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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Scope of the Commission's powers to adopt delegated acts for exceptions from the rules on protected designations of origin for wines

- Request from the Slovenian delegation

Delegations will find in Annex an information note from the Slovenian delegation on the above subject.

Scope of the Commission's powers to adopt delegated acts for exceptions from the rules on protected designations of origin for wines

In its press release on 21 December 2016, the European Commission announced its intention to adopt a delegated act granting wine producers of one Member State, five years after the conclusion of the accession negotiations, a permanent right or an exception for labelling wines with the name of a protected designation of origin of another Member State. This is the case of Teran wine, which is a Slovenian protected designation of origin.

With respect to the common organisation of markets in agricultural products, the Council and the European Parliament delegated their powers to the Commission to adopt delegated acts concerning exceptions from the rules on the protected designations of origin for wines.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing the common organisation of markets in agricultural products (hereinafter: basic Regulation) determines the procedure for granting protected designations of origin for wines in a special chapter. The procedure covers a general rule, which states that the name of a vine variety containing a protected designation of origin may not be used to label agricultural products. In the same chapter, the basic Regulation also provides for the possibility of exceptions from this general rule in order to take into account existing labelling practices.

The scope of protection of a designated origin of wine and possible exceptions is laid down in the procedure for granting protection. In the case of accession of new Member States or third countries, accession or international negotiations are applied to determine possible exception to the general rules. The purpose of delegating powers to the Commission was certainly not to permit exceptions outside these rules, nor was it intended to enable the Commission circumventing the accession process by applying the delegated powers retroactively. The result of this could be a serious precedent and a unilateral action by the Commission into existing protected designations of origin.

If the Commission adopts such an act, it will unilaterally grant another Member State the right to use the name of a vine variety which is a synonym for the protected designation of origin in spite of the objection of the Member State which is the holder of the protection. Moreover, it would also mean that such an exception would be authorized outside the decision-making procedure for approval of a protected designation of origin. The Commission would thus de facto annul the existing protected designation of origin. Additionally, by granting the exception, it would legalise the ongoing illegal labelling of products and violations of the EU legal order.

The trust of Member States and their citizens in EU institutions is essential for the further development of the Union, also when dealing with issues linked indirectly to the interinstitutional relations of the EU. Slovenia wishes to highlight new dynamics in these relations, which relate to the adoption of delegated acts.

The delegation of powers to the Commission to adopt delegated acts has been the subject of numerous discussions on the adoption of new acts and the 'Lisbonisation' of existing acts. The Council has succeeded in addressing certain issues, particularly those relating to consultations with experts when drafting delegated acts, within the framework of the Interinstitutional Agreement and the amended Common Understanding. These alignments were intended to respond to the concerns of the Council and Member States, which had noticed a growing distrust in the functioning of institutions.

The opinion of Slovenia is that the interpretation of the powers delegated to the Commission in the case of the exception of the 'teran' vine variety is too broad and fails to take into account the limitations on this authorisation which arise from the EU acquis, particularly the basic Regulation and Article 290 of the Treaty on the Functioning of the European Union (TFEU).

Slovenia thus reiterates that such a delegated act would be contrary to Article 290 of the TFEU and would constitute interference with the legislator's competence and have an indirect effect on the interinstitutional balance.

In legislative acts as per Article 290 of the Treaty on the Functioning of the European Union, the legislator may delegate powers to the Commission to adopt non-legislative acts for general use and which amend or modify certain non-essential elements of a basic legislative act. The objectives, content, scope of application and duration of powers are thus explicitly determined in legislative acts. The Commission is hence always obliged to observe the scope and purpose of authorisation for adopting delegated acts. More precisely, when determining the scope of application of a certain provision of EU law, its wording, context and objectives must also be observed.

Such authorisation must certainly be understood in the European spirit and while pursuing European values. Therefore, Slovenia emphasises that interference with existing protected designations of origin is not permitted outside the aforementioned regular procedures for granting exceptions from the rule on the protected designations of origin for wines. This would constitute disproportionate and discriminatory interference in the lawfully obtained intellectual property rights and legitimate expectations of wine producers. Furthermore, such a decision would also legalise abovementioned violations of EU law by producers of that Member States.

Slovenia thus calls on the Council to examine the announced intention of the Commission, since in the opinion of Slovenia by adopting such a delegated act the Commission is interfering with the powers of the Council as the legislator and with the sovereign rights of Member States regarding negotiations on rights that are of concern to them. This consideration is particularly necessary because it raises the issue of unilateral interference with all existing protected designations of origin.