REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No 1169/2011 on the provision of food information to consumers

**1. Introduction and legal basis**

This report is supposed to meet the obligation set for the Commission by Article 51(2) of 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 (hereinafter 'the Food Information Regulation') [[1]](#footnote-1). Article 51(2) of the Food Information Regulation requires the Commission to present to the European Parliament and to the Council a report on the exercise of the delegation conferred on the Commission by that Regulation. The report shall be drawn up not later than 9 months before the end of the 5-year period of the delegation, running from 12 December 2011. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

**2. Exercise of the delegation**

Article 51(2) of the Food Information Regulation empowers the Commission to adopt delegated acts referred to in Article 9(3), Article 10(2), Article 12(3), Article 13(4), Article 18(5), Article 19(2), Article 21(2), Article 23(2), Article 30(6), Article 31(2), Article 36(4) and Article 46 of that Regulation.

Since the entry into force of the Food Information Regulation, the Commission has adopted three delegated acts:

(a) a Commission Delegated Regulation[[2]](#footnote-2) amending the Food Information Regulation in accordance with Article 36(4) as regards the information on the absence or reduced presence of gluten in food:

 The objective of this legal act was to provide a basis for framing voluntary food information regarding the absence or reduced presence of gluten in food. Under the previous Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses[[3]](#footnote-3), the provision of such information, particularly of the statements relating to "gluten free" or "very low gluten", had been regulated by Commission Regulation (EC) No 41/2009 of 20 January 2009 concerning the composition and labelling of foodstuffs suitable for people intolerant to gluten[[4]](#footnote-4). As provided in recital 41 of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control[[5]](#footnote-5), with the repeal of Directive 2009/39/EC and Commission Regulation (EC) No 41/2009 as of 20 July 2016, the rules on information on absence or reduced presence of gluten in food were to be transferred under the Food Information Regulation. Commission Delegated Regulation (EU) No 1155/2013 allowed for this transfer, while the actual details for the use of the statements referred to above were then provided for by Commission Implementing Regulation (EU) 828/2014[[6]](#footnote-6).

(b) a Commission Delegated Regulation[[7]](#footnote-7) amending Annexes II and III to the Food Information Regulation as regards certain cereals causing allergies or intolerances and foods with added phytosterols, phytosterol esters, phytostanols or phytostanol esters:

 This legal act was adopted on the basis of Articles 10(2) and 21(2) of the Food Information Regulation with two objectives: firstly, on the basis of Article 21(2) of the Food Information Regulation, obliging the Commission to re-examine the list of substances or products causing allergies or intolerances in order to ensure better consumer information, the list of such substances or products in Annex II to the Regulation was updated; the reference to cereals containing gluten, namely wheat, was modified to include spelt as a variety of wheat and to replace the indication "kamut" which refers to a registered trademark with the actual special variety name "Khorasan". Secondly, on the basis of Article 10(2) of the Food Information Regulation, allowing for amendments to the list of specific labelling obligations for particular foods in the interest of the protection of consumers' health or the safe use of a food, Annex III to the Food Information Regulation was amended: in order to ensure that foods with added phytosterols, phytosterol esters, phytostanols or phytostanol esters reach the target group of consumers who need to control their blood cholesterol level, an appropriate indication to be provided on the labelling of such foods was introduced.

(c) a Commission Delegated Regulation on the definition of engineered nanomaterials:

 Article 18(5) of the Food Information Regulation obliges the Commission to adjust and adapt the definition of engineered nanomaterials which was originally laid down in point (t) of Article 2(2) of the Regulation to technical or scientific progress or to definitions agreed at international level. On this basis, the Commission adopted on 12 December 2013 a Commission Delegated Regulation amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as regards the definition of "engineered nanomaterials"' and notified this legal act to the European Parliament and to the Council the same day.[[8]](#footnote-8)

 On 12 March 2014, the European Parliament adopted a Resolution objecting to the Delegated Regulation considering that the Commission, by excluding certain food additives from the scope of the definition, exceeded its delegated powers[[9]](#footnote-9).

 Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001[[10]](#footnote-10), which will become applicable from 1 January 2018, takes over the definition of “engineered nanomaterials” as currently laid down in the Food Information Regulation. Accordingly, the definition of engineered nanomaterial, along with the related conferral of delegated powers to the Commission, is to be deleted from the Food Information Regulation and replaced by a reference to the definition set out in the Regulation.[[11]](#footnote-11)

The Food Information Regulation provides for further delegated powers. However, so far, the Commission has not yet invoked other legal bases[[12]](#footnote-12) for adopting delegated acts under the Food Information Regulation. It is important to note that the Regulation has only applied since 13 December 2014, with some provisions only applicable as of 13 December 2016. More specifically:

(a) Under Article 13(4) of the Food Information Regulation, the Commission shall establish rules for the legibility of the mandatory particulars which have to be indicated, usually on the label, in relation to a particular foodstuff. In this respect, further experience on the practical application of the new rules needs to be gathered before proceeding with the preparation of a delegated act in relation to legibility.

(b) Article 21(2) of the Food Information Regulation obliges the Commission to systematically re-examine and, where necessary, update the list of substances or products causing allergies or intolerances laid down in Annex II to the Regulation. In accordance with this provision, the Commission continuously assesses the need for any further modification to the list in Annex II.

(c) Article 9(3), Article 12(3), Article 19(2), Article 23(2), Article 30(6), Article 31(2) and Article 46 of the Food Information Regulation enable the Commission to establish further details on various technical aspects of the Regulation. Since the entire Regulation will only apply as from 13 December 2016, there is a need to further examine consumer perception, before decisions on the appropriate use of those delegated powers can be taken.

**3. Conclusion**

The Food Information Regulation has applied for a period of just over one year and it is not yet applicable in its entirety. So far, the Commission has adopted delegated acts on the absence or reduced presence of gluten in food and as regards certain cereals causing allergies or intolerances and foods with added phytosterols and phytostanols or their esters. A delegated act on the definition of engineered nanomaterials was rejected by the European Parliament.

1. OJ L 304, 22.11.2011, p. 18. [↑](#footnote-ref-1)
2. Commission Delegated Regulation (EU) No 1155/2013 of 21 August 2013 amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as regards information on the absence or reduced presence of gluten in food, OJ L 306, 16.11.2013, p. 7 – for further information cf. also the explanatory memorandum. [↑](#footnote-ref-2)
3. OJ L 124, 20.5.2009, p. 21. [↑](#footnote-ref-3)
4. OJ L 16, 21.1.2009, p. 3. [↑](#footnote-ref-4)
5. OJ L 181, 29.6.2013, p.35. [↑](#footnote-ref-5)
6. Commission Implementing Regulation (EU) 828/2014 of 30 July 2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food, OJ L 228, 31.7.2014, p. 5. [↑](#footnote-ref-6)
7. Commission Delegated Regulation (EU) No 78/2014 of 22 November 2013 amending Annexes II and III to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards certain cereals causing allergies or intolerances and foods with added phytosterols, phytosterol esters, phytostanols or phytostanol esters, OJ L 27, 30.1.2014, p. 7– for further information cf. also the explanatory memorandum. [↑](#footnote-ref-7)
8. C(2013)8887 final. [↑](#footnote-ref-8)
9. B7‑0185/2014 - C(2013)08887 - 2013/2997(DEA). [↑](#footnote-ref-9)
10. OJ L 327, 11.12.2015, p. 1. [↑](#footnote-ref-10)
11. See Recital 10, Article 3(2)(f) and Article 31 of Regulation (EU) 2015/2283. [↑](#footnote-ref-11)
12. Article 9(3), Article 12(3), Article 13(4), Article 19(2), Article 21(2) – with respect to other substances or products, Article 23(2), Article 30(6), Article 31(2) and Article 46 of the Food Information Regulation. [↑](#footnote-ref-12)