

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of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (repealed)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

TRADITIONAL TERMS

SECTION 1

Application

Article 29

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.

[^{F1}Article 30

Application for protection

1 The application for protection of a traditional term shall be communicated by the competent authorities of the Member States or those of the third countries or by the representative trade organisations in accordance with Article 70a(1). The application shall be accompanied by the legislation of the Member States or rules applicable to wine producers in third countries governing the use of the term in question and the reference to that legislation or those rules.

2 In the case of a request submitted by a representative trade organisation established in a third country, the applicant shall communicate to the Commission the information regarding the representative trade organisation and its members, in accordance with Article 70a(1). The Commission shall make this information public.]

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

Textual Amendments

- F1** Substituted by Commission Implementing Regulation (EU) No 670/2011 of 12 July 2011 amending Regulation (EC) No 607/2009 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.

Article 31

Language

- 1 The term to be protected shall be either:
- 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).

[^{F2}Article 32

Rules on traditional terms of third countries

- 1 The definition of traditional terms provided for in Article 118u(1) of Regulation (EC) No 1234/2007 shall apply *mutatis mutandis* to terms traditionally used in third countries for wine products covered by geographical indications or names of origin under the legislation of those third countries.
- 2 Wines originating in third countries whose labels bear traditional indications other than the traditional terms listed in the electronic database 'E-Bacchus' 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.]

Textual Amendments

- F2** Substituted by Commission Regulation (EU) No 538/2011 of 1 June 2011 amending Regulation (EC) No 607/2009 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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

SECTION 2

Examination procedure

[^{F1}Article 33

Filing of the application

1 The date of submission of an application to the Commission shall be the date on which the application is received by the Commission.

2 The Commission shall confirm receipt of the application to the authorities of the Member State or of the third country or the applicant established in the third country in question and shall attribute a file number to the application.

The confirmation of receipt shall include at least the following:

- a the file number;
- b the traditional term;
- c the date of receipt of the request.]

Textual Amendments

- F1** Substituted by Commission Implementing Regulation (EU) No 670/2011 of 12 July 2011 amending Regulation (EC) No 607/2009 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.

[^{F1}Article 34

Admissibility

1 An application shall be admissible where the application form is duly filled in and the documents required in accordance with the provisions of Article 30 are enclosed with the application. The application form shall be considered to be duly filled in when all the mandatory fields, as presented in the information systems referred to in Article 70a, have been filled in.

In this case, the application shall be considered admissible on the date on which it is received by the Commission. The applicant shall be informed.

This date shall be made known to the public.

2 If the form has not been completed or has only been partially completed, or if the documents referred to in paragraph 1 were not submitted at the same time as the application or some are missing, the application shall be inadmissible.

3 Where the application is inadmissible, the authorities of the Member State or those of the third country or the applicant established in the third country in question shall be informed of the reasons for its inadmissibility and that they are entitled to submit another application duly completed.]

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) No 670/2011 of 12 July 2011 amending Regulation \(EC\) No 607/2009 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.](#)

Article 35

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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

Article 36

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 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

Objection procedures

Article 37

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.

[^{F12} The objection shall be communicated in accordance with Article 70a(1). The date of submission of an objection to the Commission shall be the date on which the application is received by the Commission.

3 The Commission shall confirm receipt of the objection and assign a file number to the objection.

The confirmation of receipt shall include at least the following:

- a the file number;
- b the date of receipt of the objection.]

Textual Amendments

- F1** Substituted by Commission Implementing Regulation (EU) No 670/2011 of 12 July 2011 amending Regulation (EC) No 607/2009 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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

Article 38

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.

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

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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

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.

SECTION 4

Protection

[^{F1} Article 40

General protection

1 If a traditional term for which protection is requested meets the conditions set out in Article 118u(1) of Regulation (EC) No 1234/2007 and in Articles 31 and 35 of this Regulation and is not rejected by virtue of Articles 36, 38 and 39 of this Regulation, the traditional term is listed and defined in the 'E-Bacchus' database, in accordance with Article 118u(2) of Regulation (EC) No 1234/2007 on the basis of the information communicated to the Commission in accordance with Article 70a(1) of this Regulation, mentioning the following:

- a the language referred to in Article 31(1);
- b the grapevine product category or categories concerned by the protection;
- c a reference to the national legislation of the Member State or third country in which the traditional term is defined and regulated, or to the rules applicable to wine producers in the third country, including those originating from representative trade organisations, in the absence of national legislation in those third countries;
- d a summary of the definition or conditions of use;
- e the name of the country or countries of origin;
- f the date of inclusion in the electronic database 'E-Bacchus'.

2 The traditional terms listed in the electronic database 'E-Bacchus', shall be protected only in the language and for the categories of grape vine 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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

3 The traditional terms listed in the electronic database ‘E-Bacchus’ shall be made known to the public.]

Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) No 670/2011 of 12 July 2011 amending Regulation \(EC\) No 607/2009 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.](#)

Article 41

Relationship with trademarks

[^{F21} Where a traditional term is protected under this Regulation, the registration of a trademark, the use of which would contravene Article 40(2), shall be assessed in accordance with Directive 2008/95/EC of the European Parliament and of the Council⁽¹⁾ or Council Regulation (EC) No 207/2009⁽²⁾.

Trademarks registered in breach of the first subparagraph shall be declared invalid upon request in accordance with the applicable procedures as specified by Directive 2008/95/EC or Regulation (EC) No 207/2009.]

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.

Textual Amendments

- F2** Substituted by [Commission Regulation \(EU\) No 538/2011 of 1 June 2011 amending Regulation \(EC\) No 607/2009 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.](#)

Article 42

Homonyms

[^{F21} A term, for which an application is lodged and which is wholly or partially homonymous with that of a traditional term already protected under this Chapter shall be protected with due regard to local and traditional usage and the risk of confusion.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

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.

[^{F1}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 listed in the electronic database ‘E-Bacchus’, 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.

Textual Amendments

- F1** Substituted by Commission Implementing Regulation (EU) No 670/2011 of 12 July 2011 amending Regulation (EC) No 607/2009 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.
- F2** Substituted by Commission Regulation (EU) No 538/2011 of 1 June 2011 amending Regulation (EC) No 607/2009 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.

^{F3}Article 42a

Modification

An applicant as referred to in Article 29 may apply for an approval of a modification of a traditional term, the language indicated, the wine or wines concerned or of the summary of the definition or conditions of use of the traditional term concerned.

Articles 33 to 39 apply *mutatis mutandis* to applications for modification.]

Textual Amendments

- F3** Inserted by Commission Regulation (EU) No 538/2011 of 1 June 2011 amending Regulation (EC) No 607/2009 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.

Article 43

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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

SECTION 5

Cancellation procedure

Article 44

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.

[^{F1}Article 45

Submission of a request for cancellation

1 A duly substantiated request for cancellation may be communicated to the Commission by a Member State, a third country or a natural or legal person having a legitimate interest in accordance with Article 70a(1). The date of submission of a request to the Commission shall be the date on which the request is received by the Commission. This date shall be made known to the public.

2 The Commission shall confirm receipt of the request and assign a file number to the request.

The confirmation of receipt shall include at least the following:

- a the file number;
- b the date of receipt of the request.

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

Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) No 670/2011 of 12 July 2011 amending Regulation \(EC\) No 607/2009 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.](#)

Article 46

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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

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

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.

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.

[^{F15} When a cancellation takes effect, the Commission shall remove the name concerned from the list set out in the electronic database 'E-Bacchus'.]

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) No 670/2011 of 12 July 2011 amending Regulation \(EC\) No 607/2009 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.](#)

SECTION 6

Existing protected traditional terms

Article 48

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.

Status: Point in time view as at 03/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission regulation (EC) No 607/2009 (repealed), CHAPTER III. (See end of Document for details)

- (1) [^{F2}OJ L 299, 8.11.2008, p. 25.
- (2) OJ L 78, 24.3.2009, p. 1.]

Textual Amendments

- F2** Substituted by Commission Regulation (EU) No 538/2011 of 1 June 2011 amending Regulation (EC) No 607/2009 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.

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