

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

COMMISSION DELEGATED REGULATION (EU) 2019/33

of 17 October 2018

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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 109, Article 114 and Article 122 thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 repealed and replaced Council Regulation (EC) No 1234/2007⁽²⁾. Sections 2 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 lay down rules on designations of origin, geographical indications, traditional terms, labelling and presentation in the wine sector and empower the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the wine market in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace the provisions of Commission Regulation (EC) No 607/2009⁽³⁾ which should therefore be repealed.
- (2) Experience gained from the application of Regulation (EC) No 607/2009 has demonstrated that the current procedures for the registration, amendment and cancellation of Union or third country designations of origin or geographical indications can be intricate, burdensome and time consuming. Regulation (EU) No 1308/2013 has created legal vacuums, in particular as regards the procedure to be followed in applications to amend product specifications. Rules of procedure concerning designations of origin and geographical indications in the wine sector are inconsistent with the rules applicable to quality schemes in the foodstuffs, spirit drinks and aromatised wines sectors of Union law. This gives rise to inconsistencies in how this category of intellectual property rights is implemented. These discrepancies

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should be addressed in light of the right to protection of intellectual property established in Article 17(2) of the Charter of Fundamental Rights of the European Union. This Regulation should therefore simplify, clarify, complete and harmonise the relevant procedures. Procedures should be modelled as far as possible on the efficient and well tested procedures for protecting intellectual property rights relating to agricultural products and foodstuffs laid down in Regulation (EU) No 1151/2012 of the European Parliament and of the Council⁽⁴⁾, Commission Delegated Regulation (EU) No 664/2014⁽⁵⁾ and Commission Implementing Regulation (EU) No 668/2014⁽⁶⁾, and adapted to take account of the specificities of the wine sector.

- (3) Designations of origin and geographical indications are intrinsically linked to the territory of Member States. National and local authorities have the best expertise and knowledge of the relevant facts. This should be reflected in the relevant procedural rules, having regard to the principle of subsidiarity set out in Article 5(3) of the Treaty on European Union.
- (4) The name to be protected as a designation of origin or a geographical indication should only be registered in a language that has at least a historical link with the geographical area in which the product is produced. Specific rules concerning the use of linguistic characters for a PDO and a PGI should be laid down in order to ensure that operators and consumers in all Member States are better able to read and understand such names.
- (5) The conditions in which a single producer may qualify as an eligible applicant should be defined. Single producers should not be penalised if prevailing circumstances prevent the creation of a producer group. However, it should be clarified that the protected name may be used by other producers established in the demarcated geographical area provided the conditions laid down in the product specification are met, even where the protected name consists of or contains the name of the holding of the single applicant producer.
- (6) Where a wine sector product bearing a designation of origin or geographical indication must only be packaged within a demarcated geographical area according to the product specification, this constitutes a restriction on the free movement of goods and freedom to provide services. In light of the case-law of the Court of Justice such restrictions may be imposed only if they are necessary and proportionate to safeguard quality, to certify the origin of the product or to ensure control. It is therefore necessary to provide that any restrictions on packaging should be duly justified from the point of view of the free movement of goods and the freedom to provide services.
- (7) Regulation (EC) No 607/2009 laid down a number of derogations concerning production in the demarcated geographical area. These derogations should be maintained to preserve traditional production practices. They should be clearly set out for the sake of legal certainty and clarity.
- (8) Applications for protection are examined by the national authorities of the Member State concerned through a preliminary national procedure. In the case of protected designations of origin, Member States should pay particular attention to the description of the link between the quality and characteristics of the product and the particular geographical environment. In the case of protected geographical indications, Member

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States should pay particular attention to the description of the link between a specific quality, reputation or other characteristic and the geographical origin of the product, taking into account the demarcated area and the characteristics of the product. The definition of the demarcated area should be detailed, precise and unambiguous so that producers, the competent authorities and the control bodies can ascertain whether operations are being carried out within the demarcated geographical area.

- (9) The assessment carried out by the competent authorities of Member States is an essential step in the procedure. Member States have knowledge, expertise and access to data and facts that make them the best placed to assess whether an application concerning a designation of origin or a geographical indication fulfils the requirements for protection. Therefore, Member States should guarantee that the result of this assessment, which should be faithfully recorded in a single document summarising the relevant elements of the product specification, is reliable and accurate. Having regard to the principle of subsidiarity, the Commission should subsequently scrutinise applications to ensure that there are no manifest errors and that Union law and the interests of stakeholders outside the Member State of application have been taken into account.
- (10) In order to facilitate joint applications for protection of designations of origin and geographical indications, the specific steps in the procedures for those applications should be defined.
- (11) Where Member States consider that the name subject to the application for protection is eligible for registration as a protected designation of origin or geographical indication in compliance with Regulation (EU) No 1308/2013, Member States should be able to grant transitional protection at national level while the Commission is conducting the assessment on the application for protection.
- (12) The information to be submitted by an applicant in order for applications for protection, amendment, objection or cancellation requests to be deemed admissible should be set out in order to facilitate the management of such applications and in order to speed up the examination of the files.
- (13) The objection procedure should be shortened and improved. For the sake of legal certainty, deadlines should be fixed for the various steps in the procedure and grounds of objection should be specified. An amicable step should be introduced to allow the parties to communicate with a view to potentially reaching agreement.
- (14) Provision should be made for specific derogations that permit grapevine products that do not comply with the product specification to use a protected name for a transitional period. In order to overcome temporary difficulties and in order to ensure that all producers comply with the specifications in the long term, Member States should be allowed to grant derogations for a period of up to 10 years in certain cases.
- (15) Producers of grapevine products bearing a name protected as a designation of origin or geographical indication have to face a changing and challenging market. They require procedures allowing them to swiftly adapt to market demands, however, they are in fact penalised by the length and complexity of the current amendment procedure, the effect of which impedes their ability to react quickly to the market. Producers of

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grapevine products bearing a name protected as a designation of origin or geographical indication should also be allowed to take account of developments in scientific and technical knowledge and of environmental changes. In order to reduce the steps of such procedures and to give effect in this area to the principle of subsidiarity, decisions on amendments which do not concern essential elements of the product specification should be approved at Member State's level. Producers should be enabled to apply those amendments immediately on the conclusion of the national procedure. There should be no requirement to re-examine the application for approval at Union level.

- (16) However, in order to protect the interests of third parties established in Member States other than the one in which the grapevine products is produced, the Commission should remain responsible for approving amendments for which an objection procedure is required at Union level. Therefore, a new classification of amendments should be introduced: standard amendments, which apply immediately following the approval by the Member State since they do not require an objection procedure at Union level, and Union amendments, which apply only following approval by the Commission subsequent upon the completion of an objection procedure at Union level.
- (17) Temporary amendments should be introduced to allow grapevine products bearing a protected designation of origin or geographical indication to continue to be marketed under the protected names in cases of natural disaster or adverse weather conditions or adoption of sanitary or phytosanitary measures which temporarily prevent operators from complying with the product specification. Due to their emergency nature, temporary amendments should apply immediately following the approval by the Member State. The list of emergency grounds for temporary amendments is exhaustive due to the exceptional character of temporary amendments.
- (18) Union amendments should follow the procedure governing applications for protection in order to have the same efficiency and guarantees. It should be applied *mutatis mutandis* with the exclusion of certain steps which should be omitted with a view to reducing the administrative burden. The procedure for standard amendments and temporary amendments should be established to allow Member States to carry out an appropriate assessment of the applications and to guarantee a consistent approach across Member States. The accuracy and exhaustiveness of Member States' assessment should be equivalent to the accuracy and exhaustiveness required for the assessment process within the procedure governing applications for the protection.
- (19) Standard and temporary amendments related to the protected designations of origin and geographical indications of third countries should follow the approach provided for Member States, and the approval decision should be taken in accordance with the system in force in the third country in question.
- (20) The cancellation procedure should be more transparent and clear. In particular, it should be possible to oppose the cancellation request. To that end, the cancellation procedure should follow the standard procedure governing applications for protection, *mutatis mutandis*, with the exclusion of certain steps which should be omitted to reduce the administrative burden. It should be possible to cancel protected names if a name is no longer in use in the market place.

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- (21) Rules on temporary labelling and the presentation of grapevine products whose name has been the subject of an application for protection as a designation of origin or geographical indication should be adopted in order to ensure the protection of the legitimate interests of the operators while taking into account the principle of fair competition and the obligation to ensure that appropriate information is communicated to consumers.
- (22) Certain protected designations of origin benefit from derogations from the obligation to use the term ‘protected designation of origin’ on labels. In order to maintain this historical concession it is appropriate to confirm the existence of this derogation for such names.
- (23) The use of traditional terms to describe grapevine products is a long-established practice in the Union. Such terms designate a production or ageing method, the quality, colour, type of place or a particular event linked to the history of a grapevine product bearing a protected designation of origin or geographical indication or indicate that it is a grapevine product having a protected designation of origin or geographical indication. Articles 112 and 113 of Regulation (EU) No 1308/2013 lay down the general rules regarding the use and protection of traditional terms. So as to ensure fair competition and avoid misleading consumers, a common framework should be laid down regarding the protection and registration of such traditional terms. Furthermore, the procedures concerning the grant of protection to traditional terms should be simplified and harmonised, where possible, with the procedures applicable to the grant of protection to designations of origin and geographical indications.
- (24) A traditional term may evoke the particular characteristics of the grapevine product bearing that traditional term. Therefore, in order to convey clear information, that term should be indicated only in the language customarily used, with its original spelling and script.
- (25) In order to ensure that consumers are not misled, the use of traditional terms for grapevine products manufactured in third countries should be allowed provided they fulfil the same or equivalent conditions to those required from Member States. Therefore, both Member States and third countries should have the possibility to apply for the protection of a traditional term at Union level. Having regard to the fact that some third countries do not have the same centralised system of protection of traditional terms as the Union, the definition of ‘representative professional organisations’ operating in third countries should be laid down to ensure the same guarantees as those provided for in the Union rules.
- (26) Member States, third countries or representative professional organisations operating in third countries should ensure that the application for protection submitted to the Commission is complete and contains all relevant information that allows the Commission to establish that the traditional term complies with the conditions laid down in Article 112 of Regulation (EU) No 1308/2013 and proves that the traditional term is already protected in the Member State.

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- (27) Protection should only be granted to traditional terms that are widely known and have a significant economic impact on the grapevine products for which they are reserved. Therefore, the Commission should approve applications for the protection of a traditional term only where the application provides exhaustive evidence that the term is traditionally used to describe grapevine products produced in a large part of the territory of the Union or is a reputed name traditionally used in the entire territory of a Member State or third country, that fair competition is guaranteed for producers that used that term prior to the grant of protection and that the traditional term is not a generic term. To this end, the meaning of ‘traditional use’ and ‘generic’ should be defined in this Regulation.
- (28) The Commission should scrutinise the application for protection of a traditional term in order to ensure that the application is duly completed and complies with the conditions laid down by this Regulation. If the application requirements are not met, the Commission should request the applicant to make the necessary modifications or to withdraw the application. In the absence of action on the part of the applicant, the application should be rejected.
- (29) To ensure the absence of any obstacle to the protection of a traditional term, any Member State or third country, or any natural or legal person having a legitimate interest, should have the option of objecting to the protection of that traditional term. In order for the objection to be deemed admissible, the objection should be substantiated and should demonstrate that the application is not in compliance with Union rules on traditional terms. Furthermore, in case the objection is considered admissible, the Commission should provide the applicant with a copy of the objection received in order to facilitate the parties to reach an agreement. If no agreement between the parties is reached, the Commission should rule on the objection and grant the protection or reject the application for protection of the traditional term.
- (30) In order to ensure clarity for consumers as regards the nature and origin of the product and in order to ensure fair competition among producers, it is necessary to establish the conditions of use for trade marks that contain or consist of a traditional term and for the use of homonymous traditional terms.
- (31) In order to take account of the evolution in consumption patterns and to address grapevine products production and marketing developments, it should be possible for Member States and third countries to apply to modify or cancel a traditional term. To be deemed admissible, applications to modify or cancel a traditional term should be duly substantiated.
- (32) The system in place in third countries for the protection and use of traditional terms may differ from the one in place within the Union. For consistency purposes, the use of traditional terms to describe grapevine products produced in third countries should be allowed provided that they do not conflict with Union law.
- (33) The acquired right of protection of traditional terms protected under Regulation (EC) No 607/2009 should be taken into account. Those terms should therefore continue to be automatically protected under this Regulation.

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- (34) Articles 117 to 121 of Regulation (EU) No 1308/2013 lay down the general rules for the labelling and presentation of grapevine products. That Regulation also harmonises the use of terms other than those expressly specified by Union legislation, provided that they are not misleading. For the smooth functioning of the internal market, Union rules on the use of compulsory labelling particulars for grapevine products should be laid down. Moreover, in order not to mislead consumers, provisions on the use of optional labelling particulars should also be set out.
- (35) In order to assist consumers, mandatory information should be grouped in a single visual field on the container. However, in accordance with the requirements of Regulation (EU) No 1169/2011 of the European Parliament and of the Council⁽⁷⁾, certain compulsory particulars, such as the indication of the importer and listing of ingredients that may cause allergies or intolerances should be exempt from this obligation.
- (36) Under the terms of Regulation (EU) No 1169/2011 the substances or products that may cause allergies or intolerances and the terms to be used to indicate them on the label of foodstuffs are those listed in Annex II therein. In the case of grapevine products, other terms are also used to refer to egg products, milk products and sulphites. Those terms should therefore be used for the labelling of grapevine products.
- (37) Grapevine products produced within the Union are exported to third countries. In order to ensure that consumers of those countries understand the information related to the product they purchase, it should be possible to have the label translated into the languages of the importing country. Moreover, in order to facilitate trade, provision should be made permitting the labels to display any particulars required by the legislation of the importing country, whether or not compliant with Union law. Moreover, for security reasons, it should also be possible to derogate from Union presentation requirements for grapevine products to be consumed on board of airplanes, such as the obligation to use glass-bottles for sparkling wines.
- (38) The use of lead-based capsules to cover the closing devices of containers holding products covered by Regulation (EU) No 1308/2013 should continue to be banned in order to avoid any risk of contamination by contact with such capsules and environmental pollution from waste.
- (39) Due regard should be given to the particular nature of grapevine products and the degree of variability of their alcohol content. Therefore, positive and negative tolerances should be allowed as regards the indication of the actual alcoholic strength by volume on the label.
- (40) In order to ensure traceability, rules on the ‘indication of provenance’ should be introduced. Moreover, those rules should take into account the expectation of consumers as regards the origin of the grapevine products and that of the grape and must used to produce the final product.
- (41) For the smooth operation of the internal market and to ensure that the consumer is not misled, there should be a compulsory indication of the name and address of the bottler, producer, vendor or importer.

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- (42) Consumers often make purchasing decisions based on the information provided concerning the sugar content of sparkling wine, aerated sparkling wine, quality sparkling wine and quality aromatic sparkling wine. The indication of sugar content should therefore be compulsory for those categories of grapevine products while it should remain optional for other categories of grapevine products.
- (43) Consumers are not always aware of the characteristics and production methods of aerated sparkling wine and aerated semi-sparkling wine, especially as regards the use of carbon dioxide. It is therefore necessary to indicate on the label of that wine that it has been produced by adding carbon dioxide.
- (44) The indication of the vintage year and the indication of one or more wine grape varieties require specific rules to ensure that the information conveyed to consumers is not misleading. In particular, restrictions should be established for the use of grape variety names consisting of or containing a protected designation of origin or geographical indication.
- (45) Consumers also often make purchasing decisions based on the wine grape variety used. In order to prevent misleading labelling practices, rules on the conditions of use of the names used to indicate wine grape varieties should be laid down. Furthermore, considering the economic importance of varietal wines for producers, it should be possible for producers of grapevine products not bearing a protected designation of origin or geographical indication to indicate the information 'varietal wine', together with the name of the country where the grapevine product was produced, on the label.
- (46) The sugar content of grapevine products other than sparkling wine, aerated sparkling wine, quality sparkling wine and quality aromatic sparkling wine is not an essential element of information for the consumer. It should therefore be optional for producers to indicate the sugar content of those grapevine products on the label. However, in order not to mislead the consumers, the voluntary use of terms related to the sugar content for those products should be regulated.
- (47) In order to ensure the veracity and accuracy of the information conveyed to the consumer, specific conditions should be set out for indicating production methods on the label, especially as regards production methods for sparkling wines and ageing practices for all grapevine products. These terms evoke higher standard grapevine products in the consumer's mind, and should therefore be reserved for grapevine products bearing a protected designation of origin or geographical indication.
- (48) The indication of the holding which exploits the vineyards from which the grapevine products come and where all the winemaking processes are carried out, may constitute an added value for producers and a higher quality indication for consumers. It should therefore be permissible for producers to indicate the name of a holding on the labels of grapevine products bearing a protected designation of origin or protected geographical indication.
- (49) The indication on the label of the name of a geographical area which is smaller or larger than the area of a protected designation of origin or geographical indication should be permitted for grapevine products bearing a protected designation of origin or

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geographical indication, in order to better inform the consumer about the place where the grapevine product was produced, in particular where such places are well known by consumers.

- (50) The use of bottles having a particular shape for certain grapevine products bearing a protected designation of origin or geographical indication is a long-established practice within the Union and such use can evoke certain characteristics or the provenance of those grapevine products in the mind of consumers. Such bottle shapes should therefore be reserved for the wines in question.
- (51) The traditional type of glass bottle and closure of sparkling wines reflect traditional production and bottling practices. They should therefore be reserved to sparkling wine. However, Member States should be able to authorise the use of such type of bottle and closure for other beverages, provided that they do not mislead the consumer as to the real nature of the product.
- (52) Member States should be enabled, for the implementation of their quality policy, to lay down additional rules for the labelling of grapevine products produced on their territories, provided that they are compatible with Union law.
- (53) Any documents or information sent to the Commission concerning an application for protection, amendment or cancellation of a protected designation of origin, geographical indication or traditional term should be in one of the official languages of the Union or accompanied by the translation in one of those languages, in order to allow the Commission to carry out the correct analysis of the submitted documentation and information.
- (54) To ensure a smooth transition from the rules of Regulation (EC) No 607/2009 to the new rules set out in this Regulation and Commission Implementing Regulation (EU) 2019/34⁽⁸⁾, transitional periods should be provided for in order to enable economic operators established in the Union and in third countries to comply with the labelling requirements. Provisions should be enacted to ensure that grapevine products labelled in accordance with the existing rules may continue to be marketed until stocks are exhausted,

HAS ADOPTED THIS REGULATION:

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- (1) [OJ L 347, 20.12.2013, p. 671.](#)
- (2) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([OJ L 299, 16.11.2007, p. 1.](#))
- (3) Commission Regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products ([OJ L 193, 24.7.2009, p. 60.](#))
- (4) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([OJ L 343, 14.12.2012, p. 1.](#))
- (5) Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules ([OJ L 179, 19.6.2014, p. 17.](#))
- (6) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs ([OJ L 179, 19.6.2014, p. 36.](#))
- (7) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 ([OJ L 304, 22.11.2011, p. 18.](#))
- (8) Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 laying down rules for the application of 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, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks (See page 46 of this Official Journal).

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