

APPENDIX
to TBT Notification G/TBT/N/EU/432/Rev.1

NOTE

Main elements of the Commission proposal

The main objective of the Commission proposal was to align Regulation (EC) No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks to the Lisbon Treaty as regards empowerments to the Commission to amend and supplement certain elements of the basic act. At the same time, the proposal foresaw improvements in the legal formulation of certain provisions and streamlined the system for the registration and intellectual property protection of geographical indications for spirit drinks (spirit drinks GIs), in compliance with WTO obligations.

Main changes introduced to the Commission proposal by European Parliament and Council

The European Parliament and the Council decided to introduce substantial changes in the Commission proposal, mainly aimed at clarifying the legal text (in the enclosed legal text, modifications introduced in respect to the initial Commission proposal are marked in **bold** or **bold underlined** for text that has been added or shifted and as ~~striketrough~~ for text that has been eliminated). The main modifications are summarized below:

- Introduction of additional definitions and technical definitions and requirements and clarification of existing ones;
- Introduction of the possibility for the Commission to introduce in the future new sweetening products allowed in the production of spirit drinks;
- Clarification that the alcohol used to produce any alcoholic beverages (and not only spirit drinks) must be of agricultural origin;
- Clarifications on types of flavourings that can be used in the production of spirit drinks in general and in certain categories of spirit drinks in particular;
- Introduction of maximum sweetening levels for certain spirit drink categories;
- Clarifications on the legal names that can be used in the description, presentation and labelling of spirit drinks and of the terms that may supplement or replace them (including the new term 'dry');
- Clarification of the rules on the composition and labelling of compound terms, allusions, mixtures and blends (i.e. when spirit drinks are combined with other foodstuffs, including other spirit drinks);
- Clarification that names of plant raw materials that are used as legal names of certain spirit drinks may be used in the presentation and labelling of other foodstuffs (e.g. *Kirsch*, *Anis*);
- Delegation to the Commission of the power to create a public register listing the bodies appointed to supervise ageing processes;
- Introduction of the obligation to indicate in the electronic administrative document the name and the maturation period of spirit drinks that cross national borders;
- Clarification of the definition of the place of provenance for spirit drinks and exemption from the obligation to indicate the country of origin or place of provenance of the primary ingredient if it is different from that of the spirit drink;
- Introduction of the possibility that terms in *italics* in Annex II and III and geographical indications may be accompanied by translations, transcriptions or transliterations for export markets;
- Clarifications on the rules that the Commission may adopt concerning Union reference methods of analysis for spirit drinks, ethyl alcohol of agricultural origin and distillates of agricultural origin;

- Clarifications about the derogation that the Commission may adopt concerning *brandies* matured with the '*criaderas y solera*' system with respect to the general rules on the description, presentation and labelling of the maturation period or ageing of spirit drinks;
- Clarification that rules on production, description, presentation and labelling apply two years after the entry into force of the new Regulation, while all rules concerning geographical indications apply already two weeks after that entry into force and adjustment of the repeal of corresponding provisions in Regulation (EC) No 110/2008 and Commission Regulation (EU) No 716/2013;
- **Category 1 Rum:** sweetening threshold: 20 grams of sweetening products per litre, expressed in invert sugar; clarifications on the use of the French term '*traditionnel*', the Portuguese and Spanish term '*tradicional*' and the term 'agricultural';
- **Category 2 Whisky or Whiskey:** sweetening threshold: zero; clarifications on the use of the term 'single malt';
- **Category 3 Grain spirit:** correction of the minimum alcoholic strength to 35% BAV; sweetening threshold: 10 grams/litre; clarification that in the legal name 'grain spirit' or 'grain brandy' the word 'grain' may be replaced by the name of the sole cereal used in its production;
- **Category 4 Wine spirit:** sweetening threshold: 20 grams/litre; clarification that the German term '*Branntwein*' may be used in combination with the term '*essig*' for certain vinegars;
- **Category 5 Brandy or Weinbrand:** sweetening threshold: 35 grams/litre;
- **Category 6 Grape marc spirit or grape marc:** sweetening threshold: 20 grams/litre;
- **Category 7 Fruit marc spirit:** sweetening threshold: 20 grams/litre; clarification that if marcs of several different fruits are used the legal name 'fruit marc spirit' may be supplemented by the name of each fruit in decreasing order of the quantity used;
- **Category 8 Raisin spirit or raisin brandy:** sweetening threshold: 20 grams/litre;
- **Category 9 Fruit spirit:** clarification of types of fruits that may be used; clarification that it may not be coloured except for caramel that may be used to adjust the colour of spirits aged at least one year in contact with wood; sweetening threshold: 18 grams/litre; clarification that certain EU languages may express the legal name by adding a suffix to the name of the fruit, berry or vegetable; clarification of alternative legal names, including *Obstler*; clarification of the legal name in case only fruits, only vegetables or both fruit and vegetables were used to produce the fruit spirit;
- **Category 10 Cider spirit, perry spirit and cider and perry spirit:** sweetening threshold: 15 grams/litre; clarification that it can be produced by using exclusively cider (cider spirit), exclusively perry (perry spirit) or both cider and perry (cider and perry spirit);
- **Category 11 Honey spirit:** sweetening threshold: 20 grams of honey per litre;
- **Category 12 Hefebrand or lees spirit:** clarification that also lees from beer may be used for its production; sweetening threshold: 20 grams/litre;
- **Category 13 Beer spirit:** clarification that the legal name may be translated in all EU languages; sweetening threshold: 20 grams/litre;
- **Category 14 Topinambur or Jerusalem artichoke spirit:** sweetening threshold: 20 grams/litre;
- **Category 15 Vodka:** clarification that it may not be coloured; sweetening threshold: 8 grams/litre; clarification that the legal name 'vodka' may be translated in any EU language or used as such;
- **Category 16 Spirit (supplemented by the name of the fruit, berry or nuts) obtained by maceration and distillation:** clarification of fruit, berry and nuts that may be used for its production; clarification that it may not be coloured except for caramel that may be used to adjust the colour of spirits aged at least one year in contact with wood; sweetening threshold: 18 grams/litre;
- **Category 17 Geist (supplemented by the name of the fruit or the raw materials used):**

clarification that mushrooms may also be used in its production; clarification that it may not be coloured; sweetening threshold: 10 grams/litre; clarification that the term '*Geist*' may be used to describe other spirit drinks or alcoholic beverages;

- **Category 23 Caraway-flavoured spirit drinks or *Kümmel*:** clarification that the German term '*Kümmel*' may be used as legal name in any EU Member State;
- **Category 27 *Pastis de Marseille*:** clarification that the anethole content should be between 1,9 and 2,1 grams per litre;
- **Category 28 *Anis* or *janeževca*:** clarification that the Slovenian term '*janeževca*' may be used as legal name in any EU Member State; correction of the minimum alcoholic strength to 35% BAV;
- **Category 30 Bitter-tasting spirit drinks or *bitter*:** clarification that the legal name 'bitter' may be translated in any EU language or used as such and that it can also be used in the description, presentation and labelling of bitter-tasting liqueurs;
- **Category 31 Flavoured vodka:** sweetening threshold: less than 100 grams/litre; clarification that the legal name 'vodka' may be translated in any EU language or used as such;
- **Category 32 Liqueur:** introduction of a minimum sweetening level for liqueurs whose sole aromatic substance is wormwood: 80 grams/litre; clarification of the alternative legal names for certain liqueurs; clarification that the legal name for liqueurs containing milk or milk products may be 'cream' supplemented by the name of the main flavouring material; clarification of the requirements allowing that the legal name may be supplemented with the name of the main flavouring materials;
- **Category 39 Sambuca:** correction of the minimum sweetening threshold to 350 grams/litre; clarification that it may not be coloured;
- **Category 40 *Maraschino*, *Marraschino* or *Maraskino*:** clarification that it can be produced also by macerating cherries in distillates of marasca cherries; clarification that it may not be coloured;
- **Category 41 *Nocino* or *orehovec*:** clarification that the Slovenian term '*orehovec*' may be used as legal name in any EU Member State; clarification that it may be produced by simple maceration or by maceration and distillation;
- **Category 42 Egg liqueur or *advocaat* or *avocat* or *advokat*:** clarification that eggs not from chicken hens shall be specified on the label; clarification that flavouring foodstuffs, and, in particular, milk products may be used in its production;
- **Category 43 Liqueur with egg:** clarification that flavouring foodstuffs, and, in particular, milk products may be used in its production;
- **Category 44 *Mistrà*:** sweetening threshold: zero; clarification that it may not be coloured;
- **Category 45 *Väkevä glögi* or *spritzglögg*:** clarification that wine or wine products may be used to flavour it;
- **Other spirit drinks:** addition of *Guignolet-Kirsch*.

Main modifications as regards the Geographical indications related aspects:

- **GI: New definitions:** group, generic name (Article 2a (6)(7));
- **GI: Clarification of "technical file" under Regulation (EU) No 110/2008:** equivalent to "product specification" (definition no 5 in Article 2a, Article 19(2));
- **GI: Change of wording (PGI/GI)** from "protected geographical indications" to "geographical indications protected under this regulation" (Articles, 18(1), 18(2), 18(3), 19(1), 34(title), 35(5));
- **GI: Enlargement of the protection** of geographical indications (GIs) when used as an ingredient (Article 18(2));

- **GI: Change of the wording** in Article 18(2)(c) concerning labelling and presentation;
- **GI: Enlargement of the protection** of geographical indications (GIs) against the goods in transit in the EU territory (Article 18(3a));
- **GI: Product specification** (Article 19(1)a,b,h). Clarifications on: alphabet used for names registration, category of the spirit drink, the packaging rules and the nature of technical files;
- **GI: Change in the description of the link** in the product specification (Articles 19(1)f) and 20(1)(c)(ii));
- **GI: Application for registration** (Article 20). Changes concerning the content of the single document;
- **GI: Application from 3C** (Article 20(1) second paragraph): obligation for applicants to send reference to publication of the product specification;
- **GI: Enlargement of the definition of group** to single producers and MS authorities in certain specific cases (Article 21(1a) and (1b));
- **GI: Applications scrutiny by the COM** limited to the "manifest error principle" and reduced to 6 months (Article 23(1));
- **GI: Transitional period** allowing continued use of protected name limited to 15 years (Article 26(2));
- **GI: New system for adoption of amendments to product specifications** (Article 28): Union, standard and temporary amendments. Also for 3C;
- **GI: Change in the scrutiny of an amendment:** It "shall only address the proposed amendment" (Article 28(3));
- **GI: Decision on registration** (Article 27(1)). Steps added to improve the decision procedure and in particular the information of applicants;
- **GI: Cancellation** (Article 29(2)(3)). Steps added to improve the decision procedure and in particular the information of applicants.
- **GI: Register** (Article 30(2), subparagraphs 1,2,3). Details added to the regime of the Register in order to improve transparency and accessibility. Obligation for the Commission to establish the Register within two years from the entry into force of the Regulation;
- **GI: Homonymous** (Article 31(4)). Provision added. To mirror Article 100(4) of Regulation (EU) No 1308/2013;
- **GI: Grounds for refusal as regards production steps** (Article 32(3)). Provision reformulated by focussing on the definition of GI;
- **GI: Relationship between Geographical Indications and Trade Markse** (Article 33). All situations referred to in Article 18 are relevant to refuse registration or invalidate a TM. The date of submission of the application for registration of the GI to the COM is taken as (coexistence) date before which a TM may continue to be used. Aligned to food and aromatised wines sectors;
- **GI: Change of legal basis for the power of the COM to continue the assessment of the existing GIs:** from Article 34(2) of the Proposal into a new Article 45 which provides two years extension of the legal basis in Regulation (EC) No 110/2008 (Articles 20 of Regulation (EC) No 110/2008 and 9 of Regulation (EU) No 716/2013);
- **GI: Control authority** in case an authority is deemed to be a group (Article 35(1));
- **GI: Obligation to keep the list of the operators** (Article 35(-1)), requirements to perform the surveillance of the name on the market and *ex officio* controls (Article 36(1a)).

General final provisions:

- **Rules on transitional measures, repeal of Regulation (EC) No 110/2008 and entry into force and application (Articles 45, 46, 47) have been modified.** GI part will be applicable 15 days after the entry into force of the Regulation while the general part will be applicable after two years. Regulation (EC) No 110/2008 will still be applicable for two years after the entry into force of the new regulation, with the exception of the GI chapter, which is repealed after 15 days. However, some provisions of the GI chapter of Regulation (EC) No 110/2008 will remain applicable: Article 17(2) (for two years), Article 20 (until conclusion of the Commission's assessment on the existing GI) and Annex III (until the new Register is established).