors to submit applications on behalf of their members, in order to avoid multiple applications in respect of the same generic descriptor (denomination).

(5) In order, inter alia, to ensure a high level of protection for consumers, the use of claims should not be false, ambiguous or misleading. The same principle should apply for the use of generic descriptors (denominations) which could imply an effect on health. In order to achieve such objective and in line with the principle of proportionality, national authorities will have to exercise their own faculty of judgment, having regard

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to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case.

(6) Generic descriptors (denominations) should correspond to a period of at least 20 years proven usage within the Member State(s) prior to the date of entry into force of this Regulation.

(7) Member States have been consulted,

HAS ADOPTED THIS REGULATION:

Article 1

Applications concerning the use of generic descriptors (denominations) within the meaning of Article 1(4) of Regulation (EC) No 1924/2006 shall be submitted and presented in accordance with the rules set out in the Annex.

Article 2

This Regulation shall enter into force on the twentieth 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, 20 September 2013.

For the Commission

The President

José Manuel BARROSO

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ANNEX

PART A

Submission of the application

1. The application may be made for the use of a generic descriptor in one or more Member States. This application shall be submitted to the national competent authority of a single Member State (hereafter referred to as the 'recipient Member State'). Operators may choose the Member State to which to submit their application among those Member States where the generic descriptor is used.

2. The application shall be submitted electronically including all the elements listed in Part B of this Annex. Member States may request a paper copy if they require it. For the data referred to in Part B, points 1.5 and 2 of this Annex a list of references alone is not sufficient.

3. On receipt of an application the national competent authority of the recipient Member State shall:

— acknowledge receipt of the application in writing within 14 days of its receipt. The acknowledgement shall state the date of receipt of the application,

— inform without delay the Commission by forwarding the summary of the application,

— where appropriate, forward the full application to any other Member State(s) for which the application concerning the use of the generic descriptor is made (hereafter referred to as the 'Member State(s) concerned'),

— if the Member State(s) concerned consider(s) that the application does not contain data and information as foreseen in Part B of the Annex, it/they shall inform the recipient Member State within 4 weeks.

4. The recipient Member State shall verify, without delay, and taking into account information provided by the Member State(s) concerned, whether the application contains all required information as listed in Part B of this Annex. Where the application does not contain all the elements required under Part B of this Annex, the recipient Member State shall request the necessary additional information from the applicant and inform the applicant of the period within which that information shall be provided.

5. An application shall be considered as not valid in cases where an applicant does not provide further information as requested by the recipient Member State. In such a case the recipient Member State shall inform the applicant, the Commission and any other Member State(s) concerned indicating the reasons why the application is considered not valid. The applicant shall be given the possibility to re-submit the same application excluding the Member State(s) for which requested data was not provided.

6. The recipient Member State shall forward the valid application to the Commission and to all Member States, without delay and inform the applicant thereof. The Commission shall acknowledge receipt of the valid application to the recipient Member State in writing within 14 days of its receipt.

7. The recipient Member State and the Member State(s) concerned shall provide their opinion to the Commission within 6 weeks from the date of transmission of the valid application. The opinion shall state whether the generic descriptor fulfils the conditions for obtaining an exemption pursuant to Article 1(4) of Regulation (EC) No 1924/2006, and whether it is supported by the elements referred to in Part B, points 1.3, 1.4, 1.5 and, as the case may be, point 2 of this Annex, and shall give the reasons justifying that opinion. The opinions shall be