# Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs

## TITLE V

## COMMON PROVISIONS

### *CHAPTER I*

### *Official controls of protected designations of origin, protected geographical indications and traditional specialities guaranteed*

#### *Article 35*

#### Scope

The provisions of this Chapter shall apply in respect of the quality schemes set out in Title II and Title III.

#### *Article 36*

#### Designation of competent authority

1 In accordance with Regulation (EC) No 882/2004, Member States shall designate the competent authority or authorities responsible for official controls carried out to verify compliance with the legal requirements related to the quality schemes established by this Regulation.

Procedures and requirements of Regulation (EC) No 882/2004 shall apply *mutatis mutandis* to the official controls carried out to verify compliance with the legal requirement related to the quality schemes for all products covered by Annex I to this Regulation.

2 The competent authorities referred to in paragraph 1 shall offer adequate guarantees of objectivity and impartiality, and shall have at their disposal the qualified staff and resources necessary to carry out their functions.

3 Official controls shall cover:

a verification that a product complies with the corresponding product specification; and

b monitoring of the use of registered names to describe product placed on the market, in conformity with Article 13 for names registered under Title II and in conformity with Article 24 for names registered under Title III.

#### *Article 37*

#### Verification of compliance with product specification

1 In respect of protected designations of origin, protected geographical indications and traditional specialities guaranteed that designate products originating within the Union,

verification of compliance with the product specification, before placing the product on the market, shall be carried out by:

a one or more of the competent authorities as referred to in Article 36 of this Regulation; and/or

b one or more of the control bodies within the meaning of point (5) of Article 2 of Regulation (EC) No 882/2004 operating as a product certification body.

The costs of such verification of compliance with the specifications may be borne by the operators that are subject to those controls. The Member States may also contribute to these costs.

2 In respect of designations of origin, geographical indications and traditional specialities guaranteed that designate products originating in a third country, the verification of compliance with the specifications before placing the product on the market shall be carried out by:

a one or more of the public authorities designated by the third country; and/or

b one or more of the product certification bodies.

3 Member States shall make public the name and address of the authorities and bodies referred to paragraph 1 of this Article, and update that information periodically.

The Commission shall make public the name and address of the authorities and bodies referred to in paragraph 2 of this Article and update that information periodically.

4 The Commission may adopt implementing acts, without applying the procedure referred to in Article 57(2), defining the means by which the name and address of product certification bodies referred to in paragraphs 1 and 2 of this Article shall be made public.

*Article 38*

**Surveillance of the use of the name in the market place**

Member States shall inform the Commission of the names and addresses of the competent authorities referred to in Article 36. The Commission shall make public the names and addresses of those authorities.

Member States shall carry out checks, based on a risk analysis, to ensure compliance with the requirements of this Regulation and, in the event of breaches, Member States shall take all necessary measures.

*Article 39*

**Delegation by competent authorities to control bodies**

1 Competent authorities may delegate, in accordance with Article 5 of Regulation (EC) No 882/2004, specific tasks related to official controls of the quality schemes to one or more control bodies.

2 Such control bodies shall be accredited in accordance with European Standard EN 45011 or ISO/IEC Guide 65 (General requirements for bodies operating product certification systems).

3 Accreditation referred to in paragraph 2 of this Article may only be performed by:

a a national accreditation body in the Union in accordance with the provisions of Regulation (EC) No 765/2008; or

b an accreditation body outside the Union that is a signatory of a multilateral recognition arrangement under the auspices of the International Accreditation Forum.

*Article 40*

**Planning and reporting of control activities**

1 Member States shall ensure that activities for the control of obligations under this Chapter are specifically included in a separate section within the multi-annual national control plans in accordance with Articles 41, 42 and 43 of Regulation (EC) No 882/2004.

2 The annual reports concerning the control of the obligations established by this Regulation shall include a separate section comprising the information laid down in Article 44 of Regulation (EC) No 882/2004.

*CHAPTER II*

***Exceptions for certain prior uses***

*Article 41*

**Generic terms**

1 Without prejudice to Article 13, this Regulation shall not affect the use of terms that are generic in the Union, even if the generic term is part of a name that is protected under a quality scheme.

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

a the existing situation in areas of consumption;

b the relevant national or Union legal acts.

3 In order to fully protect the rights of interested parties, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down additional rules for determining the generic status of terms referred to in paragraph 1 of this Article.

*Article 42*

**Plant varieties and animal breeds**

1 This Regulation shall not prevent the placing on the market of products the labelling of which includes a name or term protected or reserved under a quality scheme described in Title II, Title III, or Title IV that contains or comprises the name of a plant variety or animal breed, provided that the following conditions are met:

a the product in question comprises or is derived from the variety or breed indicated;

b consumers are not misled;

c the usage of the name of the variety or breed name constitutes fair competition;

d the usage does not exploit the reputation of the protected term; and

e in the case of the quality scheme described in Title II, production and marketing of the product had spread beyond its area of origin prior to the date of application for registration of the geographical indication.

2 In order to further clarify the extent of rights and freedoms of food business operators to use the name of a plant variety or of an animal breed referred to in paragraph 1 of this Article, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, concerning rules for determining the use of such names.

*Article 43*

**Relation to intellectual property**

The quality schemes described in Titles III and IV shall apply without prejudice to Union rules or to those of Member States governing intellectual property, and in particular to those concerning designations of origin and geographical indications and trade marks, and rights granted under those rules.

*CHAPTER III*

***Quality scheme indications and symbols and role of producers***

*Article 44*

**Protection of indications and symbols**

1 Indications, abbreviations and symbols referring to the quality schemes may only be used in connection with products produced in conformity with the rules of the quality scheme to which they apply. This applies in particular to the following indications, abbreviations and symbols:

a ‘protected designation of origin’, ‘protected geographical indication’, ‘geographical indication’, ‘PDO’, ‘PGI’, and the associated symbols, as provided for in Title II;

b ‘traditional speciality guaranteed’, ‘TSG’, and the associated symbol, as provided for in Title III;

c ‘mountain product’, as provided for in Title IV.

2 In accordance with Article 5 of Regulation (EC) No 1290/2005, the European Agricultural Fund for Rural Development (EAFRD) may, on the initiative of the Commission or on its behalf, finance, on a centralised basis, administrative support concerning the development, preparatory work, monitoring, administrative and legal support, legal defence, registration fees, renewal fees, trade mark watching fees, litigation fees and any other related measure required to protect the use of the indications, abbreviations and symbols referring to the quality schemes from misuse, imitation, evocation or any other practice liable to mislead the consumer, within the Union and in third countries.

3 The Commission shall adopt implementing acts laying down rules for the uniform protection of the indications, abbreviations and symbols referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

*Article 45*

**Role of groups**

1 Without prejudice to specific provisions on producer organisations and inter-branch organisations as laid down in Regulation (EC) No 1234/2007, a group is entitled to:

a contribute to ensuring that the quality, reputation and authenticity of their products are guaranteed on the market by monitoring the use of the name in trade and, if necessary, by informing competent authorities as referred to in Article 36, or any other competent authority within the framework of Article 13(3);

b take action to ensure adequate legal protection of the protected designation of origin or protected geographical indication and of the intellectual property rights that are directly connected with them;

c develop information and promotion activities aiming at communicating the value-adding attributes of the product to consumers;

d develop activities related to ensuring compliance of a product with its specification;

e take action to improve the performance of the scheme, including developing economic expertise, carrying out economic analyses, disseminating economic information on the scheme and providing advice to producers;

f take measures to enhance the value of products and, where necessary, take steps to prevent or counter any measures which are, or risk being, detrimental to the image of those products.

2 Member States may encourage the formation and functioning of groups on their territories by administrative means. Moreover, Member States shall communicate to the Commission the name and address of the groups referred to in point 2 of Article 3. The Commission shall make this information public.

*Article 46*

**Right to use the schemes**

1 Member States shall ensure that any operator complying with the rules of a quality scheme set out in Titles II and III is entitled to be covered by the verification of compliance established pursuant to Article 37.

2 Operators who prepare and store a product marketed under the traditional speciality guaranteed, protected designation of origin or protected geographical indication schemes or who place such products on the market shall also be subject to the controls laid down in Chapter I of this Title.

3 Member States shall ensure that operators willing to adhere to the rules of a quality scheme set out in Titles III and IV are able to do so and do not face obstacles to participation that are discriminatory or otherwise not objectively founded.

*Article 47*

**Fees**

Without prejudice to Regulation (EC) No 882/2004 and in particular the provisions of Chapter VI of Title II thereof, Member States may charge a fee to cover their costs of managing the quality schemes, including those incurred in processing applications, statements of opposition, applications for amendments and requests for cancellations provided for in this Regulation.

*CHAPTER IV*

***Application and registration processes for designations of origin, geographical indications, and traditional specialities guaranteed***

*Article 48*

**Scope of application processes**

The provisions of this Chapter shall apply in respect of the quality schemes set out in Title II and Title III.

*Article 49*

**Application for registration of names**

1 Applications for registration of names under the quality schemes referred to in Article 48 may only be submitted by groups who work with the products with the name to be registered. In the case of a 'protected designations of origin' or 'protected geographical indications' name that designates a trans-border geographical area or in the case of a 'traditional specialities guaranteed' name, several groups from different Member States or third countries may lodge a joint application for registration.

A single natural or legal person may be treated as a group where it is shown that both of the following conditions are fulfilled:

a the person concerned is the only producer willing to submit an application;

b with regard to protected designations of origin and protected geographical indications, the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas or the characteristics of the product are different from those produced in neighbouring areas.

2 Where the application under the scheme set out in Title II relates to a geographical area in a Member State, or where an application under the scheme set out in Title III is prepared by a group established in a Member State, the application shall be addressed to the authorities of that Member State.

The Member State shall scrutinise the application by appropriate means in order to check that it is justified and meets the conditions of the respective scheme.

3 As part of the scrutiny referred to in the second subparagraph of paragraph 2 of this Article, the Member State shall initiate a national opposition procedure that ensures adequate publication of the application and that provides for a reasonable period within which any natural or legal person having a legitimate interest and established or resident on its territory may lodge an opposition to the application.

The Member State shall examine the admissibility of oppositions received under the scheme set out in Title II in the light of the criteria referred to in Article 10(1), or the admissibility of oppositions received under the scheme set out in Title III in the light of the criteria referred to in Article 21(1).

4 If, after assessment of any opposition received, the Member State considers that the requirements of this Regulation are met, it may take a favourable decision and lodge an application dossier with the Commission. It shall in such case inform the Commission of admissible oppositions received from a natural or legal person that have legally marketed the products in question, using the names concerned continuously for at least five years preceding the date of the publication referred to in paragraph 3.

The Member State shall ensure that its favourable decision is made public and that any natural or legal person having a legitimate interest has an opportunity to appeal.

The Member State shall ensure that the version of the product specification on which its favourable decision is based, is published, and shall provide electronic access to the product specification.

With reference to protected designations of origin and protected geographical indications, the Member State shall also ensure adequate publication of the version of the product specification on which the Commission takes its decision pursuant to Article 50(2).

5 Where the application under the scheme set out in Title II relates to a geographical area in a third country, or where an application under the scheme set out in Title III is prepared by a group established in a third country, the application shall be lodged with the Commission, either directly or via the authorities of the third country concerned.

6 The documents referred to in this Article which are sent to the Commission shall be in one of the official languages of the Union.

7 In order to facilitate the application process, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, defining the rules for carrying out the national objection procedure for joint applications concerning more than one national territory and complementing the rules of the application process.

The Commission may adopt implementing acts laying down detailed rules on procedures, form and presentation of applications, including for applications concerning more than one national territory. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

*Article 50*

**Scrutiny by the Commission and publication for opposition**

1 The Commission shall scrutinise by appropriate means any application that it receives pursuant to Article 49, in order to check that it is justified and that it meets the conditions of the

respective scheme. This scrutiny should not exceed a period of six months. Where this period is exceeded, the Commission shall indicate in writing to the applicant the reasons for the delay.

The Commission shall, at least each month, make public the list of names for which registration applications have been submitted to it, as well as their date of submission.

2 Where, based on the scrutiny carried out pursuant to the first subparagraph of paragraph 1, the Commission considers that the conditions laid down in this Regulation are fulfilled, it shall publish in the *Official Journal of the European Union*:

a for applications under the scheme set out in Title II, the single document and the reference to the publication of the product specification;

b for applications under the scheme set out in Title III, the specification.

*Article 51*

**Opposition procedure**

1 Within three months from the date of publication in the *Official Journal of the European Union*, the authorities of a Member State or of a third country, or a natural or legal person having a legitimate interest and established in a third country may lodge a notice of opposition with the Commission.

Any natural or legal person having a legitimate interest, established or resident in a Member State other than that from which the application was submitted, may lodge a notice of opposition with the Member State in which it is established within a time limit permitting an opposition to be lodged pursuant to the first subparagraph.

A notice of opposition shall contain a declaration that the application might infringe the conditions laid down in this Regulation. A notice of opposition that does not contain this declaration is void.

The Commission shall forward the notice of opposition to the authority or body that lodged the application without delay.

2 If a notice of opposition is lodged with the Commission and is followed within two months by a reasoned statement of opposition, the Commission shall check the admissibility of this reasoned statement of opposition.

3 Within two months after the receipt of an admissible reasoned statement of opposition, the Commission shall invite the authority or person that lodged the opposition and the authority or body that lodged the application to engage in appropriate consultations for a reasonable period that shall not exceed three months.

The authority or person that lodged the opposition and the authority or body that lodged the application shall start such appropriate consultations without undue delay. They shall provide each other with the relevant information to assess whether the application for registration complies with the conditions of this Regulation. If no agreement is reached, this information shall also be provided to the Commission.

At any time during these three months, the Commission may, at the request of the applicant extend the deadline for the consultations by a maximum of three months.

4 Where, following the appropriate consultations referred to in paragraph 3 of this Article, the details published in accordance with Article 50(2) have been substantially amended, the Commission shall repeat the scrutiny referred to in Article 50.

5 The notice of opposition, the reasoned statement of opposition and the related documents which are sent to the Commission in accordance with paragraphs 1 to 4 of this Article shall be in one of the official languages of the Union.

6 In order to establish clear procedures and deadlines for opposition, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, complementing the rules of the opposition procedure.

The Commission may adopt implementing acts laying down detailed rules on procedures, form and presentation of the oppositions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

*Article 52*

**Decision on registration**

1 Where, on the basis of the information available to the Commission from the scrutiny carried out pursuant to the first subparagraph of Article 50(1), the Commission considers that the conditions for registration are not fulfilled, it shall adopt implementing acts rejecting the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

2 If the Commission receives no notice of opposition or no admissible reasoned statement of opposition under Article 51, it shall adopt implementing acts, without applying the procedure referred to in Article 57(2), registering the name.

3 If the Commission receives an admissible reasoned statement of opposition, it shall, following the appropriate consultations referred to in Article 51(3), and taking into account the results thereof, either:

a if an agreement has been reached, register the name by means of implementing acts adopted without applying the procedure referred to in Article 57(2), and, if necessary, amend the information published pursuant to Article 50(2) provided such amendments are not substantial; or

b if an agreement has not been reached, adopt implementing acts deciding on the registration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

4 Acts of registration and decisions on rejection shall be published in the *Official Journal of the European Union*.

*Article 53*

**Amendment to a product specification**

1 A group having a legitimate interest may apply for approval of an amendment to a product specification.

Applications shall describe and give reasons for the amendments requested.

2 Where the amendment involves one or more amendments to the specification that are not minor, the amendment application shall follow the procedure laid down in Articles 49 to 52.

However, if the proposed amendments are minor, the Commission shall approve or reject the application. In the event of the approval of amendments implying a

modification of the elements referred to in Article 50(2), the Commission shall publish those elements in the *Official Journal of the European Union*.

For an amendment to be regarded as minor in the case of the quality scheme described in Title II, it shall not:

a relate to the essential characteristics of the product;

b alter the link referred to in point (f)(i) or (ii) of Article 7(1);

c include a change to the name, or to any part of the name of the product;

d affect the defined geographical area; or

e represent an increase in restrictions on trade in the product or its raw materials.

For an amendment to be regarded as minor in the case of the quality scheme described in Title III, it shall not:

a relate to the essential characteristics of the product;

b introduce essential changes to the production method; or

c include a change to the name, or to any part of the name of the product.

The scrutiny of the application shall focus on the proposed amendment.

3 In order to facilitate the administrative process of an amendment application, including where the amendment does not involve any change to the single document and where it concerns a temporary change in the specification resulting from the imposition of obligatory sanitary or phytosanitary measures by the public authorities, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, complementing the rules of the amendment application process.

The Commission may adopt implementing acts laying down detailed rules on procedures, form and presentation of an amendment application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

*Article 54*

**Cancellation**

1 The Commission may, on its own initiative or at the request of any natural or legal person having a legitimate interest, adopt implementing acts to cancel the registration of a protected designation of origin or of a protected geographical indication or of a traditional speciality guaranteed in the following cases:

a where compliance with the conditions of the specification is not ensured;

b where no product is placed on the market under the traditional speciality guaranteed, the protected designation of origin or the protected geographical indication for at least seven years.

The Commission may, at the request of the producers of product marketed under the registered name, cancel the corresponding registration.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

2 In order to ensure legal certainty that all parties have the opportunity to defend their rights and legitimate interests, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56 complementing the rules regarding the cancellation process.

The Commission may adopt implementing acts laying down detailed rules on procedures and form of the cancellation process, as well as on the presentation of the requests referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).