

GUIDELINES RELATING TO

Article 9, 10 et al. of Regulation (EC) No 110/2008 (EC) of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 concerning the use of "compound terms"

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Opening remarks:

1. The aim of the European Parliament and of the Council as legislator in adopting Regulation (EC) No 110/2008 (hereinafter referred to as 'the Regulation' or 'Regulation 110/2008') has been to draw up a spirit drinks Regulation to be directly applied in all of its content without the need of any additional implementing provisions. Preamble clause 18 of the Regulation stipulates, that the measures necessary to solve practical problems specific to the spirit drinks sector should be adopted in accordance with Decision 1999/468/EC.
2. According to Article 24(3) of Regulation 110/2008, the Commission, in consultation with the Member States, shall ensure the uniform application of this Regulation.
3. The Commission's task is to ensure the application according to the wording of the Regulation as voted for with substantial majorities after four years of intensive and detailed discussions with all stakeholders involved. There is no mandate by the legislator to the Commission to amend nor alter nor interpret existing legislation.
4. In this context, Guidelines are the appropriate means to address practical questions.
5. "Compound terms" historically constitute the only legally accepted exemption to the principal of strict protection of sales denominations and geographical indications. The spirit drinks sector still lacking compulsory ingredient labelling relies on a clear sales denomination. The correct use of "compound terms" as a sales denomination consisting of a combination of a defined spirit drinks and any additional component has a long history of discussions in the spirit drinks sector.
6. In order to meet the aim of Article 24(3) of the Regulation, the uniform application of the Regulation is of great importance. The "Minutes of the 93rd meeting of the Committee for Spirit Drinks on 3 July 2008" (AGRI D/25555 22/10/08) as endorsed by the Committee for spirit drinks in its 94th meeting on 5 November 2008 have already provided guidance regarding the provisions set out in Article 9, 10 et al., in particular concerning "compound terms". As Member State administration and stakeholders have a legitimate interest in clarification, the present Guidelines aim at further clarification of the matter.

7. Guidelines on "compound terms" are strictly limited to the wording of Regulation 110/2008. Commission Guidelines do not contain interpretation or new elements. There is no mandate or intention to amend this Regulation nor to re-open any discussion on its content. The sole aim is to ensure the uniform application of the Regulation according to Article 24(3) thereof.
8. The examples they contain are given for illustration only.
9. The Guidelines and examples given in this document cannot be regarded as official interpretation of the legislation, this being the exclusive reserve of the Court of Justice of the European Communities.

Scene Setter:

Article 6(3) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs stipulates that "*in the case of beverages containing more than 1,2 % by volume of alcohol, the Council, acting on a proposal from the Commission, shall, before 22 December 1982, determine the rules for labelling ingredients.*"

This intention originally stems from "Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer".

The European Parliament and the Council have not yet set rules for ingredient labelling of spirit drinks.

To further confirm this intention and at the explicit request of the European Parliament, at the occasion of the First Reading adoption of Regulation 110/2008, the following Statement has been added to the text of the Regulation (Interinstitutional File 2005/0028 (COD) – 10926/07 of 22 June 2007):

Statement

The Commission and Council agree on the need for the rules for labelling ingredients for spirit drinks as referred to in Directive 2000/13/EC to be adopted as soon as possible.

Notwithstanding possible national legislation, in the Member States of the European Union – unlike other countries - ingredients labelling for spirit drinks and other beverages containing more than 1,2 % by volume of alcohol does not apply.

Based on this ingredients labelling derogation, the correct application of Regulation 110/2008 and in particular the enhanced protection of sales denominations and geographical indications constitute a central element to ensure the respect of the aims of the Regulation quoted in paragraph 1. The Regulation protects clearly defined products against illegitimate use in the presentation of derived products not meeting the strict criteria set out.

Generally, in the EU, Food Law does not define sales denominations in the food sector except in rare cases such as the vertical legislation (chocolate, jams ...) or in the spirit drinks Regulation.

In the overall legal context the spirit drinks sector is unique, insofar as legislation provides for product definitions (sales denomination) but does not foresee ingredient listing despite the sensitivity of the sector.

This again points to the central role of the sales denomination as a concept to guarantee adequate consumer protection.

Amongst others, the preamble of the Regulation already states its overall objectives, e.g.:

- *the attainment of a high level of consumer protection*
- *the prevention of deceptive practices*
- *the attainment of market transparency and fair competition.*
- *to continue to take into account the traditional practices used in the production of spirit drinks*
- *to take into account the increased demand for consumer protection and information.*
- *to take into account technological innovation in the categories where such innovation serves to improve quality*
- *to set out clearly defined criteria for the production, description, presentation and labelling of spirit drinks as well as on the protection of geographical indications.*
- *to focus on definitions of spirit drinks which should be classified into categories*
- *to continue to respect the traditional quality practices*
- *to prevent the misuse of the term 'spirit drink' and the names of spirit drinks for products which do not meet the definitions set out in this Regulation.*

In the tradition of Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks, the present spirit drinks Regulation 110/2008, having included the European Parliament in the legislative process, continues to be based on a liberal principle:

Every spirit drink can be placed on the market as long as it is correctly labelled and is in line with general food law. No spirit drink is taken from the market. Yet, this liberal principle is historically combined with the principle of enhanced protection of the sales denomination and geographical indications. With Regulation 110/2008 no products become "illegal", yet the adaptation of the sales denomination to the new legal situation might be necessary in certain cases.

The general principle remained unchanged: Any product which meets the minimum criteria of general food law may be marketed in the EU. Yet, Regulation 110/2008, amongst others, sets the framework for the correct application of the obligatory sales denomination.

The objective to take into account technological innovation where such innovation serves to improve quality is accommodated by this approach.

The objective to take into account traditional practices used in the production of spirit drinks has served as a basis to root all spirit drinks definitions stipulated in Annex II of the Regulation in the respect of traditional quality practices, and is specifically mirrored – following profound discussion by the legislator - in its Annex II 4(d), Annex II 5(d), Annex II 6(d).

The most effective means of Regulation 110/2008 for consumer protection is via the sales denomination. This Regulation may in fact constitute the only branch of EU law where protection lies practically entirely on the correct application of the sales denomination.

Though a concrete analysis has not been provided by the industry, economic importance of products defined in Annex II and Annex III of the Regulation including "spirit drinks" exceeds significantly products sold with a "compound term" as sales denomination.

Introduction:

The minutes of the 93rd meeting of the Committee for Spirit Drinks on 3 July 2008 (AGRI/D/25555 22/10/08) have been endorsed by delegations. These minutes contain a chapter on the application of Regulation 110/2008, in particular Articles 9 and 10, according to discussions in the Committee.

In this context, Commission services have reminded the Committee that it is the exclusive competence of the Court of Justice to interpret EU regulations.

According to Article 24 of Regulation 110/2008, Member States shall be responsible for the control of spirit drinks. They shall take the measures necessary to ensure compliance with the provisions of this Regulation.

Yet, according to Article 24(2) and (3), "*Member States and the Commission shall communicate to each other the information necessary for the application of this Regulation*" and "*the Commission, in consultation with the Member States, shall ensure the uniform application of this Regulation and if necessary shall adopt measures in accordance with the regulatory procedure referred to in Article 25(2).*" According to the Treaty, discrepancies in the legal assessment are the competence of the Court of Justice of the European Communities.

Based thereupon, one of the functions of the Spirit Drinks Committee is to provide for a permanent conference between the Commission and Member States on the uniform application of Regulation 110/2008.

The aim is to ensure enduring and coherent application of the Regulation, based on the wording and will of the legislator, i.e. the European Parliament and the Council both having voted for the Regulation with substantial majorities.

The Commission may solely provide for technical assessment without taking position to ensure the uniform application of the Regulation. Technical assessment is not based on interpretation of provisions, but on the wording of the legal act. This technical assessment is likely to serve as a basis for a Commission position in an eventual court case.

The two central Articles are titled "Specific rules concerning sales denominations" (Article 9) and "Specific rules concerning the use of sales denominations and geographical indications" (Article 10).

Compound terms:

"Compound terms" have been used as a possibility to additionally inform consumers but – on the other hand – also constitute a potential means for misleading consumers. Being the only legal possibility to diverge from the strict application of the sales denomination, "compound terms" occupy and have always occupied a considerable role in the discussion on labelling, presentation and discussion on spirit drinks.

The discussion on the correct application of the relevant EU provisions on "compound terms" is therefore not new to Regulation 110/2008. In fact, in 1991 this discussion has led to an

amendment of Regulation (EEC) No 1576/89 – at the time limited to the product category "liqueurs" - and to a court case of the European Court of Justice of 16 July 1998 (C-136/96).

Based on Regulation (EEC) No 1576/89 in an attempt to define the notion "compound term" the European Court of Justice historically ruled in the concrete case as follows:

"The words "*spiritueux au whisky*" do not constitute a compound term within the meaning of Article 7b of Regulation (EEC) No 1014/90 ... By '*compound terms*' the Community Legislature intended to refer to a combination of the names of two different drinks, not the combination of the words 'spirit' and 'whisky', whisky being itself a spirit."

Whilst this judgement excludes the combination of a spirit drinks category with the term "spirit drink/spiritueux" it does not provide for further clarification (not sought for in the concrete case).

What is a "compound term" in the context of Regulation 110/2008?

Lacking a legal definition and not being entitled to interpret, a merely factual approach might help to achieve some clarity.

A "compound term" in the meaning of Articles 9 and 10 of Regulation 110/2008 could be seen as a composed term, consisting of two or more parts, e.g. combined with or without prepositions etc. used as a sales denomination in the presentation of a spirit drink.

One part bears a term listed in categories 1 to 46 of Annex II or of a geographical indication registered in Annex III.

(An)other part(s) containing a name of a drink, another foodstuff, a fantasy notion and also a spirit drink (argument: "*...prohibited unless the alcohol originates exclusively from the spirit drink(s) referred to*").

Articles 9 and 10 of the Regulation set the limit. A fancy name as stipulated in Article 9(8) cannot be a "compound term".

"Compound terms" constitute the only possibility foreseen by Regulation 110/2008 to derogate from the general prohibition on the use in the sales denomination of a term listed in categories 1 to 46 of Annex II or of a geographical indication registered in Annex III on a spirit drink *in any way whatsoever* (Article 9(4)) if the product does not fully meet one of the definitions listed under categories 1 to 46 and/or the relevant technical file.

As any exception to a general rule, the correct application is to be done in a restrictive way.

"Compound terms" have traditionally been dealt with by EU legislation accordingly (see: Article 7b(1) Commission Regulation (EEC) No 1014/90 "the use of a generic term in a compound term shall be prohibited in the presentation of a spirit drink unless...", Article 7b(3) laying down restrictive labelling provisions for compound terms).

The complexity of the provisions in the context of Regulation (EC) No 1576/89 hints at a long standing controversial discussion on the topic "compound terms" in an otherwise historically strict legal environment (compare also: Article 5(1) Regulation (EEC) No 1576/89 "Spirit drinks which do not meet the specifications laid down for the products defined in Article 1(4) may not bear the names assigned therein to those products).

Regulation 110/2008 follows in principle the path of the preceding legal act, Regulation (EEC) No 1576/89, by concentrating on the correct application of the sales denomination, for product categories defined in the Regulation. Yet, this approach has been considerably strengthened by Regulation 110/2008. In fact, Regulation 110/2008 differs considerably from its predecessor, Regulation (EEC) No 1576/89, including in the context of "compound terms", amongst other elements by its extension of the application beyond the category "liqueurs" and by its extension beyond the spirit drinks sector.

Although the general context of Regulation 110/2008 has developed significantly from the historic approach taking into account the increased demand for consumer protection and information, the legislator has with a strong majority maintained the approach to continue not to explicitly define the notion "compound term" in the Regulation.

Although parts of the wording of Article 10(1) of Regulation 110/2008 and Article 7b(1) of Regulation (EEC) No 1014/90 coincide, other parts and in particular the legal context have evolved significantly.

Article 1(2) stipulates that Regulation 110/2008 shall also apply to the use of the names of spirit drinks in the presentation and labelling of *foodstuffs*. This is flanked by Articles 9(4), 9(7), 10(1) confirming the extension of the scope of application of Regulation 110/2008 beyond the core spirit drinks sector. Article 10(2) adds to the principle of exception of "compound terms" and even hints in the direction of general prohibition except for certain circumstances ("*The use of a compound term ...shall also be prohibited where...*").

In total, the overall legal context of rules on "compound terms" as stipulated in Regulation 110/2008 differs considerably from previous legal provisions and is stricter in conformity with the intention of the European Parliament and the Council to guarantee a high level of consumer protection, the prevention of deceptive practices and the attainment of market transparency and fair competition.

Being the result of lengthy public discussions including all relevant stakeholders and leading to a broad vote on Regulation 110/2008 by the European Parliament and the Council, the newly introduced provisions also mirror draft amendments which were not successful in the legislative process.

The fact that stakeholders might have introduced positions which are finally not taken on board by the legislator cannot lead to non application of the Regulation.

Regulation 110/2008 in relation to "compound terms":

The "Minutes of the 93rd meeting of the Committee for Spirit Drinks on 3 July 2008" drew attention in particular to the following provisions of Regulation 110/2008:

Article 9(1): "Spirit drinks which meet the specifications for the products defined in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination assigned therein."

This provision stipulates the necessity to comply with the criteria laid down for categories 1 to 46 to obtain the right to use its name as sales denomination of the product. A product called e.g. "whisky", "vodka", "gin" etc. has to comply with the relevant provisions and the parameters set for this category have to be fulfilled.

As with any alcoholic drinks, EU legislation does not require ingredient listing for the spirit drinks sector. Therefore, the enhanced protection of sales denominations and geographical indications remains the only means of consumer protection and – on the other hand – constitutes the liberal element of the Regulation as such.

Article 9(2): "Spirit drinks which meet the definition laid down in Article 2 but which do not meet the requirements for inclusion in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination 'spirit drink'."

All spirit drinks not complying with criteria laid down in categories 1 to 46 may still be marketed, but have to be labelled with the sales denomination "spirit drink".

The principles of Article 9(1) and 9(2) stipulate the obligation to label spirit drinks with the correct sales denomination, of which there are 46 category names and the notion "spirit drink". That sales denomination shall not be replaced or altered. This applies to "spirit drinks". For products 1 to 46 the respective provision is Article 10(1).

Article 9(4): "Without prejudice to paragraph 9 of this Article and to Article 10(1), the names referred to in paragraph 1 of this Article shall not be used to describe or present in any way whatsoever any drink other than the spirit drinks for which those names are listed in Annex II and registered in Annex III."

Amongst others, this provision is a newly introduced element to enhance the protection of sales denomination as defined in categories 1 to 46 and geographical indications. This provision introduces a strong element to protect defined sales denominations against misuse.

Every spirit drink marketed in the EU shall bear a clearly defined sales denomination. The Regulation contains 46 possible defined sales denominations plus the sales denomination "spirit drink". Sales denominations may be supplemented or replaced by a geographical indication (Article 9(5)).

As a new element of Regulation 110/2008, attention should be drawn to the fact that the sales denominations and geographical indications referred to in paragraph 1 shall not be used to describe or present any drink. This being in line with the principle to prevent deceptive practices and to confront inappropriate consumption goes beyond the scope of application of Regulation (EEC) No 1576/89 and includes drinks with a lower alcoholic content than 15 %.

Article 9(7): *"An alcoholic beverage not meeting one of the definitions listed under categories 1 to 46 of Annex II shall not be described, presented or labelled by associating words or phrases such as 'like', 'type', 'style', 'made', 'flavour' or any other similar terms with any of the sales denominations provided for in this Regulation and/or geographical indications registered in Annex III."*

Enhanced protection for categories as laid down above is confirmed and clarified by the legislator.

The approach to go beyond the scope of Regulation (EEC) No 1576/89 is confirmed by the wording "alcoholic beverage", which yet again includes drinks with a lower alcoholic content than 15 % (and above 1,2 % Art 3, 6, 12 Directive 2000/13/EC).

Article 9(9): *The names referred to in categories 1 to 46 of Annex II may be included in a list of ingredients for foodstuffs provided that the list is in accordance with Directive 2000/13/EC.*

Logically placed at the end of the Article 9 on the specific use concerning sales denominations and before the legally accepted exemptions laid down in Article 10, this Article 9(9) guides the way to use a protected sales denomination on the product labelling, even in the case that the entire alcoholic beverage at stake is not fully meeting one of the definitions listed under categories 1 to 46 of Annex II:

Therefore, names referred to in categories 1 to 46 of Annex II may be included in a list of ingredients for foodstuffs provided that the list is in accordance with Directive 2000/13/EC.

This also reflects the intention of the Commission and the Council on the need for the rules for labelling ingredients for spirit drinks as referred to in Directive 2000/13/EC to be adopted as soon as possible.

Article 10(1): *"Without prejudice to Directive 2000/13/EC, the use of a term listed in categories 1 to 46 of Annex II, or of a geographical indication registered in Annex III in a compound term or the allusion in the presentation of a foodstuff to any of them shall be prohibited unless the alcohol originates exclusively from the spirit drink(s) referred to."*

To use a "compound term" in a sales denomination of a spirit drink, the conditions of Article 10 set the only possibility; paragraphs 10(1) and 10(2) define the minimum level for the use of a defined sales denomination or a protected GI – another element to hint at a strict reading of the provision. The lowest level of benchmark is set by these two paragraphs.

As stated, Regulation 110/2008 does not provide for a definition of "compound terms", even after recent lengthy public discussions on the file. Not to define this notion by the legislator is therefore taken as intended.

The approach to go beyond the scope of Regulation (EEC) 1576/89 is yet again confirmed by the wording "foodstuff", which includes products beyond spirit drinks. (To note in this context Preamble clause 5 of the Regulation, "This Regulation should also apply to the use of ethyl alcohol and/or distillates of agricultural origin in the production of alcoholic beverages and to the use of the names of spirit drinks in the presentation and labelling of foodstuffs.")

Article 10(2): *"The use of a compound term as referred to in paragraph 1 shall also be prohibited where a spirit drink has been diluted so that the alcoholic strength is reduced to below the minimum strength specified in the definition for that spirit drink."*

This Article is a new element added in Regulation 110/2008 to further strengthen the consumer protection by enhanced protection of sales denominations and geographical indications.

On request, the Commission services have expressed the technical opinion that "dilution" in the context of this Article is seen as any process that leads to the result that the alcoholic strength is reduced to below the minimum strength specified in the definition for the spirit drink concerned.

This includes, amongst others, to make thinner or less concentrated by adding a liquid such as water, to lessen the force, strength, purity, or brilliance of, especially by admixture, to lessen the strength of a product or any other reduction in strength or concentration or quality or purity.

The use of a sales denomination assigned in categories 1 to 46 in a compound term is subject to the minimum alcoholic strength required by the respective definition.

Amendments to phrase the paragraph "diluted with water" were proposed in the process of Regulation 110/2008 but not taken on board by the legislator, indicating the will of the legislator to include other means of dilution.

Dilution in the context of Article 10(2) does not cover the normal processing step for a spirit drink. In particular, the definition of products like "liqueurs" refers to a number of manufacturing steps including reduction of the strength of the original ethyl alcohol, distillate of agricultural origin or spirit drink from which the liqueur is produced.

How to check a sales denomination containing compound terms against Regulation 110/2008¹?

Based on the wording of the Regulation a spirit drink or another alcoholic beverage or a foodstuff containing more than 1,2 % by volume of alcohol² using a term listed in categories 1 to 46 of Annex II or a geographical indication registered in Annex III in its presentation, the product and its overall presentation in the meaning of Annex I point 15 is eligible to be checked against the provisions of Regulation 110/2008.

- first: check of the sales denomination
- second: check of the overall presentation of the product.

1 --- Check of the sales denomination:

Article 9(1) Spirit drinks which meet the specifications for the products defined in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination assigned therein.

The general rule of Regulation 110/2008 stipulates that the sales denomination of a product is identical with the category name assigned to the product in Annex II of the Regulation.

Possible sales denominations are therefore: Rum, Whisky, Wine spirit, Fruit spirit, Vodka, Liqueur, etc.

With Article 9(7) stipulating that *"an alcoholic beverage not meeting one of the definitions listed under categories 1 to 46 of Annex II shall not be described, presented or labelled by associating words or phrases such as 'like', 'type', 'style', 'made', 'flavour' or any other similar terms with any of the sales denominations provided for in this Regulation and/or geographical indications registered in Annex III"*, it might prove difficult to include a product with a sales denomination including more than one term listed in categories 1 to 46 of Annex II, or of a geographical indication registered in Annex III except for the case explicitly discussed in the legislative process, where the consumer is clearly informed about the nature of the product, style: *"liqueur with a dram of whisky"*.

¹ This indication and the attached checklist are merely aiming at providing a simplified guidance to checking against Regulation 110/2008 without claiming completeness.

² Argument: Directive 2000/13 on the labelling of foodstuffs draws a distinction between products containing less or more than 1,2 % by volume of alcohol (Articles 3(10), 6(3), 12). Whilst the extension of the scope of application of Regulation 110/2008 to products beyond the core spirit drinks sector is clearly laid down in Regulation 110/2008 (Articles 1(2), 9(4), 9(7), 10(2)) products below 1,2 % by volume of alcohol are correctly treated in the general food law or competition law context, fully taking into account the provisions of Regulation 110/2008.

Regulation 110/2008 foresees 46 definitions of product categories listed in its Annex II to be checked against.

- Spirit drinks which meet the specifications for the products defined in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination assigned therein – Article 9(1)
- An alcoholic beverage not fully meeting one of the definitions listed under categories 1 to 46 of Annex II shall not be described, presented or labelled with any of the sales denominations provided for in the Regulation – Article 9(7).

Following the liberal principle of the Regulation, no product failing to meet one of the definitions is to be taken from the market. The correct sales denomination in such a case is likely to be "spirit drink" – Article 9(2).

"Compound terms" as the only legal possibility to diverge from the strict application of the sales denomination being a clear exception to the rule, the use of a term listed in categories 1 to 46 in a compound term needs to be read restrictively and along the general aims of the Regulation, in particular *to attain a high level of consumer protection* and to respond to *the increased demand for consumer protection and information* (Preamble clause 2).

In fact, a "compound term" will hardly contain two terms listed in categories 1 to 46 except for the example above ("*liqueur with a dram of whisky*") having been discussed by the legislator and clearly informing the consumer about the nature of the product.

The general rule to proceed in the interest of a uniform application of the Regulation is based on consumer protection in the light of non existence of ingredient listing – any reading and interpretation has to respect this premise.

Step by step checklist - abstract:

Does the sales denomination meet the definition of a term listed in categories 1 to 46 of Annex II or of a geographical indication registered in Annex III of Regulation 110/2008?

(Compound terms: Does every component meet the requirements of the Regulation?)

If yes:

A product entirely in line with the definition of a term listed in categories 1 to 46 of Annex II, the ► sales denomination assigned in the category or the relevant geographical indication shall be applied – Article 9(1), e.g. "rum", "whisky", "vodka", "gin"...

If no:

A product not entirely in line with the definition of a term listed in categories 1 to 46 of Annex II shall ...

Case 1: bear the ► sales denomination "spirit drink" or the appropriate sales denomination for products beyond the spirit drinks sector, not using a term listed in categories 1 to 46 of Annex II – Article 9(2)

or

Case 2 (exceptional): According to Article 9(4) the exceptional case of application of Article 10 on "compound terms" might apply, if all three conditions below are fulfilled:

- The product is to be checked against the requirement that the alcohol originates exclusively from the spirit drink(s) referred to – Article 10(1),
- The product has not been diluted so that the alcoholic strength is reduced to below the minimum strength specified in the definition for that spirit drink – Article 10(2) and
- Article 9(7) applies: *An alcoholic beverage not meeting one of the definitions listed under categories 1 to 46 of Annex II shall not be described, presented or labelled by associating words or phrases such as 'like', 'type', 'style', 'made', 'flavour' or any other similar terms with any of the sales denominations provided for in this Regulation and/or geographical indications registered in Annex III.*

In the light of the overall intention of the legislator for beverages containing more than 1,2 % by volume of alcohol, to determine the rules for labelling ingredients, Article 9(9) opens the possibility for additional consumer information for all products concerned:

Article 9(9). The names referred to in categories 1 to 46 of Annex II may be included in a list of ingredients for foodstuffs provided that the list is in accordance with Directive 2000/13/EC.

2 --- Check of the overall presentation of the product

Beyond the strict field of application of the sales denomination, additional consumer information is usually made available in the overall presentation of the product.

In this context, trade marks, brand names, fantasy names are usually used in line with the Regulation. Information of the consumer by description of the product including e.g. its alcoholic basis is always a possibility. Yet, the sales denomination is not the place foreseen for such information by the legislator.

In particular Articles 9(4), 9(7) and 10(2) apply.

The check of the overall presentation of the product includes general food law, competition law and other branches of law.

Special case: Transitional products

If the product is not in line with Regulation 110/2008 and produced before 20 May 2009 sales until stocks run out: Is the labelling of the product in line with Regulation (EEC) No 1576/89 (Article 5(1) second paragraph et al.) to find out if at all the product can be subject to the transitional period (Article 28(3) Regulation 110/2008 granting a transitional period for those products in accordance with Regulation (EEC) No 1576/89).

Even in the unlikely case of products still on the market not being in line with Regulation (EEC) No 1576/89, the new spirit drinks Regulation sticks to the approach not to ban products from the market, but simply requiring the adaptation of the labels.

Any product not in line with Regulation (EEC) No 1576/89 inevitably has to change labelling. In such a case a transitional period is not foreseen by the legislator.

Step by step checklist - concrete application³:

Most "compound terms" used in sales denominations on the market are in line with Regulation 110/2008.

The following examples deliberately elaborate examples which have caused divergences in the past and some of them have been discussed in the legislative process.

As with many legal provisions, grey zones of possible interpretation are not avoided, in particular in the context of compound terms as the only loophole to the strict application of the sales denominations. The aim can only be to add the utmost clarity.

The overall market situation is best mirrored by example 1, indicating daily practice fully in line with Regulation 110/2008.

Examples:

- **Example 1 - "Liqueur with a dram of whisky"**

A "compound term" of the sales denomination "liqueur" including additional information for the consumer on an ingredient.

It is actually the example for which the plural in Article 10(1) "alcohol originates from the spirit drink(s)" has been agreed by the legislator: The possibility to name another spirit drink listed in categories 1 to 46 in a clearly informative way for the consumer, leaving no place for misunderstanding the relation of the products involved.

Check against the Regulation according to the checklist above:

1. Does the sales denomination meet the definition of a term listed in categories 1 to 46 of Annex II or of a geographical indication registered in Annex III of Regulation 110/2008? (Compound terms: Does every component meet the requirements of the Regulation?)

32. **Liqueur** (excerpt)

- (a) Liqueur is a spirit drink:
 - (i) having a minimum sugar content, expressed as invert sugar, of:
 - 70 grams per litre for cherry liqueurs the ethyl alcohol of which consists exclusively of cherry spirit,
 - 80 grams per litre for gentian or similar liqueurs prepared with gentian or similar plants as the sole aromatic substance,
 - 100 grams per litre in all other cases;
 - (ii) produced by flavouring ethyl alcohol of agricultural origin or a distillate of agricultural origin or one or more spirit drinks or a mixture thereof, sweetened and with the addition of products of agricultural origin or foodstuffs such as cream, milk or other milk products, fruit, wine or aromatized wine as defined in Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine product cocktails ⁽¹⁾.
- (b) The minimum alcoholic strength by volume of liqueur shall be 15 %.

³ As indicated in the opening remarks: the Guidelines and examples given in this document cannot be regarded as official interpretation of the legislation, this being the exclusive reserve of the Court of Justice of the European Communities. Examples do not claim to represent product placed on the market in the exact same way. Yet, the examples given are indicative and therefore open to being adapted to market situations in the appropriate way, e.g. concrete geographical indications can be inserted into the relevant examples, product categories are interchangeable etc.

2. **Whisky or Whiskey**

- (a) Whisky or *whiskey* is a spirit drink produced exclusively by:
- (i) distillation of a mash made from malted cereals with or without whole grains of other cereals, which has been:
 - saccharified by the diastase of the malt contained therein, with or without other natural enzymes,
 - fermented by the action of yeast;
 - (ii) one or more distillations at less than 94,8 % vol., so that the distillate has an aroma and taste derived from the raw materials used,
 - (iii) maturation of the final distillate for at least three years in wooden casks not exceeding 700 litres capacity.
- The final distillate, to which only water and plain caramel (for colouring) may be added, retains its colour, aroma and taste derived from the production process referred to in points (i), (ii) and (iii).
- (b) The minimum alcoholic strength by volume of *whisky* or *whiskey* shall be 40 %.
- (c) No addition of alcohol as defined in Annex I(5), diluted or not, shall take place.
- (d) *Whisky* or *whiskey* shall not be sweetened or flavoured, nor contain any additives other than plain caramel used for colouring.

- * Liqueur: yes
- * a dram of whisky: yes

**** Under the condition that alcohol originates exclusively from the spirit drink(s) referred to a sales denomination consisting of two terms listed in categories 1 to 46 clearly indicating the nature of the product style "liqueur with a dram of whisky" is in line with Regulation 110/2008.**

Comparable "compound terms" in line with the Regulation:

- "Absente" (as fantasy name – Article 9(8)) sales denomination: "Liqueur aux plantes de...."
- "Liqueur made with <geographical indication>" (provided the technical file does not stand against it).
- "Licor a base de ron" (provided the alcoholic originates exclusively from rum)

- **Example 2 - "Vodka liqueur":** (or "Licor de Vodka", "Liqueur avec Vodka" or similar as example for a product using any two terms listed in categories 1 to 46 of Annex II in the sales denomination)

Check against the Regulation according to the checklist above:

Does the sales denomination meet the definition of a term listed in categories 1 to 46 of Annex II or of a geographical indication registered in Annex III of Regulation 110/2008?

15. Vodka (excerpt)

- (a) Vodka is a spirit drink produced from ethyl alcohol of agricultural origin obtained following fermentation with yeast from either:
- (i) potatoes and/or cereals, or
 - (ii) other agricultural raw materials distilled and/or rectified so that the organoleptic characteristics of the raw materials used and by-products formed in fermentation are selectively reduced. This process may be followed by redistillation and/or treatment with appropriate processing aids, including treatment with activated charcoal, to give it special organoleptic characteristics. Maximum levels of residue for ethyl alcohol of agricultural origin shall meet those laid down in Annex I, except that the methanol content shall not exceed 10 grams per hectolitre of 100 % vol. alcohol.
- (b) The minimum alcoholic strength by volume of vodka shall be 37,5 %.

32. **Liqueur** (excerpt)

- (a) Liqueur is a spirit drink:
- (i) having a minimum sugar content, expressed as invert sugar, of:
 - 70 grams per litre for cherry liqueurs the ethyl alcohol of which consists exclusively of cherry spirit,
 - 80 grams per litre for gentian or similar liqueurs prepared with gentian or similar plants as the sole aromatic substance,
 - 100 grams per litre in all other cases;
 - (ii) produced by flavouring ethyl alcohol of agricultural origin or a distillate of agricultural origin or one or more spirit drinks or a mixture thereof, sweetened and with the addition of products of agricultural origin or foodstuffs such as cream, milk or other milk products, fruit, wine or aromatised wine as defined in Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine product cocktails ⁽¹⁾.
- (b) The minimum alcoholic strength by volume of liqueur shall be 15 %.

- * Liqueur: yes
- * Vodka: no

If no:

A product not entirely in line with the definition of a term listed in categories 1 to 46 of Annex II shall bear the ► sales denomination "spirit drink" or the appropriate sales denomination for products beyond the spirit drinks sector, not using a term listed in categories 1 to 46 of Annex II – Article 9(2)

- * "spirit drink" is a possible sales denomination in this case

Note: Given the practical difficulties to analyse vodka vs. ethyl alcohol in a combined product any other reading would bear the risk of an entire loss of the protection of the sales denomination "vodka". Any foodstuff (spirit drink or other) made on the basis of ethyl alcohol could be labelled with a compound term including "vodka", leaving to control authorities the burden to proof .

- ** A sales denomination merely consisting of two terms listed in categories 1 to 46, style "vodka liqueur" or similar without further specification is not in line with Regulation 110/2008⁴.**

- As consumers do not expect liqueurs to be sold at the same alcoholic strength as the spirits from which they are made, the correct sales denomination might be "liqueur", but also "liqueur with a dram of vodka" "liqueur with the addition of vodka", "liqueur exclusively made from vodka" etc. Ingredient listing according to Article 9(9) is an option.

⁴ In addition it is questionable if such a sales denomination would even be in line with Article 5(1) Regulation (EEC) No 1576/89

2. Check of the overall presentation of the product

Beyond the strict field of application of the sales denomination, additional consumer information can be made available in the overall presentation of the product.

In this context, trade marks, brand names, fantasy names are usually used in line with the Regulation. Information of the consumer by description of the product including e.g. its alcoholic basis is always a possibility. Yet, the sales denomination is not the place foreseen for such information by the legislator.

In particular, Article 9(9) can be applied by the producers by including the names referred to in categories 1 to 46 of Annex II in a list of ingredients.

Articles 9(4), 9(7) and 10(2) apply.

The check of the overall presentation of the product includes general food law, competition law and other branches of law.

**** Although a sales denomination "vodka liqueur" is not in line with Regulation 110/2008 the product can dispose of other means to inform consumers in the overall presentation of the product provided it is in line with the Regulation.**

• Example 3 - "Whisky drink":

Amongst others, Articles 9(4), 9(7), 10(2) apply.

**** A sales denomination using a term listed in categories 1 to 46, style "whisky drink" not meeting the definition of whisky and/or having been diluted so that the alcoholic strength falls below the minimum strength specified in the definition for that spirit drink is not in line with the Regulation.**

▶ A correct sales denomination might be "spirit drink" (or below 15 % "alcoholic beverage" - not regulated by Regulation 110/2008).

**** Although a sales denomination "whisky drink" is not in line with Regulation 110/2008 the product can dispose of other means to inform consumers in the overall presentation of the product provided it is in line with the Regulation.**

- **Example 4 - "Whisky cream":**

Amongst others, Article 9(1) applies.

- **** A sales denomination "whisky cream" does not meet the definition of a term listed in categories 1 to 46 of Annex II or of a geographical indication registered in Annex III of Regulation 110/2008.**
- ▶ Spirit drinks which meet the specifications for the products defined in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination assigned therein – Article 9 (1). Depending on the nature of the product, the correct sales denomination might be "liqueur", "spirit drink"...
- **** Although a sales denomination "whisky cream" is not in line with Regulation 110/2008 the product can dispose of other means, including fancy names to inform consumers in the overall presentation of the product provided it is in line with the Regulation.**

- **Example 5 - "Gin Tonic"**

Amongst others, Articles 9(4), 9(7), 10(2) apply.

- **** A sales denomination using a term listed in categories 1 to 46, style "gin tonic" not meeting the definition of gin and/or having been diluted so that the alcoholic strength is below the minimum strength specified in the definition for that spirit drink is not in line with the Regulation.**
- ▶ Depending on the nature of the product, the sales denomination might be "alcoholic beverage"... (not regulated by Regulation 110/2008).
- **** Although a sales denomination "gin tonic" is not in line with Regulation 110/2008 the product can dispose of other means to inform consumers in the overall presentation of the product provided it is in line with the Regulation.**

Summary:

- The wording of the Regulation is seen as sufficiently clear to serve as a basis for Member States for the control of spirit drinks in the context of Article 24(1) of Regulation 110/2008 in the overall interest of a uniform application.
- To respect Article 24(3) of the Regulation, the uniform application of the Regulation in all 27 Member States is of great importance. Member State administrations should be provided with an applicable and controllable scheme in the context of "compound terms". This is one aim of the present guidelines.
- To attain a high level of consumer protection and to prevent deceptive practices and to ensure market transparency and fair competition, Regulation 110/2008 applies the principle of enhanced protection of the sales denominations and geographical indications.
- In particular taking into account the fact that no ingredient listing is stipulated by EU legislation, the Commission services see no intention by the legislator to deviate from a high level of consumer protection, the prevention of deceptive practices and the attainment of market transparency and fair competition as laid down by the Regulation for any products sporting a "combined wording" as sales denomination.
- The emphasis in the control of spirit drinks should be set in the context of the correct application of the *sales denomination* of the product. In a second step - and in particular in the case of an unclear situation - the overall presentation of the product is to be checked against Regulation 110/2008 and the general legal context (general food law, competition law etc.).
- This general legal context as well as eventual interpretation by the Court of Justice may add to define the full amount of consumer protection and quality policy in the context of compound terms.
- The Regulation, being clear in the context of the sales denominations, provides for a wide range of possibilities for consumer information beyond the limits of the correct sales denomination as such, e.g. Article 9(9).
- In the context of Regulation 110/2008, every spirit drink can be placed on the market as long as it is correctly labelled and is in line with general food law. No spirit drink is taken from the market. Yet, this liberal principle is historically combined with the principle of enhanced protection of the sales denomination and geographical indications. With Regulation 110/2008 no products become "illegal", yet the adaptation of the sales denomination to the new legal situation might be necessary in certain cases.
- Regulation 110/2008 protects producers against misuse of sales denominations and geographical indications; likewise it protects consumers against being misled.
- Traditional practices and innovation are taken into account across the entire Regulation.
- Application is done by Member States. Consistency of the application is guaranteed by the Spirit Drinks Committee. As ever, the Commission applies an open door policy for Member States and stakeholders to discuss eventual particularities.

- According to Article 24 of Regulation 110/2008, Member States shall be responsible for the control of spirit drinks and shall take measures necessary to ensure compliance with the provisions of the Regulation. Alleged non-compliances should therefore be directed to the respective competent authority of the Member State concerned.
- Discrepancies in the legal assessment lie in the competence of the Court of Justice of the European Communities.

Excerpt of Regulation (EC) No 110/2008⁵:

Article 1(2)

*This Regulation shall apply to all spirit drinks placed on the market in the Community whether produced in the Community or in third countries, as well as to those produced in the Community for export. This Regulation shall also apply to the use of ethyl alcohol and/or distillates of agricultural origin in the production of **alcoholic beverages** and to the use of the names of spirit drinks in the presentation and labelling of foodstuffs.*

Article 9

Specific rules concerning sales denominations

- 1. Spirit drinks which meet the specifications for the products defined in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination assigned therein.*
- 2. Spirit drinks which meet the definition laid down in Article 2 but which do not meet the requirements for inclusion in categories 1 to 46 of Annex II shall bear in their description, presentation and labelling the sales denomination 'spirit drink'. Without prejudice to paragraph 5 of this Article, that sales denomination shall not be replaced or altered.*
- 3. Where a spirit drink meets the definition of more than one category of spirit drink in Annex II, it may be old under one or more of the names listed for those categories in Annex II.*
- 4. Without prejudice to paragraph 9 of this Article and to Article 10(1), the names referred to in paragraph 1 of this Article shall not be used to describe or present in any way whatsoever any drink other than the spirit drinks for which those names are listed in Annex II and registered in Annex III.*
- 5. Sales denominations may be supplemented or replaced by a geographical indication registered in Annex III and in accordance with Chapter III, or supplemented in accordance with national provisions by another geographical indication, provided that this does not mislead the consumer.*
- 6. The geographical indications registered in Annex III may only be supplemented either:
(a) by terms already in use on 20 February 2008 for established geographical indications within the meaning of Article 20, or
(b) according to the relevant technical file provided for under Article 17(1).*
- 7. An alcoholic beverage not meeting one of the definitions listed under categories 1 to 46 of Annex II shall not be described, presented or labelled by associating words or phrases such as 'like', 'type', 'style', 'made', 'flavour' or any other similar terms with any of the sales denominations provided for in this Regulation and/or geographical indications registered in Annex III.*
- 8. No trade mark, brand name or fancy name may be substituted for the sales denomination of a spirit drink.*
- 9. The names referred to in categories 1 to 46 of Annex II may be included in a **list of ingredients** for foodstuffs provided that the list is in accordance with Directive 2000/13/EC.*

Article 10

Specific rules concerning the use of sales denominations and geographical indications

- 1. Without prejudice to Directive 2000/13/EC, the use of a term listed in categories 1 to 46 of Annex II, or of a geographical indication registered in Annex III in a compound term or the allusion in the presentation of a foodstuff to any of them shall be **prohibited unless** the alcohol originates exclusively from the spirit drink(s) referred to.*

⁵ Underline and bold are not components of the legal text but are inserted for the purpose of clarity in the context of the Guidelines.

2. *The use of a compound term as referred to in paragraph 1 shall also be prohibited where a spirit drink has been diluted so that the alcoholic strength is reduced to below the minimum strength specified in the definition for that spirit drink.*
3. *By way of derogation from paragraph 1, the provisions of this Regulation shall not affect the possible use of the terms 'amer' or 'bitter' for products not covered by this Regulation.*
4. *By way of derogation from paragraph 1 and in order to take account of established production methods, the compound terms listed in category 32(d) of Annex II may be used in the presentation of liqueurs produced in the Community under the conditions set out therein.*

The term "Presentation" is defined by Annex I / 15: 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.

The term "Labelling" is defined by Annex I / 16: Labelling means all descriptions and other references, signs, designs or trade marks which distinguish a drink and which appear on the same container, including its sealing device or the tag attached to the container and the sheathing covering the neck of the bottle.

Article 11(4)

4. *Without prejudice to Directive 2000/13/EC, the description, presentation or labelling of the spirit drinks resulting from the mixtures referred to in paragraph 2 of this Article may show one or more of the terms listed in Annex II only if that term does not form part of the sales denomination but is solely listed in the same visual field in the listing of all the alcoholic ingredients contained in the mixture, preceded by the term 'mixed spirit drink'.*

Preamble clauses:

- (2) *The spirit drinks sector is important for consumers, producers and the agricultural sector in the Community. The measures applicable to the spirit drinks sector should contribute to the attainment of a high level of consumer protection, the prevention of deceptive practices and the attainment of market transparency and fair competition. By doing so, the measures should safeguard the reputation which Community spirit drinks have achieved in the Community 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 the categories where such innovation serves to improve quality, without affecting the traditional character of the spirit drinks concerned.*
- (4) *To ensure a more systematic approach in the legislation governing spirit drinks, this Regulation should set out clearly defined criteria for the production, description, presentation and labelling of spirit drinks as well as on the protection of geographical indications.*
- (6) *In general, this Regulation should continue to focus on definitions of spirit drinks which should be classified into categories. Those definitions should continue to respect the traditional quality practices but should be completed or updated where previous definitions were lacking or insufficient or where such definitions may be improved in the light of technological development.*
- (9) *Given the importance and complexity of the spirit drinks sector, it is appropriate to lay down specific measures on the description and presentation of spirit drinks going beyond the horizontal rules established in Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. Those specific measures should also prevent the misuse of the term 'spirit drink' and the names of spirit drinks for products which do not meet the definitions set out in this Regulation.*