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[...] (2013) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

amending Annexes II and III to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards certain cereals causing allergies or intolerances and foods with added phytosterols, phytosterol esters, phytostanols or phytostanol esters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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 establishes the general principles, requirements and responsibilities governing food information, and in particular food labelling.

Annex II to Regulation (EU) No 1169/2011 establishes a list of substances or products causing allergies or intolerances. Point 1 of that Annex lists, amongst others, 'kamut' and 'spelt'. However, 'kamut' is a trademark, which has been registered in over 40 countries throughout the world. This trademark is used for selling a special type of wheat, commonly referred to as 'khorasan'. In addition, spelt is also a type of wheat. Therefore, this Delegated Regulation amends Annex II to Regulation (EU) No 1169/2011 to properly reflect the nature of 'kamut' and 'spelt' as types of wheat.

Commission Regulation (EC) No 608/2004 of 31 March 2004 concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters² will be repealed by Regulation (EU) No 1169/2011. The content of Article 2 of Regulation (EC) No 608/2004 is provided for in Annex III to Regulation (EU) No 1169/2011.

In order to ensure consistency of the information provided on the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters, one of the mandatory statements laid down in Regulation (EC) No 608/2004 has been amended by Commission Regulation (EU) No 718/2013.³ This Delegated Regulation amends Annex III to Regulation (EU) No 1169/2011 to align it to the current wording of Regulation (EC) No 608/2004.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Expert Group on Regulation (EU) No 1169/2011 on the provision of food information to consumers was consulted during the preparation of this delegated act on the basis of a Working Document prepared by the Commission services in two meetings that took place on 6 March 2013 and 12 April 2013.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal bases for this Delegated Regulation are Article 10(2) and 21(2) of Regulation (EU) No 1169/2011, on the basis of which Annexes II and III to that Regulation may be amended by delegated acts.

¹ OJ L 304, 22.11.2011, p. 18.

² Commission Regulation (EC) No 608/2004 of 31 March 2004 concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters (OJ L 97, 1.4.2004, p. 44).

³ Commission Regulation (EU) No 718/2013 of 25 July 2013 amending Regulation (EC) No 608/2004 concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters (OJ L 201, 26.7.2013, p. 49).

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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 on the provision of food information to consumers⁴, and in particular Articles 10(2) and 21(2) thereof,

Whereas:

- (1) Annex II to Regulation (EU) No 1169/2011 establishes a list of substances or products causing allergies or intolerances. Point 1 of Annex II lists, amongst others, 'kamut' and 'spelt'. However, 'kamut' is a registered trademark of a type of wheat, known as 'khorasan wheat' and spelt is also a type of wheat. 'Khorasan wheat' and 'spelt' should therefore be indicated as types of wheat in point 1 of that Annex.
- (2) Annex III to Regulation (EU) No 1169/2011 establishes the list of foods for which the labelling must include one or more additional particulars. Point 5.1 of that Annex provides that the labelling of foods or food ingredients with added phytosterols, phytosterol esters, phytostanols or phytostanol esters must contain, inter alia, a statement that the food is intended exclusively for people who want to lower their blood cholesterol level.
- (3) That statement, in combination with the health claims authorised for those foods or food ingredients, could potentially lead consumers who do not need to control their blood cholesterol level to use the product and should therefore be amended. Such amendment should reflect the wording of the statement currently provided for in Commission Regulation (EC) No 608/2004.⁵ That Regulation will be repealed and replaced by Regulation (EU) No 1169/2011 as from 13 December 2014.
- (4) Regulation (EU) No 1169/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The introductory sentence in point 1 of Annex II to Regulation (EU) No 1169/2011 is replaced by the following:

⁴ OJ L 304, 22.11.2011, p. 18.

⁵ Commission Regulation (EC) No 608/2004 of 31 March 2004 concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters (OJ L 97, 1.4.2004, p. 44).

- '1. Cereals containing gluten, namely: wheat (such as spelt and khorasan wheat), rye, barley, oats or their hybridised strains, and products thereof, except:'

Article 2

In the second column of point 5.1 of Annex III to Regulation (EU) No 1169/2011, point (3) is replaced by the following:

- '(3) a statement that the product is not intended for people who do not need to control their blood cholesterol level;'

Article 3

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