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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

laying down rules for the application of Article 26(3) of Regulation (EU) N° 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food where different to that given for that food

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

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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 (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers¹, and in particular Article 26(8) thereof,

Whereas:

- (1) Article 26 of Regulation (EU) N° 1169/2011 establishes general rules and requirements regarding the indication of the country of origin or place of provenance of foods, which should apply without prejudice to the specific Union provisions.
- (2) Article 26(2)(a) of Regulation (EU) No 1169/2011 requires the indication of the country of origin or place of provenance where its omission could mislead the consumer as to the true country of origin or place of provenance of the final food in question, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance. This Article aims at preventing misleading food information which implies a certain origin of a food, when in fact its true origin is different.
- (3) Article 26(3) of Regulation (EU) N° 1169/2011 provides that where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient, the country of origin or place of provenance of the primary ingredient in question shall also be given or indicated as being different to that of the food. It further states that the application of these requirements shall be subject to the adoption of an implementing act.
- (4) Article 26(3) of Regulation (EU) N° 1169/2011 addresses cases where the country of origin or place of provenance is given mandatorily, including in accordance with Article 26(2)(a) of the Regulation, or voluntarily through any indication such as statements, terms, pictorial presentation or symbols.

¹ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, (OJ L 304, 22.11.2011, p. 18).

- (5) Voluntary indications such as geographical statements included in, or accompanying the name of the food, may also be part of product designations protected as geographical indications or as trade marks according to specific EU legislations.
- (6) Indications of the country of origin or the place of provenance of a food which are part of product designations protected as geographical indications under Regulation (EU) No 1151/2012², Regulation (EU) No 1308/2013³, Regulation (EC) No 110/2008⁴ or Regulation (EU) No 251/2014⁵ or protected pursuant to international agreements fall within the scope of Article 26(3) of Regulation (EU) N° 1169/2011. In view of the fact that for these product designations an intrinsic link between product characteristics and geographical origin exists, that they are regulated by specific rules, including rules on labelling, and taking into consideration the specific character of these names as intellectual property rights, it is necessary to further examine how the origin of the primary ingredient provided by Article 26(3) of Regulation (EU) No 1169/2011 should be indicated for said names.
- (7) Indications of the country of origin or the place of provenance of a food which are part of trade marks registered under Directive (EU) No 2015/2436 fall within the scope of Article 26(3) of Regulation (EU) N° 1169/2011. Trade marks may consist of any signs, in particular words, including personal names, designs, letters, names, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs give to the goods or services of one undertaking a distinctive character. The purpose of trade marks is to allow the consumer to identify a particular commercial source or trade origin in connection with specific good and/or services. Taking into consideration the specific character and objective of trade marks, it is appropriate to further examine how the origin of the primary ingredient provided by Article 26(3) of Regulation (EU) No 1169/2011 should be indicated when required for trade marks.
- (8) Customary and generic names including geographic terms that literally indicate origin, but whose common understanding is not an indication of origin or place of provenance of the food, should not be covered by this Regulation.
- (9) For the purpose of this Regulation, identification marks accompanying the food in accordance with Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin⁶ should not be considered as an indication of the country of origin or the place of provenance.
- (10) To enable consumers to make better informed choices, it is necessary to set specific rules which should apply for the purpose of this Regulation where the country of origin or the place of provenance of the primary ingredient is given. Those rules shall ensure that such information is sufficiently precise and meaningful.

² Regulation (EU) No 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

³ Regulation (EU) No 1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁴ Regulation (EC) No 110/2008 of 15 January 2008 on the definition, description, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

⁵ Regulation (EU) No 251/2014 of 26 February 2014 on the definition, description, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

⁶ Regulation (EC) No 853/2004 of 29 April 2004 laying down specific hygiene rules for foods of animal origin (OJ L 139, 30.4.2004, p. 55).

- (11) It is therefore appropriate that such indication for the primary ingredient is provided with reference to a geographical area which should be easy to understand for the consumer. The use of invented names for regions or other geographical areas which are not meaningful information or could mislead the consumer as to the real place of provenance of the primary ingredient should be prohibited.
- (12) Where a primary ingredient is a food subject to specific Union provisions on the indication of the country of origin or the place of provenance, these provisions could be alternatively used for the purposes of Article 26(3)(a) of the Regulation.
- (13) Where food business operators opt to only indicate the country of origin or place of provenance of the primary ingredient as being different to that of the food, for example because of multiple or variable supply sources and particular production processes, it is appropriate to provide a framework which takes into account the various circumstances of food processing. The relevant indication should ensure comprehensible information to the consumer.
- (14) Information provided with respect to primary ingredient in accordance with this Regulation should complement the information given to the consumers on the country of origin or place of provenance of the food, and should be easily visible and clearly legible and where appropriate indelible. An appropriate transitional period should be established for the application of this Regulation, in accordance with Article 47 of Regulation (EU) No 1169/2011, which requires that any new food information measures should apply as from 1 April in any calendar year. The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1
Scope

1. This Regulation lays down the modalities for the provision of information on the country of origin or place of provenance of the primary ingredient as required by Article 26 (3) of Regulation (EU) N° 1169/2011.
2. This Regulation shall not apply to geographical indications protected under Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013, Regulation (EC) No 110/2008 or Regulation (EU) No 251/2014 or protected pursuant to international agreements; nor trade marks registered under Directive (EU) No 2015/2436, pending the adoption of specific rules concerning the application of Article 26(3) to foods bearing such indications.

Article 2

Indication of the country of origin or place of provenance of the primary ingredient

The country of origin or the place of provenance of a primary ingredient which is not the same as the given country of origin or the given place of provenance of the food shall be given:

- (a) with reference to one of the following geographical areas:
 - (i) "EU", "non-EU" or "EU and non-EU"; or

- (ii) Region, or any other geographical area either within several Member States or within third countries, if defined as such under public international law or well understood by normally informed average consumers; or
 - (iii) FAO Fishing area, sea or freshwater body, if defined as such under international law or well understood by normally informed average consumers; or
 - (iv) Member State(s) or third country(ies); or
 - (v) Region, or any other geographical area within a Member State or within a third country, which is well understood by normally informed average consumers; or
 - (vi) The country of origin or place of provenance in accordance with specific Union provisions applicable for the primary ingredient(s) as such.
- (b) or by means of a statement as follows:
- "(name of the primary ingredient) do/does not originate from (the country of origin or the place of provenance of the food)" or any similar wording likely to have the same meaning for the consumer.

Article 3

Presentation of the information

1. Information provided pursuant to Article 2 shall be provided in a font size which is not smaller than the minimum font size as required in accordance with Article 13(2) of Regulation (EU) No 1169/2011.
2. Without prejudice to paragraph 1, where the country of origin or place of provenance of a food is given with words, the information provided pursuant to Article 2 shall appear in the same field of vision as the indication of the country of origin or place of provenance of the food and by using a font size which has an x-height of at least 75% of the x-height of the indication of the country of origin or place of provenance of the food.
3. Without prejudice to paragraph 1, where the country of origin or place of provenance of a food is given by means of non-scriptural form, the information provided pursuant to Article 2 shall appear in the same field of vision as the indication of the country of origin or place of provenance of the food.

Article 4

Entry into force, transitional measures and date of application

1. This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 1 April 2019.
3. Foods placed on the market or labelled prior to the date of application of this Regulation may be marketed until the stocks are exhausted.
4. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President
Jean-Claude JUNCKER*

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