

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/1235

of 12 May 2021

supplementing Regulation (EU) 2019/787 of the European Parliament and of the Council with rules concerning applications for registration of geographical indications of spirit drinks, amendments to product specifications, cancellation of the registration and the register

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 ⁽¹⁾, and in particular Article 33(1) and (2) and Article 41 thereof,

Whereas:

- (1) Regulation (EU) 2019/787 repealed and replaced Regulation (EC) No 110/2008 of the European Parliament and of the Council ⁽²⁾. Chapter III of Regulation (EU) 2019/787 lays down rules on geographical indications in the spirit drinks sector and empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the market of spirit drinks in the new legal framework and in particular to simplify and rationalise the functioning of geographical indications system for spirit drinks, certain rules have to be adopted by means of such acts. In particular, this Regulation and Commission Implementing Regulation (EU) 2021/1236 ⁽³⁾ should replace part of the provisions of Commission Implementing Regulation (EU) No 716/2013 ⁽⁴⁾, which should therefore be repealed.
- (2) In order to facilitate the Commission's scrutiny and to provide full information to the parties concerned in the opposition procedure, where the product specification includes specific requirements on packaging, the single document included in the application for registration of a geographical indication should contain a summary of the justification showing why the packaging must take place in the defined geographical area to safeguard quality, ensure the origin or ensure control of the spirit drink.

⁽¹⁾ OJ L 130, 17.5.2019, p. 1.

⁽²⁾ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

⁽³⁾ Commission Implementing Regulation (EU) 2021/1236 of 12 May 2021 laying down rules for the application of Regulation (EU) 2019/787 of the European Parliament and of the Council concerning applications for registration of geographical indications of spirit drinks, the opposition procedure, amendments to product specifications, cancellation of the registration, use of symbol and control (see page 10 of this Official Journal).

⁽⁴⁾ Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (OJ L 201, 26.7.2013, p. 21).

- (3) For the sake of consistency of the procedure and in order to facilitate the Commission's scrutiny, a Member State should guarantee that the single document is a faithful summary of the product specification on which the Commission may rely when assessing the application and on which other Member States and stakeholders may rely for the purposes of enforcement of the geographical indication. For the same reasons, the publication reference of the product specification included in the application dossier submitted to the Commission by the Member States should consist of the electronic reference to the product specification as published according to the Member State's administrative system.
- (4) The information to be submitted in order for an application for protection, an application for approval of a Union amendment or a request for cancellation to be deemed admissible should be set out in order to facilitate the management of such applications or requests and to speed up their examination.
- (5) In order to overcome temporary difficulties and to ensure that all producers comply with the product specifications in the long term, Member States should be allowed to grant producers transitional periods up to 10 years to adapt to the changes of certain rules on the product specification.
- (6) The Commission is responsible for the approval of Union amendments to the product specification, while standard amendments are approved by the Member States or by the responsible person or body in a third country. For the efficiency of the procedure, when an application for approval of a Union amendment also contains standard amendments, standard amendments should be deemed as not existing and should not be considered as approved in the context of the Union amendment.
- (7) The procedure for the approval of 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 the assessment by the Member States should be equivalent to the accuracy and exhaustiveness required for the assessment process within the procedure governing applications for registration of a geographical indication.
- (8) It is necessary to lay down rules to establish coordination between the procedures for amendments to a product specification in cases where applications concerning a Union amendment and a standard amendment are pending at the same time before the Commission and the Member State's competent authority, respectively. Since both applications amend the same product specification, while following two different parallel procedures having a different timing, rules should be laid down that avoid inconsistencies.
- (9) The rules on the procedure for cancellation of the registration of a geographical indication should be supplemented to clarify that Member States are among the legal persons that may have a legitimate interest in submitting a request for cancellation under the first subparagraph of Article 32(1) of Regulation (EU) 2019/787 and to specify the exact references to the *Official Journal of the European Union* where the publication is made.
- (10) To ensure transparency and uniformity across Member States, it is necessary to establish the electronic register of geographical indications of spirit drinks referred to in Article 33 of Regulation (EU) 2019/787 ('the register') and to adopt further rules on the content and the form of the register. In particular, since the documents available, and to be made available, for each registered name differ depending on the legal basis under which they were first protected, the requirements for those documents should be adapted accordingly. In order to allow priority dates concerning other intellectual property rights to be determined, the register should indicate the date of an application for registration and the date and publication reference of the instrument protecting the geographical indication. The register should be an electronic database managed within digital systems made available by the Commission, and should be accessible to the public,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Introductory provision

Article 1

Subject matter

This Regulation lays down rules supplementing Regulation (EU) 2019/787 as regards geographical indications of spirit drinks, and in particular concerning:

- (a) applications for registration;
- (b) amendments to product specifications;
- (c) cancellation of the registration;
- (d) the register of the geographical indications.

CHAPTER II

Specific provisions

SECTION 1

APPLICATION FOR REGISTRATION

Article 2

(Delegated power Article 41(1)(a) of Regulation (EU) 2019/787) Additional requirements for the single document

Where the single document referred to in point (c) of Article 23(1) of Regulation (EU) 2019/787 includes specific requirements on packaging, a summary of the justification referred to in the second subparagraph of Article 22(1) of that Regulation shall also be included.

Article 3

(Delegated power Article 41(1)(a) of Regulation (EU) 2019/787) Member State's application dossier

When submitting an application dossier to the Commission in accordance with Article 24(7) of Regulation (EU) 2019/787, the Member State concerned shall certify that the single document referred to in Article 23(2)(b) of Regulation (EU) 2019/787 is a faithful summary of the product specification. The Member State shall be responsible for any material divergences between the single document and the product specification. The application dossier shall include the electronic reference of the publication of the product specification.

Article 4

(Delegated power Article 41(1)(b) of Regulation (EU) 2019/787) Admissibility of the application

1. An application for registration shall be considered admissible if it has been submitted in accordance with Article 24 of Regulation (EU) 2019/787 and communicated to the Commission in accordance with Article 13(1) of Implementing Regulation (EU) 2021/1236, including the single document drawn up in accordance with Article 3 of that Implementing Regulation, and if it is complete.

An application for registration shall be considered complete when it complies with Articles 22 and 23 of Regulation (EU) 2019/787 and Articles 2 and 3 of this Regulation.

2. If the Commission considers that an application is inadmissible, it shall inform the authorities of the Member State or the third country concerned or the applicant established in a third country, as the case may be, of the reasons for the inadmissibility.

Article 5

(Delegated power Article 41(1)(b) of Regulation (EU) 2019/787) National transitional period

1. 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 a transitional period on condition that the operators concerned have legally marketed the spirit drink in question using the names concerned continuously for at least 5 years prior to the submission of the application to the authorities of the Member State and that those temporary difficulties had been raised in the national objection procedure referred to in Article 24(6) of Regulation (EU) 2019/787.

The transitional period shall start from the date on which the application dossier is submitted to the Commission and shall be as short as possible. It shall not exceed 10 years.

2. Paragraph 1 shall apply *mutatis mutandis* to a geographical indication referring to a geographical area situated in a third country, with the exception of the national objection procedure.

3. The transitional period referred to in paragraph 1 shall be indicated in the application dossier submitted to the Commission in accordance with Article 24(7) or (8), of Regulation (EU) 2019/787.

SECTION 2

AMENDMENTS TO PRODUCT SPECIFICATIONS

Article 6

(Delegated power Article 41(2) of Regulation (EU) 2019/787) Applications for Union amendments to product specifications

For the purposes of Article 31 of Regulation (EU) 2019/787, an application for approval of a Union amendment to a product specification shall contain Union amendments only. If an application for approval of a Union amendment also contains standard or temporary amendments, the procedure for a Union amendment shall apply only to the Union amendment. Standard or temporary amendments included in the application shall be deemed as not submitted.

Article 7

(Delegated power Article 41(2) of Regulation (EU) 2019/787) Admissibility of applications for approval of Union amendments

1. Applications for approval of a Union amendment to a product specification shall be considered admissible if they have been submitted in accordance with Article 31 of Regulation (EU) 2019/787 and communicated to the Commission in accordance with Article 13(1) of Implementing Regulation (EU) 2021/1236 and comply with Article 7 of that Implementing Regulation.

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

2. If the Commission considers that an application is inadmissible, it shall inform the authorities of the Member State or the third country concerned or the applicant established in a third country, as the case may be, of the reasons for the inadmissibility.

Article 8

(Delegated power Article 41(2) of Regulation (EU) 2019/787) Standard amendments to product specifications

1. For the purposes of Article 31(5) of Regulation (EU) 2019/787, applications for approval of a standard amendment to a product specification shall be submitted to the authorities of the Member State in whose territory the geographical area of the product concerned is located. Applicants shall satisfy the conditions laid down in Article 24(1), (2) or (3) of Regulation (EU) 2019/787. If the application for approval of a standard amendment to a product specification does not come from the applicant that 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 approval of a standard amendment shall provide a description of the standard amendments and demonstrate that the proposed amendments qualify as standard in accordance with Article 31 of Regulation (EU) 2019/787. A summary of the reasons for which the amendments are required shall be added.

2. Where the Member State considers that the requirements of Regulation (EU) 2019/787 and the provisions adopted pursuant to that Regulation are met, it may approve the standard amendment. The approval decision shall include the amended consolidated product specification and, where relevant, the amended consolidated single document.

The approval decision shall be made public. The approved standard amendment shall be applicable in the Member State concerned from the date on which the approval decision was made public. The Member State shall communicate approved standard amendments to the Commission not later than 1 month following the date on which the national approval decision was made public. The Member State shall communicate, without undue delay, to the Commission any final and unappealable national judgments annulling a decision approving a standard amendment.

3. Decisions approving standard amendments concerning spirit drinks originating in third countries shall be communicated to the Commission by an applicant group having a legitimate interest, either directly to the Commission or via the authorities of the third country concerned, not later than 1 month following the date on which the relevant decision was made public.

4. The communication of an approved standard amendment to the Commission shall be considered to be duly made when it complies with Article 8 of Implementing Regulation (EU) 2021/1236.

5. In the event that the standard amendment implies an amendment of the single document, the Commission shall publish the description of the standard amendment and the amended single document in the *Official Journal of the European Union*, C series, within 3 months from the date on which it has received the communication of that standard amendment.

In the event that the standard amendment does not imply an amendment of the single document, the Commission shall make public, via the digital systems referred to in point (a) of the first subparagraph of Article 13(1) of Implementing Regulation (EU) 2021/1236, the description of the standard amendment within 3 months from the date on which it has received the communication of that standard amendment.

The sender of a communication of a standard amendment shall remain responsible for its content.

6. Standard amendments shall be applicable in the territory of the Union from the date on which they have been published pursuant to the first subparagraph of paragraph 5 or made public pursuant to the second subparagraph of paragraph 5.

7. Where 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 in the territory of the Member States concerned only after the last national approval decision becomes applicable. The Member State being the last to approve the standard amendment shall send the Commission the relevant communication not later than 1 month following the date on which its approval decision was made public.

If one or more of the Member States concerned do not adopt the national approval decision referred to in the first subparagraph, any of the Member States concerned may submit that application under the Union amendment procedure.

8. Paragraph 7 shall apply *mutatis mutandis* where a part of the geographical area concerned is located in the territory of a third country.

Article 9

(Delegated power Article 41(2) of Regulation (EU) 2019/787) Relationship between Union and standard amendments

1. Where a standard amendment implying an amendment of the single document is approved while an application for approval of a Union amendment is pending, the Member State concerned shall update the single document included in the application for approval of a Union amendment accordingly. If the pending Union amendment has been published in the *Official Journal of the European Union*, C series, for opposition, the updated version of the single document shall be published in the *Official Journal of the European Union*, L series, as an Annex to the Implementing Regulation approving the Union amendment.

2. Where the amended version of the single document included in a standard amendment application approved at national level does not take into account the latest Union amendments that have been approved, that standard amendment shall not be published in the *Official Journal of the European Union*. The Member State that had approved that standard amendment shall send to the Commission the consolidated version of the single document as amended by both the Union and the standard amendments for publication in the *Official Journal of the European Union*.

Article 10

(Delegated power Article 41(2) of Regulation (EU) 2019/787) Temporary amendments to product specifications

1. Temporary amendments to product specifications shall be approved and made public by the Member State in whose territory the geographical area of the product concerned is located. Temporary amendments shall be communicated to the Commission together with the reasons supporting them not later than 1 month following the date on which the national approval decision was made public. A temporary amendment shall be applicable in the Member State concerned from the date on which the decision approving the amendment was made public.

2. Where the geographical area covers more than one Member State, the procedure for temporary amendments shall apply separately in the Member States concerned for the part of the area which falls within their territory.

3. Temporary amendments concerning spirit drinks originating in third countries shall be communicated to the Commission, together with the reasons supporting them, by an applicant group having a legitimate interest, either directly or via the authorities of that third country, not later than 1 month following their approval.

4. The communication of an approved temporary amendment to the Commission shall be considered to be duly made when it complies with Article 9 of Implementing Regulation (EU) 2021/1236.

5. The Commission shall make public the communication of temporary amendment via the digital systems referred to in point (a) of the first subparagraph of Article 13(1) of Implementing Regulation (EU) 2021/1236 within 3 months from the date on which it has received the communication of that temporary amendment. A temporary amendment shall be applicable in the territory of the Union from the date on which it was made public by the Commission.

The sender of a communication of a temporary amendment shall remain responsible for its content.

SECTION 3

CANCELLING A GEOGRAPHICAL INDICATION

Article 11

(Delegated power Article 41(1)(b) of Regulation (EU) 2019/787) Cancellation procedure

1. For the purposes of the first subparagraph of Article 32(1) of Regulation (EU) 2019/787, a request to cancel the registration of a geographical indication may be submitted by Member States on their own initiative.
2. The Commission shall publish the cancellation requests submitted pursuant to the first subparagraph of Article 32(1) of Regulation (EU) 2019/787 in the *Official Journal of the European Union*, C series.

Article 12

(Delegated power Article 41(1)(b) of Regulation (EU) 2019/787) Admissibility of cancellation requests

1. For the purposes of Article 32(1) and (2) of Regulation (EU) 2019/787, a cancellation request shall be considered admissible if:
 - (a) it complies with the requirements set out in Article 10 of Implementing Regulation (EU) 2021/1236; and
 - (b) for requests under Article 32(1) of Regulation (EU) 2019/787, it is based on the grounds referred to in the first subparagraph of that provision.
2. If the Commission considers that the cancellation request is inadmissible, it shall inform the authorities of the Member State or the third country concerned or the natural or legal person that submitted the request, as the case may be, of the reasons for the inadmissibility.
3. Reasoned statements of opposition as regards cancellation shall be admissible only where they show commercial use of the registered name by the interested person.

SECTION 4

REGISTER

Article 13

(Delegated power Article 33(1) and (2) of Regulation (EU) 2019/787) Register

1. The electronic register of geographical indications of spirit drinks referred to in Article 33 of Regulation (EU) 2019/787 ('the register') shall be established. It shall be based on digital systems managed by the Commission and accessible to the public.

2. Upon the entry into force of a legal instrument conferring protection on the name of a geographical indication, the Commission shall record the following data in the register:

- (a) the name or names to be protected as a geographical indication, including their transcriptions or transliterations in Latin characters, where applicable. Multiple names, transcriptions and transliterations shall be recorded as alternative names, separated by a space, an oblique and a second space;
- (b) the category of the spirit drink;
- (c) the file number;
- (d) the type of 'geographical indication';
- (e) the name of the country or countries of origin;
- (f) the date of application and the reference to the legal instrument protecting the name:
 - (i) for geographical indications registered in accordance with Regulation (EU) 2019/787 or Regulation (EC) No 110/2008, with the exclusion of the established geographical indications referred to in Article 20 of Regulation (EC) No 110/2008, the date of application and the electronic reference to the instruments protecting the name at Union level;
 - (ii) for the established geographical indications referred to in Article 20 of Regulation (EC) No 110/2008, the date of publication of the instrument of first protection of the geographical indication at Union level and the electronic reference to that instrument;
- (g) the electronic reference or references to the legal instrument or instruments concerning the geographical indication subsequent to the legal instruments referred to in point (f);
- (h) the references to the single document, the main specifications of the technical file, the product specification or the technical file, where available, as follows:
 - (i) for geographical indications registered in accordance with Regulation (EU) 2019/787, the electronic reference to the single document, including the electronic reference to the product specification. Where the geographical area falls within the territory of a third country, the electronic reference to the single document, including the reference to the publication of the product specification;
 - (ii) for geographical indications registered in accordance with Regulation (EC) No 110/2008, the electronic reference to the main specifications of the technical file;
 - (iii) for the established geographical indications referred to in Article 20 of Regulation (EC) No 110/2008, the technical file.

3. Where the Commission approves a Union amendment to a product specification or receives a communication of an approved standard amendment to a product specification that entails a change to the information recorded in the register, it shall record the new data with effect from the date of application of the amendment in the Union. Data concerning temporary amendments shall also be recorded.

4. Where the registration of a geographical indication has been cancelled, the Commission shall delete the name from the register from the date on which the relevant implementing act pursuant to Article 32 of Regulation (EU) 2019/787 takes effect and shall maintain a record of the cancellation.

5. The geographical indications protected by implementing regulations adopted between 8 June 2019 and the date of application of this Regulation shall be entered in the register.

6. The Commission shall retain documentation related to the registration of a geographical indication in digital or paper form for the period of validity of the geographical indication, and in case of cancellation for 10 years thereafter.

CHAPTER III

Final provisions*Article 14***Repeal**

Implementing Regulation (EU) No 716/2013 is repealed.

*Article 15***Entry into force and application**

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, 12 May 2021.

For the Commission
The President
Ursula VON DER LEYEN
