General principles and general requirements of food law (Article 53 of Regulation (EC) No 178/2002) – Foodstuffs likely to constitute a serious risk to human health – Applicable procedure (Articles 54 and 58 of the aforementioned Regulation) – Principle of suspending the placing on the market of the disputed E-171 additive (Article 53 of the Act of 30 October 2018)

- Period of application of this suspension (Order of 17 April 2019) – Failure to challenge the constitutionality of the law or its compatibility with European Union law in support of the appeal against the aforementioned Order.

Under Article 53 of 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, the European Commission may take a number of emergency measures in respect of food of Community origin or imported from a third country where there is evidence that it is likely to constitute a serious risk to human health, and that such a risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned. Article 54 thereof states: ‘1. Where a Member State officially informs the Commission of the need to take emergency measures, and where the Commission has not acted in accordance with Article 53, the Member State may adopt interim protective measures. In this event, it shall immediately inform the other Member States and the Commission. 2. Within 10 working days, the Commission shall put the matter before the Committee set up in Article 58(1) in accordance with the procedure provided for in Article 58(2) with a view to the extension, amendment or abrogation of the national interim protective measures. 3. The Member State may maintain its national interim protective measures until the Community measures have been adopted.’

It follows from the very terms of Article 53 of the Act of 30 October 2018 that, without prejudice to compliance with the procedure provided for in Article 54 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002, the legislator itself decided on the principle of suspending the placing on the market of the disputed additive, leaving only the ministers concerned, within the meaning of Article L.521-17 of the Consumer Code, to determine the period of application of this suspension. Consequently, the company, which is merely challenging the principle of the suspension of the placing on the market of the additive E-171 and foodstuffs containing it without questioning either the constitutionality of the law or its compatibility with European Union law, cannot usefully, by the means it invokes, criticise the Order of 17 April 2019 by which the Minister of State, the Minister for Ecological Transition and Solidarity, and the Minister for the Economy and Finance suspended for a period of one year from 1 January 2020 the placing on the market of foodstuffs containing additive E-171 (titanium dioxide – TiO₂).