

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of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (repealed)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

3 The traditional terms listed in the electronic database ‘E-Bacchus’ shall be made known to the 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Status: Point in time view as at 03/03/2018.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), SECTION 4. (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 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.

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.

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), SECTION 4. (See end of Document for details)

[^{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), SECTION 4. (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.

Status:

Point in time view as at 03/03/2018.

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