Council of the European Union
General Secretariat

Interinstitutional files:
2018/0218(COD)

Brussels, 08 April 2021

WK 4670/2021 INIT

LIMITE

AGRI
AGRIFIN
AGRIORG
CODEC
AGRILEG
CADREFIN

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

NOTE

From: To:	Presidency Special Committee on Agriculture (SCA)
N° Cion doc.:	9556/18 + REV 1 (en, de, fr) + COR 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands - Presidency note on the state of play of the negotiations

With a view to the meeting of the Special Committee on Agriculture on 12 April 2021, delegations will find in the Annex a Presidency note on the state of play of negotiations.

In recent weeks, progress was made on these amendments in the context of the technical meetings, the trilogues and/or the super-trilogue. The amendments relate to the negotiating block 2 on wine and geographical indications and the negotiating block 3 on producers' and inter-branch organisations:

- Wine labelling (nutrition information)
- Extension of the vine planting authorizations scheme
- Dealchoholization of PDO and PGI wines
- Maintaining the ban on the use of certain hybrids and wine grape varieties
- Use of the PDO/PGI and TSG symbols
- Suspension of scrutiny by the Commission
- Inclusion of beeswax in Annex I to Reg. (EU) No 1151/2012
- Contractual relations in the milk sector and in other sectors
- Compulsory declarations in the milk and milk product sectors

1. Block 2 - Wine and geographical indications

1.1 Wine labelling (nutrition information) – Articles 119 and 122

In October 2020, the European Parliament and the Council presented similar proposals for wines. These amendments concerned the compulsory indication of the nutrition declaration and of the list of ingredients. In particular, the co-legislators proposed that the nutrition declaration, which may be limited to the energy value, has to be provided on the label or the packaging, while the list of ingredients may be provided by electronic means identified on the label or packaging.

In the context of the ongoing negotiations, the Commission presented an alternative proposal, which foresees the compulsory indication of the nutrition declaration, which may be limited to the energy value, as well as the compulsory indication of the list of ingredients. In case the information on the label is limited to the energy value, the complete nutrition declaration should be provided by electronic means identified on the label or packaging. The list of ingredients may be provided by electronic means identified on the label or the packaging.

At the super-trilogue, the co-legislators agreed on providing nutritional information off-label, as a gesture from the part of the wine sector towards the Commission's future initiative on other alcoholic drinks but with no distinction made for the different categories of wine based on their alcohol volume.

The rules regarding the indication and the designation of ingredients for the application of Article 119(1)(i), paragraph 1, point (i) (on the list of ingredients) are to be set up by a Commission delegated act that has to be adopted within 18 months from the entry into force of the Amending Regulation. The relevant provisions on date of entry into force and on transitional period will be discussed separately, as part of the negotiating block 4.

As regards labelling of aromatised wines covered by Regulation (EU) No 251/2014 which are not covered by the drafting proposals of this document, the same approach should apply *mutatis mutandis* as for wine products.

Compromise wording for <u>Article 119</u> on compulsory particulars:

Article 1 - Amendments to Regulation (EU) No 1308/2013

"Regulation (EU) No 1308/2013 is amended as follows:

(…)

(18) Article 119 is amended as follows:

[Note: this article has more amendments under compromise, for better understanding, are referred only the relevant provisions to nutritional labelling]

(…)

(b) in paragraph 1 the following points are added:

'(h) the nutrition declaration pursuant to Article 9(1)(l) of Regulation (EU) No 1169/2011.

(i) the list of ingredients pursuant to Article 9(1)(b) of Regulation (EU) No 1169/2011.'

(c) the following paragraph 4 is added:

'4. By way of derogation from point (h) of paragraph 1, the nutrition declaration may be limited to the energy value on label or packaging, which may be expressed by using the symbol (E) for Energy. The nutrition declaration has to be provided additionally by electronic means identified on the label or packaging, for which no user data shall be collected or tracked. The nutrition declaration shall not be displayed with other information intended for sales or marketing purposes.'

(d) the following paragraph 5 is added:

'5. By way of derogation from point (i) of paragraph 1, the list of ingredients may be provided by electronic means identified on the label or packaging, in which case no user data shall be collected or tracked. The list of ingredients shall not be displayed with other information intended for sales or marketing purposes.'

Proposed amendment for <u>Article 122</u> on delegated powers:

[Note: this article has more amendments under compromise, for better understanding, are referred only the relevant provisions to nutritional labelling, under (20)(a)(ii). Even tough not related to nutritional provisions, (20)(a)(i) is displayed for clarity purposes]

(20) in Article 122, paragraph 1 is amended as follows

(a) point (b) is amended as follows:

(i) point (ii) is deleted;

(ii) the following point is added:

'(vi) rules for indication and designation of ingredients for the application of article 119 paragraph 1 point (i)'

(…)

1.2 Extension of the vine planting authorizations scheme – Article 61

The co-legislators agreed on the extension of the planting authorisation scheme until 2045 in the context of the second trilogue and this point was presented to the SCA on 8 February 2021 (document 5898/21). There were two remaining questions in relation to this extension of the scheme beyond 2030, namely the timing of the mid-term review and providing a justification for the extension in a recital.

It was agreed at the super-trilogue to extend the scheme until 2045 with two mid-term reviews to be undertaken in 2028 and 2040. It is advisable to carry out the first one before 2030, and the Presidency proposed that 2028 would be the appropriate time to carry out this first assessment, in order to allow conclusions to be reached before the date that was initially foreseen for the end of the regime. And on the other hand, as there will be many years between this date and the new end of the regime, it would be important to have a second mid-term review, closer to the end date of the extension period. Thus, it was considered that 2040 would be a good date for this purpose.

Draft recital justifying the extension of the vine planting authorisations scheme:

"The existing scheme of authorisations for vine plantings is considered essential to ensure the diversity and respond to the specificities of the Union wine landscape. The wine sector has specific characteristics, including the long cycle of viticulture with production only taking place several years after planting but then continuing for several decades and the potential for considerable fluctuations in production from one harvest to the next. Unlike many wine

producing third countries, the Union wine sector is also characterized by a very high number of small, family-run farms which results in a diverse range of wines. While an increase of production capacity is noticed on the world wine market due to the emergence of new players and changes in productivity conditions, there is a trend towards a continued decrease in domestic wine consumption due to changes in consumer habits. In order to guarantee the economic viability of their projects and to improve the competitiveness of the Union wine sector on the global market, operators in the sector and winegrowers therefore need medium-term visibility, given the significant investment that the planting of a vineyard represents. The scheme should therefore be extended from 2030 until 2045, i.e. for a period equivalent to the initial period in place since 2016."

Article 61

Duration

The scheme of authorisations for vine plantings established in this Chapter shall apply from 1 January 2016 to 31 December ~~**2030**~~ **2045**, with **two** mid-term reviews to be undertaken by the Commission **in 2028 and 2040**, to evaluate the operation of the scheme and, if appropriate, make proposals.

1.3 Dealcoholization of PDO/ PGI wines – Articles 80, 92, 93 and 119; Annexes VII and VIII

The second trilogue made good progress on this point too and the Presidency informed the SCA on 8 February 2021 (document 5898/21) about a possible compromise providing that PDO wines could be only partially dealcoholized while PGI wines could be dealcoholized totally or partially.

In the context of the super-trilogue, it was finally agreed that PDO and PGI wines can only be partially dealcoholized.

Considering that the outcome of the super-trilogue on this point is slightly different from the compromise proposal presented to the SCA on 8 February 2021, this point will be presented to the SCA again on 12 April 2021 for validation.

Following the various technical inter-institutional meetings and the outcome of the two trilogues and the super-trilogue where this issue was discussed, the Commission prepared an alternative text which reflects the compromise reached. This proposal provides the following:

I. amending Article 80 to address the limitations to oenological practices for grapevine products that undergo a dealcoholisation process;
II. allowing partial dealcoholisation for PGIs and PDOs;
III. dealing with labelling requirements for dealcoholized wine products in Article 119(1) on compulsory labelling particulars;
IV. redrafting Part II of annex VII to make clear that dealcoholized wine products are part of the different grapevine products categories and do not constitute separate categories;
V. redrafting the title of Part I of annex VII to include the reference to new dealcoholization processes.

The detailed provisions are presented below.

The Commission's proposal included also the redrafting of new Section E of Part I of Annex VIII (of the Commission's initial proposal), which had already been accepted by the Council and the EP, in order to set general principles for dealcoholized grapevine products and allowing completion of the list of the dealcoholisation processes through the secondary legislation, as well as amending paragraph 1 of Section A of Part II of Annex VIII to be able to restore water to grapevine products that have been dealcoholized. These elements of the proposal will need to be addressed further at the technical level. A reformulated proposal will be presented to SCA should this discussion lead to changes in the elements of the compromise presented in this document.

I) <u>Limits of oenological practices in Article 80</u>

(xx) Article 80 is amended as follows:

a) in paragraph 1, subpagraph 3 is replaced by the following:
'Authorised oenological practices shall only be used for the purposes of ensuring proper vinification, proper preservation**,** ~~**or**~~ proper refinement of the product **or proper dealcoholisation.**'

b) in paragraph 3, point (d) is replaced by the following:
'(d) allow the preservation of the natural and essential characteristics of the wine and**, for**

grapevine products other than those which have undergone a dealcoholisation treatment, not cause a substantial change in the composition of the product concerned;'

II) <u>Coverage of partially dealcoholised products by PDO/PGI</u>

In Art 1(1) of the draft amending Regulation, the following point (8a) new is added:

(8a) In Article 92(1), the following subparagraph is added:
"**However, rules laid down in this section do not apply to products referred to in points (1), (4) to (6), (8) and (9) of Part II of Annex VII when such products have undergone a total dealcoholisation treatment in accordance with Section E of Part I of Annex VIII**."

III) <u>Labelling provision related to dealcoholised wine products</u>

In Art 1(1) of the draft amending Regulation, letter (a) is replaced by a new text in point (18):

(18) Article 119 is amended as follows: *[initial COM proposal on point (a) to be dropped]*
~~(a) In paragraph 1 the introductory sentence is replaced by the following:~~
~~'Labelling and presentation of the products referred to in points 1 to 11, 13, 15, 16, 18 and 19 of Part II of Annex VII marketed in the Union or for export shall contain the following compulsory particulars:'~~

(a) In paragraph 1, point (a) is replaced by the following:

"(a) the designation for the category of the grapevine product in accordance with Part II of Annex VII. **For grapevine products categories defined under points (1) and (4) to (9) of Part II of Annex VII, when such products have undergone a dealcoholisation treatment in accordance with Section E of Part I of Annex VIII, the designation of the category is accompanied by:**

(i) the term "dealcoholised" if the product reaches an actual alcoholic strength of no more than 0,5% by volume, and

(ii) the term "partially dealcoholised" if the product reaches an actual alcoholic strength above 0,5% by volume and below the minimum actual

alcohol strength of the category before dealcoholisation."

(b) Paragraph 2 is is replaced by the following:

'2. By way of derogation from point (a) of paragraph 1, **for grapevine products other than those which have undergone a dealcoholisation treatment in accordance with Section E of Part I of Annex VIII,** the reference to the category of the grapevine product may be omitted for wines whose labels include the name of a protected designation of origin or a protected geographical indication.

IV) Rewording of Part II of Annex VII of the CMO

In Art 1(1) point (32) is replaced by the following: *[where the second provision (b) is the relevant for dealcoholised wines. Provision (a) has already been endorsed as A point at the 1st Trilogue of 02/12/2020]*

(32) Annex VII is amended as follows:

(a) in Part I, point III.1(A), the row for the United Kingdom is deleted;

(b) **in Part II, the following introductory paragraph is added:**

"**The categories of grapevine products shall be those listed in points 1 to 17. The categories of grapevine products defined in points (1) and (4) to (9) may undergo a total or partial dealcoholisation treatment in accordance with Section E of Part I of Annex VIII, after having reached fully their respective characteristics as described in those points**."

V) Changes to Part I of Annex VIII

Annex VIII is amended as follows:

(a) the title of Part I is replaced by:

'Enrichment, acidification, de-acidification in certain wine-growing zones **and dealcoholisation**';

1.4 **Maintaining the ban on the use of certain hybrids and wine grape varieties** – Article 81

Concerning the forbidden varieties, the co-legislators agreed at the super-trilogue to maintain the status quo on the banned varieties and accepted the EP proposal providing the possibility of replanting historical vineyards without increasing the overall area.

This outcome of the super-trilogue is consistent with the compromise solution presented to the SCA on 8 February 2021 (document 5898/21) and to the Council on 23 March 2021.

After the super-trilogue on 26 March 2021, the Commission presented a document setting out three different possibilities to implement the derogation proposed by the European Parliament in order to address legal concerns, and which will need to be discussed at the technical level with the European Parliament and the Commission. Bearing in mind that these are very specific technical issues, it may be suggested that these implementing provisions could be better discussed under secondary legislation.

The options are without prejudice to maintaining the status quo with regard to the continuation of the ban on forbidden varieties. The Presidency will inform the SCA and seek its agreements, if necessary, in a future meeting.

Article 81

Wine grape varieties

(…)

2. (…)

(a) the variety concerned belongs to the species Vitis vinifera or **the variety concerned** comes from a cross between the species Vitis vinifera and other species of the genus Vitis;

(b) the variety is not one of the following: Noah, Othello, Isabelle, Jacquez, Clinton and Herbemont.

By way of derogation from the second subparagraph, Member States may authorise the replanting of Vitis Labrusca or the varieties from point (b) thereof in existing historical vineyards as long as the existing planted surface is not increased.

(…)

2. **Block 2 - Regulation (EU) No 1151/2012**

2.1. Use of the PDO/PGI and TSG symbol - Articles 12 and 23

The European Parliament proposed an amendment on Articles 12 and 23 concerning advertising rules on the use of the PDO/PGI and TSG symbols. The Council and the Commission expressed concerns and the Commission presented a new drafting in a spirit of compromise. In the compromise text, the reference to 'advertising material' is maintained while 'material and documents relating to the product involved' is dropped.

This point was discussed at technical level in early March and the co-legislators appeared ready to accept the Commission compromise text. From the Council's side, the Presidency agreed to seek the agreement of the SCA before concluding on this point.

Compromise wording for <u>Article 12(3)</u> on "Names, symbols and indications"

(…)

3. In the case of products originating in the Union that are marketed under a protected designation of origin or a protected geographical indication registered in accordance with the procedures laid down in this Regulation, the Union symbols associated with them shall appear on the labelling **and advertising material**. ~~In addition, the registered name of the product should appear in the same field of vision~~. **The labelling requirements set out in Article 13(1) of Regulation (EU) No 1169/2011 for presentation of mandatory particulars shall apply to the registered name of the product.** The indications 'protected designation of origin 'or 'protected geographical indication' or the corresponding abbreviations 'PDO' or 'PGI' may appear on the labelling.

2.2. Suspension of scrutiny by COM - Articles 49 and 50

The European Parliament and the Council proposed to delete the paragraph 9 of Article 49 (Application for registration of names) that the Commission sought to introduce. The Council proposed new provisions in Article 50 (Scrutiny by the Commission and publication for opposition), paragraphs 2 and 3. This point was discussed at technical level in view of seeking a compromise solution.

At the technical level, the European Parliament appeared ready to accept a compromise proposal put forward by the Commission which sets out the provisions when the Commission shall be exempted from the obligation to comply with the scrutiny deadlines of an application.

Under this proposal, the ***Commission exemption from complying with the scrutiny deadline*** should be limited to two very specific cases: a) actual invalidation of the application following an immediately applicable, but not final, national judicial decision and b) expressed request from the Member State because the national case seems based on valid grounds (which is the exclusive responsibility of the Member State to assess).

The effect of the suspension ceases, thus reactivating the obligation for the Commission to scrutinize the application, immediately after the Commission has received a communication of the Member State that a further national judicial decision has restored the validity of the old application or that the Member State withdraws the request of suspension of the scrutiny.

From the Council's side, the Presidency considers that Commission's proposal is a good compromise and agreed to seek the agreement of the SCA before concluding on this point.

COM Proposal:

~~In Article 49 the following paragraph 9 is added:~~

~~*9. Where appropriate, the Commission may adopt implementing acts to suspend the scrutiny of the application for registration referred to in Article 50 until a national court or other national body has adjudicated on a challenge to an application for registration where the Member State has taken a favourable decision in a national procedure in accordance with paragraph 4.*~~

~~*Those implementing acts shall be adopted without applying the examination procedure referred to in Article 57(2).;*~~

Council Proposal:

~~(In Article 50 the following paragraphs 2 and 3 are added):~~

1. ~~The Commission shall adopt delegated acts, in accordance with Article 56, supplementing this Regulation by laying down a non-exhaustive list of grounds for the suspension of the scrutiny.~~
2. ~~In duly justified cases, including as set out in the framework provided by the delegated acts referred to in paragraph 2 of this Article, the Commission may adopt implementing acts to suspend the scrutiny of the application for registration referred to in this Article until a national court or other national body has adjudicated on a challenge to an application for registration where the Member State has taken a favourable decision in a national procedure in accordance with Article 49(4). Those implementing acts shall be adopted without applying the examination procedure referred to in Article 57(2).~~

Compromise text to be placed in Article 50 (Scrutiny by the Commission and publication for opposition) of Reg. (EU) No 1151/2012 (Food GIs)

In the Article 50, instead of paragraphs 2 and 3 as proposed by the Council, the following should be read:

2. Upon communication by a Member State, concerning an application for registration lodged with the Commission in accordance with Article 49(4), which either:

(a) informs the Commission that the application has been invalidated at national level by an immediately applicable but not final judicial decision; or,

(b) requests the Commission to suspend the scrutiny referred to in paragraph 1 because a national judicial process has been launched to challenge the validity of the application which the Member States considers based on valid grounds,

the Commission shall be exempted from the obligation to comply with the deadline to perform that scrutiny and to inform the applicant of the reasons for the delay.

The exemption shall have effect until the Commission is informed by the Member State that the original application has been restored or that it withdraws its request of suspension, respectively.

2.3. Inclusion of 'Beeswax' - in Point I of Annex I

The European Parliament tabled a proposal to include "beeswax" under this Regulation. This point was discussed at technical level, where the Council and the Commission raised some questions and concerns. In the end, in a spirit of compromise, the Presidency agreed to consult the SCA on this point.

(15) in Point I of Annex I, the following indents are added:

— **beeswax.**

Note: Annex I (AGRICULTURAL PRODUCTS AND FOODSTUFFS REFERRED TO IN ARTICLE 2(1)); Point I (Designations of Origin and Geographical indications)

3. Block 3 - Regulation (EU) No 1308/2013

3.1. Contractual relations in milk and other products - Articles 148 and 168

The European Parliament sought to introduce new elements, including a reference to production costs, in the terms of written contracts in the milk sector. The Commission and the Council considered that, since written contracts were a voluntary instrument for Member States, introducing and reinforcing requirements in terms of content and level of performance would deter implementation and could have the opposite effect. Although the Commission and the Council would have preferred maintaining the status quo, they nonetheless suggested to discuss the amendment to Article 148 (Contractual relations in the milk and milk product sector) in conjunction with the amendment to Article 168 (Contractual relations). This point was discussed in the context of the fourth trilogue on the basis of a Commission compromise proposal.

In a spirit of compromise, the Council made a gesture towards the position of the European Parliament. The Presidency would like to seek the approval of the SCA in order to validate the compromise text proposal discussed at the fourth trilogue on 24 March 2021.

Art. 148

Contractual relations in the milk and milk products sector

(…)

2. The contract and/or the offer for a contract referred to in paragraphs 1 and 1a shall:

(a) be made in advance of the delivery,

(b) be made in writing, and

(c) include, in particular, the following elements:

(i) the price payable for the delivery, which shall:

– be static and be set out in the contract and/or

– be calculated by combining various factors set out in the contract, which may include ~~**market**~~ **objective** indicators, **indices and methods of calculation of the final price, that are easily accessible and comprehensible and that reflect** ~~**reflecting**~~ changes in market conditions, the volume delivered and the quality or composition of the raw milk delivered. **These indicators may be based on relevant prices, production and market costs.**

To that effect, Member States may determine indicators, in accordance with objective criteria based on studies carried out on production and the food chain. The parties to the contracts are free to refer to these indicators or any other indicators which they deem relevant.

(…)

Art. 168

Contractual relations

(…)

4. ~~**Any**~~ **The** contract **and**/or **the** offer for a contract referred to in paragraphs 1 and 1a shall:

(a) be made in advance of the delivery,

(b) be made in writing, and

(c) include, in particular, the following elements:

(i) the price payable for the delivery, which shall:

– be static and be set out in the contract and/or

– be calculated by combining various factors set out in the contract, which may include ~~**market**~~ **objective** indicators, **indices and methods of calculation of the final price, that are easily accessible and comprehensible and that reflect** ~~**reflecting**~~ changes in market conditions, the quantities delivered and the quality or composition of the agricultural products delivered. **These indicators may be based on relevant prices, production and market costs.**

To that effect, Member States may determine indicators, in accordance with objective criteria based on studies carried out on production and the food chain. The parties to the contracts are free to refer to these indicators or any other indicators which they deem relevant.

(…)

3.2. **Compulsory declarations in the milk and milk products sector** - Article 151

The European Parliament sought to introduce a reference to "average price paid" and a distinction between organic and non-organic products under Article 151 (Compulsory declarations in the milk and milk products sector). This point was discussed at the technical level on two occasions and the Commission proposed a compromise text, taking into account the European Parliament's proposal and the discussions in the technical meetings, to reflect what is being already communicated by the operators without creating new obligations.

In a spirit of compromise, the Presidency would like to seek the agreement of the SCA in order to accept the Commission compromise text for Article 151.

Article 151

Compulsory declarations in the milk and milk products sector

From 1 April 2015, the first purchasers of raw milk shall declare to the competent national authority the quantity of raw milk that has been delivered to them each month **and the average price paid. A distinction shall be made between organic and non-organic agricultural products.**

For the purposes of this Article and Article 148, a "first purchaser" means an undertaking or group which buys milk from producers in order to:

(a) subject it to collecting, packing, storing, chilling or processing, including under a contract;

(b) sell it to one or more undertakings treating or processing milk or other milk products.

Member States shall notify the Commission of the quantity of raw milk **and the average price** referred to in the first subparagraph.

(…)