



Australian Grape & Wine guidance on submissions to the Australian Government's Public Objections Process: EU Wine Geographical Indications

6 April 2023

Background

This document has been prepared by Australian Grape & Wine, as supporting guidance to the Australian grape and wine sector and other stakeholders, in order to help support and inform submissions to the Australian Government's Public Objections Process (POP) on European Union (EU) Wine Geographical Indications (GIs). The objective of the process is to inform the Australian Government on matters relating to the protection of EU GIs that ought to inform negotiations being undertaken in pursuit of an EU – Australia Free Trade Agreement (FTA).

Background and further information on the process can be found on the Department of Agriculture, Fisheries and Forestry website here <https://haveyoursay.agriculture.gov.au/public-objections-process>. This information includes:

- A Discussion Paper;
- Frequently Asked Questions document; and
- A List of Proposed EU Wine GIs that are the focus of the POP.

The Australian Government has asked that submissions be made through the online form which is available here: https://haveyoursay.agriculture.gov.au/public-objections-process/survey_tools/public-objections-process

Submissions close at AEST 12 pm, on Friday 21 April 2023.

Why is this process relevant to me?

Subject to limited exceptions, if additional EU GIs are afforded protection in Australia, EU wine producers will be afforded exclusive rights to the use of those terms in Australia, meaning Australian producers would no longer be able to use the terms. This has the potential to stymie the use of existing trademarks containing the newly proposed EU GIs, and potentially the use of grape varieties that are similar or identical to them. Accordingly, it's important that interested parties inform the Australian Government of the likely impact of the terms being afforded protection by making submissions.

This Public Objections Process presents stakeholders with the opportunity to submit their views on the list of proposed EU GIs and will directly inform the position taken by the Australian Government as it reaches the final stages of negotiating the proposed Australia-EU FTA. This will likely be the only chance Australian winegrape growers and winemakers have to object to the protection of the terms, ahead of the EU -Australia FTA concluding. We strongly encourage all interested stakeholders to carefully review the list and consider submitting objections on one or more of the grounds available.

Who should submit an objection?

The Australian Government has made it clear that objections can be raised by any interested party. An interested party could include, for example:

- Australian wine businesses
- winegrape growers
- individuals, employees
- state and regional grape and wine associations
- local and state governments
- industry suppliers
- tourism operators
- marketers
- restaurants and caterers
- legal firms
- educators
- academics and researchers
- other industries, or
- international stakeholders.

If an objection is to be lodged, it must be made on the basis of one or more of the four grounds for objection (see the list of grounds for objection below).

The treatment of grape varietal names is a critical concern for Australian Grape & Wine. The immediate risks are associated with listed grape variety names such as Prosecco and Picpoul di Pinet, but there are also potentially significant risks for other varieties in the future if a precedent of disallowing the use of grape variety names by Australian growers and winemakers is set.

With this in mind, we encourage all interested parties to raise objections, irrespective of whether they currently grow, produce or sell such grape varieties. The absence of a strong response from Australian stakeholders will heighten the risk that our sector will lose its ability to utilise common grape variety names in the years ahead.

Grounds for Objection

All submissions must raise objections based on at least one of the four grounds of objection:

1. *The EU GI name is used in Australia as the common name for the relevant good, including as a type or style of wine.*
2. *The EU GI name is used in Australia as the name of a grape variety, plant variety, or an animal breed.*
3. *The EU GI name is identical to, or likely to cause confusion with a trade mark that is registered in Australia or the subject of a pending application made in good faith in Australia. Confusion may be likely where a trade mark consists of, or contains, the EU GI name or something so nearly resembling it.*
4. *The EU GI name is identical to, or likely to cause confusion with, an unregistered trade mark that has acquired rights through use in good faith in Australia. Confusion may be likely where a trade mark consists of, or contains, the EU GI name or something so nearly resembling it.*

You can object on multiple grounds – for example, where the term is a grape variety *and* you own a trade mark that includes the term.

You can also choose to lodge submissions for more than one proposed GI.

Guidance on Grape Varietals - Prosecco

What terms should I consider raising objections to?

All producers should review the full list of terms for which protection is being considered.

Submissions should make clear:

- Which terms you are objecting to;
- what grounds you are basing this objection on, and
- the impact likely that protection of the term will have on you, your company, region, or state etc.

For “Prosecco” we strongly recommend focusing on Number 52 of the listed proposed GIs (refer below) which contains the term “Prosecco” as a single term on the grounds detailed in the next section.

NO	COUNTRY	GEOGRAPHICAL INDICATION	PROTECTION STANDARD
52	Italy	Prosecco	PGI
53	Italy	Colli Asolani - Prosecco / Asolo – Prosecco	PGI
54	Italy	Conegliano Valdobbiadene - Prosecco / Valdobbiadene - Prosecco / Conegliano - Prosecco	PGI

Should we be objecting to the compound terms also?

When referring to GIs which are “compound terms”, this simply means terms which contain multiple components (more than one word). For example - “King Valley” is protected GI that is a compound term.

We also recommend objecting to the remaining terms (Number 53 and 54), which contain the term Prosecco within a compound term. While we acknowledge that the Australian Government has noted it is not the intention that terms that form part of compound terms be protected, there remains a risk that interested parties might mount a successful argument to the contrary. Accordingly, it is recommended that submissions make clear that there is no reason for grape varietal terms to be incorporated into EU GIs, but rather that the geographical element of the compound term ought to be sufficient. For example:

- (53) “Asolo” or “Colli Asolani” (English translation - hills of Asolo) is a province of Treviso, Italy i.e. the geographic origin of the GI. ([Asolo Google Maps Reference](#))
- (54) Conegliano Valdobbiadene / Valdobbiadene ([google maps reference](#)) / Conegliano ([google maps reference](#)) are both also individual provinces of Treviso, Italy i.e. the geographic origin of the GI.

Prosecco is the grape variety grown in these provinces, not the geographic reference point. In Australia, our GIs relate exclusively to geographic areas with clear boundaries that have no direct restriction or reference to the grape variety or varieties that are grown in these GIs. Submissions should recommend that the same approach ought to be adopted in relation to EU GIs.

Australian Grape & Wine’s submission will object to all three terms containing the term “Prosecco” on the grounds that Prosecco is a grape variety and that it is not necessary for it to be incorporated into the compound terms. For items 53 & 54 we will recommend that instead the Australian Government protect only the geographic elements of the terms being “Asolo” / “Colli Asolani” and Conegliano Valdobbiadene / Valdobbiadene / Conegliano.

Prosecco Grounds for Objection

The following table provides guidance on which of the four grounds we recommend producers object to in relation to Prosecco.

Grounds	Guidance - Should we object on these grounds?
<p>1. The EU GI name is used in Australia as the common name for the relevant good, including as a type or style of wine.</p>	<p>NO - For prosecco we do not recommend you base your objection on these grounds.</p> <p>While some references may refer to prosecco as a type or style of wine, this is incorrect. Unequivocally, Prosecco is a grape variety and referring to it as a type or style of wine could create further confusion.</p>
<p>2. The EU GI name is used in Australia as the name of a grape variety, plant variety, or an animal breed.</p>	<p>YES – We highly recommend that all objections to the Prosecco terms listed focus on the fact that the term is used in Australia as the name of a grape variety. We have provided key messages, arguments and references to support objections made on this basis.</p>
<p>3. The EU GI name is identical to, or likely to cause confusion with a trade mark that is registered in Australia or the subject of a pending application made in good faith in Australia. Confusion may be likely where a trade mark consists of, or contains, the EU GI name or something so nearly resembling it.</p>	<p>YES – If you own rights to, or have a pending application to any Australian trademarks that contain references to “Prosecco”, (eg a label image that contains the term, trademarked as part of text, advertising or marketing material etc) you should object on these grounds in addition to any other grounds you wish to use as the basis for your objection. It is suggested you provide evidence of your trademark.</p>
<p>4. The EU GI name is identical to, or likely to cause confusion with, an unregistered trade mark that has acquired rights through use in good faith in Australia. Confusion may be likely where a trade mark consists of, or contains, the EU GI name or something so nearly resembling it.</p>	<p>YES – If you have an unregistered trademark that you have used in Australia that contain references to “Prosecco” (eg a label image that contains the term, trademarked as part of text, advertising or marketing material etc) you should object on these grounds in addition to the other grounds you object on. It is suggested you provide evidence of your trademark.</p>

Key messages for Prosecco submissions

Step 1 (before filling out the online form)

You will need to fill this information into the Government's [online form](#) to submit your objection.

We recommend drafting it in a word document and then, once complete, copying the text into the online form.

Step 2 (determine which terms you are objecting to)

We recommend firstly objecting to 52 "Prosecco on its own but also objecting to the additional compound terms

52 Italy Prosecco

53 Italy Colli Asolani - Prosecco / Asolo – Prosecco

54 Italy Conegliano Valdobbiadene - Prosecco / Valdobbiadene - Prosecco / Conegliano

Step 3 (determine the grounds which you are objecting on)

List which grounds upon which you are basing your objection, as per the guidance above.

The main grounds for objection for "Prosecco" is that **the EU GI name is used in Australia as the name of a grape variety** (grounds 2).

As noted, stakeholders should also consider their registered or unregistered trademarks (grounds 3 & 4) and object on these grounds in addition if appropriate.

Step 4 (detail the impact this would have on you/your business, region, state and the industry)

Once you state your objection to "Prosecco" on the grounds that the term is used in Australia as the name of a grape variety you should detail the impact that protection of the term as an EU GI (meaning you would no longer be able to use it) would have on you, your business, region state or the Australian wine industry.

Explain your previous and current investment in Prosecco as well as the impacts that an inability to use the term would have on you/your business/state/region etc. For example, you could consider including references to costs associated with

- Investment in establishing vineyards and associated infrastructure, equipment and people.
- Investment in winemaking equipment, supplies, infrastructure and people
- Investment in marketing and promotion
- Investment in tourism, restaurants and catering.
- State, Regional and Local council investment
- Impact on business income and job loss
- Impact on local economy (financial and social)
- Broader impacts to local tourism
- Export & supply chain impacts
- Cost of vine pull/grafting/re-establishing an alternate variety.
- Investment and supply chain impacts – ie dry goods, packaging, closures, labelling, bottles
- Cost of rebranding, labelling changes, trademarks etc
- Opportunity costs associated with future growth forecasts.

The following are some high-level key messages and stats on Prosecco that you may choose to use to support your submission:

- Prosecco is an internationally recognised grape variety and protection as a GI would restrict legitimate rights of Australian wine businesses to grow, produce, label the term as a grape variety.
- The International Organisation of Vine and Wine (OIV) recognises Prosecco as a grape variety in its [International list of vine varieties and their synonyms](#) - the global reference point for grape variety names. Prosecco is also recognised as such on the OIVs newly developed [Vine Varieties Databases](#).
- Protection of a grape variety as a GI would establish a precedent which creates risk and uncertainty for those investing in other grape varieties, leaving the Australian grape and wine sector vulnerable to future attempts to ban the use of common grape variety names.
- There are millions of dollars being invested in production, employment and marketing by regional Australian wine producers and grape growers in the variety.
- The total value of Australian Prosecco production is estimated at around \$205 million to December 2021, growing from a small base of just over \$60 million in 2017. Around 95% of this is sold on the Australian domestic market.
- In 2009, Italy changed the name of the Prosecco grape variety to *Glera* within the European Union (EU). Italy then registered Prosecco as a Geographical Indication (GI) in the EU, effectively shutting out imports labelled with the Prosecco grape variety from all other countries.
- The EU is now expanding efforts to gain exclusive use of the name Prosecco in other global markets. In 2013, the Australian wine industry successfully challenged an EU application to claim Prosecco as a GI in Australia. This [Australian Registrar of Trade Marks found in our favour](#), agreeing that Prosecco is a grape variety name and could therefore continue to be used in Australia.
- Prosecco could be the tip of the iceberg. In recent EU trade negotiations with China, Japan, Mexico, Brazil, Argentina, Paraguay, Uruguay and New Zealand attempts were made to protect an expanding list of grape varieties including Prosecco, Montepulciano, Fiano, Barbera, Nero d'Avola, Alicante, Dolcetto, and others as GIs. All of these varieties are grown across Australia's 65 wine regions.
- The EU is exporting a protectionist agenda out of step with Australia's longstanding commitment to rules-based international trade. If the EU is willing to ban French producers from using the grape-variety name "Vermentino" (as happened in 2022) imagine how willing they would be to trample on the rights of Australia's grape growers and winemakers.
- Australia's Prosecco crush has increased 603% since 2015 (15,397 tonnes in 2022)
- Australian Prosecco export volume growing at 32% per annum over the last 5 years. (527,000 litres to December 2021), despite the EU's efforts to cut off the number of markets allowing the grape variety name to be used by Australian producers.
- The value of Australian Prosecco exports grew by 48% in the last year and by 33% per annum over the last 5 years (\$3.8 million).
- Domestic Sales of Prosecco in Australia increased by 14% in 2021.
- Australian Prosecco is grown in 20 Wine regions across Australia.
- Prosecco is the 8th most produced white grape variety in Australia with 15,397 tonnes of grapes crushed in 2022.
- Prosecco attracted the 2nd highest average value of any other white grape variety during the 2022 vintage at \$960/Tonne in 2021, more than double most whites, with only high value Riesling surpassing this average price.

Step 5 Attach or reference relevant evidence.

The Government has also suggested that submission should be supported by relevant information and evidence. You can upload up to two (2) attachments as evidence along with the text body of your submission. In addition to any evidence you may wish to supply that highlights the economic impact that protecting relevant EU GI's would have, for example, on you, your business, region, state or community, the following reference page provides a range of reference points that you can cite as proof the term Prosecco is a grape variety.

Disclaimer

The information in this document does not constitute legal or professional advice and interested parties should consider seeking independent advice before making any decisions based on the information in this document.

References

General references

1. Australian Grape and Wine Prosecco Factsheet (2022). https://www.agw.org.au/wp-content/uploads/2022/11/AGW_Australian-Prosecco-fact-sheet_visual-1.pdf
2. International Organisation of Vine and Wine (OIV), International list of vine varieties and their synonyms. <http://www.oiv.int/public/medias/2273/oiv-liste-publication-2013-complete.pdf>
3. OIV Vine Varieties Database - <https://www.oiv.int/what-we-do/viticulture-database-report?oiv=>
4. Jancis Robinson 'Robinson's Guide to Wine Grapes Oxford University Press 1996 - Reference material Outlining Prosecco and Montepulciano as grape varieties.

Journal articles

5. Monash University report on the 'EU's attempts to limit the use of the term 'Prosecco' - Feb 2019 <https://agw.org.au/assets/Market-Access/Monash-Report-for-AGW-27-February-2019.pdf>
6. Journal Article referencing the dubious nature of the EUs attempts to protect Prosecco globally as a grape variety - Davison, Mark, Henckels, Caroline and Emerton, Patrick, In vino veritas? The Dubious Legality of the EU's Claims to Exclusive Use of the Term "Prosecco", Australian Intellectual Property Journal (forthcoming in 2019). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3304239
7. Geographical Indications in the EU, China and Australia, WTO Case Bottling Up Over Prosecco, European Integration and Global Power Shifts: What Lessons for Asia? (Julien Chaisse ed.) 2018/2019, Forthcoming, Peking University School of Transnational Law Research Paper No. 18-14 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3218810
8. Historical References to the grape variety prosecco - Hill, Sam, 2019, dalle uve del vitigno Prosecco - Italian government decrees referring to Prosecco, Monash University https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3444265

References to Legal Cases

9. **Reference to the WFA legal case against the European Commission in Australia** where we proved legally that prosecco was a grape variety in Australia. - Winemakers' Federation of Australia v European Commission [2013] ATMOGI 1 (22 November 2013) <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ATMOGI/2013/1.html>
10. **The decision of the High Court of Singapore** to deny the application to protect Prosecco as a GI in Singapore based on the fact it was proven to be a recognised grape variety and was likely to mislead consumers if protected as a GI (2021) https://www.elitigation.sg/gd/s/2022_SGHC_33
11. **The decision of United States Patent and Trademark Office US** have rejected applications for protection of Prosecco as a GI based on 438 pieces of evidence that shows that the term Prosecco identifies a Grape Variety, Not a Place of Origin. (2022) https://tsdr.uspto.gov/#caseNumber=88392015&caseType=SERIAL_NO&searchType=statusSearch

Useful Articles which articulate the prosecco argument and related risks.

12. Australian Grape & Wine article - The Prosecco GI Lie (February 2020) <https://www.agw.org.au/the-prosecco-gi-lie/>
13. Australian Grape & Wine article - First Prosecco, Now Vermentino. What's Next...? (September 2022) <https://www.agw.org.au/first-prosecco-now-vermentino-whats-next/>
14. VinePair Inc - Recent objective article which clearly sets out the facts of the debate (2023) <https://vinepair.com/articles/italian-vs-australian-prosecco/>