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Chairman of the  
Special Standing Committee on  
European Affairs  
Vouli ton Ellinon  
11, Av. Vassilissis Sofias  
GR – 10021 ATHENS*

*cc. Mr Nikos VOUTSIS  
President of the  
Vouli ton Ellinon  
11, Av. Vassilissis Sofias  
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*Dear Chairman,*

*The Commission would like to thank the Vouli ton Ellinon for its Opinion on the 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 {COM(2016) 750 final}.*

*The proposal aims to align Regulation (EC) No 110/2008<sup>1</sup> to the provisions in the Treaty on the Functioning of the European Union and is therefore part of the process of adapting the European Union's "acquis" to the new legislative framework determined by the Treaty.*

*The Commission recalls that the existing legal framework at the level of the European Union for spirit drinks ensures the free circulation of goods in the single market by establishing product definitions, labelling rules and provisions related to the protection of geographical indications for spirit drinks. The proposal does not set out to change that.*

*Besides aligning the Regulation with the Treaty, the proposal only introduces 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 European Union legal instruments. Structure and wording changes have been introduced to simplify the regulations and improve their readability, in line with the Commission's Better Regulation agenda. In addition, the proposal replaces the existing procedures for the management of geographical indications in*

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<sup>1</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. 16-54.

*the spirit drinks sector with new procedures modelled on the more exhaustive and well tested procedures for agricultural products and foodstuffs.*

*The Commission takes seriously the concerns expressed by the Vouli ton Ellinon in its opinion which has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions.*

*As regards the respect of the principle of proportionality, the Commission would like to emphasize the fact that this proposal constitutes an alignment of Regulation (EC) No 110/2008 with the Treaty. As an alignment, it keeps the same substantial rules that ensure in the current framework the free circulation of spirit drinks in the single market, a high level of consumer protection, the attainment of market transparency and fair competition among producers as well as the safeguard of the high reputation which the Union's spirit drinks have achieved in the Union and on the world market. These rules establish product definitions, labelling rules and provisions related to the protection of geographical indications for spirit drinks. They obviously result in an important level of harmonisation which the Commission has maintained in its proposal, considering that, without them, the crucial objectives at stake could not be ensured. Furthermore, the Commission considers that, by maintaining the current level of harmonisation, these objectives have been addressed in the most efficient and satisfactory way while leaving as much scope for national decision as possible.*

*Indeed, the role of the Member States in this harmonised framework remains crucial. Member States are responsible for the uniform application of the rules on spirit drinks, for establishing and applying procedural rules concerning the protection of geographical indications, for adopting the necessary measures to ensure the required checks and verifications and for the necessary exchange of information between the Commission and the Member States for the implementation of this Regulation.*

*The Commission powers included in the proposal do not mirror those of Regulation (EC) No 110/2008. They have been completely reformulated in accordance with Articles 290 and 291 of the Treaty on the functioning of the European Union (TFEU). Therefore, the powers in the proposal are split into delegated and implementing and, furthermore, they are precisely framed.*

*In particular, Article 290 TFEU indicates that a delegated act can delegate to the Commission the power to adopt non-legislative acts of general application to supplement and amend certain non-essential elements of the legislative act. In addition, the Common Understanding between the European Parliament, the Council and the Commission on delegated acts sets out some criteria applicable to the delegated powers requiring for example that the objectives, content, scope and duration of a delegation should be expressly defined in each legislative act. The delegated powers in this proposal respect these criteria, adding considerable precision.*

*In this way, the current wide power to amend the annexes to Regulation (EC) No 110/2008 through a regulatory procedure with scrutiny, for example, is transformed into Article 5 of the proposal, a detailed provision precisely defining the power of the Commission to introduce certain changes to the annexes to the legislative act under specific conditions.*

*This strict definition of powers is maintained in the others chapters of the proposal. For example, as regards labelling, under the current rules the Commission powers would cover all necessary measures to ensure the uniform application of the Regulation, adopted in accordance with the regulatory procedure but, in this proposal, the Commission powers have been split into delegated and implementing. In particular, Article 16 defines precisely the Commission's delegated powers in this area and the conditions to which they are subject.*

*Concerning the chapter on geographical indications, it should also be noted that the empowerments regarding procedural rules mirror those of Regulation (EU) No 1151/2012.<sup>2</sup>*

*The Commission believes that, in addition to not affecting essential elements of the legislative act, the delegated powers envisaged by its proposal respond to the level of technicality of the subject matter. The technicality of the matters within the delegated powers belongs to an expert group and allows for a timely reaction of the Union required, for example in case of new developments in international standards, consumer demands or product innovation so that new products are swiftly subject to uniform technical specifications. In this way, the delegated powers are crucial to maintain the competitiveness and high reputation of spirit drinks produced in the Union and to ensure a high level of information and protection for consumers.*

*Therefore, the Commission considers that the proposed delegated powers are in line with the principles of subsidiarity and proportionality and protect the sector as well as consumers.*

*In response to the more technical comments in the Opinion the Commission would like to refer the Vouli ton Ellinon to the enclosed annex. The points made above and in the annex are based on the initial proposal presented by the Commission which is currently in the legislative process involving the European Parliament and the Council.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Vouli ton Ellinon and looks forward to continuing our political dialogue in the future.*

*Julian King*

*Member of the Commission*

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<sup>2</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. 1–29.

## Annex

*The Commission has carefully considered the issues raised by the Vouli ton Ellinon in its Opinion and is pleased to offer the following clarifications.*

*1. Concerning the remark that the proposal fails to take account of the special character of spirit drinks, compared to various agricultural products, something that is also recognised via the long-standing exemption of spirit drinks' geographical designation from horizontal provisions, the Commission would like to stress that it considers geographical indications as useful instruments allowing producers to protect the unique nature of product names from imitation. The spirit drinks sector is a strategic sector for geographical indications. The proposal maintains all the substantial rules and specificities of the geographical indications for spirit drinks. Only the procedures for registration, amendment, cancellation and opposition would be changed. These procedures have been made more transparent, less burdensome and more consistent with intellectual property rules and procedures relating to geographical indications applied in the European Union and accepted internationally. Consistency of intellectual property rules is particularly important for international negotiations.*

*2. Concerning the remark that the provisions of Article 34(2) on the cancellation of protected geographical indications referred to in Regulation (EC) 110/2008 by means of Implementing Acts and on Commission initiative would create legal uncertainty, while rebutting the existing status and the statement that the initiative for cancellation of recognized geographical indications' protection should remain within the concerned Member State, the Commission would like to point to the fact that, as regards the protection of existing geographical indications, Article 34 of the proposal provides that geographical indications of spirit drinks protected under Regulation (EC) No 110/2008 will automatically be protected as geographical indications under the new Regulation. That same Article also confers a power to the Commission to cancel, on its own initiative and for a period of up to two years following the entry into force of the Regulation, the protection of existing geographical indications if they do not comply with the definition of spirit drink geographical indication. This is the logical conclusion of the exercise on the existing spirit drinks geographical indications as provided for by Article 20 of Regulation (EC) No 110/2008. At present, the power to cancel the protection of an existing geographical indication if it does not comply with the definition of spirit drinks geographical indication is provided for in Article 9 of the Commission Implementing Regulation (EU) No 716/2013<sup>3</sup> laying down rules for the application of Regulation (EC) No 110/2008. The current Article 9 provision does not have an end date, so the modification proposed, to terminate this power after two years, will increase, not decrease, legal certainty.*

*3. The explicit indication of "bottles" in the technical definition of packaging aims at clarifying the interpretation of the provision on the obligation to justify the packaging in the geographical area. Bottling may not be considered as a production step of spirit drinks. The*

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<sup>3</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.

*spirit drink is a final product before it is bottled. Technical files (or product specifications) may require that the bottling of a spirit drink with a geographical indication takes place within the geographical area only if this obligation is sufficiently justified. This is already established in the legislation currently applicable (Article 10 of Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008). In particular, recital 6 of this Regulation explains that "Restrictions concerning the packaging of a spirit drink with a geographical indication, such as the obligation to package the spirit drink in a defined geographical area, constitute restrictions to the free movement of goods and the freedom to provide services. Such restrictions should only be allowed if they are necessary, proportionate and suitable to protect the reputation of the geographical indication."*

*4. Finally, concerning the remark that geographical indications are part of the cultural heritage of the Member State concerned, and therefore, reputation and quality assurance must be principally provided by national law and only supplemented by Union law, the Commission would like to recall that the protection scheme concerning geographical indications for spirit drinks under the rules of the European Union is the result of a partnership between the Commission and the Member States. Respective tasks are well identified. Moreover, by presenting this proposal, the Commission aimed at increasing the responsibilities of Member States, so better aligning procedures with the principle of subsidiarity. More power is given to Member States as regards, for instance, amendments and oppositions at national level. The Commission recognises that Member State authorities have a deep knowledge of the products which are produced in their territories. However, the protection of geographical indications as intellectual properties is extended to the whole Union territory. The system is a Union system which must have the same effects, creating the same rights and obligations, in all Member States. Therefore, the rules governing such a system must be provided at the level of the European Union.*