COMMISSION REGULATION (EU) 2019/335

of 27 February 2019

amending Annex III to Regulation (EC) No 110/2008 of the European Parliament and of the Council as regards the registration of the spirit drink 'Tequila' as a geographical indication

THE EUROPEAN COMMISSION,

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

Having regard to 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 ([1]), and in particular Article 17(8) thereof,

Whereas:

(1) The Consejo Regulador del Tequila ('the applicant'), a Mexican body established in accordance with Mexican law, applied for registration of 'Tequila' as a geographical indication in Annex III to Regulation (EC) No 110/2008 in accordance with the procedure provided for in Article 17(1) of that Regulation. 'Tequila' is a spirit drink that is traditionally produced in the United Mexican States by distilling juice extracted from *Agave tequilana* F.A.C. Weber (blue variety).

(2) In accordance with Article 17(5) of Regulation (EC) No 110/2008, the Commission examined the application to register the name 'Tequila' sent by the applicant.

(3) Having concluded that the application complies with Regulation (EC) No 110/2008, the Commission published the main specification of the technical file for 'Tequila' in the *Official Journal of the European Union* ([2]), pursuant to Article 17(6) of Regulation (EC) No 110/2008, for the purposes of the objection procedure.

(4) In accordance with Article 17(7) of Regulation (EC) No 110/2008 and Article 13(1) of Commission Implementing Regulation (EU) No 716/2013 ([3]), *Unión Española del Licor* from Spain and *Vinum et Spiritus* from Belgium submitted objections to the registration of the name 'Tequila' as a geographical indication within the time limit specified. The Commission deemed the two objections admissible according to Article 14 of Implementing Regulation (EU) No 716/2013. Objection from *Unión de Licoristas Cataluña* as well as further information from *Unión Española del Licor* and from *Vinum et Spiritus* were also received but were deemed inadmissible, in conformity with Article 14(1) of Implementing Regulation (EU) No 716/2013, as they were not submitted within the time period referred to in Article 17(7) of Regulation (EC) No 110/2008.

(5) By letter dated 4 April 2017 the Commission communicated the two admissible objections to the applicant and invited it to file its observations within two months in accordance with Article 15(1) of Implementing Regulation (EU) No 716/2013. The applicant sent its observations within the required deadline, on 3 June 2017.

(6) In accordance with Article 15(1) of Implementing Regulation (EU) No 716/2013, the Commission communicated the observations from the applicant by letters of 31 July 2017 to the two objectors, who were given two months to submit any comments in accordance with Article 15(2) of that Implementing Regulation. The Commission received the reply from *Unión Española del Licor* on 22 September 2017.

(7) The objections of *Unión Española del Licor* and *Vinum et Spiritus* relate to mandatory requirements laid down in an Official Standard NOM-006-SCFI-2012 (alcoholic beverages — Tequila — specifications) published in the Diario Oficial de la Federación on 13 December 2012 ([4]) ('the Official Mexican Standard') and referred to in the technical file for 'Tequila', concerning: (a) labelling requirements for marketing and health information and for the

([1]) OJ L 39, 13.2.2008, p. 16.
([2]) OJ C 255, 14.7.2016, p. 5.
([3]) 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).
([4]) NORMA Oficial Mexicana NOM-006-SCFI-2012, Bebidas alcohólicas — Tequila — Especificaciones published in the Mexican Diario Oficial of 13 December 2012.

authorised producers' reference numbers; (b) restrictions on commercial arrangements between suppliers and bottlers concerning authorisation to use registered trade marks or other distinctive signs thus limiting the ability of bottlers to source Mexican product and limiting the marketing of 'Tequila' after bottling to certain authorised trade marks thereby preventing marketing under operators' own trade marks without specific authorisation; (c) rules for authorisation of operators in the Union permitted to bottle 'Tequila' and prescriptions for bottling procedures; (d) control requirements applied to authorised bottlers in the territory of the Union as well as consequences laid down in the Official Mexican Standard in cases of non-compliance; (e) prohibition of trade in bulk of 'Tequila' blend category product (containing up to 49 % of total reducing sugars from other sources than sugars originating from *Agave tequilana* F.A.C. Weber blue variety) within the Union and prohibition of sourcing 'Tequila' blend category in bulk via third countries; and (f) a requirement that the 100 % Agave 'Tequila' category has to be bottled at a plant managed by the authorised producers located within the designated geographical area in the United Mexican States. The objectors claim that these requirements circumvent, and are incompatible with the free trade and free competition of 'Tequila' in the Member States, and specifically infringe Article 6 of Regulation (EC) No 110/2008.

(8) The applicant states that the objections should be dismissed as inadmissible because the template required in Article 13(1) of Implementing Regulation (EU) No 716/2013 was not used by the objectors in their submission, and that the objectors have not demonstrated which specific conditions for registration provided for in Regulation (EC) No 110/2008 are not fulfilled. The applicant asserts that the main objective of the system of controls on bottling, marketing, and distribution is to guarantee the traceability and, consequently, the authenticity of 'Tequila'. The applicant additionally states that any operator wishing to bottle bulk 'Tequila' can do so provided it obtains Tequila bottler's approval certificate and enters into a joint responsibility agreement for the registered trade mark or other distinctive sign.

(9) Further, the applicant considers that none of the observations calling into question the application of the Official Mexican Standard constitute a ground for opposition in accordance with Regulation (EC) No 110/2008 given that the denomination 'Tequila' is already binding under the provisions of the Agreement between the Union and the United Mexican States of 27 May 1997 on the mutual recognition and protection of designations for spirit drinks ('the 1997 Agreement') ([5]) that stipulates in its Article 4(2) that in the Union territory, the protected name 'Tequila' may not be used otherwise than under the conditions laid down in the laws and regulations of the United Mexican States.

(10) Concerning the form of the objections raised by the applicant, the Commission considered the objections from *Unión Española del Licor* and *Vinum et Spiritus* admissible as they comply with requirements laid down in Articles 13(1) and 14(1) of Implementing Regulation (EU) No 716/2013 since all the information required in the form 'Request for objection to a geographical indication' set out in Annex III to that Implementing Regulation had been provided in the objections.

(11) Concerning the applicability of the rules contained in the Official Mexican Standard, as it is a third country regulation, the Commission considers it does not have direct extra territorial effect in the Union. However, by means of the publication of the main specification of the technical file for 'Tequila' in the *Official Journal of the European Union* certain rules from the Official Mexican Standard are expressly mentioned and thus asserted to be applicable to product intended for export. These include production requirements, labelling provisions, and rules on the bottling of the 100 % Agave 'Tequila' category that are set out or referred to in the said publication in the *Official Journal of the European Union*. A system allowing operators or the authorities of a third country to prevent the distribution of product throughout the single market in a manner incompatible with the principles of Union law after its importation, cannot be protected by means of Regulation (EC) No 110/2008.

(12) Concerning the relation to the 1997 Agreement that protected 'Tequila' in the territory of the Union, it is recalled that the possible protection under Regulation (EC) No 110/2008 follows a different legal regime, independent from the one laid down by the 1997 Agreement. Given that the applicant has decided to apply for individual protection of the geographical indication 'Tequila' under Regulation (EC) No 110/2008 in addition to the protection under the 1997 Agreement, it should be clarified that the protection under the two instruments applies according to the respective rules of each instrument.

(13) The Commission has assessed the arguments and evidence provided by the objectors and the applicant, and concluded that the name 'Tequila' should be registered as a geographical indication in Annex III to Regulation (EC) No 110/2008 under the following considerations.

([5]) OJ L 152, 11.6.1997, p. 15. The 1997 Agreement has been implemented through the Commission Regulation (EC) No 936/2009 (OJ L 264, 8.10.2009, p. 5).

(14) As regards labelling requirements referred to at (a) in recital (7), Article 6(1) of Regulation (EC) No 110/2008 provides that Member States may lay down additional rules on production, description, presentation and labelling which are stricter than those provided in Annex II of that Regulation in so far as they are compatible with Union law. Article 6(1) of that Regulation is to be applied mutatis mutandis to rules laid down by the authorities of third countries. From the Official Mexican Standard and from section 9 of the main specification of the technical file for 'Tequila', it appears that the United Mexican States provides for stricter rules on the labelling of all 'Tequila' products additional to those laid down in Regulation (EC) No 110/2008. The rules in question concern marketing and health information, reference numbers and names and addresses identifying the authorised producer or the bottler. These requirements are not inconsistent with Union rules on labelling and notably those contained in Regulation (EU) No 1169/2011 of the European Parliament and of the Council ([6]). The requirement that operators are identified by a reference number or name and address is justifiable in the interests of transparency and traceability and not an unreasonable requirement. For these reasons, the Commission considers that the opposition grounds concerning labelling requirements are not founded and have to be rejected.

(15) Restrictions on commercial arrangements between suppliers and bottlers referred to at (b) in recital (7) and rules for authorisation of bottlers in the Union and the procedures for the said authorisations referred to at (c) in recital (7) are justified with regard to the need to ensure traceability and prevent fraud. The rules are expressly applied to labelling of product intended for export as stated in the second paragraph of section 9 of the main specification of the technical file for 'Tequila' published in the *Official Journal of the European Union*, which refers to the use of the term 'Tequila' and the registered trade marks or other distinctive sign under the joint responsibility agreement filed with the Mexican Patents and Trademarks Office. The Commission considers that these rules and arrangements in so far as they apply to the use of the term 'Tequila' within the Union are proportionate and justified and opposition grounds are not founded and have to be rejected.

(16) As regards control requirements applied to authorised bottlers in the territory of the Union as well as consequences laid down in the Official Mexican Standard in cases of non-compliance referred to at (d) in recital (7), Article 22 of Regulation (EC) No 110/2008 lays down provisions for verification of compliance with the specification prior to placing product on the market, which for 'Tequila' for sale to consumers, includes bottling activities, and specifically requires verification of compliance to be ensured by public authorities of the third country or by one or more product certification bodies for product originating in a third country. The Commission notes the verification procedures and action in case of non-compliance are justified with reference to the need to ensure traceability and prevent admixing and fraud which is difficult to detect for such product. As far as the Official Mexican Standard provides for a verification of compliance with the specifications in the technical file before placing of 'Tequila' for sale to consumers on the Union market, the rules are in accordance with Article 22(2) of Regulation (EC) No 110/2008. For these reasons, the Commission considers that the opposition grounds concerning control requirements are not founded and have to be rejected.

(17) As regards the alleged prohibition of trade in bulk of 'Tequila' blend category product within the Union referred to at (e) in recital (7), the Commission notes that the publication of the main specification of the technical file for 'Tequila' in the *Official Journal of the European Union* details only the specific rule for the prohibition on trade in bulk product for the 100 % Agave 'Tequila' category, there is no reference prohibiting trade within the single market of 'Tequila' blend category in bulk once it has been imported into the Union.

(18) As regards the alleged prohibition on the sourcing of 'Tequila' blend category in bulk via third countries resulting from the requirement to conclude a joint responsibility agreement filed with the Mexican Patents and Trademarks Office for the supply of bulk product and in view of the need to ensure traceability and prevent fraud, the Commission considers it justified to require that the purchase of bulk product from outside of the Union can only be made from producers in the country of origin. For these reasons, the Commission considers that the opposition grounds concerning restrictions on bulk product are not founded and have to be rejected.

([6]) 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).

(19) As regards the objection that the requirement of mandatory bottling within the demarcated geographical area applying to 100 % Agave category of 'Tequila' referred to at (f) in recital (7) is not in conformity with Union law it should be stated that, in accordance with Article 10 of Implementing Regulation (EU) No 716/2013, any restrictions concerning the bottling of spirit drink within the demarcated geographical area are to be justified in the technical file since they constitute a potential restriction to the free movement of goods and the freedom to provide services within the single market. Union law does not apply to determine whether or not a third country can restrict bottling within its territory, but it applies to prevent restrictions to the rebottling or bottling of bulk product within the Union, if such bulk products were exported from the third country into the Union. Such restrictions can only be allowed if they are necessary, proportionate and suitable to protect the reputation of the geographical indication. ([7])

(20) In section 7 of the main specification of the technical file the applicant states that the aim of the bottling restriction is to preserve the greater organoleptic complexity that could be jeopardised by bulk transport since no other sugars than those obtained from *Agave tequilana* F.A.C. Weber (blue variety) are added. The applicant asserts also that another reason for the bottling restriction is to preserve the reputation of 100 % Agave 'Tequila' which is essentially based on particular characteristics and more generally on the quality of the product that in turn results from the knowledge of the local authorised producers and may be endangered by the risk of admixture and fraud which is difficult to detect. The requirement at issue must be regarded as compatible with Union law despite its restrictive effect if it is shown that it is necessary and proportionate and capable of upholding the considerable reputation incontestably enjoyed among customers by the Mexican denomination 'Tequila'. It stems from the information contained in the technical file that the bottling restriction is limited to only one category of 'Tequila', while it does not represent an obstacle for import to the Union of 'Tequila' blend category (containing up to 49 % sugar from other sources than raw material) in bulk to which this restriction does not apply. The territorial scope of the restriction is limited to the demarcated geographical area for 'Tequila' which is confined to five Mexican states. The evidence provided by the applicant shows this restriction is justified as a proportionate and appropriate measure to uphold the guarantee of the product's composition and its reputation among consumer. Further, no less restrictive alternative measures capable of attaining an adequate level of control have been indicated. Therefore, the necessary justification of the restriction on the mandatory bottling of 100 % Agave category of 'Tequila', is compatible with Article 10 of Implementing Regulation (EU) No 716/2013.

(21) For the above reasons, the Commission considers that the grounds provided in the opposition to the registration of the geographical indication 'Tequila' in Annex III to Regulation (EC) No 110/2008, concerning the mandatory bottling within the demarcated geographical area applying to 100 % Agave 'Tequila' category are not founded and have to be rejected.

(22) In the light of the above and in accordance with Article 17(8) of Regulation (EC) No 110/2008, the Commission considers that the application for registration of 'Tequila' as a geographical indication satisfies the conditions laid down in that Regulation. The name 'Tequila' should be therefore protected and registered as a geographical indication in Annex III to Regulation (EC) No 110/2008.

(23) Regulation (EC) No 110/2008 should therefore be amended accordingly.

(24) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Spirit Drinks,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex III to Regulation (EC) No 110/2008, in product category 'Other spirit drinks', the following entry is added:

	'Tequila	United Mexican States'

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

([7]) Recital (6) of Implementing Regulation (EU) No 716/2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 February 2019.

For the Commission
The President
Jean-Claude JUNCKER