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## TEXTS ADOPTED

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### **P9\_TA(2024)0040**

#### **Implementation report on Regulation (EC) No 1924/2006 on nutrition and health claims made on foods**

**European Parliament resolution of 18 January 2024 on the implementation of Regulation (EC) No 1924/2006 on nutrition and health claims made on foods (2023/2081(INI))**

*The European Parliament,*

- having regard to Articles 168 and 169 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods<sup>1</sup>,
- having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>2</sup>,
- having regard to 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<sup>3</sup>,
- having regard to Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements<sup>4</sup>,

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<sup>1</sup> OJ L 404, 30.12.2006, p. 9.

<sup>2</sup> OJ L 31, 1.2.2002, p. 1.

<sup>3</sup> OJ L 304, 22.11.2011, p. 18.

<sup>4</sup> OJ L 183, 12.7.2002, p. 51.

- having regard to Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods<sup>1</sup>,
- having regard to 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 and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009<sup>2</sup>,
- having regard to Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)<sup>3</sup>,
- having regard to Regulation (EU) 2021/522 of the European Parliament and of the Council of 24 March 2021 establishing a Programme for the Union’s action in the field of health (‘EU4Health Programme’) for the period 2021-2027, and repealing Regulation (EU) No 282/2014<sup>4</sup>,
- having regard to its resolution of 20 October 2021 on a farm to fork strategy for a fair, healthy and environmentally-friendly food system<sup>5</sup>,
- having regard to the Commission communication of 20 May 2020 entitled ‘A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system’ (COM(2020)0381),
- having regard to the Commission staff working document of 20 May 2020 entitled ‘Executive summary of the evaluation of the Regulation (EC) No 1924/2006 on nutrition and health claims made on foods with regard to nutrient profiles and health claims made on plants and their preparations and of the general regulatory framework for their use in foods’ (SWD(2020)0096),
- having regard to the scientific opinion of the European Food Safety Authority (EFSA) of 15 December 2021 entitled ‘Tolerable upper intake level for dietary sugars’<sup>6</sup>,
- having regard to the 2022 WHO publication entitled ‘Nutrition labelling: policy brief’<sup>7</sup>,

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<sup>1</sup> OJ L 404, 30.12.2006, p. 26.

<sup>2</sup> OJ L 181, 29.6.2013, p. 35.

<sup>3</sup> OJ L 277, 27.10.2022, p. 1.

<sup>4</sup> OJ L 107, 26.3.2021, p. 1.

<sup>5</sup> OJ C 184, 5.5.2022, p. 2.

<sup>6</sup> European Food Safety Authority, ‘Tolerable upper intake level for dietary sugars’, *EFSA Journal*, Volume 20, Issue 2, European Food Safety Authority, 15 December 2021.

<sup>7</sup> World Health Organization, *Nutrition labelling: policy brief*, World Health Organization, Geneva, 2022.

- having regard to the 2019 WHO publication entitled ‘Guiding principles and framework manual for front-of-pack labelling for promoting healthy diets’<sup>1</sup>,
  - having regard to the third UN Sustainable Development Goal, which is to ensure healthy lives and promote well-being for all at all ages,
  - having regard to the UNICEF publication of December 2013 entitled ‘Children’s rights in impact assessments – A guide for integrating children’s rights into impact assessments and taking action for children’<sup>2</sup>,
  - having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A9-0416/2023),
- A. whereas Regulation (EC) No 1924/2006 (the Nutrition and Health Claims Regulation, or NHCR) was introduced with the objective of ensuring the highest level of consumer protection possible and facilitating consumers’ choices; whereas the NHCR applies to voluntary nutrition and health claims on foods in all commercial communications, including in labelling and advertising, as well as communications to health professionals<sup>3</sup>; whereas the Commission approves health claims that are grounded in scientific evidence and comprehensible to consumers, following a scientific assessment of the claims by EFSA;
- B. whereas claims can be categorised as ‘function health claims’, ‘risk reduction claims’ or ‘claims referring to children’s development’; whereas in July 2023, 269 health claims were authorised for use in the EU; whereas claims referring to children’s development and health in the labelling of foods may be authorised in accordance with the procedures and requirements laid down by the NHCR;
- C. whereas at least 18 % of new products entering the EU food and drink market carry nutrition or health claims, with an estimated quarter of all foods available on the EU market bearing such claims<sup>4</sup>; whereas, as explained in recital 10 of the NHCR, foods promoted with claims may be perceived by consumers as having a nutritional, physiological or other health advantage over similar or other products to which such nutrients and other substances are not added, and this may encourage consumers to make choices that directly influence their total intake of individual nutrients or other substances in a way which would run counter to scientific advice;

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<sup>1</sup> World Health Organization, *Guiding principles and framework manual for front-of-pack labelling for promoting healthy diets*, World Health Organization, Geneva, 2019.

<sup>2</sup> UNICEF, *Children’s rights in impact assessments – A guide for integrating children’s rights into impact assessments and taking action for children*, UNICEF, Geneva, December 2013.

<sup>3</sup> Judgment of the Court of Justice of 14 July 2016, *Verband Sozialer Wettbewerb eV v Innova Vital GmbH*, C-19/15, ECLI:EU:C:2016:563.

<sup>4</sup> European Commission, *Final Report Summary – CLYMBOL (Role of health-related claims and symbols in consumer behaviour)*, 8 March 2017.

- D. whereas under Article 13(3) of the NHCR, the Commission was supposed to adopt a Community list of permitted claims by 31 January 2010 at the latest;
- E. whereas the presence of nutrition or health claims affects consumers' food choices, along with other characteristics such as price, brand, colour and packaging shape; whereas health claims, especially risk reduction claims, have more of an impact on consumers' attitudes than nutrition claims<sup>1</sup>; whereas consumer understanding of nutrition and health claims is influenced by various factors, including nutritional knowledge and education levels, and this should be taken into account so as to facilitate the shift to healthier diets and to stimulate food reformulation; whereas, however, information provision, education and awareness campaigns alone are insufficient to achieve the required change to more sustainable and healthy consumer choices, as these can be influenced by other key elements of food environments, such as affordability, marketing and availability;
- F. whereas the NHCR mandated the Commission to set nutrient profiles for foods or specific food categories by 19 January 2009; whereas nutrient profiles have yet to be set in practice; whereas, in 2020, the Commission evaluation report on the NHCR reaffirmed the need to develop nutrient profiles as a tool to protect consumers from being exposed to health claim-bearing foods with poor nutritional compositions; whereas the Farm to Fork Strategy reaffirmed that nutrient profiles should be set in order to restrict the marketing and promotion of unhealthy foods via nutritional and health claims;
- G. whereas, in its 2021 resolution on the Farm to Fork Strategy, Parliament explicitly welcomed the announcement of a legislative proposal to establish nutrient profiles in order to prohibit the use of nutrition and health claims on foods high in fat, sugar and/or salt or generally unhealthy foods and called for particular attention to be given to food for children and other special purpose foods;
- H. whereas consumers continue to be exposed to positive nutrition or health claims on foods high in fat, salt or sugar, which is incompatible with the objective of high-level consumer protection;
- I. whereas weight problems and obesity are increasing rapidly in most Member States, with more than half of European adults and one in three children being overweight or obese<sup>2</sup>; whereas childhood overweight and obesity are increasing global public health challenges; whereas there is sufficient evidence that childhood obesity is influenced by the marketing of foods that are high in fat, salt and sugar, yet children continue to be exposed to high levels of such marketing, which employs powerful and persuasive techniques, including, increasingly, via digital means;
- J. whereas unhealthy diets that are high in salt, sugar and fat, including saturated fats and trans fats, are a leading risk factor for disease and mortality in Europe and, according to the WHO, cause 8 million premature deaths every year; whereas 1 in 5 deaths in 2017

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<sup>1</sup> Pichierri, M. et al., 'The interplay between health claim type and individual regulatory focus in determining consumers' intentions toward extra-virgin olive oil', *Food Research International*, Volume 136, Article 109467, Elsevier, October 2020.

<sup>2</sup> World Health Organization, *WHO European Regional Obesity Report 2022*, World Health Organization, Geneva, 2022.

was attributable to unhealthy diets, mainly through cardiovascular diseases and cancers; whereas a stronger focus on prevention of disease is needed;

- K. whereas in its resolution of 16 February 2022 on strengthening Europe in the fight against cancer — towards a comprehensive and coordinated strategy<sup>1</sup>, Parliament stressed the role of healthy diets in preventing and limiting the incidence of cancer;
- L. whereas EFSA could not set a safe level of intake for free and added sugars because ‘the risk of adverse health effects (response) increased across the whole range of observed intake levels (doses) in a constant (linear) manner, i.e. the higher the intake, the greater the risk of adverse effects’<sup>2</sup>; whereas the WHO’s International Agency for Research on Cancer has classified the sweetener aspartame as possibly carcinogenic to humans; whereas a systematic review by the WHO suggests that non-sugar sweeteners could be linked to an increased risk of type 2 diabetes, cardiovascular disease, all-cause mortality and increased body weight; whereas healthier diets that include increased consumption of plant-based foods, such as fresh fruits and vegetables, whole grains and legumes, and avoid overconsumption of meat and ultra-processed products contribute to improved health, reduce mortality from diet-related non-communicable diseases and bring environmental benefits;
- M. whereas effective information tools, such as front-of-pack nutritional labels, support citizens in making healthier food choices and avoiding unhealthy consumption of food high in salt, fat and sugar; whereas Parliament supported the adoption of such a label in its own-initiative resolution of 20 October 2021 on the Farm to Fork strategy, in which it called on the Commission to ensure the development of mandatory and harmonised EU front-of-pack nutritional labelling based on scientific evidence and demonstrated consumer understanding in order to support the provision of accurate information about foods and healthier alternatives;
- N. whereas in 2012, the Commission established an ‘on-hold’ list of 2 078 health claims relating to plant substances, mainly due to the absence of human intervention studies that led to the suspension of the EFSA assessment and authorisation procedure in 2010; whereas the ‘on-hold’ health claims – both those negatively assessed and those not yet reviewed – may still be used on the EU market according to the transitional measures set out in the NHCR, until a decision on the ‘on-hold’ list is taken;
- O. whereas in 2020, the Commission concluded in its evaluation report on the NHCR that consumers continue to be exposed to health claims on botanicals with varying levels of scientific assessment, including unsubstantiated health claims for which they may believe that the stated beneficial effects have been scientifically evaluated when this is not the case;
- P. whereas more coordination on the safety framework for botanicals could contribute to improving consumer protection;
- Q. whereas the legislation on botanicals in foods and food supplements is not harmonised at EU level; whereas Member States either have positive, negative or no lists of

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<sup>1</sup> OJ C 342, 6.9.2022, p. 109.

<sup>2</sup> European Food Safety Authority, *EFSA explains draft scientific opinion on a tolerable upper intake level for dietary sugars*, European Food Safety Authority, 2021.

botanical substances permitted in foods; whereas the classification of botanicals as either food or medicine lies within the competence of each individual Member State; whereas the purpose of a medicinal product is to treat or prevent disease in human beings and food supplements are intended for consumers who do not have immediate medical needs; whereas it is therefore important to maintain a clear distinction between food and medicine;

- R. whereas herbal medicines must undergo authorisation procedures before their introduction to the EU market, necessitating the demonstration of product safety and efficacy and the fulfilment of additional legal requirements in such areas as quality assessments, pharmacovigilance and compliance with good manufacturing practices; whereas herbal medicines that have been safely used for 30 years, including 15 years in the EU, can use a simplified registration procedure for traditional herbal medicinal products, where ‘traditional use’ data is accepted to substantiate the safety and efficacy of the product;
  - S. whereas the enforcement of the NHCR as regards claims on botanicals has been substantially delayed; whereas the NHCR’s objective of ensuring a high level of consumer protection requires swift action from the Commission to either fully enforce or revise the NHCR, as it is not fit for purpose in certain respects;
  - T. whereas Member States are responsible for enforcing the NHCR within their jurisdictions; whereas Member States are obliged to apply the principle of mutual recognition; whereas, due to interpretation differences and enforcement discrepancies between Member States, enforcement actions following the incorrect use of claims vary, ranging from advice on how to adjust claims to fines for their improper use;
  - U. whereas social media significantly contributes to the advertising and sale of foods and food supplements, while the extent to which the NHCR regulates health-related online communications about foods remains unclear; whereas influencer or celebrity communications on social media are not always clearly commercial or non-commercial<sup>1</sup> and can lead to unverified false and misleading claims on food products, for example with regard to the advertisement of protein and other supplements to enhance muscle growth;
1. Notes that the NHCR’s main objective is to ensure that claims on foods are based on generally accepted scientific evidence and can be expected to be understood by the average consumer; underlines that, in practice, misleading claims are still reported in both online and offline sales of food;
  2. Points out an increasing consumer interest in food information<sup>2</sup>; stresses the need to ensure that information about the nutritional or health values of foods appearing on labels and being used for presentation, marketing and advertising purposes is accurate, science-based and meaningful; calls for the list of authorised nutrition and health claims

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<sup>1</sup> Ashwell, M. et al., ‘Nature of the evidence base and strengths, challenges and recommendations in the area of nutrition and health claims: a position paper from the Academy of Nutrition Sciences’, *British Journal of Nutrition*, Volume 130, Issue 2, 28 July 2023, pp. 221-238.

<sup>2</sup> European Union, ‘Eurobarometer – Making our food fit for the future – new trends and challenges’, October 2020.

on food to be updated regularly, in line with scientific developments in the fields of food and nutrition;

3. Stresses the need to ensure that health claims remain aligned with EU health policies and priorities; reaffirms the importance of the Commission's discretion to not authorise claims when they could result in conflicting and confusing messages being conveyed to consumers<sup>1</sup>;

### ***Consideration of nutrient profiles in health claim assessments***

4. Recalls that under Article 4 of the NHCR, the Commission should have established nutrient profiles to restrict the use of nutrition and health claims on foods high in fat, sugar and/or salt by 19 January 2009; regrets the fact that the Commission proposal on nutrient profiles has not yet been submitted, despite being planned for 2022 as part of a revision of EU legislation on food information to consumers; insists that setting nutrient profiles with specific nutrient thresholds for the use of health and nutrition claims, in accordance with Article 4 of the NHCR, remains pertinent and necessary to meet the objectives of the NHCR;
5. Recalls that claims should not mislead consumers about the true nutrient value of a product; highlights that, in the absence of nutrient profiles, claims can stress a positive aspect of an overall unhealthy product or a product that exceeds the thresholds for specific nutrients, such as fat, sugar and salt; points out that many food products, including some marketed towards children, continue to use health and nutrition claims despite containing high levels of nutrients of concern; underlines that the development of specific nutrient profiles, as provided for in Article 4 of the NHCR and in line with the objectives of the NHCR, is necessary to limit the use of nutrition and health claims on foods high in fat, sugar and/or salt; underlines that the future nutrient profiles, which should be based on robust and independent scientific evidence, could help consumers to make informed, healthy and sustainable choices about food products;
6. Regrets the lack of a systematic and evidence-based approach to creating food environments that help consumers to make informed choices and that stimulate a shift towards healthier diets, including increased consumption of plant-based foods, such as fresh fruits and vegetables, whole grains and legumes; considers that, in addition to implementing the NHCR correctly, the Commission and the Member States should invest more in food and nutrition education, such as information campaigns, through different programmes, including EU4Health, notably by supporting actions in schools with a view to teaching children and adolescents about healthy and balanced diets; highlights the influence of social determinants in consumers' literacy with regard to claims on food; points out that information provision, education and awareness campaigns alone are insufficient to ensure informed consumer choices and need to be accompanied by policies that improve food environments;

### ***Consumer information***

7. Highlights that consumers tend to overconsume food products bearing claims that they promote better health, which is known as the 'halo effect'; advocates for the inclusion

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<sup>1</sup> Judgment of the Court of Justice of 8 June 2017, *Dextro Energy GmbH & Co. KG v European Commission*, C-296/16, ECLI:EU:C:2017:437.

of both minimum and maximum usage thresholds on the product labels of all foods and food supplements bearing health claims, along with a recommendation to consult a healthcare professional before consuming food supplements in particular, in order to avoid potential adverse interactions with specific treatments and to avoid reinforcing potential eating disorders; highlights that information asymmetry is expected to persist, in a fast-changing food environment and calls for the funding of research into consumer understanding of claims;

8. Regrets the delay of the proposal for a revision of Regulation (EU) No 1169/2011 on the provision of food information to consumers with regard to the development of front-of-pack nutrition labels, which have been shown to effectively help consumers to make healthier food and beverage choices; asks the Commission and the Member States to encourage and help consumers to make informed, healthy and sustainable choices about food products by adopting, as soon as possible, a mandatory and harmonised EU front-of-pack nutritional label that is developed based on robust, independent scientific evidence and demonstrated consumer understanding; notes that studies show that the effects of food on health cannot be explained only by the nutritional composition, but also by the level of processing, particularly in the case of ultra-processed foods; stresses, therefore, that including information about the processing of food on interpretive front-of-pack nutritional labels might be in the interest of public health and consumers and might prove effective in helping consumers to make healthier food choices; calls for regulatory measures to reduce the burden that highly processed foods place on public health;

### ***Relevance of claims***

9. Notes that many of the claims used on the EU market are for nutrients that very few European consumers lack in their diets; calls on the Commission to examine the legislative potential for extending EFSA's remit to include assessing the relevance of the use of such claims, in addition to examining the scientific basis for such claims; strongly supports the ongoing publication by EFSA of specific guidelines according to the use of a claim;
10. Calls on the Commission to evaluate the possibility of restricting the use of the permitted nutrition claim 'no added sugar' for products containing sweeteners or high levels of free sugars;
11. Highlights that even when claims on infant formula are scientifically substantiated, such as the health claim 'DHA intake contributes to the normal visual development of infants up to 12 months of age', their use should avoid influencing infant feeding choices and limiting improvements in infant formula<sup>1</sup>;

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<sup>1</sup> Munblit, D. et al., 'Health and nutrition claims for infant formula are poorly substantiated and potentially harmful', *British Medical Journal*, Volume 369, Article m875, 2020, and Cheung, K.Y., et al., 'Health and nutrition claims for infant formula: international cross sectional survey', *British Medical Journal*, Volume 380, Issue 8371, 2023.



12. Supports the establishment of prior consultations between manufacturers and EFSA to enable EFSA to present its expectations in the context of submitting their claim request, while respecting the principle of EFSA's independence;

### ***Botanicals***

13. Points out that the lack of harmonisation at EU level concerning the classification of botanical substances as either food or medicine means that a plant substance can be labelled as 'food' in one Member State and as 'medicine' in another; underlines that such inconsistencies pose challenges to manufacturers and regulators and have the potential to negatively affect the safety and well-being of consumers, as it is difficult for consumers to distinguish between traditional herbal medicines and botanical food supplements based on the same plant substance(s), which can lead to misunderstandings about their use;
14. Points out the absence of an EU positive or negative list of botanical substances used in foods and food supplements, as well as the absence of a comprehensive list of beneficial or adverse health effects of botanicals, resulting in legislative disparities among the Member States, market fragmentation and potentially unsafe products reaching consumers;
15. Disapproves of the continued suspension of the evaluation of claims on botanicals and points out that there are significant legal concerns about the continued use of the 'on-hold' claims under the transitional measures of the NHCR; highlights the imperative need to address the 'on-hold' list of claims on botanicals by further evaluating these claims as an urgently required measure for consumer protection, as identified by the 2020 Commission evaluation report on the NHCR; is very concerned that the continued use of the 'on-hold' claims under the transitional measures of the NHCR could mislead consumers and constitute a health risk for them, as they may falsely assume that the 'on-hold' claims have been scientifically assessed and the risk managed;
16. Considers it essential for EFSA and the Commission to promptly review, in line with the provisions of the NHCR, the 'on-hold' health claims related to botanicals in foods; calls on the Commission to reject those claims from the 'on-hold' list that have already been assessed negatively;
17. Urges the Member States to collaborate effectively on establishing a coordinated approach on botanical food supplements and calls on the Commission to provide guidance in this regard; calls on the Commission and the Member States to establish, without delay, an EU-level negative list of botanicals used in food, basing this on their toxicity or adverse health effects already identified in Member States;

### ***Enforcement***

18. Calls on the Commission to provide updated guidance on how to deal with marketing practices that are used to circumvent the NHCR;
19. Calls for the Commission and the Member States to set up a knowledge network aimed at supporting the working group on nutrition and health claims; points out that this network should help to facilitate the exchange of best practices, bridge interpretation gaps among Member States and address enforcement disparities;

### *Health claims in online communications*

20. Highlights that the NHCR was adopted at a time when social media did not yet play such a large role in advertising and the sale of foods and food supplements; is concerned that the extent to which the NHCR effectively governs health-related online communications about foods remains unclear;
21. Is concerned about the presence of unauthorised and misleading nutrition and health claims online; stresses the need to ensure that the NHCR remains relevant in the online environment, especially because certain vulnerable groups, such as children and adolescents, may be particularly sensitive to certain health claims and food information shared on social media and this poses a risk to their physical and mental health; considers it important, in this regard, to define what constitutes commercial communication on foods and food supplements on social media;
22. Calls for renewed attention to be given to achieving an effective and EU-wide approach to tackle the exposure of children and adolescents to the advertising and marketing of processed foods high in fat, sugar and salt on broadcast and digital media; calls on the Commission to consider taking legislative action to protect the health of this vulnerable group of consumers;
23. Invites the Commission to draft comprehensive guidelines for the enforcement of the NHCR online; considers that these guidelines should outline clear procedures and standards for monitoring and regulating health claims online, ensuring the accuracy and transparency of such claims and safeguarding the well-being of consumers within the framework of the Digital Services Act; points to the responsibilities of Member States and online platform providers as established by the Digital Services Act, namely to act against the dissemination of illegal content and to ensure transparency for consumers as regards online advertising;
24. Calls on the Commission and the Member States to create a platform to share best practices in enforcement of the NHCR online and encourage collaboration among the Member States' competent authorities;
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25. Instructs its President to forward this resolution to the Council and the Commission.