COMMISSION IMPLEMENTING REGULATION (EU) 2023/512

of 2 March 2023

approving a non-minor amendment to the product specification for a name entered in the register of protected designations of origin and protected geographical indications ('Aceto Balsamico di Modena' (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to 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 ([1]), and in particular Article 52(3)(b) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, the application from Italy for approval of a non-minor amendment to the product specification of the Protected Geographical Indication 'Aceto Balsamico di Modena' was published in the *Official Journal of the European Union* ([2]).

(2) On 31 August 2021 the Commission received from Germany three notices of opposition and one reasoned statement. Two other reasoned statements of opposition from Germany were submitted on 11 October 2021. On 16 September 2021 the Commission received the fourth notice of opposition from an opponent based in Türkiye. The related reasoned statement of opposition was submitted on 16 November 2021.

(3) After examining the reasoned statements of opposition and founding them admissible, in accordance with Article 51(3) of Regulation (EU) No 1151/2012, the Commission, by letter of 10 December 2021, invited both Italy and Germany and Italy and the opponent from Türkiye to engage in appropriate consultations in view of reaching an agreement.

(4) On 4 March 2021 Germany informed the Commission that one of the oppositions was withdrawn, but maintained by two other opponents from Germany.

(5) The consultations between Italy and Germany on one side and Italy and the opponent from Türkiye on the other ended without an agreement being reached. The Commission should therefore take a decision on the amendments in accordance with the procedure provided for in Article 52(3)(b) of Regulation (EU) No 1151/2012 taking into account the results of these consultations.

(6) The opponents considered that the amendments to the product specification would result in non-compliance with the conditions laid down in Article 5(2) of Regulation (EU) No 1151/2012, notably for breaking the link between the product and the geographical area. To that end, alleged changes to the organoleptic characteristics of 'Aceto Balsamico di Modena', the change of the minimum total acidity for the aged product and a correction procedure for possible deviations from the parameters were questioned. These amendments were also contested as lowering the quality of 'Aceto Balsamico di Modena' and resulting in non-compliance with the requirements laid down for wine vinegars under point 17 of Part II of Annex VII to Regulation (EU) No 1308/2013 of the European Parliament and of the Council ([3]) establishing a common organisation of the markets in agricultural products (acidity of at least 60 grams per litre = at least 6 %).

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) OJ C 231, 16.6.2021, p. 11.
([3]) 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 (OJ L 347, 20.12.2013, p. 671).

(7) Moreover, the opponents alleged non-compliance with the minimum requirements for the content of the product specification, with regard to Article (7)(1)(g) of Regulation (EU) No 1151/2012, concerning the removal of indication of the control body for 'Aceto Balsamico di Modena'.

(8) Furthermore, the opponents alleged that the existing scope of protection has been unduly extended and, thus, the registration of the amendments would jeopardise the existence of names, trade marks or products, including balsamic vinegars of other origins. This claim would, in particular, concern the alleged inclusion of the obligation of bottling in the demarcated area, an additional rule on shape of containers, as well as the introduction of isotopic ratio parameters. As a result, the opponents claim that the planned amendments allegedly prejudice the interests of the bottlers of 'Aceto Balsamico di Modena' and German producers of other vinegars.

(9) Finally, the opponents claimed that newly introduced reduction of minimum acidity could lead to confusion between 'Aceto Balsamico di Modena' PGI and 'Aceto Balsamico Tradizionale di Modena' PDO.

(10) The Commission has assessed the arguments exposed in the reasoned statements of opposition from Germany and Türkiye in the light of the provisions of Regulation (EU) No 1151/2012, taking into account the results of the appropriate consultations carried out between the applicant and the opponents and it has concluded that the amendment to the product specification for the protected geographical indication 'Aceto Balsamico di Modena' should be approved.

(11) Italy claimed that the opponents had not demonstrated their legitimate interest in lodging the oppositions, as required by Article 51(1) of Regulation (EU) No 1151/2012, since the opponents contested amendments that were either not applied for or that did not result in trade and/or market barriers.

In the context of the procedure applicable to applications for amendments to the specification that are not minor, any natural or legal person having a legitimate interest may lodge an opposition to the application for amendment submitted. In the present case, the risk of harm to the interests of the opponents was not considered as purely improbable, nor hypothetical and, therefore, it was concluded that the opponents demonstrated legitimate interest in lodging the oppositions.

(12) The analysis of the reservations submitted by the opponents revealed that indeed some of the claims were made with regard to the elements in the product specification that in fact have not changed as a result of the present amendments, but that consisted of mere editorial changes. These editorial changes aimed at bringing the single document in line with Article 8(1)(c) of Regulation (EU) No 1151/2012 and better reflecting the conditions established in the product specification of 'Aceto Balsamico di Modena' PGI. This concerns, in particular, the alleged changes to the organoleptic characteristics, the alleged changes concerning the use of additives and the use of plastic containers, as well as alleged obligation of bottling in the demarcated area. These rules have not changed, while the rewording that appeared in the single document and might have been perceived as amendments to the product specification, in fact resulted from the rectification of discrepancies between the product specification and the summary of the product specification that was published the *Official Journal of the European Union* ([4]). The Commission's assessment of the application for amendment of 'Aceto Balsamico di Modena' PGI has focussed on the substantial amendments applied for.

(13) The changes concerning a minimum percentage of acidity for the 'invecchiato' (aged) type from 6 % to 5,5 % or allowed correction procedure for possible deviations cannot be considered as negatively impacting the link between the product and its geographical origin. The reasons behind these amendments have been explained and duly justified in the publication of the application, while it is evident that the nature and scale of these amendments do not alter the essential characteristics of 'Aceto Balsamico di Modena' PGI and consequently cannot make the link disappear.

([4]) OJ C 152, 6.7.2007, p. 18 and Commission Regulation (EC) No 583/2009 of 3 July 2009 entering a name in the register of protected designations of origin and protected geographical indications [Aceto Balsamico di Modena (PGI)] (OJ L 175, 4.7.2009, p. 7).

(14) Moreover, the similarity in the level of acidity does not have a capacity to create confusion between 'Aceto Balsamico di Modena' PGI and 'Aceto Balsamico Tradizionale di Modena' PDO or lead to the evocation of the latter. Even if products under both designations share certain characteristics, like the level of acidity, they are made of different raw materials and follow different production method and thus remain distinct.

(15) Finally, 'Aceto Balsamico di Modena' PGI is not defined as a wine vinegar and thus not subject to the rules applicable to wine vinegars, in particular with regard to the minimum acidity.

(16) With respect to the oppositions concerning the extension of the size range of the bottles, the amendment cannot be considered as imposing any limitations on the operators involved in packaging of 'Aceto Balsamico di Modena'. On the contrary, allowing additional capacities of containers such as 0,100 l, 0,150 l, 0,200 l or 1,5 l can be considered as liberalising the conditions for bottling. A possible effect of an increased competition that might result from the marketing of 'Aceto Balsamico di Modena' in a wider range of bottle sizes would be in line with the founding principles of the EU competition policy and should not be considered as detrimental to the reputation of the 'Aceto Balsamico di Modena' PGI.

(17) The aim of the characteristics of the containers with a capacity of less than 0,250 litres included in section 3.5 of the single document is to ensure a minimum standard of uniformity among the bottles, in which the product will be sold. This packaging rule is not included in the description of the product, nor is elaborated with regard to the product specificity under the section of the single document devoted to the link and thus it cannot be considered as an essential feature of the presentation of the product. As these requirements are set only for new containers with a capacity of less than 0,250 litres, which were not allowed before the present amendment, the contested change will not negatively impact investments in containers already made by the bottlers of 'Aceto Balsamico di Modena' and consequently, it will not result in their economic loss.

(18) Information regarding the control body has not been provided directly in the single document, as it is not required there in line with Annex I to Commission Implementing Regulation (EU) No 668/2014 ([5]). However, this information has been included in the product specification, as stipulated in Article 7(1)(g) of Regulation (EU) No 1151/2012.

(19) With reference to the opponents' objections to the required compliance with the isotopic ratio parameters, such parameters have been introduced to better detect possible adulteration of the wine vinegar and improve the control system for 'Aceto Balsamico di Modena'. The verification of the isotopic ratio is in any event carried out at the production stage and thus affecting only producers of 'Aceto Balsamico di Modena'.

(20) Accordingly, the amendments to the product specification published in the *Official Journal of the European Union* regarding the name 'Aceto Balsamico di Modena' (PGI) should be approved.

(21) The measures provided for in this Regulation are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the product specification published in the *Official Journal of the European Union* regarding the name 'Aceto Balsamico di Modena' (PGI) are hereby approved.

([5]) 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).

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*.

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

Done at Brussels, 2 March 2023.

For the Commission
The President
Ursula VON DER LEYEN