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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/1626

of 19 April 2023

on amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/1229 as regards the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 ⁽¹⁾, and in particular Article 7(15), third subparagraph, thereof,

Whereas:

- (1) Pursuant to Article 7(11) of Regulation (EU) 909/2014, the cash penalties regime is not to apply to failing participants which are CCPs.
- (2) Article 19 of Commission Delegated Regulation (EU) 2018/1229 ⁽²⁾ as currently applicable provides for a specific mechanism on the collection and distribution by CCPs of cash penalties ('penalty mechanism') to ensure that, in respect of settlement fails relating to cleared transactions, where CCPs interpose themselves between counterparties, cash penalties are not applied to CCPs.
- (3) However, due to the multiplicity of parties involved, the application of the penalty mechanism by CCPs adds operational risks, technical complexities and costs to the process of collecting and distributing cash penalties for settlement fails relating to cleared transactions. Penalties for settlement fails relating to cleared transactions could be fully calculated, applied, collected and redistributed by CSDs, from and to all the participants identified in the settlement instructions submitted by CCPs, in accordance with Articles 16, 17 and 18 of Delegated Regulation (EU) 2018/1229, as any other penalties for settlement fails relating to uncleared transactions.
- (4) Pursuant to Article 2(19) of Regulation (EU) No 909/2014, any institution, central counterparty, settlement agent, clearing house, system operator or clearing member of a CCP may qualify as a participant.

⁽¹⁾ OJ L 257, 28.8.2014, p. 1

⁽²⁾ Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p. 1).

- (5) To facilitate the calculation, collection and distribution of the cash penalties for fails of settlement instructions relating to cleared transactions submitted by CCPs, while at the same time reducing the risks and the cost related to such process, CSDs should calculate, collect from and distribute to their relevant participants, pursuant to Articles 16, 17 and 18 of Delegated Regulation (EU) 2018/1229, the cash penalties relating to settlement instructions submitted by CCPs for cleared transactions.
- (6) Where CCPs interpose themselves between counterparties, the net amount of penalties that CSDs have to collect and distribute in relation to settlement instructions submitted by a CCP would normally amount to zero since the settlement instructions submitted by the CCP represent both legs of the cleared transactions. However, in certain cases such as a late delivery of securities to a CCP on the intended settlement date which does not allow for the settlement of the delivery instructions from the CCP, or in cases of differences in the penalties calculated by different CSDs, imbalanced positions in respect of cleared transactions may remain in the books of the CCPs and the net amount of penalties to be collected from, or distributed to, CCPs can be different from zero. In such cases, the CCPs should be allowed to allocate to their clearing members the remaining net amount of penalties, credit or debit. CCPs should establish an appropriate mechanism in their rules to that effect.
- (7) Delegated Regulation (EU) 2018/1229 should therefore be amended accordingly.
- (8) To ensure that the calculation of penalties for settlement fails that occur before the date of application of this Regulation is not retroactively affected, it is appropriate to include transitional provisions.
- (9) To enable CCPs and CSDs to implement the necessary technological adaptations in view of ensuring compliance with the amended penalty mechanism, it is appropriate to defer the application of this Regulation.
- (10) This Regulation is based on the draft regulatory technical standards developed in close cooperation with the members of the European System of Central Banks and submitted to the Commission by the European Securities and Markets Authority.
- (11) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2018/1229

Article 19 of Delegated Regulation (EU) 2018/1229 is replaced by the following:

'Article 19

Penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement

With respect to settlement fails relating to cleared transactions submitted by CCPs for settlement, CSDs shall apply Articles 16, 17 and 18.

CCPs may allocate to their clearing members any remaining net amount of penalties, credit or debit, paid pursuant to Article 16 and distributed pursuant to Article 17(2).

CCPs shall establish an appropriate mechanism in their rules to that effect.'

⁽³⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

*Article 2***Transitional provision**

Article 19 of Delegated Regulation (EU) 2018/1229 as applicable on 1 September 2024 shall continue to apply to settlement fails that occurred before 2 September 2024.

*Article 3***Entry into force and application**

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

It shall apply from 2 September 2024.

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

Done at Brussels, 19 April 2023.

For the Commission

The President

Ursula VON DER LEYEN

COMMISSION REGULATION (EU) 2023/1627**of 10 August 2023****amending Annex I to Regulation (EU) No 10/2011 as regards the authorisation of the substance bis(2-ethylhexyl)cyclohexane-1,4-dicarboxylate (FCM No 1079)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁾, and in particular Article 5(1), second subparagraph, points (a), (e), and (i), and Article 11(3) thereof,

Whereas:

- (1) Commission Regulation (EU) No 10/2011 ⁽²⁾ lays down specific rules as regards plastic materials and articles intended to come into contact with food. In particular, Annex I to that Regulation establishes a Union list of authorised substances that may be intentionally used in the manufacture of plastic materials and articles intended to come into contact with food.
- (2) On 11 December 2019, the European Food Safety Authority ('the Authority') adopted a favourable scientific opinion ⁽³⁾ on the use of the substance bis(2-ethylhexyl)cyclohexane-1,4-dicarboxylate ('DEHCH', CAS No 84731-70-4, FCM No 1079), as an additive (plasticiser) in poly(vinyl chloride) (PVC) at up to 25 % w/w in contact with aqueous, acidic and low-alcohol foods for long-term storage at room temperature or below (refrigerated and frozen). Furthermore, based on a scientific study provided to the Authority, the Authority concluded that the substance does not raise a genotoxicity concern and noted that no adverse effects were observed up to the highest tested dose of 1 000 mg/kg body weight (bw) per day in repeated dose toxicity studies. However, given uncertainty on the potential for accumulation of the substance in humans, it concluded that the migration of the substance should not exceed 0,05 mg/kg food, and the substance should only be used in PVC in contact with foods, for which simulants A (10 % ethanol) and B (3 % acetic acid) are assigned, at room temperature or below.
- (3) Therefore, it is appropriate to authorise the substance bis(2-ethylhexyl)cyclohexane-1,4-dicarboxylate.
- (4) Regulation (EU) No 10/2011 should be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 338, 13.11.2004, p. 4.

⁽²⁾ Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food (OJ L 12, 15.1.2011, p. 1).

⁽³⁾ EFSA Journal 2020; 18(1):5973.

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 10/2011 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 10 August 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In Annex I to Regulation (EU) No 10/2011, the following entry is inserted in numerical order:

'1079		84731-70-4	bis(2-ethylhexyl) cyclohexane-1,4-dicarboxylate (DEHCH)	yes	no	no	0,05		Only to be used as an additive in poly(vinyl chloride) (PVC) at up to 25 % w/w in contact at room temperature or below with foods for which food simulants A or B are assigned in Table 2 of Annex III.'	
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DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2023/1628

of 10 August 2023

rejecting an application for protection of a geographical indication in accordance with Article 52(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council

(‘Лідський квас/Lidski kvas’ (PGI))

(notified under document C(2023) 5371)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to 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⁽¹⁾, and in particular Article 52(1) thereof,

Whereas:

- (1) In accordance with Article 50 of Regulation (EU) No 1151/2012, the Commission has examined the application for registration of the names ‘Лідський квас/Lidski kvas’ as protected geographical indication (PGI). The application refers to a fermented beverage produced in the city of Lida in Belarus and was submitted by the Joint-Stock Company ‘Lidskoe Pivo’ from Belarus on 21 July 2021 (PGI-BY-02788).
- (2) Following the scrutiny, the Commission sent a letter requesting clarification of some of the aspects of the file. In particular, taking into account that water for the production of the ‘Лідський квас/Лідскі квас’ has to come from particular springs located on land owned by the applicant, and production of the product is carried out according to a ‘separate unique technological instruction’, as stated in the product specification, (the owner and sole user of which is the applicant) the applicant was asked to explain if the participation of other producers is possible in accordance with the principles of Geographical Indications scheme in the EU.
- (3) Moreover, the Commission explained that a single natural or legal person may be treated as a group when filing an application, where it is shown that both of the conditions of Article 49(1), second subparagraph, of Regulation (EU) No 1151/2012 are fulfilled: (a) the person concerned is the only producer willing to submit an application; and (b) with regard to protected geographical indications, the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas or the characteristics of the product are different from those produced in neighbouring areas. The applicant was asked to provide such justifications.
- (4) In the reply the applicant provided an updated Single Document and product Specification, according to which the Joint-Stock Company ‘Lidskoe Pivo’ is the only owner and operator of the wells that must be used for production of ‘Лідський квас/Lidski kvas’ and that the entire production process is carried out on the territory of city of Lida by the applicant and according to a ‘separate unique technological instruction’, the owner and sole user of which is the applicant.

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

- (5) On the basis of the information provided, the Commission concluded that the application does not fulfil the requirements laid down in Regulation (EU) No 1151/2012 and informed the applicant in the rejection letter that, if no observations have been received within two months of receipt of the letter, it intends to launch the procedure for the adoption of a formal Commission decision rejecting the application pursuant to Article 52(1) of Regulation (EU) No 1151/2012.
- (6) The Commission took into account that the system of GIs has been developed and designed in order to allow producers, of a certain area and whose product differentiates itself from any other product on the market due to the natural/social environment in which it has been produced, to protect their products.
- (7) The Commission considered that protected geographical indications confer, unlike individual trademarks, collective rights and contrary to trade marks owned by clearly identifiable holders, GIs are deemed to be owned by a collective abstract community, that comprises all producers, -current or potential-, abiding to the related specification. This means that any producer who respects the requirements of the product specification may use the protected designation.
- (8) The Commission concluded that the participation of other producers is clearly not possible in case of 'Лидский квас/Lidski kvas', where the applicant is the only owner and operator of the wells that must be used for production of the product in question.
- (9) Moreover, the Commission took into account that, the owner and sole user of the 'separate unique technological instruction', according to which the product is produced, is the applicant. Therefore, the product characteristics are not attributable to its geographical origin as required by Article 5(2) of Regulation (EU) No 1151/2012 but to 'special production method', as described by the applicant, that is in the exclusive possession of the applicant. The production techniques are described in a general way by listing merely the production steps, without providing any details that would allow participation of other potential producers.
- (10) Further, Article 49(1) of Regulation (EU) No 1151/2012 provides that applications for the protection of GIs should be submitted by a group of producers, as a rule. Only where the additional conditions of Article 49(1), second subparagraph are fulfilled, may a single producer apply for such protection. The Commission noted that the applicant did not provide any justification in this regard.
- (11) The applicant did not reply to the rejection letter sent by the Commission within the set deadline.
- (12) In the light of the above the Commission considers that the application for registration 'Лидский квас/Lidski kvas' as PGI does not fulfil the requirements of the Regulation (EU) No 1151/2012, namely Article 5(2) and Article 49(1) of the said Regulation.
- (13) The application for protection of the name 'Лидский квас/Lidski kvas' as a protected geographical indication should therefore be rejected.
- (14) The measures provided for in this Decision are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS DECISION:

Article 1

The application for registration of the name 'Лидский квас/Lidski kvas' is rejected.

Article 2

This Decision is addressed to the legal representative of the applicant:

EUROMARKPAT GERMANY
v.Füner Ebbinghaus Finck Hano

European Patent, Trademark and Design Attorneys
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81541 München
Germany

Done at Brussels, 10 August 2023.

For the Commission
Janusz WOJCIECHOWSKI
Member of the Commission

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