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

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 on the common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)[(1)], and in particular points (k), (l) and (m) of the first paragraph of Article 121 and Article 203b, in conjunction with Article 4 thereof,

Whereas:

(1) Article 18 of Commission Regulation (EC) No 607/2009[(2)] lays down that the 'Register of protected designations of origin and protected geographical indications' (hereinafter 'the Register') maintained by the Commission as provided for in Article 118n of Regulation (EC) No 1234/2007 is included in the electronic database 'E-Bacchus'.

(2) For the sake of simplification, the list of representative trade organisations and their members provided in Annex XI to Regulation (EC) No 607/2009 should be published on the Internet. Therefore, Article 30(2) should be amended accordingly.

(3) In order to avoid any discrimination between wines originating in the Union and those imported from third countries, it should be clarified that terms traditionally used in third countries may obtain recognition and protection as traditional terms in the Union also where they are used in conjunction with geographical indications or names of origin regulated by those third countries.

(4) For the sake of clarity, protected traditional terms listed in Annex XII should be transferred to the electronic database 'E-Bacchus' thus gathering protected designations of origin, protected geographical indications and protected traditional terms in a single IT tool, easily available for consultation purposes.

(5) In order to provide up-to-date information relating to traditional terms, the information indicated in Annex XII to Regulation (EC) No 607/2009 should be transferred to the electronic database 'E-Bacchus' and new information related to the protection of traditional terms should exclusively be included in that database.

Changes to legislation: *Commission Regulation (EU) No 538/2011 is up to date with all changes known to be in force on or before 28 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) In order to clarify the relationship between protected traditional terms and trademarks, it is necessary to specify on what legal basis an application for a trademark containing or consisting of a protected traditional term should be assessed in accordance with Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks[(3)] or Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark[(4)].

(7) In order to improve the transparency of the rules concerning traditional terms, in particular due to the fact that they are moved to the electronic database 'E-Bacchus', any modification relating to traditional terms shall follow a formally defined procedure.

(8) Rules should be provided for the indication of the alcoholic strength by volume of certain specific grapevine products in order to provide the public with accurate information.

(9) In order to facilitate less burdensome labelling, certain information related to the name and the address of the bottler may in some circumstances not be required.

(10) In order to improve controls of certain grapevine products, Member States should be allowed to regulate the use of particulars referring to producer and processor.

(11) For the sake of clarity, Articles 42(1) and 56(3) should be amended.

(12) The use of a specific type of bottle and closure for sparkling wines, quality sparkling wines and quality aromatic sparkling wines as provided for in Article 69 of Regulation (EC) No 607/2009 should be obligatory exclusively for the marketing and the export of such wines produced in the European Union.

(13) As regards the transmission of technical files of existing protected wine names referred to in Article 118s of Regulation (EC) No 1234/2007 the requirement to identify the applicant of an existing wine name as referred to in point (b) of Article 118c(1) of that Regulation may raise difficulty for some Member States since these existing protected wine names are regulated at a national level without any reference to a particular applicant. In order to facilitate the transition from the arrangements provided for in Council Regulation (EC) No 1493/1999[(5)] to those established by Regulation (EC) No 1234/2007, transitional measures should be provided to comply with national legislations of those Member States.

(14) It is necessary to amend Annex VIII to Regulation (EC) No 607/2009 as regards the prior rights which may be claimed in case of an opposition against an application for protection of a traditional term.

(15) Regulation (EC) No 607/2009 should therefore be amended accordingly.

(16) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

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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;

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.

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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[(6)] or Council Regulation (EC) No 207/2009[(7)].

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.;

(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".;

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(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:

a products traditionally bottled in such bottles and which:

(i) are listed in Article 113d(1)(a) of Regulation (EC) No 1234/2007;