

Commission regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (repealed)

CHAPTER III **U.K.**

TRADITIONAL TERMS

SECTION 1 **U.K.**

Application

Article 29 **U.K.**

Applicants

1 Competent authorities of Member States or third countries or representative professional organisations established in third countries may submit to the Commission an application for protection of traditional terms within the meaning of Article 54(1) of Regulation (EC) No 479/2008.

2 ‘*Representative professional organisation*’ shall mean any producer organisation or association of producer organisations having adopted the same rules, operating in a given or more wine designation of origin or geographical indication area(s) where it includes in its membership at least two thirds of the producers in the designation of origin or geographical indication area(s) in which it operates and accounts for at least two thirds of that areas’ production. A representative professional organisation may lodge an application for protection only for wines which it produces.

Article 30 **U.K.**

Application for protection

1 The application for protection of a traditional term shall conform to the model set out in Annex VII and shall be accompanied by a copy of the rules regulating the use of the term concerned.

2 In case of an application filed by a representative professional organisation established in a third country, the details of the representative professional organisation shall also be communicated. This information, including relevant details of members of the representative professional organisation, as appropriate, is listed in Annex XI.

Article 31 **U.K.**

Language

1 The term to be protected shall be either:

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- a in the official language(s), regional language(s) of the Member State or third country where the term originates; or
- b in the language used in commerce for this term.

The term used in a certain language shall refer to specific products referred to in Article 33(1) of Regulation (EC) No 479/2008.

- 2 The term shall be registered with its original spelling(s).

Article 32 U.K.

Rules on traditional terms of third countries

- 1 Article 54(1) of Regulation (EC) No 479/2008 applies *mutatis mutandis* to terms traditionally used in third countries in connection with wine sector products with geographical indications of the third countries concerned.

- 2 Wines originating in third countries whose labels bear traditional indications other than the traditional terms listed in Annex XII, may use these traditional indications on wine labels in accordance with the rules applicable in the third countries concerned, including those emanating from representative professional organisations.

SECTION 2 U.K.

Examination procedure

Article 33 U.K.

Filing of the application

The Commission shall mark the documents making up the application with the date of its receipt and the file number of the application. The application shall be submitted to the Commission in paper or electronic form. The date of submission of the application to the Commission shall be the date on which the application is entered in the Commission's mail registry. This date and the traditional term are made available to the public by appropriate means.

The applicant shall receive an acknowledgement of receipt indicating at least:

- (a) the file number;
- (b) the traditional term;
- (c) the number of the documents received; and
- (d) the date of their receipt.

Article 34 U.K.

Admissibility

The Commission verifies that the application form is fully completed and is accompanied by the requested documentation as provided for in Article 30.

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If the application form is incomplete or the documentation is missing or incomplete, the Commission shall inform the applicant accordingly and shall invite him to remedy the deficiencies noted within a period of two months. If the deficiencies are not remedied before the time limit expires, the Commission shall reject the application as inadmissible. The decision on inadmissibility shall be notified to the applicant.

Article 35 **U.K.**

Conditions of validity

- 1 The recognition of a traditional term shall be accepted if:
 - a it fulfils the definition as laid down in Article 54(1)(a) or (b) of Regulation (EC) No 479/2008 and the conditions laid down in Article 31 of this Regulation;
 - b the term exclusively consists of either:
 - (i) a name traditionally used in commerce in a large part of the territory of the Community or of the third country concerned, to distinguish specific categories of grapevine products referred to in Article 33(1) of Regulation (EC) No 479/2008; or
 - (ii) a reputed name traditionally used in commerce in at least the territory of the Member State or third country concerned, to distinguish specific categories of grapevine products referred to in Article 33(1) of Regulation (EC) No 479/2008;
 - c the term shall:
 - (i) not be generic;
 - (ii) be defined and regulated in the Member State's legislation; or
 - (iii) be subject to conditions of use as provided for by rules applicable to wine producers in the third country concerned, including those emanating from representative professional organisations.
- 2 For the purpose of paragraph (1), point (b), traditional use means:
 - a at least five years in case of terms filed in language(s) referred to in Article 31(a) of this Regulation;
 - b at least 15 years in case of terms filed in a language referred to in Article 31(b) of this Regulation.
- 3 For the purpose of paragraph (1), point (c)(i), 'generic' means the name of a traditional term although it relates to a specific production method or ageing method, or the quality, colour, type of place, or a particular linked to the history of a grapevine product, has become the common name of the grapevine product in question in the Community.
- 4 The condition listed in paragraph 1(b) of this Article does not apply to traditional terms referred to in Article 54(1)(a) to Regulation (EC) No 479/2008.

Article 36 **U.K.**

Grounds for refusal

- 1 If an application for a traditional term does not meet the definition laid down in Article 54(1) of Regulation (EC) No 479/2008 and the requirements laid down in Articles 31

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and 35, the Commission shall inform the applicant of the grounds for refusal, setting a deadline of two months from the issuance date of such communication, for the withdrawal or amendment of the application or for the submission of comments.

The Commission shall decide on the protection based on the information available to it.

2 If the obstacles are not remedied by the applicant within the deadline referred to in paragraph 1, the Commission shall reject the application. Any decision to reject the traditional term concerned shall be taken by the Commission on the basis of the documents and information available to it. Such decision on rejection shall be notified to the applicant.

SECTION 3 **U.K.**

Objection procedures

Article 37 **U.K.**

Submission of a request of objection

1 Within two months from the date of publication provided for in the first sub-paragraph of Article 33, any Member State or third country, or any natural or legal person having a legitimate interest may object to the proposed recognition by lodging a request of objection.

2 The request of objection shall be drawn up on the basis of the form set out in Annex VIII and shall be submitted to the Commission in paper or electronic form. The date of submission of the request of objection to the Commission is the date on which the request is entered in the Commission's mail registry.

3 The Commission shall mark the documents making up the request of objection with the date of receipt and the file number allocated to the request of objection.

The objector shall receive an acknowledgement of receipt indicating at least the following:

- a the file number;
- b the number of pages received; and
- c the date of receipt of the request.

Article 38 **U.K.**

Admissibility

1 For the purposes of determining whether an objection is admissible, the Commission shall verify that the request of objection mentions the prior right(s) claimed and the ground(s) for the objection and was received by the Commission within the deadline provided for in the first paragraph of Article 37.

2 If the objection is based on the existence of an earlier trademark of reputation and renown, in accordance with Article 41(2), the request of objection shall be accompanied by proof of the filing, registration or use of that earlier trademark, such as the certificate of registration and proof of its reputation and renown.

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3 Any duly substantiated request of objection shall contain details of the facts, evidence and comments submitted in support of the objection, accompanied by the relevant supporting documents.

The information and evidence to be produced in support of the use of an earlier trademark shall comprise particulars of the location, duration, extent and nature of the use made of the earlier trademark, and of its reputation and renown.

4 If the details of the prior right(s) claimed, ground(s), facts, evidence or comments, or the supporting documents, as referred to in paragraphs 1 to 3, have not been produced at the same time as the request of objection or if some are missing, the Commission shall inform the opponent accordingly and shall invite him to remedy the deficiencies noted within a period of two months. If the deficiencies are not remedied before the time limit expires, the Commission shall reject the request as inadmissible. The decision on inadmissibility shall be notified to the objector and to the Member State or the third-country authorities or the representative professional organisation established in the third country in question.

5 Any request of objection that is deemed admissible shall be notified to the Member State or the third-country authorities or the representative professional organisation in the third country in question.

Article 39 **U.K.**

Scrutiny of an objection

1 If the Commission has not rejected the request of opposition in accordance with Article 38(4), it shall communicate the objection to the Member State or the third-country authorities or the representative professional organisation established in the third country in question and shall invite him to file observations within two months from the issuance date of such communication. Any observations received within this two months period shall be communicated to the objector.

In the course of its scrutiny of an objection, the Commission shall request the parties to submit comments, if appropriate, within a period of two months from the issuance date of such request, on the communications received from the other parties.

2 If the Member State or the third-country authorities or the representative professional organisation established in the third country in question or the objector files no observations in response, or does not respect the time periods, the Commission gives ruling on the opposition.

3 Any decision to reject or recognise the traditional term concerned shall be taken by the Commission on the basis of the evidence available to it. It shall consider whether the conditions referred to in Article 40(1), or laid down in Articles 41(3) or 42 are not fulfilled. The decision on rejection shall be notified to the objector and to the Member State or the third-country authorities or the representative professional organisation established in the third country in question.

4 In the event of multiple requests of objection, following a preliminary examination of one or more such requests of objection, it may not be possible to accept the application for recognition; in such cases, the Commission may suspend the other objection procedures. The Commission shall inform the other objectors of any decision affecting them which was taken in the course of the procedure.

Where an application is rejected, objection procedures which have been suspended shall be deemed to be closed and the objectors concerned shall be duly informed.

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SECTION 4 **U.K.**

Protection

Article 40 **U.K.**

General protection

1 If an application satisfies the conditions laid down in Article 54(1) of Regulation (EC) No 479/2008 and in Articles 31 and 35 and is not rejected under Articles 38 and 39, the traditional term shall be listed in Annex XII to this Regulation.

2 The traditional terms listed in Annex XII, are protected only in the language and for the categories of grapevine products claimed in the application, against:

- a any misuse even if the protected term is accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar;
- b any other false or misleading indication as to the nature, characteristics or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to it;
- c any other practice liable to mislead the consumer, in particular to give the impression that the wine qualifies for the protected traditional term.

Article 41 **U.K.**

Relationship with trademarks

1 Where a traditional term is protected under this Regulation, the registration of a trademark, which corresponds to one of the situations referred to in Article 40, shall be refused if the application for registration of the trademark does not concern wines qualified to use such a traditional term and is submitted after the date of submission of the application for protection of the traditional term to the Commission and the traditional term is subsequently protected.

Trademarks registered in breach of the first subparagraph shall be declared invalid on application in accordance with the applicable procedures as specified by Directive 2008/95/EC of the European Parliament and of the Council⁽¹⁾ or Council Regulation (EC) No 40/94⁽²⁾.

2 A trademark, which corresponds to one of the situations referred to in Article 40 of this Regulation, and 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 4 May 2002 or before the date of submission of the application for protection of the traditional term to the Commission, may continue to be used and renewed notwithstanding the protection of the traditional term.

In such cases the use of the traditional term shall be permitted alongside the relevant trademark.

3 A name shall not be protected as a traditional term, where in the light of a trademark's reputation and renown, such protection is liable to mislead the consumer as to the true identity, nature, characteristic or quality of the wine.

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Article 42 **U.K.**

Homonyms

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

A homonymous term which misleads consumers as to the nature, quality or the true origin of the products shall not be registered even if the term is accurate.

The use of a protected homonymous term shall be subject to there being a sufficient distinction in practice between the homonym protected subsequently and the traditional term already listed in Annex XII, 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 for traditional terms protected before 1 August 2009, which are partially homonymous with a protected designation of origin or geographical indication or a wine grape variety name or its synonym listed in Annex XV.

Article 43 **U.K.**

Enforcement of the protection

For the purposes of the application of Article 55 of Regulation (EC) No 479/2008, in case of illegal use of protected traditional terms, competent national authorities, on their own initiative or at the request of a party, take all measures to stop the marketing, including any export, of the products concerned.

SECTION 5 **U.K.**

Cancellation procedure

Article 44 **U.K.**

Grounds of cancellation

The grounds for cancelling a traditional term shall be that it no longer meets the definition laid down in Article 54(1) of Regulation (EC) No 479/2008 or the requirements laid down in Articles 31, 35, 40(2), 41(3) or 42.

Article 45 **U.K.**

Submission of a request of cancellation

1 A duly substantiated request of cancellation may be filed with the Commission by a Member State, a third country or a natural or legal person having a legitimate interest in accordance with the form set out in Annex IX. The request of cancellation shall be submitted to the Commission in paper or electronic form. The date of submission of the request of

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cancellation to the Commission is the date on which the request is entered in the Commission's mail registry. This date shall be made available to the public by appropriate means.

2 The Commission shall mark the documents making up the request for cancellation with the date of receipt and the file number allocated to the request of cancellation.

The author of the request of cancellation shall receive an acknowledgement of receipt indicating at least:

- a the file number;
- b the number of pages received; and
- c the date of receipt of the request.

3 Paragraphs 1 and 2 do not apply when the cancellation is initiated by the Commission.

Article 46 **U.K.**

Admissibility

1 For the purposes of determining whether a request of cancellation is admissible, the Commission shall verify that the request:

- a mentions the legitimate interest of the author of the request of cancellation;
- b the ground(s) for cancellation; and
- c refers to a statement from the Member State or third country where the residence or registered office of the author of the request is located explaining the legitimate interest, reasons and justification of the author of the cancellation.

2 Any request for cancellation shall contain details of the facts, evidence and comments submitted in support of the cancellation, accompanied by the relevant supporting documents.

3 If detailed information concerning the grounds, facts, evidence and comments, as well as the supporting documents referred to in paragraphs 1 and 2, have not been produced at the same time as the request of cancellation, the Commission shall inform the author of the request of cancellation accordingly and shall invite him to remedy the deficiencies noted within a period of two months. If the deficiencies are not remedied before the time limit expires, the Commission shall reject the request as inadmissible. The decision on inadmissibility shall be notified to the author of the request of cancellation and to the Member State or the third-country authorities or the author of the request of cancellation established in the third country in question.

4 Any request of cancellation that is deemed admissible, including Commission own-initiative cancellation procedure, shall be notified to the Member State or the third-country authorities or the author of the request of cancellation established in the third country whose traditional term is affected by the cancellation.

Article 47 **U.K.**

Scrutiny of a cancellation

1 If the Commission has not rejected the request of cancellation in accordance with Article 46(3), it shall communicate the request of cancellation to the Member State or the third-country authorities or the applicant established in the third country in question and shall invite him to file observations within two months from the issuance date of such communication. Any observations received within this two months period shall be communicated to the author of the request of cancellation.

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In the course of the scrutiny of a cancellation, the Commission shall request the parties to submit comments, if appropriate, within a period of two months from the issuance date of such request, on the communications received from the other parties.

2 If the Member State or the third-country authorities or the applicant established in the third country in question or the author of a request of cancellation files no observations in response, or does not respect the time periods, the Commission gives ruling on the cancellation.

3 Any decision to cancel the traditional term concerned shall be taken by the Commission on the basis of the evidence available to it. It shall consider whether the conditions referred to in Article 44 are no longer fulfilled.

Such decision on cancellation shall be notified to the author of the request of cancellation and to the Member State or the third-country authorities in question.

4 In the event of multiple requests of cancellation, following a preliminary examination of one or more such requests of cancellation, it may not be possible to accept to continue to protect a traditional term, in which case the Commission may suspend the other cancellation procedures. In this case the Commission shall inform the other authors of the request of cancellation of any decision affecting them which was taken in the course of the procedure.

Where a traditional term is cancelled, cancellation procedures which have been suspended shall be deemed to be closed and the authors of the request of cancellation concerned shall be duly informed.

5 When a cancellation takes effect, the Commission shall remove the name concerned from the list set out in Annex XII.

SECTION 6 **U.K.**

Existing protected traditional terms

Article 48 **U.K.**

Existing protected traditional terms

Traditional terms, which are protected in accordance with Articles 24, 28 and 29 of Regulation (EC) No 753/2002, shall automatically be protected under this Regulation, provided:

- (a) a summary of the definition or the conditions of use was submitted to the Commission by 1 May 2009;
- (b) Member States or third countries have not ceased to protect certain traditional terms.

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- (1) OJ L 299, 8.11.2008, p. 25.
- (2) OJ L 11, 14.1.1994, p. 1.

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