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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:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 23.4.2015 supplementing Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries

Delegations will find attached document C(2015) 2593 final.

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Brussels, 23.4.2015
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 23.4.2015

supplementing Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Regulation (EU) No 3/2008 empowers the Commission to adopt delegated acts.

This delegated act was drafted taking account of the current provisions as laid down in Commission Regulation (EC) No 501/2008 of 5 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries.

Due to the substantial changes contained in the Regulation (EU) No 1144/2014, such as the widened scope of eligible products, the extension to new beneficiaries, the possibility to mention brands or origin under certain conditions, the elimination of the pre-selection phase at the level of Member States or the different management modes for simple and multi programmes, this delegated act proposes to repeal the Commission regulation (EC) No 501/2008.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations, involving experts from all the 28 Member States, have been carried within the Experts Group for Agricultural Markets and the Simplification Experts Group. The first meeting, held on 10 September 2014, was organised to launch a discussion on the shape of the new measures. This meeting allowed for a first reflection by the Experts Group on the Commission's questions concerning simplification and the scope of this act and there was a first exchange of views. A second meeting of the Experts Group was held on 14 October 2014. At this meeting the draft text was presented for the first time. The Commission clarified its approach and heard the views of the experts in attendance at the meeting. The draft was then revised taking into account the observations and comments made orally during that meeting and sent in writing to the Commission. A last meeting of the Experts Group took place on 13 November 2014 when there was a final revision of the text with the possibility for the Experts Group to send further written comments to the Commission. The successive draft versions of the present act were transmitted to the European Parliament and to the Council when convening the Experts Group meetings. Bearing in mind that this regulation will largely be applied by private operators, informal consultations with the main stakeholders with experience in European promotion of agrifood products have also taken place.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The act contains the provisions supplementing certain parts of Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Regulation (EU) No 3/2008, as well as certain parts of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy that are necessary to ensure appropriate implementation of the information and promotion policy.

Having in mind the goal of better regulation, this act was drafted with the aim that, in so far as is possible, the rules for both multi and simple programmes are the same.

The purpose of this delegated act is to lay down rules concerning the criteria for determining the eligibility of proposing organisations, the conditions governing the competitive procedure for the selection of implementing organisations, the specific conditions for eligibility with regard to simple programmes and the costs of information provision and promotion measures, administrative and staff costs and administrative penalties. It specifies the provisions established in Regulation (EU) No 1144/2014 and notably the procedural requirements in order to apply for EU funding. This delegated act does not have any significant direct economic, social or environmental impact.

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

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supplementing Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008¹, and in particular Article 7(2), Article 11(1), second subparagraph of Article 13(1) and Article 15(8) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008², and in particular Article 64(6)(a) and Article 66(3)(d) thereof,

Whereas:

- (1) Regulation (EU) No 1144/2014 has repealed Council Regulation (EC) No 3/2008³ and lays down new rules under which information provision and promotion measures concerning agricultural products and certain foods based on agricultural products, implemented in the internal market or in third countries, may be fully or partially financed from the Union budget.
- (2) The rules laid down in this Regulation concern predominantly the simple programmes, managed by Member States. For multi programmes, directly managed by the Commission, Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁴ should apply. Nevertheless, the conditions under which a proposing organisation may submit a programme, set out in Article 1 of this Regulation, should apply to both multi and simple programmes.

¹ OJ L 317, 4.11.2014, p. 56.

² OJ L 347, 20.12.2013, p. 549.

³ Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries (OJ L 3, 5.1.2008, p. 1).

⁴ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (3) Article 7 of Regulation (EU) No 1144/2014 establishes the list of proposing organisations. It is necessary to specify under which conditions each category of proposing organisation may submit a proposal for an information and promotion programme to be co-financed by the Union. To ensure that the proposing organisations are representative for the sector concerned, it is necessary to specify the necessary level of representation. When possible, the simple rule of representing the majority of the sector would be applied.
- (4) Information provision and promotion measures co-financed by the Union should aim at opening new markets in third countries and should be undertaken by a wider range of organisations. In order to boost competition and ensure widest possible access to the Union promotion scheme, rules should be laid down to ensure that an organisation does not receive support for the same promotion programme more than two consecutive times.
- (5) With a view to select bodies responsible for implementing simple programmes the proposing organisations must ensure best value for money. In doing so, they must avoid any conflict of interests. Where the proposing organisation is a body governed by public law within the meaning of Article 2(1)(4) of Directive 2014/24/EU of the European Parliament and of the Council⁵, the rules provided for in that Directive and transposed into national law will apply.
- (6) The Union promotion scheme should supplement and reinforce schemes run by Member States and should focus on a Union message. In that respect, information provision and promotion measures co-financed by the Union should demonstrate a specific Union dimension for which the necessary criteria need to be established.
- (7) To date, in almost two thirds of the programmes carried out in the internal market, only the Member State of origin has been targeted by the proposing organisations. In addition, the origin of products may be now visible on information and promotion material under certain conditions. In order to ensure a real Union added value, the targeted markets of the programmes co-financed by the Union carried out in the internal market should be expanded and should not be limited to the Member State of origin of the proposing organisation, unless the programmes convey a message concerning the European quality schemes or proper dietary practices in line with the European Commission's white paper on a strategy on nutrition, overweight, and obesity related health issues⁶.
- (8) In order to avoid any overlaps with the promotion measures funded under Regulation (EU) No 1305/2013 of the European Parliament and of the Council⁷, it is necessary to exclude from funding under this Regulation programmes that have only local impact and to favour programmes which will operate on a significant scale, notably in the internal market, in terms of cross-border coverage.

⁵ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65). Directive 2004/18/EC is repealed with effect from 18 April 2016.

⁶ COM(2007)279 final, 30.5.2007.

⁷ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

- (9) Information provision and promotion measures co-financed by the Union should not be brand or origin-oriented but should convey a Union message. In this regard, information provision and promotion measures in the internal market covering a scheme as referred to in Article 5(4) of Regulation (EU) No 1144/2014, should convey a message on the characteristics or guarantees offered by these schemes aiming, in particular, at increasing the awareness and recognition of Union quality schemes.
- (10) In order to inform consumers, it should be specified that any information on the impact on health of a product needs to have a recognised scientific basis and needs to comply with the Annex to Regulation (EC) No 1924/2006 of the European Parliament and of the Council⁸ or be accepted by the competent national authorities responsible for public health in the country where the operations are carried out.
- (11) In view of the specific nature of the promotion measures, rules on the eligibility of costs incurred by the beneficiary for the implementation of a programme should be laid down.
- (12) Simple programmes should be financed on the basis of Regulation (EU) No 1306/2013. Article 19(4) of Commission Delegated Regulation (EU) No 907/2014⁹ provides that charges relating to the securities should be borne by the party giving the security. According to point (a) of the second subparagraph of Article 126(3) of Regulation (EU, Euratom) No 966/2012 which should apply to multi programmes, costs relating to a pre-financing guarantee lodged by the beneficiary of the grant should be considered as eligible for Union funding. In order to ensure equal treatment of simple and multi programmes that could both be submitted by the same proposing organisations, it should be derogated from Article 19(4) of Regulation (EU) No 907/2014 and allowed for the costs of securities to be eligible for Union funding.
- (13) To protect the Union's financial interests effectively, appropriate measures should be adopted to combat fraud and gross negligence. To this end, administrative penalties should be established having regard to the principles of effectiveness, dissuasiveness and proportionality. The administrative penalties under this Regulation should be considered dissuasive enough to discourage intentional non-compliance.
- (14) For the sake of clarity and legal certainty, Commission Regulation (EC) No 501/2008¹⁰ laying down detailed rules for implementing Regulation (EC) No 3/2008 should be repealed. However, it should continue to apply in respect of programmes that have been selected under its provisions,

⁸ 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 (OJ L 404, 30.12.2006, p. 9).

⁹ Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 255, 28.8.2014, p. 18).

¹⁰ Commission Regulation (EC) No 501/2008 of 5 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries (OJ L 147, 6.6.2008, p. 3).

HAS ADOPTED THIS REGULATION:

Article 1

Conditions under which a proposing organisation may submit a simple or multi programme

1. The proposing organisations as referred to in Article 7(1) of Regulation (EU) No 1144/2014 may submit a proposal for an information and promotion programme provided that they are representative of the sector or product concerned as follows:
 - (a) trade or inter-trade organisation, established in a Member State or at Union level, as referred to in Article 7(1)(a) and (b) of Regulation (EU) No 1144/2014 respectively, shall be deemed to be representative of the sector concerned by the programme:
 - i. where it accounts for at least 50% as a proportion of the number of producers, or 50 % of the volume or value of marketable production of the product(s) or sector concerned, in the Member State concerned or at Union level; or
 - ii. where it is an interbranch organisation recognised by the Member State in accordance with Article 158 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council¹¹ or with Article 16 of Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013¹²;
 - (b) a group as defined in point 2 of Article 3 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council¹³ and referred to in Article 7(1)(a) of Regulation (EU) No 1144/2014, shall be deemed to be representative of the name protected under Regulation (EU) No 1151/2012 and covered by the programme, where it accounts for at least 50% of the volume or value of marketable production of the product(s) whose name is protected;
 - (c) a producer organisation or an association of producer organisations as referred to in Article 7(1)(c) of Regulation (EU) No 1144/2014 shall be deemed to be representative of the product(s) or sector concerned by the programme where it is recognised by the Member State in accordance with Articles 154 or 156 of Regulation (EU) No 1308/2013 or with Article 14 of Regulation (EU) No 1379/2013;
 - (d) with the exception of programmes carried out after a loss of consumer confidence, agri-food sector body as referred to in Article 7(1)(d) of Regulation (EU) No

¹¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council 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).

¹² Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000.

¹³ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

1144/2014 shall be representative of the sector(s) concerned by the programme by means of having representatives of that product(s) or sector among its memberships.

2. By way of derogation from points (a) i) and (b) of paragraph 1, lower thresholds may be accepted, if the proposing organisation demonstrates in the submitted proposal that there are specific circumstances, including the evidence on the structure of the market, which would justify treating the proposing organisation as representative of the product(s) or sector concerned.
3. The proposing organisation shall have the necessary technical, financial and professional resources to carry out the programme effectively.
4. A proposing organisation shall not receive support for information and promotion programmes on the same product or scheme, carried out in the same geographical market on more than two consecutive occasions.

Article 2

Selection of bodies responsible for implementing simple programmes

1. Proposing organisations must select bodies responsible for implementing simple programmes ensuring best value for money. In doing so, they must take all measures to prevent any situation where the impartial and objective implementation of the programme is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests').
2. Where the proposing organisation is a body governed by public law within the meaning of Article 2(1)(4) of Directive 2014/24/EU, it must select bodies responsible for implementing simple programmes in accordance with the national legislation transposing that Directive.

Article 3

Eligibility of simple programmes

1. To be eligible, the simple programmes shall:
 - (a) comply with Union law governing the products concerned and their marketing;
 - (b) be of a significant scale, notably in terms of its foreseen measurable cross-border impact. In the internal market, this means that a programme shall be implemented in at least two Member States with a coherent share of the allocated budget in particular taking into account the respective size of the market in each of the Member States concerned, or be implemented in one Member State if that Member State is different from the Member State of origin of the proposing organisation(s). This requirement does not apply to programmes relaying a message which concerns the Union quality

schemes referred to in Article 5(4)(a), (b) and (c) of Regulation (EU) No 1144/2014 and to programmes relaying a message which concerns proper dietary practices;

- (c) have a Union dimension, both in terms of content of the message and impact, in particular provide information on European production standards, the quality and safety of European food products and European dietary practices and culture, promote the image of European products on the internal market and international markets, raise awareness of European products and logos among the general public and in commercial undertakings. This means in particular for a programme in the internal market covering one or more schemes as referred to in Article 5(4) of Regulation (EU) No 1144/2014, to focus on the(se) scheme(s) in its main Union message. When in this programme, one or several products illustrate(s) the(se) scheme(s), it/they shall appear as a secondary message in relation to the main Union message;
2. In addition, if a message conveyed by a programme concerns information on the impact on health, this message shall:
- (a) in the internal market, comply with the Annex to Regulation (EC) No 1924/2006, or be accepted by the national authority responsible for public health in the Member State where the operations are carried out;
 - (b) in third countries, be accepted by the national authority responsible for public health in the country where the operations are carried out.

Article 4

Costs of simple programmes eligible for Union funding

1. Costs eligible for Union funding shall be costs which meet all of the following criteria:
- (a) they are actually incurred by the proposing organisation during the implementation of the programme, with the exception of costs relating to final reports and evaluation;
 - (b) they are indicated in the estimated overall budget of the programme;
 - (c) they are necessary for the implementation of the programme which is subject of co-financing;
 - (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the proposing organisation and determined according to the applicable accounting standards of the Member State where the proposing organisation is established;
 - (e) they comply with the requirements of the applicable tax and social legislation;
 - (f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

2. The call for proposals referred to in Article 8(2) of Regulation (EU) No 1144/2014 shall specify the categories of costs considered as eligible for Union funding.

However, the following categories of costs shall be eligible:

- (a) by way of derogation from Article 19(4) of Regulation (EU) No 907/2014, costs relating to an advance guarantee provided by a bank or financial institution and lodged by the proposing organisation where that guarantee is required in accordance with Article 15(6) of Regulation (EU) No 1144/2014;
 - (b) costs relating to external audits where such audits are required in support of the requests for payments;
 - (c) personnel costs limited to salaries, social security charges and other costs included in the remuneration of personnel assigned to the implementation of the programme, arising from the applicable national law or from the employment contract, the costs for natural persons working under a direct contract with the proposing organisation other than an employment contract or seconded by a third party against payment;
 - (d) value added tax ('VAT') where it is not recoverable under the applicable national VAT legislation and is paid by a beneficiary other than a non-taxable person as defined in the first subparagraph of Article 13(1) of Council Directive 2006/112/EC¹⁴;
 - (e) the costs of studies to evaluate the results of promotional and information measures, as referred to in Article 15(4) of Regulation (EU) No 1144/2014, performed by an independent and qualified external body.
3. Indirect eligible costs shall be determined by applying a flat rate of 4 % of the total direct eligible personnel costs of the proposing organisation.

Article 5

Administrative penalties concerning simple programmes

1. In the case of irregularities, an administrative penalty shall be imposed on the proposing organisation that shall consist of the payment of twice the difference between the amount initially paid or requested and the amount actually due.
2. In case of a serious misconduct, in particular recurrence of the irregularities referred to in paragraph 1 or when the proposing organisation has been found to be in serious breach of its obligations in the selection procedure of the programmes or their operation, the proposing organisation shall be excluded from the right to participate in the information provision and promotion measures for the period of three years from the date the infringement is established.

¹⁴ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p.1).

Article 6

Repeal

Regulation (EC) No 501/2008 is repealed. However, it remains applicable to programmes approved in accordance with its provisions before 1 December 2015.

Article 7

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 December 2015 to the proposals of programmes submitted as from 1 December 2015 and onwards.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23.4.2015

For the Commission
The President
Jean-Claude JUNCKER