

Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (repealed)

TITLE III

REGULATORY MEASURES

CHAPTER IV

Designations of origin and geographical indications

Section 1

Definitions

Article 34

Definitions

- 1 For the purposes of this Regulation, the following definitions shall apply:
 - a 'designation of origin' means the name of a region, a specific place or, in exceptional cases, a country used to describe a product referred to in Article 33(1) that complies with the following requirements:
 - (i) its quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
 - (ii) the grapes from which it is produced come exclusively from this geographical area;
 - (iii) its production takes place in this geographical area;
 - (iv) it is obtained from vine varieties belonging to *Vitis vinifera*;
 - b 'geographical indication' means an indication referring to a region, a specific place or, in exceptional cases, a country, used to describe a product referred to in Article 33(1) which complies with the following requirements:
 - (i) it possesses a specific quality, reputation or other characteristics attributable to that geographical origin;
 - (ii) at least 85 % of the grapes used for its production come exclusively from this geographical area;
 - (iii) its production takes place in this geographical area;
 - (iv) it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*.

- 2 Certain traditionally used names shall constitute a designation of origin where they:
- a designate a wine;
 - b refer to a geographical name;
 - c meet the requirements referred to in paragraph 1(a)(i) to (iv);
 - d undergo the procedure conferring protection on designations of origin and geographical indications laid down in this Chapter.
- 3 Designations of origin and geographical indications, including those relating to geographical areas in third countries, shall be eligible for protection in the Community in accordance with the rules laid down in this Chapter.

Section 2

Application for protection

Article 35

Content of applications for protection

- 1 Applications for protection of names as designations of origin or geographical indications shall include a technical file containing:
- a the name to be protected;
 - b the name and address of the applicant;
 - c a product specification as referred to in paragraph 2;
 - d a single document summarising the product specification referred to in paragraph 2.
- 2 The product specification shall enable interested parties to verify the relevant conditions of production of the designation of origin or geographical indication. It shall consist at least of:
- a the name to be protected;
 - b a description of the wine(s):
 - (i) for wines with a designation of origin, its principal analytical and organoleptic characteristics;
 - (ii) for wines with a geographical indication, its principal analytical characteristics as well as an evaluation or indication of its organoleptic characteristics;
 - c where applicable, the specific oenological practices used to make the wine(s) as well as the relevant restrictions on making the wine(s);
 - d the demarcation of the geographical area concerned;
 - e the maximum yields per hectare;
 - f an indication of the wine grape variety or varieties the wine(s) is obtained from;
 - g the details bearing out the link referred to in Article 34(1)(a)(i) or, as the case may be, in Article 34(1)(b)(i);
 - h applicable requirements laid down in Community or national provisions or, where foreseen by Member States, by an organisation which manages the protected designation of origin or geographical indication, having regard to the fact that such requirements shall be objective and non-discriminatory and compatible with Community law;

- i the name and address of the authorities or bodies verifying compliance with the provisions of the product specification and their specific tasks.

Article 36

Application for protection relating to a geographical area in a third country

- 1 Where the application for protection concerns a geographical area in a third country, it shall contain in addition to the elements provided for in Article 35 proof that the name in question is protected in its country of origin.
- 2 The application shall be sent to the Commission, either directly from the applicant or via the authorities of the third country concerned.
- 3 The application for protection shall be filed in one of the official languages of the Community or accompanied by a certified translation into one of those languages.

Article 37

Applicants

- 1 Any interested group of producers, or in exceptional cases a single producer, may apply for the protection of a designation of origin or geographical indication. Other interested parties may participate in the application.
- 2 Producers may lodge an application for protection only for wines which they produce.
- 3 In the case of a name designating a trans-border geographical area or a traditional name connected to a trans-border geographical area, a joint application may be lodged.

Section 3

Procedure conferring protection

Article 38

Preliminary national procedure

- 1 Applications for protection of a designation of origin or a geographical indication of wines in accordance with Article 34 originating in the Community shall be subject to a preliminary national procedure in accordance with this Article.
- 2 The application for protection shall be filed with the Member State in which territory the designation of origin or geographical indication originates.
- 3 The Member State shall examine the application for protection as to whether it meets the conditions set out in this Chapter.

The Member State shall carry out a national procedure ensuring adequate publication of the application and providing for a period of at least two months from the date of publication within which any natural or legal person having a legitimate interest and established or resident on its territory may object to the proposed protection by lodging a duly substantiated statement with the Member State.

4 If the Member State considers that the designation of origin or geographical indication does not meet the relevant requirements, including the eventuality that it is incompatible with Community law in general, it shall reject the application.

5 If the Member State considers that the relevant requirements are met, it shall

- a publish the single document and the product specification at least on the Internet; and
- b forward to the Commission an application for protection containing the following information:

- (i) the name and address of the applicant;
- (ii) the single document referred to in Article 35(1)(d);
- (iii) a declaration by the Member State that it considers that the application lodged by the applicant meets the conditions of this Regulation;
- (iv) the reference to publication, as referred to in (a).

This information shall be forwarded in one of the official languages of the Community or accompanied by a certified translation into one of those languages.

6 Member States shall introduce the laws, regulations or administrative provisions necessary to comply with this Article by 1 August 2009.

7 Where a Member State has no national legislation concerning the protection of designations of origin and geographical indications, it may, on a transitional basis only, grant protection in accordance with the terms of this Chapter at national level to the name with effect from the day the application is lodged with the Commission. Such transitional national protection shall cease on the date on which a decision on registration or refusal under this Chapter is taken.

Article 39

Scrutiny by the Commission

1 The Commission shall make the date of submission of the application for protection of the designation of origin or geographical indication public.

2 The Commission shall examine whether the applications for protection referred to in Article 38(5) meet the conditions laid down in this Chapter.

3 Where the Commission considers that the conditions laid down in this Chapter are met, it shall publish in the *Official Journal of the European Union* the single document referred to in Article 35(1)(d) and the reference to the publication of the product specification referred to in Article 38(5).

Where this is not the case, it shall be decided, in accordance with the procedure referred to in Article 113(2), to reject the application.

Article 40

Objection procedure

Within two months from the date of publication provided for in the first subparagraph of Article 39(3), any Member State or third country, or any natural or legal person having a legitimate interest, established or resident in a Member State other than that applying

for the protection or in a third country, may object to the proposed protection by lodging a duly substantiated statement relating to the conditions of eligibility as laid down in this Chapter with the Commission.

In the case of natural or legal persons established or resident in a third country, such statement shall be lodged, either directly or via the authorities of the third country concerned, within the time limit of two months referred to in the first paragraph.

Article 41

Decision on protection

On the basis of the information available to the Commission, it shall be decided, in accordance with the procedure referred to in Article 113(2), either to confer protection on the designation of origin or geographical indication which meets the conditions laid down in this Chapter and is compatible with Community law, or to reject the application where those conditions are not satisfied.

Section 4

Specific cases

Article 42

Homonyms

1 A name, for which an application is lodged, wholly or partially homonymous with that of a name already registered under this Regulation shall be registered with due regard for local and traditional usage and the risk of confusion.

A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the products in question is concerned.

The use of a registered homonymous name shall be subject to there being a sufficient distinction in practice between the homonym registered subsequently and the name already on the register, having regard to the need to treat the producers concerned in an equitable manner and not to mislead the consumer.

2 Paragraph 1 shall apply *mutatis mutandis* if a name, for which an application is lodged, is wholly or partially homonymous with a geographical indication protected as such under the legislation of Member States.

Member States shall not register non-identical geographical indications for protection under their respective legislation on geographical indications if a designation of origin or geographical indication is protected in the Community by virtue of the Community law relevant to designations of origin and geographical indications.

3 Save as otherwise provided for in Commission implementing measures, where the name of a wine grape variety contains or consists of a protected designation of origin or geographical indication that name shall not be used for purposes of labelling the products covered by this Regulation.

4 The protection of designations of origin and geographical indications for products covered in Article 34 shall be without prejudice to protected geographical indications applying in relation to spirit drinks within the meaning of 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⁽¹⁾ and vice versa.

Article 43

Grounds for refusal of protection

1 Names that have become generic shall not be protected as a designation of origin or geographical indication.

For the purposes of this Chapter, a 'name that has become generic' means the name of a wine which, although it relates to the place or the region where this product was originally produced or marketed, has become the common name of a wine in the Community.

To establish whether or not a name has become generic, account shall be taken of all relevant factors, in particular:

- a the existing situation in the Community, notably in areas of consumption;
- b the relevant national or Community legal provisions.

2 A name shall not be protected as a designation of origin or geographical indication where, in the light of a trademark's reputation and renown, protection is liable to mislead the consumer as to the true identity of the wine.

Article 44

Relationship with trademarks

1 Where a designation of origin or a geographical indication is protected under this Regulation, the registration of a trademark corresponding to one of the situations referred to in Article 45(2) and relating to a product falling under one of the categories listed in Annex IV shall be refused if the application for registration of the trademark is submitted after the date of submission of the application for protection of the designation of origin or geographical indication to the Commission and the designation of origin or geographical indication is subsequently protected.

Trademarks registered in breach of the first subparagraph shall be invalidated.

2 Without prejudice to Article 43(2), a trademark the use of which corresponds to one of the situations referred to in Article 45(2), which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of the Community before the date on which the application for protection of the designation of origin or geographical indication is submitted to the Commission, may continue to be used and renewed notwithstanding the protection of a designation of origin or geographical indication, provided that no grounds for the trademark's invalidity or revocation exist as specified by the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks⁽²⁾ or Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark⁽³⁾.

In such cases the use of the designation of origin or geographical indication shall be permitted alongside the relevant trademarks.

Section 5

Protection and control

Article 45

Protection

1 Protected designations of origins and geographical indications may be used by any operator marketing a wine which has been produced in conformity with the corresponding product specification.

2 Protected designations of origins and geographical indications and the wines using those protected names in conformity with the product specification shall be protected against:

- a any direct or indirect commercial use of a protected name:
 - (i) by comparable products not complying with the product specification of the protected name; or
 - (ii) in so far as such use exploits the reputation of a designation of origin or a geographical indication;
- b any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar;
- c any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- d any other practice liable to mislead the consumer as to the true origin of the product.

3 Protected designations of origin or protected geographical indications shall not become generic in the Community within the meaning of Article 43(1).

4 Member States shall take the steps necessary to stop unlawful use of protected designations of origin and geographical indications as referred to in paragraph 2.

Article 46

Register

The Commission shall establish and maintain an electronic register of protected designations of origin and geographical indications for wine which shall be publicly accessible.

Article 47

Designation of competent control authority

1 Member States shall designate the competent authority or authorities responsible for controls in respect of the obligations established by this Chapter in accordance with the criteria laid down in Article 4 of Regulation (EC) No 882/2004.

2 Member States shall ensure that any operator complying with this Chapter is entitled to be covered by a system of controls.

3 Member States shall inform the Commission of the competent authority or authorities referred to in paragraph 1. The Commission shall make their names and addresses public and update them periodically.

Article 48

Verification of compliance with specifications

1 In respect of protected designations of origin and geographical indications relating to a geographical area within the Community, annual verification of compliance with the product specification, during the production and during or after conditioning of the wine, shall be ensured by:

- a the competent authority or authorities referred to in Article 47(1); or
- b one or more control bodies within the meaning of point 5 of the second subparagraph of Article 2 of Regulation (EC) No 882/2004 operating as a product certification body in accordance with the criteria laid down in Article 5 of that Regulation.

The costs of such verification shall be borne by the operators subject to it.

2 In respect of protected designations of origin and geographical indications relating to a geographical area in a third country, annual verification of compliance with the product specification, during the production and during or after conditioning of the wine, shall be ensured by:

- a one or more public authorities designated by the third country; or
- b one or more certification bodies.

3 The certification bodies referred to in paragraphs 1(b) and 2(b) shall comply with, and from 1 May 2010 be accredited in accordance with, the European standard EN 45011 or ISO/IEC Guide 65 (General requirements for bodies operating product certification systems).

4 Where the authority or authorities referred to in paragraphs 1(a) and 2(a), verify compliance with the product specification, they shall offer adequate guarantees of objectivity and impartiality, and have at their disposal the qualified staff and resources needed to carry out their tasks.

Article 49

Amendments to product specifications

1 An applicant satisfying the conditions of Article 37 may apply for approval of an amendment to the product specification of a protected designation of origin or geographical indication, in particular to take account of developments in scientific and technical knowledge or to redefine the geographical area referred to in (d) of the second subparagraph of Article 35(2). Applications shall describe and give reasons for the amendments requested.

2 Where the proposed amendment involves one or more amendments to the single document referred to in Article 35(1)(d), Articles 38 to 41 shall apply *mutatis mutandis* to the amendment application. However, if the proposed amendment is only minor, it shall be decided, in accordance with the procedure referred to in Article 113(2), whether to approve the application without following the procedure laid down in Article 39(2) and Article 40 and in

the case of approval, the Commission shall proceed to publication of the elements referred to in Article 39(3).

3 Where the proposed amendment does not involve any change to the single document, the following rules shall apply:

- a where the geographical area is in a given Member State, that Member State shall express its position on the amendment and, if it is in favour, shall publish the amended product specification and inform the Commission of the amendments approved and the reasons for them;
- b where the geographical area is in a third country, the Commission shall determine whether to approve the proposed amendment.

Article 50

Cancellation

It may be decided, in accordance with the procedure referred to in Article 113(2), at the initiative of the Commission or at a duly substantiated request of a Member State, of a third country or of a natural or legal person having a legitimate interest, to cancel the protection of a designation of origin or a geographical indication if compliance with the corresponding product specification is no longer ensured.

Articles 38 to 41 shall apply *mutatis mutandis*.

Article 51

Existing protected wine names

1 Wine names, which are protected in accordance with Articles 51 and 54 of Regulation (EC) No 1493/1999 and Article 28 of Regulation (EC) No 753/2002, shall automatically be protected under this Regulation. The Commission shall list them in the register provided for in Article 46 of this Regulation.

2 Member States shall, in respect of existing protected wine names referred to in paragraph 1, transmit to the Commission:

- a the technical files as provided for in Article 35(1);
- b the national decisions of approval.

3 Wine names referred to in paragraph 1, for which the information referred to in paragraph 2 is not submitted by 31 December 2011, shall lose protection under this Regulation. The Commission shall take the corresponding formal step of removing such names from the register provided for in Article 46.

4 Article 50 shall not apply in respect of existing protected wine names referred to in paragraph 1.

It may be decided, until 31 December 2014, at the initiative of the Commission and in accordance with the procedure referred to in Article 113(2), to cancel protection of existing protected wine names referred to in paragraph 1 if they do not meet the conditions laid down in Article 34.

Section 6

General provisions

Article 52

Implementing measures

The measures necessary for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 113(1).

Those measures may in particular include derogations from the applicability of the rules and requirements laid down in this Chapter:

- (a) in so far as pending applications for protection of designations of origin or geographical indications are concerned;
- (b) in so far as the production of certain wines with a protected designation of origin or geographical indication in a geographical area in proximity of the geographical area where the grapes originate is concerned;
- (c) in so far as traditional production practices of certain wines with a protected designation of origin are concerned.

Article 53

Fees

Member States may charge a fee to cover their costs, including those incurred in examining applications for protection, statements of objections, applications for amendments and requests for cancellations under this Regulation.

Status: This is the original version (as it was originally adopted).

- (1) [OJ L 39, 13.2.2008, p. 16.](#)
- (2) [OJ L 40, 11.2.1989, p. 1.](#) Directive as amended by Decision 92/10/EEC ([OJ L 6, 11.1.1992, p. 35.](#)).
- (3) [OJ L 11, 14.1.1994, p. 1.](#) Regulation as last amended by Regulation (EC) No 1891/2006 ([OJ L 386, 29.12.2006, p. 14.](#)).