EUROPEAN
COMMISSION

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COMMISSION REGULATION (EU) No …/..

of XXX

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

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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[1], and in particular Article 1(4) thereof,

Whereas:

(1) Regulation (EC) No 1924/2006 establishes rules for the use of claims in the labelling, presentation and advertising of foods.

(2) 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 are to be exempted from the application of the Regulation following an application by the food business operators concerned.

(3) 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.

(4) The rules should ensure that the application is compiled in a way which presents and provides the necessary information with a view to decision-making by the Commission. The information to be provided should be without prejudice to any supplementary information the Commission may request, where appropriate and depending on the nature of the generic descriptor and the extent of the derogation applied for.

(5) It is appropriate to allow trade associations representing specific food sectors to submit applications in order to avoid multiple applications in respect of the same generic descriptor (denomination).

(6) For the purpose of Article 1(4) of Regulation (EC) No 1924/2006 the notion of generic descriptors (denominations should be understood in conjunction with other provisions and in light of the objectives of that Regulation.

(7) 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 perception of the average consumer in a given case.

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

(8) The benchmark for the establishment of the 'traditional' use of generic descriptors (denominations) should be a period that allows transmission between generations; this period is to be at least 30 years proven usage within the Member State(s), or where appropriate a more limited geographical area (local/regional level).

(9) Member States have been consulted,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for the use of generic descriptors shall be submitted and presented in accordance with the rules as 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 concerning the use of a generic descriptor shall be submitted to the national competent authority of a Member State where the generic descriptor is used. If the application is made for the use of the generic descriptor in more than one Member State, operators may choose where to submit their application.
2. The application shall be submitted electronically including all the elements listed in the 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 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 and, where appropriate, any other Member State(s) for which the application concerning the use of the generic descriptor is made.
4. The national competent authority shall verify, without delay, whether the application contains all required information as listed in Part B of this Annex. Where necessary, the national competent authority may request additional information from the applicant on matters regarding the validity of the application and inform the applicant of the period within which that information shall be provided.
5. Where the application does not contain all the elements required under Part B of this Annex, the application shall be considered as not valid. In such a case the national competent authority shall inform the applicant, the Commission and any other Member State(s) for which the application concerning the use of the generic descriptor is made, indicating the reasons why the application is considered not valid.
6. The national competent authority shall forward the valid application to the Commission and to the Member States, without delay and inform the applicant thereof. The Member State(s) for which the application for the use of the generic descriptor is made shall provide its/their opinion within a reasonable time (X days/weeks). The opinion shall state whether the requested generic descriptor qualifies as such, within the meaning of Article 1(4) of Regulation (EC) No 1924/2006, and in relation to the elements referred to in Part B, points 4, 5 and 6 of this Annex, and shall give the reasons justifying that opinion. Member States which are not directly related to the application may also express their opinion.
7. The Commission shall acknowledge receipt of the application in writing within 14 days of its receipt.
8. After receiving the valid application from a Member State, and the opinion(s) referred to in point 6 of this Part of the Annex, the Commission shall initiate discussions with the Member States on the application concerning the use of the generic descriptor pursuant to Article 1(4) of Regulation (EC) No 1924/2006.

Part B. Content of the application

The application shall consist of the following:

1. A summary of the application that shall include:

- the name 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.

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. The members of a trade association supporting the application shall be clearly mentioned therein.

3. The generic descriptor subject to the application

1. The generic descriptor as used in the language(s) where 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.

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 description, highlighting the particularity, of the class of foods or beverages marketed under the generic descriptor for which the application is made.

5. Supporting data in relation to the 'traditional' use

Relevant bibliographical or otherwise verifiable evidence of the marketing of the class of foods or beverages bearing the generic descriptor, demonstrating commercial use of 30 years in the Member State(s), or where appropriate a more limited geographical area (local/regional level), where the generic descriptor is used.

6. Supporting data in relation to the understanding/perception of the consumer

Relevant evidence/ information related to consumer understanding and demonstrating that while the generic descriptor could imply an effect on health, consumers do not perceive it as such and therefore 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.

7. Any additional information (optional)