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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL amending Directives 1999/4/EC, 2000/36/EC,
2001/111/EC, 2001/113/EC and 2001/114/EC as regards the powers to be
conferred on the Commission

Delegations will find attached Commission document COM(2012) 150 final.

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EUROPEAN COMMISSION

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and
2001/114/EC as regards the powers to be conferred on the Commission**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

To align the existing Commission implementing powers in Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC to the differentiation between delegated and implementing powers of the Commission introduced by Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE) and to confer additional delegated powers on the Commission.

The Treaty makes a distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act as laid down in Article 290(1) of the Treaty (delegated acts), and the powers conferred upon the Commission to adopt uniform conditions for implementing legally binding Union acts as laid down in Article 291(2) of the Treaty (implementing acts). In the case of delegated acts, the Legislator delegates to the Commission the power to adopt quasi-legislative acts. In the case of implementing acts, the context is very different. Indeed, Member States are primarily responsible for the implementation of legally binding acts of the European Union. However, if the application of the legislative act requires uniform conditions for its implementation the Commission is authorised to adopt these acts. The alignment of Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC on new rules of the Treaty is based on a classification on the basis of the new philosophy of the current Commission powers.

In addition, still in the context of that new philosophy, the provisions of the above mentioned Directives have also been scrutinized in order to identify possible supplementary need in term of powers to be conferred to the Commission under the new classification of the Treaty.

At the end of this exercise, a draft proposal for amendment of Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC has been prepared.

- **General context**

Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE) distinguish two different types of Commission acts:

- Article 290 of the TFUE allows the legislator to "*delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act*". Legal acts adopted by the Commission in this way are referred to in the terminology used by the Treaty as "delegated acts" (Article 290(3)).
- Article 291 of the TFUE allows Member States to "*adopt all measures of national law necessary to implement legally binding Union acts*". Those acts shall confer implementing powers on the Commission where uniform conditions for implementing them are needed. Legal acts adopted by the Commission in this way

are referred to in the terminology used by the Treaty as "implementing acts" (Article 291(4))

- **Existing provisions in the area of the proposal**

Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE).

Council Decision 1999/468/EC of 28 June 1999, laying down the procedures for the exercise of implementing powers conferred on the Commission, as modified by Council Decision 2006/512/EC, repealed by Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011, laying down the general principle concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2. **RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

- **Consultation of interested parties**

- **Collection and use of expertise**

There was no need for consultation of interested parties or for external expertise since the proposal is an inter-institutional matter that will concern all Council and/or Council and European Parliament acts.

- **Impact assessment**

No need of impact assessment since the proposal is an inter-institutional matter that will concern all Council and/or Council and European Parliament acts.

3. **LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

Identify the delegated and implementing powers that should be conferred upon the Commission as regards Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC and establish the corresponding procedure for adoption of these acts in the new legal context determined by the entry into force of Articles 290 and 291 of the TFUE.

- **Legal basis**

Articles 43 and 114 of the Treaty on the Functioning of the European Union.

- **Subsidiarity principle**

The proposal falls under shared competence between the EU and the Member States and complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle.

- **Choice of instruments**

The proposal is part of the alignment exercise and concern only powers of the Commission in the new legal context created by the Lisbon Treaties. Provisions on the Commission's delegated powers have not to be transposed in the Member States' legal orders. Therefore, the form of a Regulation is chosen.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC as regards the powers to be conferred on the Commission

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2) and 114(1) thereof,

Having regard to the proposal from the European Commission¹,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts³, Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption⁴, Council Directive 2001/111/EC of 20 December 2001 relating to certain sugars intended for human consumption⁵, Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption⁶ and Council Directive 2001/114/EC of 20 December 2001 relating to certain partly or wholly dehydrated preserved milk for human consumption⁷ confer powers on the Commission in order to implement some of their provisions, to be exercised in accordance with the procedures laid down in Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸ as amended by Council Decision 2006/512/EC⁹.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ L 66, 13.3.1999, p. 26.

⁴ OJ L 197, 3.8.2000, p. 19.

⁵ OJ L 10, 12.1.2002, p. 53.

⁶ OJ L 10, 12.1.2002, p. 67.

⁷ OJ L 15, 17.1.2002, p. 19.

⁸ OJ L 184, 17.7.1999, p. 23.

⁹ OJ L 200, 22.7.2006, p. 11.

- (2) As a consequence of the entry into force of the Lisbon Treaty, those powers need to be aligned to Article 290 of the Treaty on the Functioning of the European Union (the Treaty).
- (3) Although Annexes to Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, and 2001/114/EC contain technical elements which might have to be adapted or updated to take account of developments in relevant international standards, those Directives do not confer on the Commission appropriate powers to promptly adapt or update those Annexes to take account of developments in international standards. In addition, Directive 1999/4/EC does not confer on the Commission appropriate powers to promptly adapt or update its Annex to take account of technical progress, although that Annex contains technical elements which might also have to be adapted or updated to take account of technical progress. Furthermore, although containing technical elements which might have to be adapted or updated to take account of technical progress, Sections A and B(1) of Annex I to Directive 2000/36/EC are not covered by the Commission's powers to adapt certain provisions of that Annex to technical progress. Therefore, for the consistent implementation of Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC, the additional powers to adapt or update the Annexes to Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, and 2001/114/EC to take account of technical progress and of developments in international standards should also be conferred on the Commission
- (4) Therefore, in order to supplement or amend certain non-essential elements of Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC to take account of technical progress and/or, where appropriate, the developments in international standards, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the following scope and content: as regards Directive 1999/4/EC, to adapt or update the technical characteristics related to the product descriptions and definitions in the Annex, normally expressed in percentages; as regards Directive 2000/36/EC, to adapt or update the technical characteristics related to the sales names and definitions of Section A of Annex 1, normally expressed in percentages and/or grams, as well as Sections B, C and D of that Annex; as regards Directive 2001/111/EC, to adapt or update Part A of the Annex in respect of the technical characteristics related to the product names and definitions, as well as Part B of the Annex; as regards Directive 2001/113/EC, to adapt or update Annex I in respect of the technical characteristics related to the product names and definitions, normally expressed in grams and/or percentage, as well as Annex II and Part B of Annex III; and as regards Directive 2001/114/EC, to adapt or update Annex I in respect of the technical characteristics related to the definitions of products and product names, normally expressed in percentages, as well as Annex II.
- (5) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (6) Following the adoption of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying

down procedures in matters of food safety¹⁰, which applies to all stages of production, processing and distribution of food and feed at Union and national level, general Union provisions on foodstuffs apply directly to the products covered by Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC. As a consequence, it is no longer necessary for the Commission to have the powers to align the provisions of those Directives to the general Union provisions on foodstuffs. The provisions conferring such powers should therefore be deleted.

- (7) Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC should therefore be amended accordingly.
- (8) Since the amendments made to Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC concern the Commission powers only, they do not need to be transposed by the Member States,

HAVE ADOPTED THIS REGULATION:

Article 1

Articles 4 and 5 of Directive 1999/4/EC are replaced by the following:

'Article 4

The Commission shall be empowered to adopt delegated acts in accordance with Article 5 to amend the technical characteristics related to the product descriptions and definitions in the Annex to take account of the developments in relevant international standards, where appropriate, and of technical progress.

Article 5

1. The power to adopt the delegated acts referred to in this Directive is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4 shall be conferred on the Commission for an indeterminate period of time from (...). (Publications Office is to fill in the date of entry into force of this amending Act).
3. The delegation of power referred to in Article 4 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council .

¹⁰ OJ L 31, 1.2.2002, p. 1.

5. A delegated act adopted pursuant to Article 4 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. '

Article 2

Articles 5 and 6 of Directive 2000/36/EC are replaced by the following:

'Article 5

The Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend the technical characteristics related to the sales names and definitions of Section A of Annex 1, as well as Sections B, C and D of that Annex, to take account of the developments in relevant international standards, where appropriate, and of technical progress.

Article 6

1. The power to adopt the delegated acts referred to in this Directive is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 5 shall be conferred on the Commission for an indeterminate period of time from (...).(Publications Office is to fill in the date of entry into force of this amending Act).
3. The delegation of power referred to in Article 5 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council .
5. A delegated act adopted pursuant to Article 5 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

Article 3

Articles 4 and 5 of Directive 2001/111/EC are replaced by the following:

'Article 4

The Commission shall be empowered to adopt delegated acts in accordance with Article 5 to amend Part A of the Annex in respect of the technical characteristics related to the product names and definitions, as well as Part B of the Annex, to take account of the developments in relevant international standards, where appropriate, and of technical progress.

Article 5

1. The power to adopt the delegated acts referred to in this Directive is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4 shall be conferred on the Commission for an indeterminate period of time from (...). (Publications Office is to fill in the date of entry into force of this amending Act)
3. The delegation of power referred to in Article 4 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council .
5. A delegated act adopted pursuant to Article 4 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

Article 4

Articles 5 and 6 of Directive 2001/113/EC are replaced by the following:

'Article 5

The Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend Annex I in respect of the technical characteristics related to the product names and definitions, as well as Annex II and Part B of Annex III, to take

account of the developments in relevant international standards, where appropriate, and of technical progress.

Article 6

1. The power to adopt the delegated acts referred to in this Directive is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 5 shall be conferred on the Commission for an indeterminate period of time from (...). (Publications Office is to fill in the date of entry into force of this amending Act).
3. The delegation of power referred to in Article 5 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council .5. A delegated act adopted pursuant to Article 5 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

Article 5

Articles 5 and 6 of Directive 2001/114/EC are replaced by the following:

'Article 5

The Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend Annex I in respect of the technical characteristics related to the definitions of products and product names, as well as Annex II, to take account of the developments in relevant international standards, where appropriate, and of technical progress.

Article 6

1. The power to adopt the delegated acts referred to in this Directive is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 5 shall be conferred on the Commission for an indeterminate period of time from (...). (Publications Office is to fill in the date of entry into force of this amending Act).
3. The delegation of power referred to in Article 5 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council .
5. A delegated act adopted pursuant to Article 5 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

Article 6

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 European Parliament
The President

For the Council
The President