



Council of the
European Union

Brussels, 6 July 2021
(OR. en)

10579/21

AGRI 327
WTO 176
DELECT 142

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 6 July 2021

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: C(2021) 4867 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 6.7.2021 amending Regulation (EU) 2019/787 of the European Parliament and of the Council as regards the definition of allusions to legal names of spirit drinks or geographical indications for spirit drinks and their use in the description, presentation and labelling of spirit drinks other than the spirit drinks to which allusion is made

Delegations will find attached document C(2021) 4867 final.

Encl: C(2021) 4867 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 the definition of allusions to legal names of spirit drinks or geographical indications for spirit drinks and their use in the description, presentation and labelling of spirit drinks other than the spirit drinks to which allusion is made

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2019/787 has clarified and substantially reworded certain production and labelling provisions concerning spirit drinks and foodstuffs produced by using spirit drinks as ingredients. In view of providing an adequately long period to test the soundness of the reformulated provisions, the Legislator has empowered the Commission until 25 May 2025 to adopt delegated acts to amend those provisions or supplementing the Spirit Drinks Regulation by derogating from those provisions.

In particular, the definition and conditions of use of ‘allusions’ to the name of one or more spirit drinks have been fundamentally reformulated with respect to the current provisions, restricting the possibility to use ‘allusions’ only to foodstuffs other than spirit drinks and to liqueurs. This precludes the possibility to use the name of spirit drinks in the description, presentation or labelling of spirit drinks other than liqueurs.

However, for certain spirit drinks it is traditional practice to refer to names of other spirit drinks when they constitute the sole alcoholic base from which they are further processed or have been matured or finished in casks having previously contained other spirit drinks.

This possibility should be preserved and therefore Regulation (EU) 2019/787 should be amended to allow the allusion to names of spirit drinks or geographical indications for spirit drinks in the description, presentation and labelling of other spirit drinks.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Certain Member States and representatives of the industry have pointed out to the Commission that the above-mentioned rewording of the new Spirit Drinks Regulation renders illegal the labelling of certain spirit drinks that have already been on the market for some time. This should be clarified to allow full, legitimate information to consumers and to align the legislation to traditional production methods that are broadly used.

Consultations involving experts from all the 27 Member States have been carried out as a preparation for and during the meeting of the Expert Group for the Common Organisation of Agricultural Markets – Spirit Drinks held (virtually) on 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 14 April to 12 May 2021.

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 possibility to make allusion to a legal names of a spirit drink category or a geographical indication for spirit drinks in the description, presentation and labelling of other spirit drinks in certain cases and under certain conditions while adapting accordingly the definition of ‘allusion’ in Article 3(3) of Regulation (EU) 2019/787. It also derogates from the general ‘half font size’ labelling requirement for allusions to spirit drinks casks while requiring that such allusions are not more prominent that the legal name or compound terms used.

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 Implementing Regulation (EU) No 716/2013, 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 provisions it refers to (i.e. Articles 3(3) and 12 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 6.7.2021

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

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) Regulation (EU) 2019/787 has clarified and substantially reworded certain production and labelling provisions concerning spirit drinks and foodstuffs produced by using spirit drinks as ingredients.
- (2) In particular, the definition and conditions for the use of allusions to the legal name of one or more spirit drink categories or geographical indications for spirit drinks as laid down in Article 10(1) of Council Regulation (EC) No 110/2008² and Article 2, point (d), of Commission Implementing Regulation (EU) No 716/2013³, have been fundamentally revised by Regulation (EU) 2019/787, which repeals and replaces Regulation (EC) No 110/2008 with effect from 25 May 2021. In fact, the new corresponding provisions in Article 3(3) and Article 12 of Regulation (EU) 2019/787 allow the use of allusions only in the description, presentation and labelling of foodstuffs other than spirit drinks and of liqueurs. Consequently, any allusion in the description, presentation and labelling of spirit drinks other than liqueurs are not covered by the new provisions on allusions in Regulation (EU) 2019/787. That legislative choice was made to avoid overlapping between allusions, regulated by Article 12 of Regulation (EU) 2019/787, and mixtures, regulated by Articles 13(3) and

¹ OJ L 130, 17.5.2019, p. 1.

² 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).

³ Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (OJ L 201, 26.7.2013, p. 21).

- (4) of that Regulation. Indeed, the combination of a spirit drink with another spirit drink qualifies as a mixture and should consequently not be labelled in accordance with the labelling provisions for allusions. Nonetheless, an exception was inserted in Article 12 of Regulation (EU) 2019/787 to allow allusions to other spirit drinks on liqueurs, in view to preserving the labelling of a considerable number of products that is considered as traditional and generally recognised by consumers. However, the new definition and requirements for allusions did not take into account two additional cases of traditional production methods where allusion is made to spirit drinks which are the sole alcoholic ingredient of other spirit drink or to spirit drinks in whose cask other spirit drinks have been matured, neither of which qualify as mixture. Therefore, if not regulated as allusions, those cases will become illegal under Regulation (EU) 2019/787.
- (3) According to Article 10(7) of Regulation (EU) 2019/787, the use of a legal name of a spirit drink category or of a geographical indication for spirit drinks in the description, presentation or labelling of any beverage not complying with the respective requirements is prohibited except in case of compound terms, allusions and ingredients lists.
- (4) In consequence and following consultation with the spirit drinks industry and the Member States, it has become clear that the rewording of the provisions on allusions results in the preclusion of the possibility to inform consumers about traditional production methods in use to produce certain spirit drinks, when such information relates to the name of other spirit drinks. Those methods consist in the use of a spirit drink as the sole alcoholic base, without the addition of other foodstuffs or dilution with water below the required alcoholic strength for further processing to become a different spirit drink, and the storage of certain spirit drinks for the full maturation period or a part thereof in wooden casks having previously contained another spirit drink. In the latter case, for those spirit drink categories or geographical indications for spirit drinks for which the addition of alcohol is prohibited, casks must be emptied of their previous contents before introducing the spirit drink that is to be subsequently matured therein.
- (5) Such methods have been traditionally used in the spirit drinks sector for a long time and should be covered by Regulation (EU) 2019/787. In fact, when such traditional production methods are used, their indication in the description, presentation and labelling of the corresponding spirit drinks provides consumers with important and useful information about the product they choose to purchase and consume and serves as a differentiator between different brands within categories. In particular, knowing what type of casks the spirit drink has been matured in is key to helping explain some of the complexity in that spirit drink.
- (6) In order to preserve the possibility for producers to provide information concerning traditional production methods, it is appropriate to amend Article 3(3) and Article 12 of Regulation (EU) 2019/787 to allow allusions to legal names of spirit drinks or geographical indications for spirit drinks in the description, presentation and labelling of other spirit drinks produced following such traditional methods.
- (7) Moreover, in the case of allusions to spirit drinks that were previously contained in casks subsequently used to mature other spirit drinks, the labelling provision introduced by Article 12(4), point (b), of Regulation (EU) 2019/787, requiring that the

allusion is to appear in a font size which is no larger than half the font size used for the name of the alcoholic beverage and any compound term, would impose a disproportionate burden on the spirits industry, requiring thousands of labels and cartons to be changed and an unnecessary change in labelling layouts that consumers have been accustomed to for years. In addition, in many cases such a requirement would make the allusion barely visible to the naked eye unless the font size of the legal name was dramatically increased, which shouldn't be necessary when the legal name is a simple, clear reference to one of the categories set out in Annex I to that Regulation or to the name of a geographical indication for spirit drinks where no potential confusion arises. Therefore, it is appropriate to derogate from this labelling requirement and require instead that allusions appear in a font size no larger and not more prominently than the legal name of the spirit drink and, where used, of any compound terms.

- (8) Regulation (EU) 2019/787 should therefore be amended accordingly.
- (9) A transitional period should be provided for the application of the labelling requirements laid down for allusions by Regulation (EU) 2019/787 to allusions on spirit drinks other than liqueurs. Those provisions should apply from 31 December 2022 to allow concerned spirit drinks labelled before that date in compliance with Implementing Regulation (EU) No 716/2013 to continue being placed on the market without requiring them to be relabelled.
- (10) 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

Regulation (EU) 2019/787 is amended as follows:

- (1) in Article 3, point 3 is replaced by the following:

‘(3) ‘allusion’ means the direct or indirect reference to one or more legal names provided for in the categories of spirit drinks set out in Annex I or to one or more geographical indications for spirit drinks, other than a reference in a compound term or in a list of ingredients as referred to in Article 13(2) to (4) in the description, presentation and labelling of

 - (a) a foodstuff other than a spirit drink,
 - (b) a spirit drink that complies with the requirements of categories 33 to 40 of Annex I, or
 - (c) a spirit drink that complies with the conditions laid down in Article 12(3a);’
- (2) Article 12 is amended as follows:
 - (a) the following paragraph 3a is inserted:

‘3a. By way of derogation from paragraph 1, in the description, presentation and labelling of a spirit drink other than spirit drinks complying with the requirements of categories 33 to 40 of Annex I, the allusion to a legal name provided for in a category of spirit drinks set out in that Annex or to a geographical indication for spirit drinks shall be allowed on condition that:

- (a) the spirit drink referred to in the allusion:
 - (i) has been used as the sole alcoholic base for the production of the final spirit drink, which shall comply with the requirements of a category of spirit drinks set out in Annex I,
 - (ii) has not been combined with any foodstuffs other than the foodstuffs used for its production or the production of the final spirit drink in accordance with Annex I or the relevant product specification, and
 - (iii) has not been diluted by addition of water so that its alcoholic strength is below the minimum strength provided for under the category of spirit drinks set out in Annex I or the product specification for the geographical indication to which the spirit drink referred to in the allusion belongs; or
- (b) the spirit drink has been stored for the full maturation period or part of it in a wooden cask previously used to mature the spirit drink referred to in the allusion, on condition that:
 - (i) the wooden cask was emptied of its previous contents for those categories of spirit drinks or geographical indications for spirit drinks for which the addition of alcohol, diluted or not, is prohibited,
 - (ii) the allusion is made within the description of the cask used to mature the resulting spirit drink,
 - (iii) the allusion appears less prominently than the legal name of the spirit drink or any compound term used, and
 - (iv) by way of derogation from paragraph 4, point (b), the allusion appears in a font size no larger than the font size used for the legal name of the spirit drink or any compound term used.’;

(b) in paragraph 4, the introductory phrase is replaced by the following:

‘4. The allusions referred to in paragraphs 2, 3 and 3a shall.’.

Article 2

Spirit drinks referred to in Article 12(3a) of Regulation (EU) 2019/787 which do not meet the labelling requirements laid down in that Article and in Article 12(4) of Regulation (EU) 2019/787 as amended by this Regulation but which meet the requirements of Article 4 of

Implementing Regulation (EU) No 716/2013 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, 6.7.2021

For the Commission
The President
Ursula VON DER LEYEN