

Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation

CHAPTER II

PROTECTED DESIGNATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

SECTION 1

Application for protection

Article 2

Name to be protected

1 The name to be protected as a designation of origin or geographical indication shall be registered only in the languages which are or were historically used to describe the specific product in the demarcated geographical area.

2 The name of a designation of origin or a geographical indication shall be registered in its original script. Where the original script is not in Latin characters, a transcription in Latin characters shall be registered together with the name in its original script.

Article 3

Applicant

A single producer may be deemed an applicant within the meaning of Article 95(1) of Regulation (EU) No 1308/2013 if it is shown that:

- (a) the person concerned is the only producer willing to submit an application; and
- (b) the demarcated geographical area possesses characteristics which differ appreciably from those of neighbouring areas or the characteristics of the product are different from those produced in neighbouring areas.

The circumstance by which a protected designation of origin or geographical indication consists of or contains the name of the holding of the single applicant producer shall not prevent other producers from using that name provided that they comply with the product specification.

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Article 4

Additional requirements for product specifications

1 The description of the grapevine products shall indicate the relevant category or categories of grapevine products from amongst the categories set out in Part II of Annex VII to Regulation (EU) No 1308/2013.

2 Where the product specification indicates that packaging, including bottling, shall take place within the demarcated geographical area or within an area in the immediate proximity of the demarcated area in question, it shall also include a justification showing why, in the specific case, the packaging must take place in the particular geographical area to safeguard quality, to ensure the origin or to ensure control, taking into account Union law, in particular that on the free movement of goods and the free provision of services.

Article 5

Derogations concerning production in the demarcated geographical area

1 By way of derogation from points (a)(iii) and (b)(iii) of Article 93(1) of Regulation (EU) No 1308/2013, and on condition that the product specification so provides, a product which has a protected designation of origin or geographical indication may be made into wine in any of the following locations:

- a in an area in the immediate proximity of the demarcated area in question;
- b in an area located within the same administrative unit or within a neighbouring administrative unit, in conformity with national rules;
- c in the case of a trans-border designation of origin or geographical indication, or where an agreement on control measures exists between two or more Member States or between one or more Member States and one or more third countries, in an area situated in the immediate proximity of the demarcated area in question.

2 By way of derogation from point (a)(iii) of Article 93(1) of Regulation (EU) No 1308/2013, and on condition that the product specification so provides, a product may be made into sparkling wine or semi-sparkling wine bearing a protected designation of origin beyond the immediate proximity of the demarcated area in question if this practice was in use prior to 1 March 1986.

3 By way of derogation from point (a)(iii) of Article 93(1) of Regulation (EU) No 1308/2013, with regard to liqueur wines with the protected designation of origin 'Málaga' and 'Jerez-Xérès-Sherry', the must of raisined grapes to which neutral alcohol of vine origin has been added to prevent fermentation, obtained from Pedro Ximénez vine variety, may come from the 'Montilla-Moriles' region.

Article 6

National procedure

When forwarding an application for protection to the Commission in accordance with Article 96(5) of Regulation (EU) No 1308/2013, a Member State shall include a declaration that it considers that the application lodged by the applicant meets the conditions for protection under Subsection 2 of Section 2 of Chapter I of Title II of Part

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II of Regulation (EU) No 1308/2013 and the provisions adopted pursuant thereto and that it certifies that the single document referred to in Article 94(1)(d) of Regulation (EU) No 1308/2013 is a faithful summary of the product specification.

Member States shall inform the Commission of admissible objections received in the national procedure. Member States shall keep the Commission informed of any national judicial proceedings possibly affecting the application for protection.

Article 7

Joint applications

Where joint applications for the protection of a name as designation of origin or geographical indication, as referred to in Article 95(3) of Regulation (EU) No 1308/2013, are submitted, the related preliminary national procedures, including the objection stage, shall be carried out in all the Member States concerned.

Article 8

Transitional national protection

1 A Member State may, on a transitional basis only, grant protection to a name at national level, with effect from the date upon which an application for protection has been forwarded to the Commission.

Such transitional national protection shall cease on the date upon which either a decision on protection under Regulation (EU) No 1308/2013 is taken or the application is withdrawn.

2 Where a name is not protected under this Regulation, the consequences of such national protection shall be the sole responsibility of the Member State concerned. The measures taken by Member States under paragraph 1 shall have no effect on intra-Union or international trade.

Article 9

Admissibility of the application

1 Applications for protection are considered admissible if they are submitted in accordance with Articles 94, 95 and 96 of Regulation (EU) No 1308/2013 and Article 3 and Article 5(3) of Implementing Regulation (EU) 2019/34 and if they are duly completed.

An application for protection shall be considered to be duly completed when it complies with Article 94(1) and (3) of Regulation (EU) No 1308/2013 and Article 2 of Implementing Regulation (EU) 2019/34 and if the single document is duly completed.

The single document summarising the product specification, referred to in Article 94(1)(d) of Regulation (EU) No 1308/2013 shall be considered to be duly completed when it complies with the requirements listed in Article 5(1) and (2) of Implementing Regulation (EU) 2019/34. The product specification shall be considered duly completed when it complies with the requirements set out in Article 94(2) of Regulation (EU) No 1308/2013.

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2 If the Commission considers that an application is inadmissible, it shall inform the competent authorities of the Member State or those of the third country or the applicant established in a third country of the reasons grounding the finding of inadmissibility.

3 At least once a month the Commission shall make public the list of names for which it has received applications for protection as designations of origin or geographical indications, the name of the applicant Member State or third country and the date of submission of the application.

Article 10

Scrutiny of the application

An examination of the application by the Commission, as referred to in Article 97(2) of Regulation (EU) No 1308/2013, shall consist of a check that there are no manifest errors in the application. When examining the application the Commission shall examine the single document in particular. The examination should be completed within a period of 6 months. Where this period is exceeded, the Commission shall inform the applicant in writing of the reasons for the delay.

SECTION 2

Objection procedure

Article 11

Admissibility and grounds of objection

1 For the purposes of Article 98 of Regulation (EU) No 1308/2013 a substantiated statement of objection shall be admissible where:

- a it is received by the Commission within the deadline set out in Article 98 of Regulation (EU) No 1308/2013;
- b it complies with the requirements set out in Article 8(1) of Implementing Regulation (EU) 2019/34;

and:

- c it shows that the application for protection or amendment to the product specification or for cancellation of the protection is incompatible with the rules on designations of origin and geographical indications because:
 - (i) it would conflict with Articles 92 to 95, 105 or 106 of Regulation (EU) No 1308/2013 and with the provisions adopted pursuant thereto;
 - (ii) the registration of the proposed name would conflict with Article 100 or 101 of Regulation (EU) No 1308/2013;
 - (iii) the registration of the proposed name would jeopardise the rights of a trade mark holder or of a user of a fully homonymous name or of a compound name, one term of which is identical to the name to be registered, or the existence of partially homonymous names or of other names similar to the name to be registered which refer to grapevine products which have been legally on the

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market for at least five years preceding the date of the publication provided for in Article 97(3) of Regulation (EU) No 1308/2013.

The grounds of objection shall be assessed in relation to the territory of the Union.

Where an objection is filed by a natural or legal person, the duly substantiated statement of objection shall be admissible only if it shows the legitimate interest of the objector.

2 Where the Commission considers that the objection is inadmissible, it shall inform the authority or natural or legal person that objected of the reasons grounding the finding of inadmissibility.

Article 12

Objection procedure

1 If the Commission considers that the objection is admissible it shall invite the authority or natural or legal person that lodged the objection and the authority or natural or legal person that lodged the application for protection to engage in appropriate consultations for a period of three months. The invitation shall be issued within a period of four months from the date on which the application for protection, to which the substantiated statement of objection relates, is published in the *Official Journal of the European Union* and it shall be accompanied by a copy of the substantiated statement of objection. At any time during these three months, the Commission may, at the request of the authority or natural or legal person that lodged the application, extend the deadline for the consultations by a maximum of three months.

2 The authority or person that lodged the objection and the authority or person that lodged the application for protection shall start such consultations without undue delay. They shall provide each other with the relevant information to assess whether the application for protection complies with the conditions of this Regulation and of Regulation (EU) No 1308/2013.

3 If the parties reach an agreement, either the applicant established in the third country or the authorities of the Member State or of the third country from which the application for protection was lodged shall notify the Commission of the results of the consultations carried out and of all the factors which enabled that agreement to be reached, including the opinions of the parties. If the details published in accordance with Article 97(3) of Regulation (EU) No 1308/2013 have been substantially amended, the Commission shall repeat the scrutiny referred to in Article 97(2) of that Regulation after a national procedure ensuring adequate publication of those amended details has been carried out. Where, following the agreement, there are no amendments to the product specification or where the amendments are not substantial, the Commission shall adopt a decision in accordance with Article 99 of Regulation (EU) No 1308/2013 conferring protection on the designation of origin or geographical indication.

4 If no agreement is reached, either the applicant established in the third country or the authorities of the Member State or of the third country, from which the application for protection was lodged shall notify the Commission of the results of the consultations carried out and of all the related information and documents. The Commission shall adopt a decision in accordance with Article 99 of Regulation (EU) No 1308/2013 either conferring protection or rejecting the application.

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Article 13

Restrictions on the use of protected designations of origin and protected geographical indications

1 Without prejudice to Article 102 of Regulation (EU) No 1308/2013, the Commission may adopt implementing acts granting a transitional period of up to five years to enable products originating in a Member State or a third country, the designation of which consists of or contains a name that contravenes Article 103(2) of Regulation (EU) No 1308/2013, to continue to use the designation under which they were marketed.

The granting of such transitional period is conditional upon the submission of an admissible statement of objection under Article 96(3) or Article 98 of Regulation (EU) No 1308/2013 showing that the decision conferring protection over the name would jeopardise the existence:

- a of an entirely identical name or of a compound name, one term of which is identical to the name to be registered; or
- b of partially homonymous names or of other names similar to the name to be registered which refer to grapevine products which have been legally on the market for at least five years preceding the date of the publication provided for in Article 97(3) of Regulation (EU) No 1308/2013.

2 The Commission may adopt implementing acts extending the transitional period referred to in paragraph 1 up to 15 years in duly justified cases where it is shown that:

- a the designation referred to in paragraph 1 has been in legal use consistently and fairly for at least 25 years before the application for protection was submitted to the Commission;
- b the purpose of using the designation referred to in paragraph 1 has not, at any time, been to profit from the reputation of the registered name and it is shown that the consumer has not been nor could have been misled as to the true origin of the product.

3 When using a designation referred to in paragraphs 1 and 2, the indication of the country of origin shall clearly and visibly appear on the labelling.

4 To overcome temporary difficulties, with the long-term objective of ensuring that all producers in the area concerned comply with the product specification, a Member State may grant protection for a transitional period, starting from the date on which the application is forwarded to the Commission, on condition that the operators concerned have legally marketed the grapevine products in question using the names concerned continuously for at least the five years prior to the lodging of the application to the authorities of the Member State and that these temporary difficulties had been raised in the national objection procedure referred to in Article 96(3) of Regulation (EU) No 1308/2013. The transitional period shall be as short as possible and shall not exceed 10 years.

The first subparagraph shall apply *mutatis mutandis* to a protected geographical indication or protected designation of origin referring to a geographical area situated in a third country, with the exception of the objection procedure.

Such transitional periods shall be indicated in the application file referred to in Article 94(1) of Regulation (EU) No 1308/2013.

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SECTION 3

Amendments to product specifications

Article 14

Types of amendments

1 For the purposes of Article 105 of Regulation (EU) No 1308/2013 amendments to a product specification are classified into two categories as regards their importance: amendments requiring an objection procedure at Union level ('Union amendments'), and amendments to be dealt with at Member State or third country level ('standard amendments').

An amendment is considered to be a Union amendment where:

- a it includes a change in the name of the protected designation of origin or protected geographical indication;
- b it consists of a change, a deletion or an addition of a category of grapevine product, as referred to in Part II of Annex VII to Regulation (EU) No 1308/2013;
- c it could potentially void the link referred to in point (a)(i) or in point (b)(i) of Article 93(1) of Regulation (EU) No 1308/2013;
- d it entails further restrictions on the marketing of the product.

Applications for Union amendments submitted by third countries or by third country producers shall contain proof that the requested amendment complies with the laws on the protection of designations of origin or geographical indications in force in that third country.

All other amendments are considered standard amendments.

2 For the purposes of Article 105 of Regulation (EU) No 1308/2013, a temporary amendment is a standard amendment concerning a temporary change in the product specification resulting from the imposition of obligatory sanitary and phytosanitary measures by the public authorities or linked to natural disasters or adverse weather conditions formally recognised by the competent authorities.

Article 15

Procedure for Union amendments to product specifications

1 An application for approval of a Union amendment to a product specification, as defined in Article 14 of this Regulation, shall follow the procedure laid down in Article 94 and Articles 96 to 99 of Regulation (EU) No 1308/2013, in Sections 1, 2 and 3 of Chapter II of this Regulation and in Sections 1, 2 and 3 of Chapter II of Implementing Regulation (EU) 2019/34 *mutatis mutandis*.

2 Where, based on the examination carried out pursuant to Article 97(2) of Regulation (EU) No 1308/2013, the Commission considers that the conditions required under Article 97(3) of that Regulation are met, it shall publish the application for a Union amendment referred to in Article 9(1) of Implementing Regulation (EU) 2019/34 in the *Official Journal of the European Union*, C series. The final decision on the approval of the amendment shall be adopted without applying the examination procedure referred to in Article 229(2) of Regulation (EU) No 1308/2013 unless an admissible objection has been lodged or the application for amendment is rejected, in which case the second paragraph of Article 99 of that Regulation shall apply.

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3 An application for approval of Union amendments shall contain Union amendments exclusively. If an application for Union amendments also contains standard or temporary amendments the procedure for Union amendments shall apply only to the Union amendments. The standard or temporary amendments shall be deemed as not submitted.

4 In examining the applications for amendment, the Commission shall focus on the proposed amendments.

Article 16

Admissibility of applications for Union amendment

1 Applications for approval of a Union amendment to a product specification are considered admissible if they are submitted in accordance with Article 105 of Regulation (EU) No 1308/2013 and with Article 3 and Article 9(2) of Implementing Regulation (EU) 2019/34 *mutatis mutandis*, and if they are duly completed.

An application for approval of a Union amendment to a product specification shall be considered to be duly completed where it is comprehensive and exhaustive and where it complies with the requirements set out in Article 2 and Article 9(1) of Implementing Regulation (EU) 2019/34.

The approval by the Commission of an application for approval of a Union amendment to a product specification shall only cover the amendments submitted in the application itself.

2 If the application is considered inadmissible, the competent authorities of the Member State or those of the third country or the applicant established in a third country shall be informed of the reasons for the inadmissibility.

Article 17

Standard amendments

1 Standard amendments shall be approved and made public by Member States to which the geographical area of the designation of origin or geographical indication relates.

Applications for approval of a standard amendment to a product specification shall be submitted to the authorities of the Member State to whom the geographical area of the designation or indication relates. Applicants shall satisfy the conditions laid down in Article 95 of Regulation (EU) No 1308/2013. If the application for approval of a standard amendment to a product specification does not come from the applicant which had submitted the application for protection of the name or names to which the product specification refers, the Member State shall give that applicant the opportunity to comment on the application, if that applicant still exists.

The application for a standard amendment shall provide a description of the standard amendments, provide a summary of the reasons for which the amendments are required and demonstrate that the proposed amendments qualify as standard in accordance with Article 14 of this Regulation.

2 Where the Member State considers that the requirements of Regulation (EU) No 1308/2013 and the provisions adopted pursuant thereto are met, it may approve and make public

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the standard amendment. The approval decision shall include the modified consolidated single document, where relevant, and the modified consolidated product specification.

The standard amendment shall be applicable in the Member State once it has been made public. The Member State shall communicate standard amendments to the Commission not later than one month following the date on which the national decision of approval was made public.

3 Decisions approving standard amendments concerning grapevine products originating in third countries shall be taken in accordance with the system in force in the third country concerned and shall be communicated to the Commission by a single producer within the meaning of Article 3 or a group of producers having a legitimate interest, either directly to the Commission or via the authorities of that third country, not later than one month following the date they are made public.

4 The communication of standard amendments shall be considered to be duly completed when it complies with Article 10 of Implementing Regulation (EU) 2019/34.

5 In the event that the standard amendment implies a modification of the single document, the Commission shall publish the description of the standard amendment referred to in Article 10 of Implementing Regulation (EU) 2019/34 and the modified single document in the *Official Journal of the European Union*, C series, within three months from the date on which the communication is received from the Member State, third country or third country single producer or group of producers.

6 In the event that the standard amendment does not imply a modification of the single document, the Commission shall make public, via the information systems referred to in Article 32 of Implementing Regulation (EU) 2019/34, the description of the standard amendment within three months from the date on which the communication is received from the Member State, third country or applicant established in the third country.

7 Standard amendments shall be applicable in the territory of the Union once they have been published in the *Official Journal of the European Union*, C series or made public by the Commission in the information systems referred to in Article 32 of Implementing Regulation (EU) 2019/34.

8 If the geographical area covers more than one Member State, the Member States concerned shall apply the procedure for standard amendments separately for the part of the area which falls within their territory. The standard amendment shall be applicable only after the last national decision of approval becomes applicable. The Member State last approving the standard amendment shall send the Commission the communication referred to in paragraph 4 not later than one month following the date on which its decision approving the standard amendment is made public.

If one or more of the Member States concerned do not adopt the national decision of approval referred to in the first subparagraph, any of Member States concerned may submit an application under the Union amendment procedure. Such a rule shall also apply *mutatis mutandis* when one or more of the concerned countries is a third country.

Article 18

Temporary amendments

1 Temporary amendments shall be approved and made public by Member States to which the geographical area of the designation of origin or geographical indication relates. They

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shall be communicated to the Commission together with the reasons supporting the temporary amendments not later than one month following the date on which the national decision of approval was made public. A temporary amendment is applicable in the Member State once it has been made public.

2 Where the geographical area covers more than one Member State, the procedure for temporary amendment applies separately in the Member States concerned for the part of the area which falls within their territory. Temporary amendments shall be applicable only when the last national decision of approval becomes applicable. The Member State last approving the temporary amendment shall communicate it to the Commission not later than one month following the date upon which its decision of approval is made public. This rule applies, *mutatis mutandis*, also when one or more of the countries concerned is a third country.

3 Temporary amendments concerning grapevine products originating in third countries shall be communicated to the Commission, together with the reasons supporting the temporary amendments, by a single producer within the meaning of Article 3 or a group of producers having a legitimate interest, either directly or via the authorities of that third country, not later than one month following their approval.

4 The communication of temporary amendments shall be considered to be duly completed when it contains all the elements referred to in Article 11 of Implementing Regulation (EU) 2019/34.

5 The Commission shall make public such amendments within three months from the date on which the communication is received from the Member State, third country or third country single producer or group of producers. A temporary amendment is applicable in the territory of the Union once it has been made public by the Commission.

SECTION 4

Cancelling a protected designation of origin or geographical indication

Article 19

Cancellation procedure

Requests to cancel a protected designation of origin or geographical indication, as referred to in Article 106 of Regulation (EU) No 1308/2013, shall follow the procedure laid down in Article 94 and Articles 96 to 99 of that Regulation together with provisions of Sections 1, 2 and 4 of Chapter II of this Regulation and of Sections 1, 2, 4 and 5 of Chapter II of Implementing Regulation (EU) 2019/34 *mutatis mutandis*.

The Commission shall publish the cancellation request referred to in Article 13 of Implementing Regulation (EU) 2019/34 in the *Official Journal of the European Union*, C series.

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Article 20

Grounds for cancellation

For the purposes of Article 106 of Regulation (EU) No 1308/2013 compliance with the product specification shall also be deemed not to be ensured where no product bearing the protected name has been placed on the market for at least seven consecutive years.

Article 21

Admissibility of cancellation requests

- 1 For the purpose of Articles 106 of Regulation (EU) No 1308/2013 a substantiated cancellation request shall be admissible where:
 - a the cancellation request complies with the requirements set out in Article 13(1) of Implementing Regulation (EU) 2019/34; and
 - b the cancellation request is based on the grounds referred to in Article 106 of Regulation (EU) No 1308/2013.
- 2 Where the Commission considers that the cancellation request is not admissible it shall inform the Member State or third country authority or the natural or legal person that submitted the request of the reasons supporting the finding of inadmissibility.
- 3 Substantiated statements of objection to cancellation shall be admissible only where they show commercial reliance by an interested person on the registered name.

SECTION 5

Use of symbols, indications and abbreviations

Article 22

Temporary labelling and presentation

After an application for protection of a designation of origin or a geographical indication has been forwarded to the Commission, producers may indicate it in labelling and presentation, and use national logos and indications, in compliance with Union law and in particular Regulation (EU) No 1169/2011.

Union symbols indicating the protected designation of origin or the protected geographical indication, the Union indications 'protected designation of origin' or 'protected geographical indication' and the Union abbreviations 'PDO' or 'PGI' may appear on the labelling only after the publication of the decision conferring protection on that designation of origin or geographical indication.

Where the application is rejected, any grapevine products labelled in accordance with the first subparagraph may be marketed until the stocks are exhausted.

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Article 23

Derogations from the obligation to use the term ‘protected designation of origin’ on labels

In accordance with Article 119(3) of Regulation (EU) No 1308/2013, references to the terms ‘protected designation of origin’ may be omitted for wines bearing the following protected designations of origin:

- (a) Greece:
Σάμος (Samos);
- (b) Spain:
Cava, Jerez, Xérès or Sherry, Manzanilla;
- (c) France:
Champagne;
- (d) Italy:
Asti, Marsala, Franciacorta;
- (e) Cyprus:
Κουμανδαρία (Commandaria);
- (f) Portugal:
Madeira or Madère, Port or Porto.

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