

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 1

Amendment of Regulation (EC) No 607/2009

Regulation (EC) No 607/2009 is amended as follows:

- (1) in Article 30, paragraph 2 is replaced by the following:
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. The Commission shall publish on the Internet the list of third countries concerned, the names of the representative professional organisations and the members of these representative professional organisations.;
- (2) Article 32 is replaced by the following:

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.;
- (3) Article 40 is replaced by the following:

Article 40

General protection

- 1 If an application for the protection of a traditional term satisfies the conditions laid down in Article 118u(1) of Regulation (EC) No 1234/2007 and in Articles 31 and 35 of this Regulation and is not rejected under Articles 36, 38 and 39 of this Regulation, the traditional term shall be included in the electronic database “E-Bacchus” with an indication of:
 - a the language as referred to in Article 31;
 - b an indication of the grapevine product category or categories concerned by the protection;

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- c a reference to the national legislation of the Member State in which the traditional term is defined and regulated, or rules applicable to wine producers in third countries, including those emanating from representative professional organisations; and
 - d a summary of the definition or conditions of use.
- 2 The traditional terms listed in the electronic database “E-Bacchus”, are 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.;
- (4) in Article 41, paragraph 1 is replaced by the following:
1. 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.;
- (5) in Article 42, paragraph 1 is replaced by the following:
1. 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.
- 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 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.;
- (6) a new Article 42a is inserted:

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.;

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- (7) in Article 47, paragraph 5 is replaced by the following:
5. When a cancellation takes effect, the Commission shall remove the name concerned from the list set out in the electronic database “E-Bacchus”;
- (8) in Article 54, a new paragraph 3 is added:
3. In case of partially fermented grape must or new wine still in fermentation, the actual and/or total alcoholic strength by volume shall appear on the label. When the total alcoholic strength by volume appears on the label, the figures shall be followed by “% vol” and may be preceded by words “total alcoholic strength” or “total alcohol”;
- (9) Article 56 is amended as follows:
- (a) in the third subparagraph of paragraph 2, the following second sentence is added:
- ‘These requirements do not apply where bottling is carried out in a place of immediate proximity to that of the bottler.’;
- (b) paragraph 3 is replaced by the following:
3. The name and address of the producer or vendor shall be supplemented by the terms “*producer*” or “*produced by*” and “*vendor*” or “*sold by*”, or equivalent.
- Member States may decide to:
- a make compulsory the indication of the producer;
- b allow the replacement of the terms “*producer*” or “*produced by*” by “*processor*” respectively “*processed by*”;
- (10) Article 69 is replaced by the following:

Article 69

Rules on presentation for certain products

- 1 Sparkling wine, quality sparkling wine and quality aromatic sparkling wine produced in the European Union shall be marketed or exported in “sparkling wine”-type glass bottles closed with:
- a for bottles with a nominal volume more than 0,20 litres: a mushroom-shaped stopper made of cork or other material permitted to come into contact with foodstuffs, held in place by a fastening, covered, if necessary, by a cap and sheathed in foil completely covering the stopper and all or part of the neck of the bottle;
- b for bottles with a nominal volume content not exceeding 0,20 litres: any other suitable closure.
- Other products produced in the Union shall not be marketed or exported in either “sparkling wine”-type glass bottles or with a closure as described in point (a) of the first subparagraph.
- 2 By way of derogation from the second subparagraph of paragraph 1, Member States may decide that the following products may be marketed or exported in “sparkling wine”-type glass bottles and/or with a closure as described in point (a) of the first subparagraph of paragraph 1:

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- a products traditionally bottled in such bottles and which:
 - (i) are listed in Article 113d(1)(a) of Regulation (EC) No 1234/2007;
 - (ii) are listed in points 7, 8 and 9 of Annex XIb to Regulation (EC) No 1234/2007;
 - (iii) are listed in Council Regulation (EEC) No 1601/1991⁽³⁾; or
 - (iv) have an actual alcoholic strength by volume no greater than 1,2 % vol;
 - b products other than those referred to in point (a) provided that they do not mislead consumers with regard to the real nature of the product.;
- (11) in Article 71 a new paragraph 3 is added:
3. By way of derogation from Article 2(2) of this Regulation, in respect of the transmission of the technical files as referred to in point (a) of Article 118s(2) of Regulation (EC) No 1234/2007 the authorities of the Member States may be considered as applicants for the purpose of the application of point (b) of Article 118c(1) of that Regulation.;
- (12) Annex II is replaced by Annex I to this Regulation;
- (13) Annex VIII is replaced by Annex II to this Regulation;
- (14) Annexes XI and XII are deleted.

Article 2

Transitional provisions

- 1 Prior to the deletion of Annexes XI and XII to Regulation (EC) No 607/2009 by point (14) of Article 1 of this Regulation, the Commission shall replicate and:
- a publish on the Internet the content of Annex XI; and
 - b enter in the electronic database 'E-Bacchus' the traditional terms listed in Annex XII.
- 2 Any modification related to a traditional term which has been recognised by a Member State or a third country and notified to the Commission by the date of entry into force of this Regulation and which has not been included in Annex XII to Regulation (EC) No 607/2009, shall not be subject to the procedure referred to in Article 42a as introduced by point (6) of Article 1 of this Regulation. The Commission shall enter that modification in the electronic database 'E-Bacchus'.

Article 3

Entry into force

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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Done at Brussels, 1 June 2011.

For the Commission

The President

José Manuel BARROSO

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- (1) [OJ L 299, 8.11.2008, p. 25.](#)
- (2) [OJ L 78, 24.3.2009, p. 1.](#);
- (3) [OJ L 149, 14.6.1991, p. 1.](#);

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Changes and effects yet to be applied to :

- Regulation implicit repeal by [EUR 2019/33](#) Regulation