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COMMISSION

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**COMMISSION REGULATION (EU) No …/..**

**of XXX**

**setting the rules for applications concerning the use of generic descriptors (denominations)**

(Text with EEA relevance)

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

(6) The benchmark for the establishment of the 'traditional' use of the relevant generic descriptors (denominations) should be a period of at least [10/20/25] years proven usage within the Member State(s), or where appropriate a more limited geographical

[1] OJ L 404, 30.12.2006, p. 9.

area (local/regional level), before the date of entry into force of [Regulation (EC) No 1924/2006 (i.e. 19 January 2007)] or [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,

*For the Commission*
*The President*
*José Manuel BARROSO*

## 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 5 and 6 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 four weeks.

4. The recipient Member State shall verify, without delay, and taking into account information provided by 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 six 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 submitted in writing. Other Member States may also provide their opinion on the application to the Commission by the same deadline and under the same modalities.

8. After receiving the valid application from a Member State, and the opinion(s) referred to in point 7 of this Part of the Annex, the Commission may, within a reasonable time, initiate the procedure of approval of the generic descriptor pursuant to Article 1(4) of Regulation (EC) No 1924/2006.

**Part B. Content of the application**

**1. Mandatory information**

The application shall consist of the following:

**1.1. A summary of the application that shall include:**

- the name and the address of the applicant,
- the generic descriptor subject to the application,
- a brief description of the particularity of the class of foods or beverages which the generic descriptor covers, and
- the Member State(s) for which the application concerning the use of the generic descriptor is made by the applicant.

**1.2. Applicant**

Name, address and contact details of the food business operator submitting an application and/or of the person authorised to communicate with the Commission on behalf of the applicant.

Applications for the authorisation of a generic descriptor may also be submitted by trade associations, acting on behalf of their members and shall include the name, address and contact details of the trade association submitting an application and/or of the person authorised to communicate with the Commission on behalf of the trade association. Information about the support of the application by the members of the trade association would be desirable.

**1.3. The generic descriptor subject to the application**

1. The generic descriptor as used in the language(s) where it is traditionally used. A description of the generic descriptor in English, where appropriate.
2. The Member State(s) or, where appropriate, a more limited geographical area (local/regional level) where the generic descriptor is used.

**1.4. The class of foods or beverages which the generic descriptor covers**

1. An indication of the class of foods or beverages marketed under the generic descriptor for which the application is made.
2. A detailed description, highlighting the particularity and the elements that distinguish the class of foods or beverages marketed under the

generic descriptor, for which the application is made, from other products falling within the same class of foods or beverages.

**1.5. Supporting data in relation to the use of the generic descriptor**

Relevant bibliographical or otherwise verifiable evidence demonstrating the presence on the market of the class of foods or beverages with the generic descriptor, over at least a [10/20/25]-year period, in the Member State(s), or where appropriate a more limited geographical area (local/regional level), prior to [19 January 2007] or [date of entry into force of this Regulation].

**2. Additional mandatory information that may be requested on the Member States' initiative: supporting data in relation to the understanding/perception of the consumer**

Recipient Member States and Member State(s) concerned may require the additional data by the applicant of one of the following types of information, prior to the submission of the application to the Commission, where they consider it necessary for the assessment of the application:

- [Relevant evidence or information related to consumer understanding and demonstrating that while the generic descriptor could imply an effect on health it does not risk misleading consumers. Such data shall cover the Member State(s) or, where appropriate, a more limited geographical area (local/regional level) where the generic descriptor is used.]

OR

- [Relevant evidence/information related to consumer understanding and perception of the effects that could be implied by the generic descriptor. Such data shall cover the Member State(s) or, where appropriate, a more limited geographical area (local/regional level) where the generic descriptor is used.]

**3. Any additional information (optional)**