

Brussels, XXX
[...] (2020) XXX draft

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

of XXX

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 other spirit drinks

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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’ 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 factually renders illegal the labelling of certain spirit drinks that have already been on the market for some time. This should be corrected to allow full, legitimate information to consumers and to align the legislation to traditional production practices 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. This consultation process led to a broad consensus on the draft delegated regulation.

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.

Article 2: 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.

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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 currently laid down in Article 10(1) of Council Regulation (EC) No 110/2008² and Article 2(d) of Commission Implementing Regulation (EU) No 716/2013³ have been fundamentally revised so that the new corresponding provisions in Articles 3(3) and 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 related provisions in Regulation (EU) 2019/787.
- (3) In addition, 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 production requirements is prohibited except in case of compound terms, allusions and ingredients lists.

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) 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 practices include notably the use of a spirit drink as the sole alcoholic base for further processing to become a different spirit drink, or the maturation or finishing of certain spirit drinks in wooden casks having previously contained another spirit drink, from which no alcohol is transferred to the matured or finished spirit drink.
- (5) Such practices have been traditionally used in the spirit drinks sector for a long time and it is only due to an accidental oversight that the possibility to provide such information was not covered by the provisions of Regulation (EU) 2019/787. In addition, when such traditional production methods are used, they need to be referred to in the description, presentation and labelling of the corresponding spirit drinks so that consumers are properly informed.
- (6) In order to preserve the possibility for producers to provide information concerning legitimate traditional production methods, it is appropriate to amend Articles 3(3) and 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) Regulation (EU) 2019/787 should therefore be amended accordingly.
- (8) This Regulation should apply from 25 May 2021, in accordance with Article 51(3) of Regulation (EU) 2019/787,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. in Article 3, paragraph 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), (3) and (4);’
2. Article 12 is amended as follows:
 - (a) the following paragraph 3a is inserted:

‘3a. By way of derogation from paragraph 1 of this Article, an allusion in the description, presentation and labelling of a spirit drink to a legal name provided for in a category of spirit drinks set out in Annex I to this Regulation or to a geographical indication for spirit drinks shall be authorised in the following cases:

 - (a) the spirit drink referred to in the allusion has been used as the sole alcoholic base for the production of the final spirit drink, whose alcohol originates exclusively from the spirit drink referred in the allusion; or
 - (b) the final spirit drink has been matured or finished for an adequate period of time in a wooden cask previously used to mature the spirit drink

referred to in the allusion, on condition that no alcohol originating from the spirit drink referred to in the allusion is added to the final spirit drink.’;

- (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

This Regulation shall enter into force on the twentieth 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,

For the Commission
The President
Ursula VON DER LEYEN