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Subject: Notification 2024/682/ES

Draft Regulation governing the use of the certification mark for Sustainable Agricultural Production, which includes the technical standards to be promoted in sustainable agricultural production

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Sir,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535⁽¹⁾, the Spanish authorities notified to the Commission on 13 December 2024 the draft **“Draft Regulation governing the use of the certification mark for Sustainable Agricultural Production, which includes the technical standards to be promoted in sustainable agricultural production”** (hereafter “the notified draft”).

According to the notification message, the notified draft aims to introduce a voluntary certification mark in order to be able to identify products produced on farms that comply with technical standards of sustainable agricultural production, thus fostering the transition to a three-pronged sustainability model: environmental, economic and social.

The examination of the notified draft has prompted the Commission to issue the following comments.

1. Openness of the scheme to producers from other Member States

¹() Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

From the text of the notified draft, it is not clear whether the SAP certification mark is accessible to producers from other Member States.

Specifically, regarding the procedure to be registered as user of the SAP certification mark, under Chapter IV of the Draft Regulation on the use of the SAP certification mark (“Management and authorisation of the certification mark”), it is stated that *“The Certification Mark Holder, through the Certification Mark management bodies, recognises the Certification Mark Management Entities as independent bodies to authorise users the right to use the Certification Mark. Persons covered by the certification mark of Sustainable Agricultural Production defined in paragraph 6 of this Regulation who have passed the requirements established in the certification system of the certification mark will be registered in the register of operators of the certification mark of the GMME, and will be authorised to use the certification mark, becoming authorised users to use the certification mark under the conditions established in this Regulation”*. It is also clarified that, *“The certification mark management entities (hereinafter GMME) are created for the purpose of carrying out what is detailed in this Regulation. The different autonomous communities to which the use of the certification mark has been assigned in accordance with the provisions of this Regulation may designate their own GMME.”* In these sections, no reference is made to certification bodies in other Member States, or producers from other Member States, it is therefore not clear how producers from other Member States can be registered as users of the certification mark.

As regards substance, several references to the Catalonian origin of input, to the Catalonian legislation or Collective agreement of the agricultural sector of Catalonia might create further confusion as to the possibility for producers from other Member States to access the SAP certification mark (see for example in point 10 of the Technical livestock standard, where reference is made to salaries being *“at least those stipulated in the collective agricultural agreement of Catalonia”* (or specific sectoral agreement); see also in point 8.1.1.2 of the Agricultural technical standard, a reference is made to *“Decree 153/2019 of the Generalitat of Catalonia and (...) Royal Decree 1051/2022 on Sustainable Fertilisation”*; see also point 5.1.1. of the Technical livestock Standard which provides for *“Ruminant (Cattle, Sheep, Goat) and Equine Farms: at least 40% of the feed (common fodder, fresh, dried or silage, feed, etc.) will come from the farm itself or, if this is not possible or available, will be produced in collaboration with other production units using fodder, feed and other feed materials from the same region (Catalonia).”*

The Commission invites the Spanish authorities to clarify whether the certification mark is open to all producers, including from other Member States.

2. Food information to consumers

In Section 16 ‘Application for use of the certification mark’, the notified draft introduces technical criteria for the use of the certification mark on labels. In particular, the notified draft includes the following requirements for the placement of the certification mark for the labelling of processed food:

- *‘In the case of processed food, the SAP certification stamp may be used on labelling, advertising and commercial documents provided that the ingredients of animal or plant origin that can be certified constitute the primary ingredient as defined in regulation (EU) 1169/2011 of the European Parliament and of the*

Council, i.e. at least 50 % of the total ingredients or, if less than 50 %, it is deemed to be the main ingredient of the food.

- *In the case of processed food containing a single type of ingredient of animal or plant origin, 100% of the ingredients must come from certified agricultural holdings or farms, or the SAP certification stamp may not be used on labelling, advertising or commercial documents.*
- *In the case of processed food containing more than one type of ingredient of animal or plant origin, but not all ingredients are certified, the SAP certification stamp may be used on labelling, advertising and commercial documents only when accompanied by a statement on the same side of the packaging specifying which of the ingredients are certified. In addition, ingredients that are certified must be clearly indicated in the list of ingredients.'*

According to Article 2(2)(q) of Regulation (EU) No 1169/2011 on the provision of food information to consumers ⁽²⁾, 'primary ingredient' means '*an ingredient or ingredients of a food that represent more than 50 % of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required.*'

While Section 16 of the notified draft refers to the definition of 'primary ingredient' in the above-mentioned Regulation, its wording should be adapted to make it clear that a food might have more than one 'primary ingredients' in light of the definition laid down in Article 2(2)(q) of Regulation (EU) No 1169/2011.

Section 16 of the notified draft requires, for the case when not all ingredients of a processed food containing more than one type of ingredient are certified, that the SAP stamp may only be used '*when accompanied by a statement on the same side of the packaging specifying which of the ingredients are certified*'.

In order to avoid legal uncertainty and to ensure consistency with EU legislation and clarity for the use of the quality certification mark on products regardless of the shape of their packaging, the Spanish authorities are invited to refer to 'same principal field of vision' rather than 'same side of the packaging'.

Article 2(2)(l) of Regulation (EU) 1169/2011 defines 'principal field of vision' as follows:

'principal field of vision' means the field of vision of a package which is most likely to be seen at first glance by the consumer at the time of purchase and that enables the consumer to immediately identify a product in terms of its character or nature and, if applicable, its brand name. If a package has several identical principal fields of vision, the principal field of vision is the one chosen by the food business operator'.

²⁾ 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

The Commission further invites the Spanish authorities to clarify that the requirement to accompany the use of the certification mark with a statement on the same side of the packaging specifying which of the ingredients are certified also applies to processed food products in which only the primary ingredient(s) is/are certified in accordance with the rules laid down in the notified draft.

The Commission recalls that, in accordance with Article 36 (2) of Regulation (EU) No 1169/2011:

*‘Food information provided on a voluntary basis shall meet the following requirements:
(a) it shall not mislead the consumer, as referred to in Article 7;
(b) it shall not be ambiguous or confusing for the consumer; and
(c) it shall, where appropriate, be based on the relevant scientific data.’*

Article 7 of Regulation (EU) No 1169/2011 provides that:

*‘Food information shall not be misleading, particularly:
(a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production;
(b) by attributing to the food effects or properties which it does not possess;
(c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients;
(d) by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient.’*

In this respect, the Commission would like to underline that a quality label must specify the requirements related to the characteristics of the product that go beyond the standards and that give superior quality to the products with respect to similar products.

The affixing of a quality label to products or foodstuffs not complying with superior requirements would mislead the consumer, suggesting a quality that appears to be higher, when similar products or foodstuffs are actually of the same quality (judgement in case 13/78 Eggers, ECLI:EU:C:1978:182, paragraphs 24 and 25; reiterated in the judgement in the case C-325/00, Commission v Germany, ECLI:EU:C:2002:633, paragraph 24).

The notified draft should therefore be clarified in line with the requirements of Articles 36 and 7 of Regulation (EU) No 1169/2011 to exclude that consumers are misled by attributing to the entire product qualities that are possessed only by its primary ingredient.

The Spanish authorities are invited to clarify that a statement specifying which ingredient is certified accompanies the SAP certification stamp, when the stamp is used in the case of processed foods containing more than one type of ingredient of animal or plant origin, irrespective of whether the certified ingredient is the primary ingredient, or one of the primary ingredients of the food.

The Spanish authorities are invited to take these comments into account.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Kerstin JORNA
Director-General
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