

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 (Text with EEA relevance)

## CHAPTER VI

### NATIONAL MEASURES

#### *Article 38*

##### **National measures**

1 As regards the matters specifically harmonised by this Regulation, Member States may not adopt nor maintain national measures unless authorised by Union law. Those national measures shall not give rise to obstacles to free movement of goods, including discrimination as regards foods from other Member States.

2 Without prejudice to Article 39, Member States may adopt national measures concerning matters not specifically harmonised by this Regulation provided that they do not prohibit, impede or restrict the free movement of goods that are in conformity with this Regulation.

#### *Article 39*

##### **National measures on additional mandatory particulars**

1 In addition to the mandatory particulars referred to in Article 9(1) and in Article 10, Member States may, in accordance with the procedure laid down in Article 45, adopt measures requiring additional mandatory particulars for specific types or categories of foods, justified on grounds of at least one of the following:

- a the protection of public health;
- b the protection of consumers;
- c the prevention of fraud;
- d the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition.

2 By means of paragraph 1, Member States may introduce measures concerning the mandatory indication of the country of origin or place of provenance of foods only where there is a proven link between certain qualities of the food and its origin or provenance. When notifying such measures to the Commission, Member States shall provide evidence that the majority of consumers attach significant value to the provision of that information.

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*Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) No 1169/2011 of the European Parliament and of the Council, CHAPTER VI. (See end of Document for details)*

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#### *Article 40*

### **Milk and milk products**

Member States may adopt measures derogating from Article 9(1) and Article 10(1) in the case of milk and milk products presented in glass bottles intended for reuse.

They shall communicate to the Commission the text of those measures without delay.

#### *Article 41*

### **Alcoholic beverages**

Member States may, pending the adoption of the Union provisions referred to in Article 16(4), maintain national measures as regards the listing of ingredients in the case of beverages containing more than 1,2 % by volume of alcohol.

#### *Article 42*

### **Expression of the net quantity**

In the absence of Union provisions referred to in Article 23(2) concerning the expression of net quantity for specified foods in a different manner to that provided for in Article 23(1), Member States may maintain national measures adopted before 12 December 2011.

By 13 December 2014, Member States shall inform the Commission about such measures. The Commission shall bring them to the attention of the other Member States.

#### *Article 43*

### **Voluntary indication of reference intakes for specific population groups**

Pending the adoption of the Union provisions referred to in point (c) of Article 36(3), Member States may adopt national measures on the voluntary indication of reference intakes for specific population groups.

Member States shall communicate to the Commission the text of those measures without delay.

#### *Article 44*

### **National measures for non-prepacked food**

1 Where foods are offered for sale to the final consumer or to mass caterers without prepackaging, or where foods are packed on the sales premises at the consumer's request or prepacked for direct sale:

- a the provision of the particulars specified in point (c) of Article 9(1) is mandatory;

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- b the provision of other particulars referred to in Articles 9 and 10 is not mandatory unless Member States adopt national measures requiring the provision of some or all of those particulars or elements of those particulars.

2 Member States may adopt national measures concerning the means through which the particulars or elements of those particulars specified in paragraph 1 are to be made available and, where appropriate, their form of expression and presentation.

3 Member States shall communicate to the Commission the text of the measures referred to in point (b) of paragraph 1 and in paragraph 2 without delay.

#### *Article 45*

#### **Notification procedure**

1 When reference is made to this Article, the Member State which deems it necessary to adopt new food information legislation shall notify in advance the Commission and the other Member States of the measures envisaged and give the reasons justifying them.

2 The Commission shall consult the Standing Committee on the Food Chain and Animal Health set up by Article 58(1) of Regulation (EC) No 178/2002 if it considers such consultation to be useful or if a Member State so requests. In that case, the Commission shall ensure that this process is transparent for all stakeholders.

3 The Member State which deems it necessary to adopt new food information legislation may take the envisaged measures only 3 months after the notification referred to in paragraph 1, provided that it has not received a negative opinion from the Commission.

4 If the Commission's opinion is negative, and before the expiry of the period referred to in paragraph 3 of this Article, the Commission shall initiate the examination procedure referred to in Article 48(2) in order to determine whether the envisaged measures may be implemented subject, if necessary, to the appropriate modifications.

5 Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services<sup>(1)</sup> shall not apply to the measures falling within the notification procedure specified in this Article.

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- (1) [OJ L 204, 21.7.1998, p. 37.](#)

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