



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,  
SANTE E1/DSK/mk (2019) 2494633

Your Excellency,

**Subject: Notification from Italy on mandatory indication of place of provenance**

I acknowledge receipt of your letter of 7 March 2019 by which you submit to the Commission, under Article 45 of Regulation (EU) No 1169/2011 on food information to consumers<sup>1</sup>, Article 3-bis of the Italian decree law 135/2018, converted in law by Article 1 of the Italian law 12/2019, and the relevant justifications. I note that you have communicated the measure also to the other Member States.

In the amendments introduced in paragraphs 3 and 3-bis of Article 4 of the Italian law 4/2011, the measure provides for rules concerning the procedural aspects to define the specific categories of foods for which the indication of the place of provenance of the food shall be mandatorily laid down in the future. In addition, the amendment introduced by the measure in paragraph 3-ter of Article 4 of the Italian law 4/2011 lays down a requirement for the mandatory indication of the place of provenance of foods under certain conditions.

In accordance with Article 39 of Regulation (EU) No 1169/2011, the notification procedure of Article 45 of the same Regulation applies when Member States wish to adopt measures requiring additional mandatory particulars for specific types or categories of foods. I would draw to your attention that the notification procedure laid down in Regulation (EU) No 1169/2011 concerns draft national measures and not measures already adopted by Member States.

Taking into account that the notified measure is of general nature and does not explicitly refer to any specific types or categories of food, it does not fall within the scope of Article 39 of Regulation (EU) No 1169/2011. As a result, the notification procedure of Article 45 of Regulation (EU) No 1169/2011 is not applicable in relation to the concerned measure.

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<sup>1</sup> 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, OJ L 304, 22.11.2011, p. 18.

H.E. Ambassador Michele Quaroni  
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Finally, I would like to note that Directive (EU) 2015/1535<sup>2</sup> lays down a notification procedure of national draft legislation in the field of technical regulations related to goods and rules on information society services. While it is for the Member States authorities to decide on whether a draft measure needs to be notified to the Commission in compliance with the said Directive, when a measure that should have been notified is adopted without prior notification, a breach of EU law is entailed. Moreover, it is for the national courts to establish whether a specific measure is, or is not, a technical regulation within the meaning of Directive (EU) 2015/1535. The consequences in case of non-notification are explained in established case-law of the Court of Justice of the EU (see case C-194/94 CIA Security International EU:C:1996:172, paragraphs 54 and 55, and more recently, order of 1 February 2017, Município de Palmela, Case C-144/16, EU:C:2017:76, paragraphs 35 to 38), according to which the failure to fulfil the notification obligation under Directive (EU) 2015/1535 constitutes a substantial procedural defect in the adoption of the technical regulation concerned, which implies that any interested individual could challenge the legality of the technical regulation before a national court and ask for its inapplicability.

Yours sincerely,



Anne Bucher

c.c.: Mr M. Hudson, Ms S. Jülicher (DG SANTE)

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<sup>2</sup> 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.

Bcc : R. Delfino, A. Nikolakopoulou, S. Pelsser, D. Szentpaly-Kleis