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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 27.5.2021 amending Regulation (EU) 2019/787 of the European Parliament and of the Council as regards allusions to legal names of spirit drinks or geographical indications for spirit drinks in the description, presentation and labelling of other spirit drinks

Delegations will find attached document C(2021) 3584 final.

Encl.: C(2021) 3584 final



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COMMISSION DELEGATED REGULATION (EU) .../...

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amending Regulation (EU) 2019/787 of the European Parliament and of the Council as regards allusions to legal names of spirit drinks or geographical indications for spirit drinks in the description, presentation and labelling of other spirit drinks

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Currently, Regulation (EU) 2019/787 does not require that the legal name of spirit drinks alluding to one or more spirit drink categories or geographical indications should appear in the same visual field as the allusion. This delegated act aims at specifying the conditions for labelling such spirit drinks.

In fact, in the absence of such requirement, the actual nature of the spirit drink may not result clearly and the labelling may induce consumers to believe that the allusion is the actual name of the spirit drink. This, in certain cases, may result in the abuse of the reputation of a spirit drink (category or geographical indication) whose legal name is made allusion to, whereas in this case it would no longer comply with the production requirements laid down for each spirit drink category in Annex I to Regulation (EU) 2019/787 or with the relevant product specification.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Certain Member States have pointed out to the Commission that the absence of a provision requiring to indicate the legal name of the spirit drink in the same visual field as the allusion to one or more spirit drinks weakens the provisions concerning the latter.

Consultations involving experts from all the 27 Member States have been carried out as a preparation for and during the meetings of the Expert Group for the Common Organisation of Agricultural Markets – Spirit Drinks held (virtually) on 13 October and 3 December 2020 as well as 9 February and 28 April 2021. This consultation process led to a broad consensus on the draft delegated regulation.

Consensus was also registered during the general public consultation carried out through the publication of the draft delegated regulation on the Better Regulation Portal from 26 March to 23 April 2021. WTO partners were notified.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act is based on Article 50(3) of Regulation (EU) 2019/787 and concerns solely one provision that the Commission has been granted the empowerment to amend by virtue of that paragraph. It should be adopted by means of the procedure according to Article 46 of Regulation (EU) 2019/787.

Article 1: This Article provides for the legal name of any spirit drink making allusion to the name of a spirit drink category or geographical indication for spirit drinks to appear in the same visual field as the allusion. This aims at avoiding that consumers are misled about the content of the resulting spirit drink.

Article 2: This Article provides for a transitional period in that it allows spirit drinks concerned by the present Regulation which were labelled before 31 December 2022 in compliance with the provisions of Regulation (EC) No 110/2008, to continue being placed on the market without need to be relabelled.

Article 3: This Article provides for the simultaneous application of the amendment provided in Article 1 with the provision it refers to (i.e. Article 12(4) of Regulation (EU) 2019/787) which, by virtue of Article 51(1) of Regulation (EU) 2019/787, will apply from 25 May 2021.

COMMISSION DELEGATED REGULATION (EU) .../...

of 27.5.2021

amending Regulation (EU) 2019/787 of the European Parliament and of the Council as regards allusions to legal names of spirit drinks or geographical indications for spirit drinks in the description, presentation and labelling of other spirit drinks

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008¹, and in particular Article 50(3) thereof,

Whereas:

- (1) Article 12(4) of Regulation (EU) 2019/787 lays down rules on how to display allusions to the legal name of spirit drink categories or geographical indications for spirit drinks in the presentation and labelling of alcoholic beverages.
- (2) Article 12(4) of Regulation (EU) 2019/787 does not require that the name of the resulting alcoholic beverage is displayed in the same visual field as the allusion. Where the name of the alcoholic beverage appears in a different visual field than the allusion, consumers may be however induced to believe that the allusion is part of the name of the alcoholic beverage, notably in the cases where the resulting alcoholic beverage is a spirit drink.
- (3) Moreover, in certain cases, such allusion may unduly abuse the reputation of spirit drink categories or geographical indications, which, when combined with other foodstuffs that are not required or allowed in their production, lose their nature and may no longer be labelled as such. Displaying those names in a prominent way in the presentation and labelling of the spirit drink which makes allusion to them, may thus effectively result in misappropriation of their reputation.
- (4) Article 7(1), point (a), of Regulation (EU) No 1169/2011 of the European Parliament and of the Council² requires that food information is not misleading, notably as to the

¹ OJ L 130, 17.5.2019, p. 1.

² 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

nature and identity of the food. Article 9 of that Regulation provides that mandatory food information, including the name of the foodstuff, is to be provided and Article 13 of that Regulation requires that mandatory information is marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible.

- (5) In accordance with Article 9 of Regulation (EU) 2019/787, the presentation and labelling requirements set out in Regulation (EU) No 1169/2011 apply to alcoholic beverages resulting from the combination of spirit drinks with other foodstuffs. In order to ensure that those requirements are best fulfilled, in particular for spirit drinks making allusion to other spirit drinks, it is appropriate to require that the legal name of the resulting spirit drink be displayed in the same visual field as the allusion to a spirit drink. This should occur each time the allusion is indicated in the description, presentation or labelling of a spirit drink. This will prevent misleading practices and ensure that consumers are properly informed about the actual nature of the spirit drink resulting from the combination of spirit drinks with other foodstuffs.
- (6) Regulation (EU) 2019/787 should therefore be amended accordingly.
- (7) A transitional period should be provided for the application of the labelling provisions laid down in this Regulation to allow spirit drinks labelled before 31 December 2022 in compliance with the provisions of Regulation (EC) No 110/2008 of the European Parliament and of the Council³ to continue being placed on the market without requiring them to be relabelled.
- (8) In accordance with Article 51(3) of Regulation (EU) 2019/787 and to avoid any sort of regulatory vacuum, this Regulation should apply retroactively from 25 May 2021,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 12 of Regulation (EU) 2019/787, paragraph 4 is replaced by the following:

- ‘4. The allusions referred to in paragraphs 2 and 3 shall:
- (a) not be on the same line as the name of the alcoholic beverage;
 - (b) appear in a font size which is no larger than half the font size used for the name of the alcoholic beverage and, where compound terms are used, in a font size which is no larger than half the font size used for such compound terms, in accordance with point (c) of Article 11(3); and
 - (c) in case of allusions in the description, presentation and labelling of spirit drinks, always be accompanied by the legal name of the spirit drink, which shall appear in the same visual field as the allusion.’

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 (OJ L 304, 22.11.2011, p. 18).

³ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

Article 2

Spirit drinks which do not meet the requirements laid down in Article 12(4), point (c), of Regulation (EU) 2019/787 as amended by this Regulation but which meet the requirements of Regulation (EC) No 110/2008 and were labelled before 31 December 2022 may continue to be placed on the market until stocks are exhausted.

Article 3

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

It shall apply from 25 May 2021.

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

Done at Brussels, 27.5.2021

For the Commission
The President
Ursula VON DER LEYEN