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From:	Secretary-General of the European Commission, signed by Ms Marianne KLINGBEIL f.f., Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION REGULATION (EU) No .../.. of XXX granting derogation from certain provisions of Annex II to Regulation (EC) No 852/2004 as regards the transport of liquid oils and fats by sea

Delegations will find attached document D030733/03.

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[...](2013) **XXX** draft

COMMISSION REGULATION (EU) No .../..

of **XXX**

**granting derogation from certain provisions of Annex II to Regulation (EC) No 852/2004
as regards the transport of liquid oils and fats by sea**

(Text with EEA relevance)

COMMISSION REGULATION (EU) No .../..

of XXX

**granting derogation from certain provisions of Annex II to Regulation (EC) No 852/2004
as regards the transport of liquid oils and fats by sea**

(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 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs¹, and in particular Article 13(2) thereof,

Whereas:

- (1) Regulation (EC) No 852/2004 provides that food business operators are to comply with the general hygiene requirements for the transport of foodstuffs set out in Chapter IV of Annex II to that Regulation. Point 4 of that Chapter requires that bulk foodstuffs in liquid, granulate or powdered form be transported in receptacles and/or containers/tankers reserved for the transport of foodstuffs. However, that requirement is not practical and imposes an unduly onerous burden on food business operators when applied to the transport in seagoing vessels of liquid oils and fats intended for, or likely to be used for, human consumption. In addition, the availability of seagoing vessels reserved for the transport of foodstuffs is insufficient to serve the continuing trade in such oils and fats.
- (2) Commission Directive 96/3/EC² permits the transport by sea of bulk liquid oils and fats in tanks which have been previously used to transport the substances listed in the Annex thereto, subject to certain conditions which ensure the protection of public health and the safety and wholesomeness of the foodstuffs concerned.
- (3) In view of the discussion in Codex Alimentarius leading to the adoption of criteria to be used to determine the acceptability of previous cargoes for bulk edible liquid oils and fats transported by sea³ and at the Commission's request, the European Food Safety Authority (EFSA) assessed the criteria for acceptable previous cargoes for

¹ OJ L 139, 30.4.2004, p. 1.

² Commission Directive 96/3/EC of 26 January 1996 granting a derogation from certain provisions of Council Directive 93/43/EEC on the hygiene of foodstuffs as regards the transport of bulk liquid oils and fats by sea (OJ L 21, 27.1.1996, p. 42).

³ Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Thirty-fourth Session, International Conference Centre, Geneva, Switzerland, 4 to 9 July 2011, REP11/CAC, Para. 45-46.

edible fats and oils and adopted a scientific opinion on the review of the criteria for acceptable previous cargoes for edible fats and oils⁴.

- (4) At the Commission's request, the EFSA also evaluated a list of substances taking into account those criteria. The EFSA has adopted several scientific opinions on the evaluation of the substances on their acceptability as previous cargoes for edible fats and oils^{5 6 7 8}.
- (5) In the interests of clarity of Union legislation and to take into account the outcome of the EFSA scientific opinions, Directive 96/3/EC should be repealed and replaced by this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1
Derogation

By way of derogation to point 4 of Chapter IV of Annex II to Regulation (EC) No 852/2004, liquid oils or fats which are intended for or likely to be used for human consumption ('oils or fats') may be transported in seagoing vessels which are not reserved for the transport of foodstuffs subject to compliance with the conditions laid down in Articles 2 and 3 of this Regulation.

Article 2
Conditions for derogation

1. The freight carried preceding the oils and fats in the same equipment in a seagoing vessel (hereafter called the "previous cargo") shall consist of a substance or a mixture of substances listed in the annex to this Regulation.
2. The bulk transport in seagoing vessels of liquid oils or fats which are to be processed shall be permitted in tanks that are not exclusively reserved for the transport of foodstuffs, subject to the following conditions:

⁴ Scientific Opinion of the Panel on Contaminants in the Food Chain on a request from the European Commission on the review of the criteria for acceptable previous cargoes for edible fats and oils. EFSA Journal (2009) 1110, 1-21.

⁵ EFSA Panel on Contaminants in the Food Chain (CONTAM); Scientific Opinion on the evaluation of substances as acceptable previous cargoes for edible fats and oils. EFSA Journal 2009; 7(11):1391.

⁶ EFSA Panel on Contaminants in the Food Chain (CONTAM); Scientific Opinion on the evaluation of the substances currently on the list in the annex to Commission Directive 96/3/EC as acceptable previous cargoes for edible fats and oils, Part I of III. EFSA Journal 2011; 9(12):2482.

⁷ EFSA Panel on Contaminants in the Food Chain (CONTAM); Scientific Opinion on the evaluation of the substances currently on the list in the annex to Commission Directive 1996/3/EC as acceptable previous cargoes for edible fats and oils, Part II of III. EFSA Journal 2012; 10(5):2703.

⁸ EFSA Panel on Contaminants in the Food Chain (CONTAM); Scientific Opinion on the evaluation of the substances currently on the list in the annex to Commission Directive 96/3/EC as acceptable previous cargoes for edible fats and oils, Part III of III. EFSA Journal 2012; 10(12):2984.

- (a) where the oils or fats are transported in a stainless steel tank, or tank lined with epoxy resin or technical equivalent, the immediately previous cargo shall have been:
 - (i) a foodstuff; or
 - (ii) a cargo from the list of acceptable previous cargoes set out in the Annex;

or

 - (b) where the oils or fats are transported in a tank made of materials other than those referred to in point (a), the three previous cargoes transported in the tank shall have been:
 - (i) foodstuffs; or
 - (ii) a cargo from the list of acceptable previous cargoes set out in the Annex.
3. The bulk transport in seagoing vessels of oils or fats which are not to be further processed shall be permitted in tanks that are not exclusively reserved for the transport of foodstuffs, subject to the following conditions:
- (a) the tank shall be:
 - (i) of stainless steel; or
 - (ii) lined with epoxy resin or technical equivalent;
- and
- (b) the three previous cargoes transported in the tank shall have been foodstuffs.

Article 3
Record keeping

1. The captain of the seagoing vessel transporting, in tanks, bulk oils and fats shall keep accurate documentary evidence relating to the three preceding cargoes carried in the tanks concerned, and the effectiveness of the cleaning process applied between those cargoes.
2. Where the cargo has been transhipped, in addition to the documentary evidence required in paragraph 1, the captain of the receiving seagoing vessel shall keep accurate documentary evidence that the transport of the bulk oils or fats complied with the conditions laid down in Article 2 during the previous shipment and of the effectiveness of the cleaning process used between those cargoes on the other vessel.
3. Upon request, the captain of the seagoing vessel shall provide the competent authority with the documentary evidence provided for in paragraphs 1 and 2.

Article 4
Repeal

Directive 96/3/EC is repealed.

Article 5

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,

For the Commission
The President
José Manuel BARROSO