

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 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 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.

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2019/33. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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.

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.

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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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