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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the definition, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs and the protection of geographical indications for spirit drinks**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

The aim of this Commission proposal is to align Regulation (EC) No 110/2008 with the Treaty on the Functioning of the European Union (TFEU). It mainly divides the provisions adopted by the Commission under that Regulation into delegated acts and implementing acts.

The existing EU legal framework for spirit drinks enables the free circulation of goods in the single market by setting up product definitions, labelling rules and provisions related to the protection of geographical indications for spirit drinks. Therefore, it should not be changed.

For this reason, besides alignment with the TFEU, the proposal introduces only a few minor technical amendments, in order to address shortcomings in the implementation of Regulation (EC) No 110/2008 and to make the legislation consistent with new EU legal instruments. Structure and wording changes have been made with the exclusive aim of simplifying the regulations and improving readability, in line with the Commission's 'better regulation' agenda.

These wording and structure changes, and the few technical adaptations, do not affect the substance of the law, which remains the same as in Regulation (EC) No 110/2008. For this reason, no impact assessment was considered necessary.

The associations of spirit drinks producers have been consulted. Their main concerns have been taken into account.

This initiative is not included in the regulatory fitness and performance programme (REFIT) agenda. However, the proposal has been drafted taking into account the Member States' and stakeholders' expectations of regulatory simplification and keeping in mind the guiding principles of better regulation.

Given the importance and complexity of the spirit drinks sector, it is appropriate to keep the spirit drinks Regulation for specific measures on the description and presentation of spirit drinks which go beyond the general rules provided in 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,<sup>1</sup> while remaining consistent with those general rules. The spirit drinks Regulation should continue to focus on definitions of spirit drinks, classified into categories and to contribute to the highest level of consumer protection and the prevention of deceptive practices.

It should also be noted that Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs<sup>2</sup> has updated and harmonised the rules on the protection of protected designations of origin (PDOs), protected geographical indications (PGIs) and traditional specialties guaranteed (TSGs). Procedures for the management of PDOs, PGIs, and TSGs (application, amendment, registration, opposition, cancellation) have been completely revised and streamlined. In order to make the procedures for the management of geographical indications in the spirit drinks sector more homogenous with those in place for foodstuffs, the draft proposal replacing Regulation (EC) No 110/2008 includes the modification of Chapter III on geographical indications.

The proposal keeps unchanged the specificity of the geographical indications scheme for spirit drinks.

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<sup>1</sup> OJ L 304, 22.11.2011, p. 18.

<sup>2</sup> OJ L 343, 14.12.2012, p. 1.

As regards procedures, the proposal also includes provisions concerning joint applications and oppositions mirroring those set out in Commission Regulation (EU) No 664/2014<sup>3</sup> and in Commission Regulation (EU) No 668/2014<sup>4</sup>. The inclusion of these provisions makes the proposal consistent and complete. Should Regulation (EU) No 1151/2012 be revised, the same approach would be followed.

Finally, some of the elements currently included in the Commission Regulation (EU) No 716/2013<sup>5</sup> that concern definitions and rules related to compound terms and allusions, are considered essential and have therefore been introduced in the proposal as part of the basic act.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

The proposal is based on Articles 43(2) and Article 114(1) of the TFEU, unlike Regulation (EC) No 110/2008 that is only based on Article 95 of the Treaty establishing the European Community (TEC) (currently Article 114 of the TFEU). The addition of Article 43(2) of the TFEU reflects the fact that the ethyl alcohol used for the production of spirits drinks and other alcoholic beverages must be of agricultural origin, which ensures an outlet for basic agricultural products. This strong link to the agricultural sector is emphasised in the new regulatory framework.

This proposal aligns EU legislation on spirit drinks with the TFEU. In addition, it contains minor technical adjustments of such legislation and it replaces the existing procedures for the management of geographical indications in the spirit drinks sector, with new procedures modelled on the more exhaustive and well tested procedures for agricultural products and foodstuffs.

The objectives of such a proposal cannot be achieved by actions carried out by Member States on their own.

However, Member States, in accordance with Article 291 of the TFEU, are responsible for implementing the scheme defined by the legislator. It is necessary to ensure that the rules on spirit drinks are applied uniformly in all Member States in order to:

- prevent deceptive practices;
- ensure protection of consumers; and
- avoid unfair competition.

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<sup>3</sup> Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules (OJ L 179, 19.6.2014, p. 17).

<sup>4</sup> Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

<sup>5</sup> 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).

The legislator therefore grants the Commission the power to implement measures, in accordance with Article 291(2) of the TFEU, specifically on:

- the uniform application of the rules on spirit drinks;
- procedural rules concerning protection of geographical indications;
- checks and verifications to be carried out by Member States; and
- the necessary exchange of information between the Commission and the Member States for the implementation of this Regulation.

This proposal targets the objectives set in the most efficient and satisfactory way while leaving as much scope for national decision as possible.

### **3. EVALUATION, CONSULTATION AND IMPACT ASSESSMENT**

A consensus exists among the producers of spirit drinks to keep the existing legal framework on spirits.

For this reason, the proposal only lays down the Commission empowerments to adopt delegated and implementing acts, besides introducing few technical adjustments and some structure and wording changes that simplify and clarify the drafting of those provisions without changing its substance. The representatives of the spirits sector have been consulted in the context of the Civil Dialogue Group meetings, during which the Commission has gathered information, opinions and recommendations from the spirit drinks experts.

As regards the section on geographical indications, it only brings the registration procedures more in line with the ones applicable to other foodstuffs but does not affect the specificity of the geographical indications regime for spirit drinks.

Therefore, the purpose and scope of the existing regulation will remain unchanged.

For these reasons, an impact assessment to accompany this proposal has not been considered necessary.

### **4. BUDGETARY IMPLICATIONS**

This proposal has no financial implications for the EU budget.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2) and 114(1) thereof,

Having regard to the proposal from the European Commission,<sup>6</sup>

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,<sup>7</sup>

Acting in accordance with the ordinary legislative procedure,<sup>8</sup>

Whereas:

- (1) Regulation (EC) No 110/2008 of the European Parliament and of the Council<sup>9</sup> has proved successful in regulating the spirit drinks sector. However, in the light of recent experience and technological innovation it is necessary to update the rules on the definition, presentation and labelling of spirit drinks and to review the ways geographical indications for spirit drinks are registered.
- (2) In order to align the powers conferred upon the Commission pursuant to Regulation (EC) No 110/2008 to Articles 290 and 291 of the Treaty on the Functioning of the European Union ('the Treaty'), further amendments to that Regulation are needed.
- (3) The measures applicable to spirit drinks should contribute to attaining a high level of consumer protection, preventing deceptive practices and attaining market transparency and fair competition. They should safeguard the reputation which the Union's spirit drinks have achieved in the Union and on the world market by continuing to take into account the traditional practices used in the production of spirit drinks as well as increased demand for consumer protection and information. Technological innovation should also be taken into account in respect of spirit drinks, where such innovation serves to improve quality, without affecting the traditional character of the spirit drinks concerned. The production of spirit drinks is strongly linked to the agricultural sector. Besides representing a major outlet for the agriculture of the Union, this link is determinant for the quality and reputation of the spirit drinks produced in the Union. This strong link to the agricultural sector should therefore be emphasised by the regulatory framework.

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<sup>6</sup> OJ C [...], [...], p. [...].

<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ C [...], [...], p. [...].

<sup>9</sup> 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).

- (4) To ensure a more uniform approach in the legislation on spirit drinks, this Regulation should set out clear criteria for the definition, presentation and labelling of spirit drinks as well as for the protection of geographical indications. It should also set out rules on the use of ethyl alcohol or distillates of agricultural origin in the production of alcoholic beverages and on the use of the sales denominations of spirit drinks in the presentation and labelling of foodstuffs.
- (5) In the interests of consumers, this Regulation should apply to all spirit drinks placed on the Union market, whether produced in the Member States or in third countries. In order to maintain and improve the reputation of the spirit drinks produced in the Union on the world market, this Regulation should also apply to spirit drinks produced in the Union for export.
- (6) In order to meet consumer expectations and to conform to traditional practices, ethyl alcohol used for the production of spirit drinks and other alcoholic beverages should be exclusively of agricultural origin. This should also ensure an outlet for basic agricultural products.
- (7) This Regulation should continue to focus on definitions of spirit drinks classified into categories by taking into account the traditional quality practices. This Regulation should also lay down specific rules for certain spirit drinks that are not included in the list of categories.
- (8) It should be clarified that a new category may only be added if a spirit drink has a significant market share in at least one Member State. Moreover, the name chosen for the new category shall either be a widely used name or, where this is not possible, be of a descriptive nature, in particular, by referring to the raw material used for the production of the spirit drink.
- (9) Regulation (EC) No 1334/2008 of the European Parliament and the Council<sup>10</sup> also applies to spirit drinks. However, it is necessary to lay down additional rules concerning flavourings which will only apply to spirit drinks.
- (10) Given the importance and complexity of the spirit drinks sector, it is appropriate to lay down specific rules on the presentation and labelling of spirit drinks, in particular for the use of sales denominations, geographical indications, compound terms and allusions.
- (11) Regulation (EU) No 1169/2011 of the European Parliament and of the Council<sup>11</sup> should apply to the presentation and labelling of spirit drinks, save as otherwise provided for in this Regulation.
- (12) In order to ensure the uniform use of compound terms and allusions in Member States, it is necessary to lay down provisions concerning their use for the purpose of presentation of spirit drinks and other foodstuffs.

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<sup>10</sup> Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34).

<sup>11</sup> 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 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).

- (13) In order to provide consumers with the adequate information, provisions on the presentation and labelling of spirit drinks which qualify for mixtures of spirit drinks should be laid down.
- (14) While it is important to ensure that in general the maturation period or age specifies only the youngest alcoholic component, it should be possible to provide, by means of delegated acts, for a derogation, to take account of traditional ageing processes in the Member States.
- (15) In some cases, food business operators may be required or may want to indicate the origin of spirit drinks to draw consumers' attention to the qualities of their product. Such origin indications should comply with harmonised criteria. Therefore, specific provisions on the indication of the country of origin or place of provenance in the presentation and labelling of spirit drinks should be laid down.
- (16) The use of lead-based capsules to cover the closing devices of containers holding spirit drinks should be banned, in order to avoid any risk of contamination, in particular by accidental contact with such capsules, and of environmental pollution from waste containing lead from such capsules.
- (17) Concerning the protection of geographical indications, it is important to have due regard to the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement'), and in particular Articles 22 and 23 thereof, and to the General Agreement on Tariffs and Trade ('GATT Agreement') which were approved by Council Decision 94/800/EC.<sup>12</sup>
- (18) Regulation (EU) No 1151/2012 of the European Parliament and of the Council<sup>13</sup> does not apply to spirit drinks. Rules on protection of geographical indications of spirit drinks should therefore be laid down. Geographical indications identifying spirit drinks as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the spirit drink are essentially attributable to its geographical origin should be registered by the Commission.
- (19) Procedures for the registration, modification and possible cancellation of Union or third country geographical indications in accordance with the TRIPS Agreement should be laid down whilst automatically recognising the status of existing protected geographical indications of the Union. In view of making procedural rules on geographical indications consistent through all the sectors concerned, such procedures for spirit drinks should be modelled on the more exhaustive and well tested procedures for agricultural products and foodstuffs laid down in Regulation (EU) No 1151/2012 while taking into account specificities of spirit drinks. In order to simplify the registration procedures and to ensure that information for food business operators and consumers is electronically available an electronic register of geographical indications should be established.
- (20) Member State authorities should be responsible for ensuring compliance with this Regulation, and the Commission should be able to monitor and verify such

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<sup>12</sup> Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

<sup>13</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

compliance. Therefore the Commission and the Member States should be required to share relevant information with each other.

- (21) In applying a quality policy and in order to allow for a high level of quality of spirit drinks and diversity in the spirit drinks sector, Member States should be allowed to adopt rules on the definition, presentation and labelling of spirit drinks produced in their territory that are stricter than those laid down in this Regulation.
- (22) In order to take into account evolving consumer demands, technological progress, developments in the relevant international standards and the need to improve the economic conditions of production and marketing, the traditional ageing processes and, in exceptional cases, the law of the importing third countries, and in order to ensure the protection of geographical indications, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the amendment of or derogations from the technical definitions and requirements of the categories of spirit drinks and the specific rules concerning some of them referred to under Chapter I of this Regulation, the labelling and presentation referred to under Chapter II of this Regulation, the geographical indications referred to under Chapter III of this Regulation and the checks and exchange of information referred under Chapter IV of this Regulation.
- (23) In order to react rapidly to economic and technological developments regarding spirit drinks covered by this Regulation for which no category and technical specifications exist so as to protect consumers and the economic interests of producers and unify the given production and quality requirements for those spirit drinks, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission as regard the addition, subject to certain conditions, of new categories of spirit drinks to those listed respectively in Part I and II of Annex II to this Regulation and the technical specifications thereof.
- (24) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.<sup>14</sup> In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (25) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission.
- (26) The implementing powers relating to the labelling and presentation referred to under Chapter II of this Regulation, the geographical indications referred to under Chapter III of this Regulation and the checks and exchange of information referred to under Chapter IV of this Regulation should be exercised in accordance with the provisions of Regulation (EU) No 182/2011 of the European Parliament and the Council.<sup>15</sup>

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<sup>14</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

<sup>15</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (27) The transition from the rules provided for in Regulation (EC) No 110/2008 to those laid down in this Regulation could give rise to difficulties which are not dealt with in this Regulation. To take the necessary measures in that respect, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission.
- (28) In order to protect the legitimate interests of producers or stakeholders concerned to benefit from the publicity given to single documents under the new legal framework, it should be made possible that single documents concerning geographical indications registered in accordance with Regulation (EC) No 110/2008 are published upon request of the Member States concerned.
- (29) To facilitate a smooth transition from the rules provided for in Regulation (EC) No 110/2008 to the rules laid down in this Regulation, this Regulation should start to apply two years after its entry into force. The marketing of existing stocks should be allowed after the date of application of this Regulation, until those stocks are exhausted,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **SCOPE, DEFINITIONS, AGRICULTURAL ORIGIN OF ETHYL ALCOHOL AND DISTILLATES AND CLASSIFICATION OF SPIRIT DRINKS**

#### *Article 1*

##### **Subject matter and scope**

1. This Regulation lays down rules on the definition, presentation and labelling of spirit drinks, as well as on the protection of geographical indications for spirit drinks. This Regulation shall also apply to the use of ethyl alcohol or distillates of agricultural origin in the production of alcoholic beverages and to the use of spirit drinks' names in the presentation and labelling of other foodstuffs.
2. This Regulation shall apply to the products referred to in paragraph 1 placed on the Union market whether produced in the Union or in third countries, as well as to those produced in the Union for export.

#### *Article 2*

##### **Definitions**

1. For the purpose of this Regulation, the following definitions shall apply:
  - (1) 'spirit drink' means an alcoholic beverage which complies with the following requirements:
    - (a) it is intended for human consumption;
    - (b) it possesses particular organoleptic qualities;
    - (c) it has a minimum alcoholic strength of 15 % vol., except for spirit drinks listed in category 42 of Part I of Annex II;
    - (d) it has been produced:
      - (i) either directly by using any of the following methods:

- distillation, with or without added flavourings, of naturally fermented products,
  - the maceration or similar processing of plant materials in ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks or a mixture thereof within the meaning of this Regulation,
  - the addition to ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks of any of the following:
    - flavourings,
    - colours,
    - sugars or other sweetening products,
    - other agricultural products,
    - foodstuffs; or
- (ii) by adding to a spirit drink any of the following:
- other spirit drinks,
  - ethyl alcohol of agricultural origin,
  - distillates of agricultural origin,
  - other foodstuffs;
- (e) it does not fall within CN codes 2203, 2204, 2205, 2206 and 2207;
- (2) ‘sales denomination’ means the name under which a spirit drink is sold;
- (3) ‘mixture’ means a spirit drink listed in Part I of Annex II or corresponding to a geographical indication mixed with any of the following:
- (a) other spirit drinks which do not belong to the same category listed in Part I of Annex II;
  - (b) distillates of agricultural origin;
- (4) ‘compound term’ means the combination of the terms of a sales denomination of a spirit drink provided for in Part I of Annex II or the terms of a geographical indication, describing a spirit drink, from which all the alcohol of the final product originates, with any of the following:
- (a) the name of one or more foodstuffs other than those used for the production of that spirit drink in accordance with Annex II, or adjectives deriving from those names;
  - (b) the term ‘liqueur’;
- (5) ‘allusion’ means the direct or indirect reference to one or more spirit drinks listed in Part I of Annex II or geographical indications, other than the reference in a compound term or list of ingredients referred to in Article 8(6);
- (6) ‘geographical indication’ means an indication which identifies a spirit drink as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to its geographical origin;

- (7) 'product specification' means a file attached to the application for the protection of a geographical indication setting out the specifications which the spirit drink must comply with;
  - (8) 'presentation' means the terms used on the labelling and on the packaging, including in advertising and sales promotion, in images or such like, as well as on the container, including the bottle and the closure;
  - (9) 'labelling' means any word, particulars, trademarks, brand name, pictorial matter or symbol relating to a spirit drink and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such spirit drink;
  - (10) 'label' means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to the packaging or container of food;
  - (11) 'name that has become generic' means the name of a spirit drink which, although it relates to the place or the region where this product was originally produced or marketed, has become the common name of a spirit drink in the Union.
2. The technical definitions laid down in Annex I shall also apply.

### *Article 3*

#### **Origin of ethyl alcohol and distillates used in alcoholic beverages**

- 1. The alcohol used in the production of alcoholic beverages and to dilute or dissolve colours, flavourings or any other authorised additives used in the preparation of alcoholic beverages shall be ethyl alcohol of agricultural origin.
- 2. Distillates used in the production of alcoholic beverages and to dilute or dissolve colours, flavourings or any other authorised additives used in the preparation of alcoholic beverages shall exclusively be of agricultural origin.

### *Article 4*

#### **Classification of spirit drinks**

- 1. Without prejudice to the specific rules laid down for each of the categories of spirit drinks 1 to 14 of Part I of Annex II, the spirit drinks of those categories shall:
  - (a) be produced by the alcoholic fermentation and distillation exclusively obtained from the raw material provided for under the relevant category;
  - (b) have no addition of alcohol as defined in point (4) of Annex I, whether diluted or not;
  - (c) not contain flavourings, as defined in point (8) of Annex I;
  - (d) only contain caramel as a means to adapt colour;
  - (e) solely be sweetened in accordance with point (3) of Annex I and in order to round off the final taste of the product.
- 2. Without prejudice to the specific rules laid down for each of the categories of spirit drinks 15 to 47 of Part I of Annex II, the spirit drinks of those categories may:
  - (a) be obtained from any agricultural raw material listed in Annex I to the Treaty;

- (b) have addition of alcohol as defined in point (4) of Annex I;
  - (c) contain flavourings as defined in point (8) of Annex I;
  - (d) contain colouring as defined in point (14) of Annex I;
  - (e) be sweetened to correspond to particular product characteristics and in accordance with point (3) of Annex I and taking into account the relevant legislation of the Member States.
3. Without prejudice to the specific rules laid down in Part II of Annex II, other spirit drinks which do not comply with the specific rules laid down for each of the categories listed in Part I of Annex II may:
- (a) be obtained from any agricultural raw material listed in Annex I to the Treaty or from foodstuff suitable for human consumption or both;
  - (b) have addition of alcohol as defined in point (4) of Annex I;
  - (c) contain flavourings as defined in point (8) of Annex I;
  - (d) contain colours as defined in point (13) of Annex I;
  - (e) be sweetened to correspond to particular product characteristics and in accordance with point (3) of Annex I.

## *Article 5*

### **Delegated powers**

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning:
- (a) the amendment of the technical definitions provided for in Annex I;
  - (b) the amendment of the requirements of the categories of spirit drinks provided for in Part I of Annex II and the specific rules concerning certain spirit drinks listed in Part II of Annex II.

The delegated acts referred to in points (a) and (b) of the first subparagraph shall be limited to meeting demonstrated needs resulting from evolving consumer demands, technological progress, developments in relevant international standards or needs for product innovation.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning the addition of new categories of spirit drinks in Annex II.

A new category may be added under the following conditions:

- (a) the marketing of a spirit drink under a particular name and in accordance with uniform technical specifications is economically and technically necessary to protect the interests of consumers and producers;
- (b) a spirit drink has a significant market share in at least one Member State;
- (c) the name chosen for the new category shall either be a widely used name or where this is not possible be of a descriptive nature, in particular, by referring to the raw material used for the production of the spirit drink;
- (d) the technical specifications for the new category shall be laid down and based on an evaluation of existing quality and production parameters used on the Union market. When laying down the technical specifications, the applicable

Union consumer protection legislation shall be respected and account shall be taken of any relevant international standards. They shall ensure fair competition amongst union producers as well as the high reputation of Union spirit drinks.

3. The Commission shall, in exceptional cases where the law of the importing third country so requires, also be empowered to adopt delegated acts in accordance with Article 43 concerning derogations from the requirements under the technical definitions provided for in Annex I, the requirements under the categories of spirit drinks provided for in Part I of Annex II and the specific rules concerning certain spirit drinks listed in Part II of Annex II.

## **CHAPTER II**

### **PRESENTATION AND LABELLING OF SPIRIT DRINKS AND USE OF THE NAMES OF SPIRIT DRINKS IN THE PRESENTATION AND LABELLING OF OTHER FOODSTUFFS**

#### *Article 6*

##### **Labelling**

Products referred to in Article 1(1) placed on the Union market must comply with the labelling requirements set out in Regulation (EU) No 1169/2011, unless otherwise provided in this Regulation.

#### *Article 7*

##### **Sales denomination**

Spirit drinks shall bear sales denominations in their presentation and labelling.

#### *Article 8*

##### **General rules concerning sales denominations**

1. The sales denominations of spirit drinks which meet the requirements laid down for the categories of spirit drinks listed in Part I of Annex II shall be the names of the relevant categories, unless other sales denominations are provided for under those categories.
2. The sales denomination of a spirit drink not complying with the requirements laid down for the categories of spirit drinks listed in Part I of Annex II shall be 'spirit drink'.
3. Where a spirit drink meets the requirements of more than one of the categories of spirit drinks 15 to 47 of Part I of Annex II, it may be sold under one or more of the relevant sales denominations provided for under those categories.
4. Sales denominations shall not be replaced or altered. They may only be either:
  - (a) supplemented or replaced by a geographical indication referred to in Chapter III, or supplemented in accordance with national provisions by another geographical indication, provided that this does not mislead the consumer; or

- (b) replaced by a compound term that includes the term 'liqueur' provided that the final product complies with the requirements set out in category 32 of Part I of Annex II.

If a sales denomination is supplemented or replaced in accordance with point (a) of the first subparagraph, the geographical indication referred to in that point may only be supplemented either:

- (a) by terms already in use on 20 February 2008 for existing geographical indications within the meaning of Article 34(1); or
- (b) by terms indicated in the relevant product specification.

- 5. Without prejudice to paragraph 6 and Articles 9 and 10, the sales denominations referred to in paragraph 1 or geographical indications shall not be used in the presentation or labelling of beverages not meeting the requirements of the relevant categories listed in Part I of Annex II or relating to the relevant geographical indications, including by associating words or phrases such as 'like', 'type', 'style', 'made', 'flavour' or any other similar terms with those sales denominations or geographical indications.

The sales denominations referred to in paragraph 1 supplemented by the term 'flavour' or any other similar terms may only be used to refer to flavourings that imitate a spirit drink or their use in the production of a foodstuff other than a beverage. Geographical indications shall not be used to describe flavourings.

- 6. The sales denominations referred to in paragraph 1 may be included in a list of ingredients for foodstuffs provided that the list is in accordance with Articles 18 to 21 of Regulation (EU) No 1169/2011.

#### *Article 9*

##### **Compound terms and allusions**

- 1. In the presentation and labelling of a foodstuff, the use of a sales denomination provided for under the categories of spirit drinks listed in Part I of Annex II or of a geographical indication in a compound term or the allusion to any of them shall be authorised under the following conditions:
  - (a) the alcohol used in the production of the foodstuffs originates exclusively from the spirit drinks referred to in the compound term or in the allusion(s), except for ethyl alcohol that may be present in flavourings used for the production of that foodstuff; and
  - (b) the spirit drinks used in the production of the foodstuff have not been diluted merely with water so that the alcoholic strength is reduced to below the minimum strength provided for under the relevant category of spirit drinks listed in Part I of Annex II.
- 2. The term 'spirit drink' shall not be part of a compound term describing an alcoholic beverage.
- 3. A compound term describing an alcoholic beverage shall not consist of a combination of the term 'liqueur' with the sales denominations provided for under one of the categories 33 to 41 of Part I of Annex II.
- 4. The compound term describing an alcoholic beverage shall appear in uniform characters of the same font, size and colour. It shall not be interrupted by any textual

or pictorial element which does not form part of it and shall not appear in a larger font size than that of the sales denomination.

5. The allusion to any spirit drink category or geographical indication, for the presentation of a foodstuff, shall not be in the same line as the sales denomination. Without prejudice to the second subparagraph of Article 10(3), for the presentation of alcoholic beverages, the allusion shall appear in a font size smaller than those used for the sales denomination and compound term.

#### *Article 10*

##### **Presentation and labelling of mixtures**

1. A mixture shall bear the sales denomination 'spirit drink'.  
A mixture may show, in its presentation or labelling, the names listed in Part I of Annex II or geographical indications corresponding to the spirit drinks that were used in the mixture under the following conditions:
  - (a) those names or geographical indications appear exclusively in a list of all the alcoholic ingredients contained in the mixture, preceded by the term 'mixed spirit drink'; and
  - (b) the term 'mixed spirit drink' appears in the same visual field as the sales denomination, in uniform characters of the same font and colour as those used for the sales denomination and in characters which are no larger than half the size of those used for the sales denomination.
2. By way of derogation from paragraph 1, if a mixture meets the requirements of one of the categories of Annex II, the mixture shall bear the sales denomination provided for under the relevant category.  
In the case referred to in the first subparagraph, the presentation or labelling of the mixture may show the names listed in Part I of Annex II or geographical indications corresponding to the spirits drinks that were mixed, provided that these names appear:
  - (a) exclusively in a list of all the alcoholic ingredients contained in the mixture; and
  - (b) in the same visual field as the sales denomination at least once.
3. The list of alcoholic ingredients referred to in paragraphs 1 and 2 shall indicate, at least once, the percentage by volume of pure alcohol that each alcoholic ingredient represents in the total pure alcohol content by volume of the mixture. The alcoholic ingredients shall be listed in descending order of that percentage.  
The list of alcoholic ingredients shall appear in uniform characters of the same font and colour as those used for the sales denomination and in characters which are no larger than half the size of the characters used for the sales denomination.

#### *Article 11*

##### **Additional rules on labelling and presentation**

1. Where the presentation or labelling of a spirit drink indicates the raw material used to produce the ethyl alcohol, each type of ethyl alcohol of agricultural origin shall be mentioned in descending order of quantity used.

2. The presentation or labelling of a spirit drink may be supplemented by the term ‘blend’, ‘blending’ or ‘blended’ only where the spirit drink has undergone blending, as defined in point (6) of Annex I.
3. A maturation period or age may only be specified in the presentation or labelling of a spirit drink where it refers to the youngest alcoholic component and provided that the spirit drink was aged under supervision of the tax authorities of a Member State or a supervision affording equivalent guarantees.

#### *Article 12*

##### **Indication of origin**

1. Where the origin of a spirit drink is indicated, it shall correspond to the country or territory of origin in accordance with Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>16</sup>.
2. The indication of the country or territory of origin of the ingredients shall not be required for spirit drinks.

#### *Article 13*

##### **Language used for the names of spirit drinks**

The terms in italics in Annex II and the geographical indications shall neither be translated on the label nor in the presentation of the spirit drink.

#### *Article 14*

##### **Use of a Union symbol for protected geographical indications**

The Union symbol for the protected geographical indication may be used for the labelling and presentation of spirit drinks.

#### *Article 15*

##### **Prohibition of lead-based capsules or foil**

Spirit drinks shall not be held with a view to sale or be placed on the market in containers fitted with closing devices covered by lead-based capsules or foil.

#### *Article 16*

##### **Delegated powers**

1. In order to take into account evolving consumer demands, technological progress, developments in the relevant international standards and the need to improve the economic conditions of production and marketing, the Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning:
  - (a) amendments to the rules on indications on the label of spirits drinks concerning compound terms or allusions;
  - (b) amendments to the rules on the presentation and labelling of mixtures; and

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<sup>16</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (c) updating and completing Union reference methods for the analysis of spirit drinks.
- 2. In order to take into account traditional ageing processes in the Member States, the Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning derogations from Article 11(3) concerning the specification of a maturation period or age in the presentation or labelling of a spirit drink.
- 3. In exceptional cases where the law of the importing third country so requires, the Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning derogations from the provisions on presentation and labelling contained in this Chapter.

#### *Article 17*

### **Implementing powers**

The Commission may, by means of implementing acts, adopt:

- (a) rules on the modalities for the use of the Union symbol referred to in Article 14 in the presentation and labelling of spirit drinks;
- (b) rules on the modalities for indicating, when used, the country or territory of origin on the label of spirit drinks.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

## **CHAPTER III**

### **GEOGRAPHICAL INDICATIONS**

#### *Article 18*

### **Protection of geographical indications**

- 1. Protected geographical indications may be used by any operator marketing a spirit drink produced in conformity with the corresponding product specification.
- 2. Protected geographical indications and the spirit drinks using those protected names in conformity with the product specification shall be protected against:
  - (a) any direct or indirect commercial use of a protected name:
    - (i) by comparable products not complying with the product specification of the protected name; or
    - (ii) in so far as such use exploits the reputation of a geographical indication;
  - (b) any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar;
  - (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

- (d) any other practice liable to mislead the consumer as to the true origin of the product.
- 3. Protected geographical indications shall not become generic in the Union within the meaning of Article 32(1) .
- 4. Member States shall take the steps necessary to stop the unlawful use of protected geographical indications as referred to in paragraph 2.

### *Article 19*

#### **Product specification**

A geographical indication shall comply with a product specification which shall include at least:

- (a) the name to be protected as a geographical indication, as it is used, whether in trade or in common language, and only in the languages which are or were historically used to describe the specific product in the defined geographical area;
- (b) the category of the spirit drink;
- (c) a description of the spirit drink, including the raw materials, if appropriate, as well as the principal physical, chemical or organoleptic characteristics of the product and the specific characteristics of the product compared to spirit drinks of the same category;
- (d) the definition of the geographical area delimited with regard to the link referred to in point (f);
- (e) a description of the method of obtaining the spirit drink and, where appropriate, the authentic and unvarying local methods as well as information on packaging, if the applicant group so determines and gives sufficient product-specific justification as to why the packaging must take place in the defined geographical area to safeguard quality, to ensure the origin or to ensure control, taking into account Union law, in particular that on the free movement of goods and the free provision of services;
- (f) details establishing the link between a given quality, reputation or other characteristic of the spirit drink and the geographical area referred to in point (d);
- (g) the names and addresses of the authorities or, if available, the names and addresses of the bodies verifying compliance with the provisions of the product specification pursuant to Article 35 and their specific tasks;
- (h) any specific labelling rule for the spirit drink in question.

### *Article 20*

#### **Content of application for registration**

- 1. An application for registration of a geographical indication pursuant to Article 21(2) or (5) shall include at least:

- (a) the names and addresses of the applicant group and of the authorities or, if available, the bodies verifying compliance with the provisions of the product specification;
- (b) the product specification provided for in Article 19;
- (c) a single document setting out the following:
  - (i) the main points of the product specification: the name, a description of the spirit drink, including, where appropriate, specific rules concerning packaging and labelling, and a concise definition of the geographical area;
  - (ii) a description of the link between the spirit drink and the geographical area as referred to in point (6) of Article 2(1) including, where appropriate, the specific elements of the product description or production method justifying the link.

An application as referred to in Article 21(5) shall also include proof that the name of the product is protected in its country of origin.

2. An application dossier as referred to in Article 21(4) shall include:

- (a) the name and address of the applicant group;
- (b) the single document referred to in point (c) of paragraph 1 of this Article;
- (c) a declaration by the Member State that it considers that the application lodged by the applicant group and qualifying for the favourable decision meets the conditions of this Regulation and the provisions adopted pursuant thereto;
- (d) the publication reference of the product specification.

## *Article 21*

### **Application for registration of names**

1. Applications for registration of names as geographical indications under the scheme provided for by this Regulation may only be submitted by groups who work with the spirit drink name to be registered.

In the case of a geographical indication name that designates a cross-border geographical area, several groups from different Member States or third countries may lodge a joint application for registration.

A joint application shall be submitted to the Commission by a Member State concerned, or by an applicant group in a third country concerned, directly or through the authorities of that third country. It shall include the declaration referred to in point (c) of Article 20(2) from all the Member States concerned. The requirements laid down in Article 20 shall be fulfilled in all Member States and third countries concerned.

In case of joint applications, the related national opposition procedures shall be carried out in all the Member States concerned.

2. Where the application relates to a geographical area in a Member State the application shall be addressed to the authorities of that Member State.

The Member State shall scrutinise the application by appropriate means in order to check that it is justified and meets the conditions of this Chapter.

3. As part of the scrutiny referred to in the second subparagraph of paragraph 2, the Member State shall initiate a national opposition procedure that ensures adequate publication of the application and that provides for a reasonable period within which any natural or legal person having a legitimate interest and established or resident on its territory may lodge an opposition to the application.

The Member State shall examine the admissibility of oppositions received in the light of the criteria referred to in Article 25.

4. If, after assessment of any opposition received, the Member State considers that the requirements of this Chapter are met, it may take a favourable decision and lodge an application dossier with the Commission. It shall in such case inform the Commission of admissible oppositions received from a natural or legal person that have legally marketed the products in question, using the names concerned continuously for at least five years preceding the date of the publication referred to in paragraph 3. Member States shall also keep the Commission informed of the national judicial proceedings possibly affecting the registration procedure.

The Member State shall ensure that its favourable decision is made public and that any natural or legal person having a legitimate interest has an opportunity to appeal.

The Member State shall ensure that the version of the product specification on which its favourable decision is based, is published, and shall provide electronic access to the product specification.

The Member State shall also ensure adequate publication of the version of the product specification on which the Commission takes its decision pursuant to Article 23(2).

5. Where the application relates to a geographical area in a third country the application shall be lodged with the Commission, either directly or via the authorities of the third country concerned.
6. The documents referred to in this Article which are sent to the Commission shall be in one of the official languages of the Union.

## *Article 22*

### **Transitional national protection**

1. A Member State may, on a transitional basis only, grant protection to a name under this Regulation at national level, with effect from the date on which an application is lodged with the Commission.
2. Such national protection shall cease on the date on which either a decision on registration under this Regulation is taken or the application is withdrawn.
3. Where a name is not registered under this Chapter, the consequences of such national protection shall be the sole responsibility of the Member State concerned.
4. The measures taken by Member States under paragraph 1 shall produce effects at national level only, and they shall have no effect on intra-Union or international trade.

## *Article 23*

### **Scrutiny by the Commission and publication for opposition**

1. The Commission shall scrutinise by appropriate means any application that it receives pursuant to Article 21, in order to check that it is justified and that it meets the conditions of this Chapter. This scrutiny should not exceed a period of 12 months. Where this period is exceeded, the Commission shall indicate in writing to the applicant the reasons for the delay.

The Commission shall, at least each month, make public the list of names for which registration applications have been submitted to it, as well as their date of submission.

2. Where, based on the scrutiny carried out pursuant to the first subparagraph of paragraph 1, the Commission considers that the conditions laid down in this Chapter are fulfilled, it shall publish in the *Official Journal of the European Union* the single document referred to in point (c) of Article 20(1) and the reference to the publication of the product specification.

#### Article 24

##### **Opposition procedure**

1. Within three months from the date of publication in the *Official Journal of the European Union*, the authorities of a Member State or of a third country, or a natural or legal person having a legitimate interest and established in a third country may lodge a notice of opposition with the Commission.

Any natural or legal person having a legitimate interest, established or resident in a Member State other than that from which the application was submitted, may lodge a notice of opposition with the Member State in which it is established within a time limit permitting an opposition to be lodged pursuant to the first subparagraph.

A notice of opposition shall contain a declaration that the application might infringe the conditions laid down in this Chapter.

A notice of opposition that does not contain this declaration is void.

The Commission shall forward the notice of opposition to the authority or body that lodged the application without delay.

2. If a notice of opposition is lodged with the Commission and is followed within two months by a reasoned statement of opposition, the Commission shall check the admissibility of this reasoned statement of opposition.
3. Within two months after the receipt of an admissible reasoned statement of opposition, the Commission shall invite the authority or person that lodged the opposition and the authority or body that lodged the application to engage in appropriate consultations for a period that shall not exceed three months. This deadline shall start on the date when the invitation to the interested parties is delivered by electronic means.

The authority or person that lodged the opposition and the authority or body that lodged the application shall start such appropriate consultations without undue delay. They shall provide each other with the relevant information to assess whether the application for registration complies with the conditions of this Chapter. If no agreement is reached, this information shall also be provided to the Commission.

When the interested parties reach an agreement, the authorities of the Member State or of the third country from which the application was lodged shall notify the

Commission of all the factors which enabled that agreement to be reached, including the opinions of the applicant and of the authorities of a Member State or of a third country or other natural and legal persons having lodged an opposition.

Whether an agreement has been reached or not, the notification to the Commission shall be made within one month from the end of the consultations.

At any time during these three months, the Commission may, at the request of the applicant extend the deadline for the consultations by a maximum of three months.

4. Where, following the appropriate consultations referred to in paragraph 3, the details published in accordance with Article 23(2) have been substantially amended, the Commission shall repeat the scrutiny referred to in Article 23.
5. The notice of opposition, the reasoned statement of opposition and the related documents which are sent to the Commission in accordance with paragraphs 1 to 4 shall be in one of the official languages of the Union.

#### *Article 25*

##### **Grounds for opposition**

1. A reasoned statement of opposition as referred to in Article 24(2) shall be admissible only if it is received by the Commission within the time limit set out in that provision and if it shows that:
  - (a) the conditions referred to in point (6) of Article 2(1) and Article 19 are not complied with;
  - (b) the registration of the name proposed would be contrary to Article 31 or 32; or
  - (c) the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in Article 23(2).
2. The grounds for opposition shall be assessed in relation to the territory of the Union.

#### *Article 26*

##### **Transitional periods for use of geographical indications**

1. Without prejudice to Article 18, the Commission may adopt implementing acts granting a transitional period of up to five years to enable spirit drinks originating in a Member State or a third country the name of which contravenes Article 18(2) to continue to use the designation under which it was marketed on condition that an admissible statement of opposition under Article 21(3) or Article 24 shows that the registration of the name would jeopardise the existence of:
  - (a) an entirely identical name or of a compound name, one term of which is identical to the name to be registered; or
  - (b) other names similar to the name to be registered which refer to spirit drinks which have been legally on the market for at least five years preceding the date of the publication provided for in Article 23(2).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

2. Without prejudice to Article 33, the Commission may adopt implementing acts extending the transitional period mentioned in paragraph 1 of this Article or allowing continued use in duly justified cases where it is shown that:
  - (a) the designation referred to in paragraph 1 has been in legal use consistently and fairly for at least 25 years before the application for protection was submitted to the Commission;
  - (b) the purpose of using the designation referred to in paragraph 1 has not, at any time, been to profit from the reputation of the registered name and it is shown that the consumer has not been nor could have been misled as to the true origin of the product.Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).
3. When using a designation referred to in paragraphs 1 and 2, the indication of country of origin shall clearly and visibly appear on the labelling.

## *Article 27*

### **Decision on registration**

1. Where, on the basis of the information available to the Commission from the scrutiny carried out pursuant to the first subparagraph of Article 23(1), the Commission considers that the conditions for registration are not fulfilled, it shall adopt implementing acts rejecting the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).
2. If the Commission receives no notice of opposition or no admissible reasoned statement of opposition under Article 24, it shall adopt implementing acts, without applying the procedure referred to in Article 44(2), registering the name.
3. If the Commission receives an admissible reasoned statement of opposition, it shall, following the appropriate consultations referred to in Article 24(3), and taking into account the results thereof, either:
  - (a) if an agreement has been reached, register the name by means of implementing acts adopted without applying the procedure referred to in Article 44(2), and, if necessary, amend the information published pursuant to Article 23(2) provided such amendments are not substantial; or
  - (b) if an agreement has not been reached, adopt implementing acts deciding on the registration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).
4. Acts of registration and decisions on rejection shall be published in the *Official Journal of the European Union*.

The act of registration shall grant the protection referred to in Article 18 to the geographical indication.

## *Article 28*

### **Amendment to a product specification**

1. A group having a legitimate interest may apply for approval of an amendment to a product specification.

Applications shall describe and give reasons for the amendments requested.

2. Amendments shall be approved by the Member State in whose territory the geographical area of the product concerned is located.

However, where the amendment applications involve one or more amendments to the product specification that relate to the essential characteristics of the product, alter the link referred to in point (f) of Article 19, include a change to the name, or to any part of the name of the spirit drink, affect the defined geographical area or represent an increase in restrictions on trade in the product or its raw materials, the Member State shall submit the amendment application to the Commission for approval and the application shall follow the procedure laid down in Articles 21 to 27.

3. The scrutiny of the application shall focus on the proposed amendment.

#### *Article 29*

##### **Cancellation**

The Commission may, on its own initiative or at the request of any natural or legal person having a legitimate interest, adopt implementing acts to cancel the registration of a geographical indication in the following cases:

- (a) where compliance with the conditions of the product specification is not ensured;
- (b) where no product is placed on the market under the geographical indication for at least seven years.

The Commission may, at the request of the producers of the product marketed under the registered name, cancel the corresponding registration. Articles 21, 23, 24 and 27 shall apply to the cancellation procedure.

The implementing acts referred to in the first paragraph shall be adopted in accordance with the examination procedure referred to in Article 44(2).

#### *Article 30*

##### **Register of geographical indications of spirit drinks**

The Commission shall adopt implementing acts, without applying the procedure referred to in Article 44(2), establishing and maintaining a publicly accessible updated electronic register of geographical indications of spirit drinks recognised under this scheme ('the Register').

The Commission may adopt implementing acts laying down detailed rules on the form and content of the Register. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Geographical indications of spirit drinks produced in third countries that are protected in the Union pursuant to an international agreement to which the Union is a contracting party may be entered in the Register as geographical indications.

#### *Article 31*

##### **Homonymous geographical indications**

1. If a name for which an application is submitted is a whole or partial homonym of a name already registered under this Regulation, the name shall be registered with due regard to local and traditional usage and any risk of confusion.
2. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of those products is concerned.
3. The use of a registered homonymous geographical indication shall be subject to there being a sufficient distinction in practice between the homonym registered subsequently and the name already in the Register, having regard to the need to treat the producers concerned in an equitable manner and not to mislead the consumer.

#### *Article 32*

##### **Specific grounds for refusal of protection**

1. A name that has become generic shall not be protected as a geographical indication.  
To establish whether or not a name has become generic, account shall be taken of all relevant factors, in particular:
  - (a) the existing situation in the Union, notably in areas of consumption;
  - (b) the relevant Union or national legislation.
2. A name shall not be protected as a geographical indication where, in the light of a trade mark's reputation and renown, protection could mislead the consumer as to the true identity of the spirit drink.
3. A name shall not be protected as a geographical indication if the production or preparation steps which are compulsory for the relevant category of spirit drink, do not take place in the relevant geographical area.

#### *Article 33*

##### **Relation between trademarks and geographical indications**

1. The registration of a trademark which contains or consists of a geographical indication listed in the Register shall be refused or invalidated if its use would lead to any of the situations referred to in Article 18(2).
2. A trademark the use of which corresponds to one of the situations referred to in Article 18(2) which has been applied for, registered, or established by use, if that possibility is provided for by the legislation concerned, in good faith within the territory of the Union, before either the date of protection of the geographical indication in the country of origin or before 1 January 1996, may continue to be used notwithstanding the registration of a geographical indication, provided that no grounds for its invalidity or revocation exist under Directive 2008/95/EC of the European Parliament and of the Council<sup>17</sup> or Council Regulation (EC) No 207/2009.<sup>18</sup>

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<sup>17</sup> Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trademarks (OJ L 299, 8.11.2008, p. 25).

<sup>18</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trademark (OJ L 78, 24.3.2009, p. 1).

## Article 34

### **Implementing powers with respect to existing protected geographical indications**

1. Without prejudice to paragraph 2, geographical indications of spirit drinks protected under Regulation (EC) No 110/2008, shall automatically be protected as geographical indications under this Regulation. The Commission shall list them in the Register.
2. For a period of up to two years following the entry into force of this Regulation, the Commission, by means of implementing acts, may, on its own initiative, cancel the protection of geographical indications referred to in Article 20 of Regulation (EU) No 110/2008 if they do not comply with point (6) of Article 2(1). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

## Article 35

### **Verification of compliance with the product specification**

1. In respect of the geographical indications within the Union, verification of compliance with the product specification, before placing the product on the market, shall be ensured by at least one:
  - (a) competent authority referred to in Article 40(1); or
  - (b) control body within the meaning of point 5 of the second subparagraph of Article 2 of Regulation (EC) No 882/2004 of the European Parliament and of the Council,<sup>19</sup> operating as a product certification body.

Notwithstanding the national legislation of Member States, the costs of such verification of compliance with the product specification shall be borne by the food business operators which are subject to those controls.

2. In respect of the geographical indications within a third country, verification of compliance with the product specification, before placing the product on the market, shall be ensured by at least one:
  - (a) public competent authority designated by the third country; or
  - (b) product certification body.
3. Member States shall make public the names and addresses of the authorities and bodies referred to in paragraph 1, and update that information periodically.

The Commission shall make public the name and address of the authorities and bodies referred to in paragraph 2 and update that information periodically.
4. The product certification bodies referred to in point (b) of paragraph 1 and in point (b) of paragraph 2 shall comply with and be accredited in accordance with European standard ISO/IEC 17065:2012.
5. The competent authorities or bodies referred to in paragraphs 1 and 2 verifying compliance of the protected geographical indication with the product specification

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<sup>19</sup> Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).

shall be objective and impartial. They shall have at their disposal the qualified staff and resources necessary to carry out their tasks.

#### *Article 36*

##### **Surveillance of the use of the name in the market place**

1. Member States shall carry out checks, based on a risk analysis, as regards the use of the registered names of geographical indications in the market place and shall take all necessary measures in the event of breaches of the requirements of this Chapter.
2. Member States shall inform the Commission of the names and addresses of the competent authorities responsible for controls of the use of the name in the market place designated in accordance with Article 40. The Commission shall make public the names and addresses of those authorities.

#### *Article 37*

##### **Procedure and requirements, planning and reporting of control activities**

1. Procedures and requirements laid down in Regulation (EC) No 882/2004 shall apply *mutatis mutandis* to the checks provided for in Articles 35 and 36 of this Regulation.
2. Member States shall ensure that activities for the control of obligations under this Chapter are specifically included in a separate section within the multi-annual national control plans in accordance with Articles 41 to 43 of Regulation (EC) No 882/2004.
3. The annual reports referred to in Article 44(1) of Regulation (EC) No 882/2004 shall include in a separate section the information referred to in that provision concerning the control of the obligations established by this Regulation.

#### *Article 38*

##### **Delegated powers**

1. In order to take account of the specificities of the production in the demarcated geographical area, the Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning:
  - (a) the additional criteria for the demarcation of the geographical area; and
  - (b) the restrictions and derogations related to the production in the demarcated geographical area.
2. In order to ensure product quality and traceability, the Commission may, by means of delegated acts adopted in accordance with Article 43, provide for the conditions under which the product specification may include information concerning packaging as referred to in point (e) of Article 19 or any specific labelling rule as referred to in point (h) of Article 19.
3. In order to ensure the rights or legitimate interests of producers or food business operators, the Commission may, by means of delegated acts adopted in accordance with Article 43, set out:
  - (a) in which cases a single producer may apply for the protection of a geographical indication;

- (b) the conditions to be followed in respect of an application for the protection of a geographical indication, preliminary national procedures, scrutiny by the Commission, the opposition procedure and the cancellation of geographical indications, including in cases where the geographical area covers more than one country.
- 4. In order to ensure that product specifications provide relevant and succinct information, the Commission shall be empowered to adopt delegated acts, in accordance with Article 43, laying down rules which limit the information contained in the product specification, where such a limitation is necessary to avoid excessively voluminous applications for registration.
- 5. In order to facilitate the administrative process of an amendment application, including where the amendment consists in a temporary change of the product specification resulting from the imposition of obligatory sanitary and phytosanitary measures by the public authorities or linked to natural disasters or adverse weather conditions formally recognised by the competent authorities, the Commission shall be empowered to adopt delegated acts, in accordance with Article 43, to establish conditions and requirements for the procedure concerning the amendments to be approved both by the Member States and by the Commission.
- 6. In order to prevent the unlawful use of geographical indications, the Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning the appropriate actions to be implemented by the Member States in this respect.
- 7. In order to ensure the efficiency of the checks provided for in this Chapter, the Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning the necessary measures regarding the notification of food business operators to the competent authorities.

### *Article 39*

#### **Implementing powers**

The Commission may adopt implementing acts laying down detailed rules concerning:

- (a) the form of the specification and measures on the information to be provided in the product specification with regard to the link between the geographical area and the final product;
- (b) procedures, form and presentation of applications, including for applications concerning more than one national territory;
- (c) procedures, form and presentation of the oppositions;
- (d) form and presentation of an amendment application;
- (e) procedures and form of the cancellation process, as well as on the presentation of the requests of cancellation;
- (f) the checks and verifications to be carried out by the Member States, including testing.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

## **CHAPTER IV**

### **CHECKS, EXCHANGE OF INFORMATION, MEMBER STATES' LEGISLATION**

#### *Article 40*

##### **Checks on spirit drinks**

1. Member States shall be responsible for checks on spirit drinks. They shall take the measures necessary to ensure compliance with this Regulation and designate the competent authorities responsible on compliance with this Regulation.
2. The Commission shall ensure the uniform application of this Regulation and, where necessary, shall, by means of implementing acts adopt the rules concerning administrative and physical checks to be conducted by the Member States with regard to the respect of the obligations resulting from the application of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

#### *Article 41*

##### **Exchange of information**

1. Member States and the Commission shall communicate to each other the information necessary for the application of this Regulation.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 43 concerning the nature and type of information to be exchanged.
3. The Commission shall be empowered to adopt implementing acts concerning the methods for exchanging information.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

#### *Article 42*

##### **Member States' legislation**

1. In applying a quality policy for spirit drinks produced in their own territory and in particular for geographical indications listed in the Register or for the protection of new geographical indications, Member States may lay down rules on production, presentation and labelling stricter than those set out in Annex II in so far as they are compatible with Union law.
2. Member States shall not prohibit or restrict the import, sale or consumption of spirit drinks which comply with this Regulation.

## **CHAPTER V**

### **DELEGATION OF POWER, IMPLEMENTING PROVISIONS, REPEAL AND AMENDMENT, TRANSITIONAL AND FINAL PROVISIONS**

## SECTION 1

### DELEGATION OF POWER AND IMPLEMENTING PROVISIONS

#### *Article 43*

##### **Exercise of the delegation**

1. The power to adopt delegated acts shall be conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 5, 16, 38, 41 and 46(2) shall be conferred on the Commission for an indeterminate period of time from the entry into force of this Regulation.
3. The delegation of power referred to in Articles 5, 16, 38, 41 and 46(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 5, 16, 38, 41 and 46(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

#### *Article 44*

##### **Committee procedure**

1. The Commission shall be assisted by the Committee for Spirit Drinks established by Council Regulation (EEC) No 1576/89.<sup>20</sup> That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

## SECTION 2

### REPEAL, TRANSITIONAL AND FINAL PROVISIONS

<sup>20</sup>

Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks (OJ L 160, 12.6.1989, p. 1).

## Article 45

### Repeal

Regulation (EC) No 110/2008 is repealed.

References to Regulation (EC) No 110/2008 shall be construed as references to this Regulation.

## Article 46

### Transitional measures

1. Spirit drinks which meet the requirements of Regulation (EC) No 110/2008 and were produced before the date of application of this Regulation may continue to be placed on the market until stocks are exhausted.
2. In order to facilitate the transition from the rules provided for in Regulation (EC) No 110/2008 to those established by this Regulation, the Commission, where appropriate, may, by means of delegated acts, adopt measures to amend or derogate from this Regulation, by 3 years after the date of application.
3. Articles 19 to 23, 28 and 29 shall apply to applications for protection, applications for amendment and cancellations submitted after the date of application of this Regulation.

The relevant provisions of Regulation (EC) No 110/2008 shall continue to apply in respect of the applications for protection and for amendment of product specification and to the requests for cancellation which are pending at the date of entry into force of this Regulation.

The provisions on the opposition procedure referred to in Articles 24 to 26 shall apply to the procedures for application for protection, for application for amendment and for request of cancellation for which the single document, the amendment application or the request of cancellation have not been published at the date of entry into force of this Regulation. The relevant provisions of Regulation (EC) No 110/2008 shall continue to apply to the procedures for application for protection, for application for amendment and for request of cancellation for which the single document, the amendment application or the request of cancellation have been published at the date of entry into force of this Regulation.

4. In respect of geographical indications registered in accordance with Regulation (EC) No 110/2008 the Commission shall, at the request of a Member State, publish a single document submitted by that Member State in the *Official Journal of the European Union*. That publication shall be accompanied by the publication reference of the product specification and shall not be followed by an opposition procedure.

## Article 47

### Entry into force and application

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

It shall apply from [...].

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*