EUROPEAN
COMMISSION

Brussels, XXX
[…](2020) XXX draft

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

derogating from Commission Delegated Regulation (EU) 2016/1149 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

On October 2, 2019, the World Trade Organization (WTO) issued an arbitration decision in European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft, WT/DS316/ARB. The decision entitled the United States to request an authorisation to impose countermeasures at a level not exceeding $7.5 billion annually in response to EU subsidies to Airbus. On 18 October 2019, the United States of America imposed a 25% ad valorem import duty on, among others, bottled still wines exported to the USA by Germany, France, Spain and the United Kingdom. This exceptional and unpredictable situation severely affects the trade of Union wines. The EU wine sector producing bottled still wines considers itself an unjustifiable victim of the Airbus situation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Ministers, Members of the European Parliament and representatives of the wine sector are demanding that the Commission rapidly offer support to help overcome what they consider as serious and dramatic consequences of the application by the US of 25% *ad valorem* duties. They underline, in particular, that the results of the costly promotion efforts to conquer and consolidate markets in the US over the past years are seriously undermined. Moreover, the application of these tariffs will be detrimental to European wines because of the discrimination they introduce in relation to other suppliers on the world market. Moreover, the international wine market is a global market; disruptions on the US market will affect the situation on other world markets that will become alternative outlets for European wines. Everyone agrees that some relief could come via promotion in the context of National Support Programmes for wine. In particular, the wine sector has asked for more flexibility in the management of the promotion programmes.

Consultations, involving experts from all the 28 Member States have been carried out within the Expert Group for Agricultural Markets under the single common organisation of the markets. This consultation process led to a broad consensus on the draft Delegated Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft Delegated Regulation provides an enhanced flexibility for the application of the promotion measure under Article 45(1)(b) of Regulation (EU) No 1308/2013, i.e. promotion in third countries.

Article 1: Since the US tariffs apply to wines, these exceptional measures under this Regulation should apply to these products.

Article 2: Member States would be able to allow beneficiaries of support for promotion to extend the duration of their operation beyond the maximum 5 years laid down in Article 4 of Delegated Regulation (EU) 2016/1149. This would allow beneficiaries to strengthen their promotion actions in whichever market it is needed and consolidate their presence on these markets.

Article 3: Member States would be able to allow beneficiaries of support for promotion in third countries to change the targeted third country or third country market of an already approved operation, even if this would change the initial objective of the operation. This would be a derogation to the current rule under Article 53(1) of Commission Delegated Regulation (EU) 2016/1149.

Article 4: In the case where a change of the destination market of an already approved and partially implemented operation has been made, support shall be paid for the individual actions implemented so far under this operation. This would be a derogation to Article 54 (1) of Delegated Regulation (EU) 2016/1149.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007[1], and in particular Article 53(b) and (h) thereof,

Whereas:

(1) On 2 October 2019, the World Trade Organization (WTO) issued the arbitration decision in European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft, WT/DS316/ARB. The arbitration decision entitled the United States of America (USA) to request an authorisation to impose countermeasures at a level not exceeding $7,5 billion annually in response to Union subsidies to Airbus. On 18 October 2019, the USA imposed a 25 % ad valorem import duty on, among others, still wines exported to the USA by Germany, Spain, France and the United Kingdom. This exceptional, inequitable and unpredictable situation is having a severe and detrimental impact on the global trade of all Union wines. The USA have further threatened to apply 100 % ad valorem import duties on French sparkling wines in response to the French Digital Services Tax (GAFA tax).

(2) The import duties imposed by the USA are having a direct and severe impact on the Union wine trade on the USA market, which is the Union's largest export market for agricultural products, and for wine in particular, both in terms of value and volume of exports. In 2018, Union wine exports to the USA totalled 6,5 billion hectolitres, accounting for EUR 4 billion. Union wine exports to the USA typically represent between 30 % and 40 % of the global Union wine export value.

(3) The increased import duties imposed by the USA are having a damaging effect on all Union wine, not only on still wines originating from the four Member States that are subject to the increased import duties. The reputation and trade of all Union wine present in the USA market is adversely impacted as a result. The reputation of a wine is determined not only by its quality but also by its price and the perceived price-quality ratio. This is particularly the case for the lower to middle range priced wines, which, in absolute terms, are more impacted by a 25 % import duty than more expensive wines that are purchased by connoisseurs for whom a price increase does not operate as a deterrent. Union wines compete in the USA market with wines from other origins such as South America, Australia or South Africa. In the light of such fierce and intense

[1] OJ L 347, 20.12.2013, p. 671.

competition, perception of overall price levels plays a significant role. Where the consumer is aware that the price of wine from certain origins within the Union is subject to an increased import duty, this will have a negative impact on the overall perception of the price level of Union wines as such and thus divert consumer demand to products of other origins. . In the light of the identified resulting market conditions and decrease in overall returns to producers, immediate measures to address the effects of the import duties are warranted covering all wines originating in all Member States and not only in those directly targeted by the import duties.

(4) From a market stability perspective, the import duty regime imposed by the USA does not represent an isolated national measure with effects limited to the trade with the USA. The world wine market is a global market on which single measures taken by important economic players such as the USA have far-reaching repercussions affecting the international trade in wine as a whole. Any negative change in the conditions in a major destination market for Union wines, such as the USA, inevitably affects other markets since the products that cannot be sold in the USA, having become too expensive, need to be diverted elsewhere. Consequently, consumers in those other markets, being well aware of the market conditions, will exert additional pressure on prices and competition will also be much fiercer than normal. The current import duties imposed by the USA are therefore likely to cause stagnation in Union wine exports worldwide. Reports from the wine sector have shown that significant orders of French wines on the USA market have already been cancelled.

(5) The Union wine market has been subject to aggravating conditions throughout 2019 and wine stocks are at their highest level since 2009. This development is due primarily to a combination of the record harvest in 2018 and decreasing wine consumption in the Union. If the wines affected by the import duties imposed by the USA are not sold in the export markets outside the Union, this will only serve to amplify the urgency and seriousness of the situation in the Union market. Furthermore, the urgency of the situation is aggravated by the timing of the application of the import duty tariffs. The tariffs are applicable from 18 October 2019, which falls right in the middle of the 2019 wine harvest and production campaign and just before the end of year festive season; two of the most important sale periods of the year for the Union wine sector. Against this background, it is therefore necessary to take immediate measures to address the situation.

(6) Among the support measures in the wine sector set out in Article 43 of Regulation (EU) No 1308/2013, only the promotion measure under Article 45(1)(b) of that Regulation is directly targeted on promoting Union wines in third countries in order to improve their competitiveness. Over the years, the promotion measure has proved remarkably effective to conquer and consolidate markets in third countries. It proved to be the most effective tool to support Union wines on third country markets by enhancing their reputation and raising awareness on their quality. The international wine market is a global market and any promotion operation for Union wine on third country markets is beneficial to all Union wines. It opens opportunities for those who will subsequently enter the market in question with other Union wines. The individual promotions have a “multiplier” effect on sales as they cover whole ranges of wines or entire wine-making regions and not just one individual brand or type of wine. It is therefore essential to continue, launch and intensify promotion activities in all markets in order to find outlets for the wines that will not be sold on the USA market and to preserve the reputation of Union wines in those other markets as well as to counter pressure on prices.

(7) Therefore, to help operators respond to the current exceptional circumstances in export markets all over the world following the import duty regime imposed by the USA and address this unpredictable and precarious situation, it is appropriate to allow further flexibility in implementing the promotion measure under Article 45(1)(b) of Regulation (EU) No 1308/2013 by derogating from certain provisions set out in Commission Delegated Regulation (EU) 2016/1149[2].

(8) In order to allow beneficiaries to strengthen their promotion actions and to consolidate their presence on the targeted markets, it should be possible for Member States to extend the duration of the support to already selected operations under the promotion measure referred to in Article 45(1)(b) of Regulation (EU) No 1308/2013 beyond the maximum duration of 5 years set out in Article 4 of Delegated Regulation (EU) 2016/1149. Such a measure will provide more stability and continuity of the promotion operations for the operators already present on the USA market and directly affected by the import duties. Furthermore, it will also benefit those operators promoting wine on other third country markets which are not directly subject to the import duty regime imposed by the USA but who are struggling to keep their position in the newly created unstable wine world market situation of fierce competition.

(9) However, the individual prolongation granted to projects should not extend beyond the current programming period which runs from 2019 to 2023 and thus should end on 15 October 2023.

(10) Further flexibility should be allowed with regard to the possible changes to operations under the promotion measure referred to in Article 45(1)(b) of Regulation (EU) No 1308/2013 as laid down in Article 53(1) of Delegated Regulation (EU) 2016/1149. In order to enable beneficiaries to react adequately and efficiently to exceptional circumstances and adapt their target markets as required, it is appropriate to authorise Member States to derogate from those rules by allowing changes to the destination market even if the change is not in line with the initial objective of the operation. Such a derogation would help beneficiaries currently carrying out promotion operations in the USA to target other markets and prevent further economic losses. It would also provide assistance to those beneficiaries carrying out operations in other third countries affected by the repercussions of the import duty regime imposed by the USA on that particular market and who wish to redirect their efforts elsewhere.

(11) To avoid a scenario whereby beneficiaries using the flexibility and deciding to change the targeted market are penalised for not having implemented their overall operation as approved initially by the competent authority, it is also necessary to derogate from Article 54(1) of Delegated Regulation (EU) 2016/1149. This would ensure that support is paid to the individual actions, as amended by this Regulation, as long as those actions are fully implemented and subjected to the applicable checks laid down in Section 1 of Chapter IV of Commission Implementing Regulation (EU) 2016/1150[3].

(12) The two measures introduced by this Regulation should be applicable to all operators already present on a given third country market to ensure that they are supported in the same way as newcomers to that market who will be entitled to benefit from a higher

[2] Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector and amending Commission Regulation (EC) No 555/2008 (OJ L 190, 15.7.2016, p. 1).

[3] Commission Implementing Regulation (EU) 2016/1150 of 15 April 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector (OJ L 190, 15.7.2016, p. 23).

Union contribution rate of up to 60 % of the eligible expenditure pursuant to Commission Implementing Regulation (EU) …/…[4]. These measures should also apply to all operations promoting wine under Article 45(1)(b) of Regulation (EU) No 1308/2013 in disregard of the specific wine category which is promoted given the fact that the import duty regime imposed by the USA affects the reputation of all Union wines as a whole. In addition, it would be very difficult to separate within one promotion operation the actions concerning still wines from the actions concerning other wines since the promotion operations are typically designed to promote a whole range of products and not just a specific category. Many promotion campaigns concern all wines of a region or a broad variety of wines sold by a given operator. To separate the actions concerning other wines from the actions concerning still wines within a promotion campaign would represent a heavy administrative burden and would undermine the positive effects of the promotion operation.

(13) Therefore, it is necessary to derogate from Article 4, Article 53(1) and Article 54(1) of Delegated Regulation (EU) 2016/1149,

HAS ADOPTED THIS REGULATION:

Article 1

Categories of products covered

This Regulation shall apply to the promotion of wine within the meaning of points (1) to (9) and (15) to (16) of Part II of Annex VII to Regulation (EU) No 1308/2013.

Article 2

Duration of the support

By way of derogation from Article 4 of Delegated Regulation (EU) 2016/1149 and if justified in view of the effects of the operation, the duration of the support for a given beneficiary in a given third country or third-country market for the promotion measure referred to in Article 45(1)(b) of Regulation (EU) No 1308/2013 may be extended beyond the five-year period laid down in Article 4 of Delegated Regulation (EU) 2016/1149, but not later than 15 October 2023.

Article 3

Changes to approved operations

By way of derogation from Article 53(1) of Delegated Regulation (EU) 2016/1149, Member States may allow beneficiaries of an ongoing operation under the promotion measure referred to in Article 45(1)(b) of Regulation (EU) No 1308/2013 to submit, via a notification to the competent authority, changes to the destination market of that operation, even if this change modifies the initial objective of the operation. Such changes shall not require prior approval by

[4] Commission Implementing Regulation (EU) …/… of […][…] (OJ L …).

the competent authority. The notification shall be submitted by the beneficiaries within the deadlines set by the Member States.

Article 4

Support for implemented individual actions

By way of derogation from Article 54(1) of Delegated Regulation (EU) 2016/1149, where a change of the destination market of an already approved operation has been notified to the competent authority in accordance with Article 3 of this Regulation, support shall be paid for the individual actions already implemented under this operation if these actions have been implemented in full and have been subject to administrative and, where applicable, on-the-spot checks in accordance with Section 1 of Chapter IV of Implementing Regulation (EU) 2016/1150.

Article 5

Entry into force

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

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

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN