

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 III

TRADITIONAL TERMS

SECTION 1

Applications for protection and examination procedure

Article 24

Language and spelling of the traditional term

- 1 A traditional term shall be registered:
 - a in the official language or regional language of the Member State or third country from which the term originates; or
 - b in the language used in trade for this term.
- 2 A traditional term shall be registered with its original spelling and 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 25

Applicants

- 1 Competent authorities of the Member States or third countries or representative professional organisations established in third countries may apply for the protection of a traditional term.
- 2 ‘Representative professional organisation’ shall mean any producer organisation or association of producer organisations having adopted the same rules, operating in the area of one or more wine designations of origin or geographical indications where it includes in its membership at least two thirds of the producers established in the area in which it operates and accounts for at least two thirds of the production of that area. A representative professional organisation may lodge an application for protection only for grapevine products which it produces.

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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)

Article 26

Admissibility of the application

1 Applications for protection are considered admissible where they are submitted in compliance with Article 25 of this Regulation and Article 21 and Article 30(3) of Implementing Regulation (EU) 2019/34 and are duly completed.

An application shall be considered to be duly completed where it contains the following information:

- a the name to be protected as a traditional term;
- b the type of traditional term, whether it falls under Article 112(a) or (b) of Regulation (EU) No 1308/2013;
- c the language in which the name to be protected as a traditional term is expressed;
- d the grapevine product category or categories concerned;
- e a summary of the definition and conditions of use;
- f the protected designations of origin or protected geographical indications concerned.

2 The application shall be accompanied by a copy of the legislation of the Member State concerned or rules applicable to wine producers in the third country or countries concerned, governing the use of the term in question, and a reference to the publication of that legislation or those rules.

3 If the application is not duly completed or if the documents referred to in paragraph 2 have not been provided with the application, the application shall be inadmissible.

4 Where the application is inadmissible, the authorities of the Member State or those of the third country or the applicant established in the third country in question shall be informed of the reasons for its inadmissibility and that they are entitled to submit another application duly completed.

Article 27

Conditions of validity

1 An application for the protection of a traditional term shall be deemed valid if the name for which the protection is sought:

- a fulfils the requirements of a traditional term as defined in Article 112 of Regulation (EU) No 1308/2013 as well as the requirements laid down in Article 24 of this Regulation;
- b consists exclusively of either:
 - (i) a name traditionally used in trade in a large part of the territory of the Union or of the third country in question, to distinguish specific categories of grapevine products referred to in Article 92(1) of Regulation (EU) No 1308/2013; or
 - (ii) a reputed name traditionally used in trade in at least the territory of the Member State or third country in question, to distinguish specific categories of grapevine products referred to in Article 92(1) of Regulation (EU) No 1308/2013;
- c has not become generic, and

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- d is defined and regulated in the Member State's legislation or subject to conditions of use as provided for by rules applicable to wine producers in the third country in question, including those emanating from representative professional organisations.

Point (b) shall not apply to traditional terms referred to in Article 112(a) of Regulation (EU) No 1308/2013.

- 2 For the purposes of paragraph (1) (b), traditional use means:
- a use amounting to a period of at least five years in case of terms filed in the official language or regional language of the Member State or third country where the term originates;
 - b use amounting to a period of at least 15 years in case of terms filed in the language used for trade.
- 3 For the purposes of paragraph (1)(c), a name that has become 'generic' means the name which, although it relates to a specific production method or ageing method, or the quality, colour, type of place, or a particular event linked to the history of a grapevine product, has become the common name of that product in the Union.

Article 28

Scrutiny by the Commission

- 1 The date of submission of an application for protection of a traditional term shall be the date on which the application is received by the Commission.
- 2 The Commission shall examine whether the application for protection meets the conditions laid down in this Chapter.
- 3 Where the Commission considers that the conditions laid down in Articles 26 and 27 are met, it shall adopt an implementing act concerning the publication, in the *Official Journal of the European Union*, of the application for protection.
- 4 If an application for the protection of a traditional term does not meet the conditions laid down in this Chapter, the Commission shall inform the applicant of the grounds for refusal, setting a deadline for the withdrawal or modification of the application or for the submission of comments.
- 5 If the obstacles are not remedied by the applicant within the deadline referred to in paragraph 4, the Commission shall adopt an implementing act rejecting the application in accordance with Article 115(2) of Regulation (EU) No 1308/2013.

SECTION 2

Objection procedure

Article 29

Submission of an objection

The date of submission of an objection shall be the date on which the objection is received by the Commission.

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Article 30

Admissibility and grounds of objection

- 1 A substantiated objection shall be admissible where:
 - a it is submitted by any Member State or third country, or any natural or legal person having a legitimate interest;
 - b it is received by the Commission within the deadline provided for in Article 22(1) of Implementing Regulation (EU) 2019/34;
 - c it demonstrates that the application for protection is incompatible with the rules on traditional terms because it does not comply with Article 27 of this Regulation or because the registration of the name proposed would conflict with Article 32 or 33 of this Regulation.
- 2 An objection that is deemed admissible shall be notified to the Member State or the third country authorities or the representative professional organisation in the third country in question.

Article 31

Scrutiny of an objection

1 Where the Commission does not reject the objection in accordance with Article 23(3) of Implementing Regulation (EU) 2019/34, it shall communicate the objection to the applicant that submitted the application and shall invite the applicant to file observations within the time period referred to in Article 24(1) of Implementing Regulation (EU) 2019/34. Any observations received within this period shall be communicated to the objector.

In the course of its scrutiny of an objection, the Commission shall request the parties to provide comments, if appropriate, within the time period referred to in Article 24(2) of Implementing Regulation (EU) 2019/34, on the communications received from the other parties.

2 Where the applicant or the objector do not file any observations in response, or where the time periods for filing observations and for submitting comments referred to in Article 24 of Implementing Regulation (EU) 2019/34 are not respected, the Commission shall proceed to rule on the objection.

3 A decision to reject or recognise the traditional term in question shall be taken by the Commission on the basis of the evidence available to it. The Commission shall consider whether the conditions referred to or laid down in Articles 27, 32 or 33 of this Regulation are fulfilled. A decision to reject the traditional term shall be notified to the objector and to the applicant.

4 Where multiple objections are lodged, a preliminary examination of one or more such objections may prevent an application for protection from proceeding. In these circumstances, the Commission may suspend the other objection procedures. The Commission shall inform the other objectors of any decision affecting them which was taken in the course of the procedure.

Where an application is rejected, objection procedures which have been suspended shall be deemed to be closed and the objectors concerned shall be duly informed.

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SECTION 3

Protection

Article 32

Relationship with trade marks

1 The registration of a trade mark that contains or consists of a traditional term which does not respect the definition and conditions of use of that traditional term as referred to in Article 112 of Regulation (EU) No 1308/2013, and that relates to a product falling under one of the categories listed in Part II of Annex VII thereto shall be:

- a refused if the application for registration of the trade mark is submitted after the date of submission of the application for protection of the traditional term to the Commission and the traditional term is subsequently protected; or
- b invalidated.

2 A name shall not be protected as a traditional term where, in the light of a trade mark's reputation and renown, such protection is liable to mislead the consumer as to the true identity, nature, characteristic or quality of the grapevine product.

3 Without prejudice to paragraph 2, a trade mark referred to in paragraph 1 which has been applied for, registered or established by use in good faith, where national legislation so provides, in the territory of the Union, prior to the date of protection of the traditional term in the country of origin, may continue to be used and renewed notwithstanding the protection of a traditional term, provided that no grounds for the trade mark's invalidity or revocation exist under Directive 2008/95/EC of the European Parliament and of the Council⁽¹⁾, Directive (EU) 2015/2436 of the European Parliament and of the Council⁽²⁾ or under Regulation (EU) 2017/1001 of the European Parliament and of the Council⁽³⁾.

In such cases, the use of the traditional term shall be permitted alongside the relevant trade marks.

Article 33

Homonyms

1 A term for which an application for protection is submitted and which is wholly or partially homonymous with a traditional term already protected under Article 113 of Regulation (EU) No 1308/2013 shall be registered with due regard to local and traditional usage and the risk of confusion.

A homonymous term which misleads consumers as to the nature, quality or the true origin of the grapevine products shall not be registered even if the term is accurate.

A registered homonymous term may be used only if there is a sufficient distinction in practice between the homonym registered subsequently and the term already in the register, having regard to the need to treat the producers concerned in an equitable manner and the need to avoid misleading the consumer.

2 Paragraph 1 shall apply *mutatis mutandis* for traditional terms protected before 1 August 2009 which are wholly or partially homonymous with a protected designation of origin or geographical indication or a wine grape variety name or its synonym listed in Annex IV.

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SECTION 4

Modification and cancellation

Article 34

Modification of a traditional term

An applicant satisfying the conditions of Article 25 may apply for approval of a modification of a registered traditional term concerning the elements referred to in points (b), (c) and (d) of Article 26(1).

Articles 26 to 31 shall apply *mutatis mutandis* to applications for modification.

Article 35

Cancellation of a traditional term

In accordance with Article 115(2) of Regulation (EU) No 1308/2013, the Commission may, on a duly substantiated request by a Member State, a third country or a natural or legal person having a legitimate interest, adopt implementing acts cancelling the protection of a traditional term.

Articles 26 to 31 shall apply *mutatis mutandis* to applications for cancellation.

Article 36

Grounds for cancellation

The protection of a traditional term shall be cancelled where:

- (a) the traditional term no longer meets the requirements laid down in Articles 27, 32 or 33;
- (b) compliance with the corresponding definition and conditions of use is no longer ensured.

Article 37

Admissibility of a cancellation request

1 A substantiated cancellation request shall be admissible where:

- a it was submitted to the Commission by a Member State, a third country or a natural or legal person having a legitimate interest; and
- b it is based on one of the grounds referred to in Article 36.

The duly substantiated cancellation request shall be admissible only if it demonstrates the legitimate interest of the applicant.

2 Where the Commission considers that the cancellation request is not admissible it shall inform the authority or person that sent the request of the reasons for inadmissibility.

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3 The Commission shall make the cancellation request available to the authorities and persons affected in accordance with Article 30(4) of Implementing Regulation (EU) 2019/34.

4 Substantiated statements of objection to cancellation requests shall be admissible only if they show continued commercial reliance on the registered name by an interested person.

Article 38

Rules concerning traditional terms used in third countries

1 The definition of traditional terms provided for in Article 112 of Regulation (EU) No 1308/2013 shall apply *mutatis mutandis* to terms traditionally used in third countries for grapevine products covered by geographical indications or designations of origin under the legislation of those third countries.

2 Grapevine products originating in third countries whose labels bear traditional indications other than the traditional terms listed in the electronic database 'E-Bacchus', referred to in Article 25(1) of Implementing Regulation (EU) 2019/34, may use these traditional indications on wine labels in accordance with the rules applicable in the third countries concerned, including those emanating from representative professional organisations.

SECTION 5

Article 39

Existing protected traditional terms

A traditional term which is protected under Regulation (EC) No 607/2009 shall automatically be protected under this Regulation.

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- (1) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks ([OJ L 299, 8.11.2008, p. 25](#)).
- (2) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (Recast) ([OJ L 336, 23.12.2015, p. 1](#)).
- (3) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ([OJ L 154, 16.6.2017, p. 1](#)).

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