

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

PART II

INTERNAL MARKET

TITLE II

RULES CONCERNING MARKETING AND PRODUCER ORGANISATIONS

CHAPTER I

Rules concerning marketing

Section 1

Marketing standards

Subsection 1

Introductory provisions

Article 73

Scope

Without prejudice to any other provisions applicable to agricultural products, as well as to the provisions adopted in the veterinary, phytosanitary and food sectors to ensure that products comply with hygiene and health standards and to protect animal, plant and human health, this Section lays down the rules concerning marketing standards. Those rules shall be divided between obligatory rules and optional reserved terms for agricultural products.

Subsection 2

Marketing standards by sectors or products

Article 74

General principle

The products for which marketing standards by sectors or products have been laid down in accordance with this Section may be marketed in the Union only if they conform to those standards.

Article 75

Establishment and content

1 Marketing standards may apply to one or more of the following sectors and products:

- a olive oil and table olives;
- b fruit and vegetables;
- c processed fruit and vegetable products;
- d bananas;
- e live plants;
- f eggs;
- g poultrymeat;
- h spreadable fats intended for human consumption;
- i hops.

2 In order to take into account the expectations of consumers and to improve the economic conditions for the production and marketing as well as the quality of the agricultural products covered by paragraphs 1 and 4 of this Article, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 on marketing standards by sectors or products, at all stages of the marketing, as well as derogations and exemptions from such standards in order to adapt to constantly changing market conditions, to evolving consumer demands, to developments in relevant international standards and to avoid creating obstacles to product innovation.

3 Without prejudice to Article 26 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council⁽¹⁾, the marketing standards referred to in paragraph 1 may cover one or more of the following, to be determined on a sectoral or product basis and based on the characteristics of each sector, the need to regulate the placing on the market and the conditions defined in paragraph 5 of this Article:

- a the technical definitions, designation and sales descriptions for sectors other than those set out in Article 78;
- b classification criteria such as grading into classes, weight, sizing, age and category;
- c the species, plant variety or animal race or the commercial type;
- d the presentation, labelling linked to obligatory marketing standards, packaging, rules to be applied in relation to packing centres, marking, year of harvesting and use of specific terms, without prejudice to Articles 92 to 123;
- e criteria such as appearance, consistency, conformation, product characteristics and the percentage of water content;

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- f specific substances used in production, or components or constituents, including their quantitative content, purity and identification;
- g the type of farming and production method including oenological practices and advanced systems of sustainable production;
- h coupage of must and wine including definitions thereof, blending and restrictions thereof;
- i the frequency of collection, delivery, preservation and handling, the conservation method and temperature, storage and transport;
- j the place of farming and/or origin, excluding poultrymeat and spreadable fats;
- k restrictions as regards the use of certain substances and practices;
- l specific use;
- m the conditions governing the disposal, the holding, circulation and use of products not in conformity with the marketing standards adopted pursuant to paragraph 1 or with the definitions, designations and sales descriptions as referred to in Article 78, as well as the disposal of by-products.

4 In addition to paragraph 1, marketing standards may apply to the wine sector. Points (f), (g), (h), (k) and (m) of paragraph 3 shall apply to that sector.

5 The marketing standards by sectors or products adopted pursuant to paragraph 1 of this Article shall be established without prejudice to Articles 84 to 88 and Annex IX and shall take into account:

- a the specific characteristics of the product concerned;
- b the need to ensure the conditions to facilitate the placing of the products on the market;
- c the interest of producers to communicate the product and farming characteristics, and the interest of consumers to receive adequate and transparent product information, including the place of farming to be determined on a case-by-case basis at the appropriate geographical level, after conducting an evaluation, in particular, of the costs and administrative burdens for operators and the benefits offered to producers and the end consumer;
- d the methods available for determining physical, chemical and organoleptic characteristics of the products;
- e the standard recommendations adopted by international bodies;
- f the need to preserve the natural and essential characteristics of products and to avoid causing a substantial change in the composition of the product concerned.

6 In order to take into account the expectations of consumers and the need to improve the quality and the economic conditions for the production and marketing of agricultural products, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 to modify the list of sectors in paragraph 1. Such delegated acts shall be strictly limited to demonstrated needs resulting from evolving consumer demand, technical progress or the need for product innovation, and shall be subject to a Commission report to the European Parliament and to the Council evaluating, in particular, the needs of the consumer, the costs and administrative burdens for operators, including the impact on the internal market and on international trade, and the benefits offered to producers and to the end consumer.

Article 76

Additional requirements for marketing of products in the fruit and vegetables sector

1 In addition, where relevant, to the applicable marketing standards referred to in Article 75, products of the fruit and vegetables sector which are intended to be sold fresh to the consumer may only be marketed if they are sound, fair and of marketable quality and if the country of origin is indicated.

2 The marketing standards referred to in paragraph 1, as well as any marketing standard applicable to the fruit and vegetables sector laid down in accordance with this subsection, shall apply at all marketing stages including import and export, and may cover quality, categorisation, weight, size, packing, packaging, storage, transport, presentation and marketing.

3 The holder of products of the fruit and vegetables sector covered by marketing standards shall not display such products, offer them for sale or deliver or market them in any manner within the Union other than in conformity with those standards and shall be responsible for ensuring such conformity.

4 In order to ensure the proper application of requirements set out in paragraph 1 of this Article and to take into account certain specific situations, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning specific derogations to this Article which are necessary for its proper application.

Article 77

Certification for hops

1 In addition, where relevant, to the applicable marketing standards, products of the hops sector harvested or prepared within the Union shall be subject to a certification procedure under this Article.

2 Certificates may be issued only for products having the minimum quality characteristics appropriate to a specific stage of marketing. In the case of hop powder, hop powder with higher lupulin content, extract of hops and mixed hop products, the certificate may only be issued if the alpha acid content of these products is not lower than that of the hops from which they have been prepared.

3 The certificates shall at least indicate:

- a the place(s) of production of the hops;
- b the year(s) of harvesting; and
- c the variety or varieties.

4 Products of the hops sector may be marketed or exported only if covered by a certificate issued in accordance with this Article.

In the case of imported products of the hops sector, the attestation provided for in Article 190(2) shall be deemed to be equivalent to that certificate.

5 The Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down measures derogating from paragraph 4 of this Article:

- a in order to satisfy the trade requirements of certain third countries; or
- b for products intended for special uses.

The measures referred to in the first subparagraph shall:

- (i) not prejudice the normal marketing of products for which the certificate has been issued; and
- (ii) be accompanied by guarantees intended to avoid any confusion with those products.

Article 78

Definitions, designations and sales descriptions for certain sectors and products

1 In addition, where relevant, to the applicable marketing standards, the definitions, designations and sales descriptions provided for in Annex VII shall apply to the following sectors or products:

- a beef and veal;
- b wine;
- c milk and milk products intended for human consumption;
- d poultrymeat;
- e eggs;
- f spreadable fats intended for human consumption; and
- g olive oil and table olives.

2 The definitions, designations or sales descriptions provided for in Annex VII may be used in the Union only for the marketing of a product which conforms to the corresponding requirements laid down in that Annex.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning the modifications, derogations or exemptions to the definitions and sales descriptions provided for in Annex VII. Those delegated acts shall be strictly limited to demonstrated needs resulting from evolving consumer demand, technical progress or the need for product innovation.

4 In order to ensure that operators and Member States have a clear and proper understanding of the definitions and sales descriptions provided for in Annex VII, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning the rules on their specification and application.

5 In order to take into account the expectations of consumers and the evolution of the milk products market, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 to specify the milk products in respect of which the animal species from which the milk originates is to be stated, if it is not bovine, and to lay down the necessary rules.

Article 79

Tolerance

1 In order to take into account the specific characteristics of each product or sector, the different marketing stages, the technical conditions, any possible considerable practical difficulty, and also the accuracy and repeatability of the methods of analysis, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 on tolerance for one or more specific standards in excess of which the entire batch of products shall be considered not to respect that standard.

2 When adopting the acts referred to in paragraph 1, the Commission shall take into account the need not to alter the intrinsic characteristics of the product and to avoid lowering its quality.

Article 80

Oenological practices and methods of analyses

1 Only oenological practices authorised in accordance with Annex VIII and provided for in point (g) of Article 75(3) and in Article 83(2) and (3) shall be used in the production and conservation of the products listed in Part II of Annex VII in the Union.

The first subparagraph shall not apply to:

- a grape juice and concentrated grape juice; and
- b grape must and concentrated grape must intended for the preparation of grape juice.

Authorised oenological practices shall only be used for the purposes of ensuring proper vinification, proper preservation or proper refinement of the product.

Products listed in Part II of Annex VII shall be produced in the Union in accordance with the rules laid down in Annex VIII.

2 Products listed in Part II of Annex VII shall not be marketed in the Union if:

- a they have undergone unauthorised Union oenological practices;
- b they have undergone unauthorised national oenological practices; or
- c they do not comply with the rules laid down in Annex VIII.

The grapevine products which are unmarketable in accordance with the first subparagraph shall be destroyed. By way of derogation from this rule, Member States may authorise the use of certain of such products, the characteristics of which they shall determine, by distilleries or vinegar factories or for industrial purposes, provided that this authorisation does not become an incentive to produce grapevine products by means of unauthorised oenological practices.

3 When authorising oenological practices for wine as referred to in point (g) of Article 75(3), the Commission shall:

- a take into account the oenological practices and methods of analyses recommended and published by the OIV, as well as the results of experimental use of as-yet unauthorised oenological practices;
- b take into account the protection of human health;
- c take into account the possible risk of consumers being misled due to their well established perception of the product and their corresponding expectations, having regard to the availability and feasibility of informational means to exclude such risks;
- d allow the preservation of the natural and essential characteristics of the wine and not cause a substantial change in the composition of the product concerned;
- e ensure an acceptable minimum level of environmental care;
- f respect the general rules concerning oenological practices and the rules laid down in Annex VIII.

4 In order to ensure the correct treatment of unmarketable wine products, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning rules on the national procedures referred to in the second subparagraph of paragraph

2 of this Article, and derogations therefrom concerning the withdrawal or destruction of wine products that do not comply with the requirements.

5 The Commission shall, where necessary, adopt implementing acts laying down the methods referred to in point (d) of Article 75(5) for products listed in Part II of Annex VII. Those methods shall be based on any relevant methods recommended and published by the OIV, unless they would be ineffective or inappropriate in view of the objective pursued by the Union. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

Pending the adoption of such implementing acts, the methods and rules to be used shall be those allowed by the Member State concerned.

Article 81

Wine grape varieties

1 Products listed in Part II of Annex VII and produced in the Union shall be made from wine grape varieties classifiable in accordance with paragraph 2 of this Article.

2 Subject to paragraph 3, Member States shall classify which wine grape varieties may be planted, replanted or grafted on their territories for the purpose of wine production.

Only wine grape varieties meeting the following conditions may be classified by Member States:

- a the variety concerned belongs to the species *Vitis vinifera* or comes from a cross between the species *Vitis vinifera* and other species of the genus *Vitis*;
- b the variety is not one of the following: Noah, Othello, Isabelle, Jacquez, Clinton and Herbemont.

Where a wine grape variety is deleted from the classification referred to in the first subparagraph, grubbing up of this variety shall take place within 15 years of its deletion.

3 Member States whose wine production does not exceed 50 000 hectolitres per wine year, calculated on the basis of the average production during the last five wine years, shall be exempt from the classification obligation provided for in the first subparagraph of paragraph 2.

However, also in those Member States, only wine grape varieties complying with the second subparagraph of paragraph 2 may be planted, replanted or grafted for the purpose of wine production.

4 By way of derogation from the first and third subparagraphs of paragraph 2 and the second subparagraph of paragraph 3, the planting, replanting or grafting of the following wine grape varieties shall be allowed by the Member States for scientific research and experimental purposes:

- a wine grape varieties which are not classified, in the case of the Member States other than those referred to in paragraph 3;
- b wine grape varieties which do not comply with the second subparagraph of paragraph 2, in the case of the Member States referred to in paragraph 3.

5 Areas planted with wine grape varieties for the purpose of wine production planted in breach of paragraphs 2, 3 and 4 shall be grubbed up.

However, there shall be no obligation to grub up such areas where the relevant production is intended exclusively for consumption by the wine-producer's household.

Article 82

Specific use of wine not conforming to the categories listed in Part II of Annex VII

Except for bottled wine in respect of which there is evidence that bottling was performed before 1 September 1971, wine produced from wine grape varieties listed in the classifications drawn up in accordance with the first subparagraph of Article 81(2) but not conforming to one of the categories laid down in Part II of Annex VII shall be used only for consumption by individual wine-producers' households, for the production of wine vinegar or for distillation.

Article 83

National rules for certain products and sectors

1 Notwithstanding Article 75(2), Member States may adopt or maintain national rules laying down different quality levels for spreadable fats. Such rules shall allow those quality levels to be assessed on the basis of criteria relating, in particular, to the raw materials used, the organoleptic characteristics of the products and their physical and microbiological stability.

Member States making use of the option provided for in the first subparagraph shall ensure that other Member States' products complying with the criteria laid down by those national rules may, in a non-discriminatory way, use terms which state that those criteria have been complied with.

2 Member States may limit or prohibit the use of certain oenological practices and provide for more stringent rules for wines authorised under Union law produced in their territory with a view to reinforcing the preservation of the essential characteristics of wines with a protected designation of origin or a protected geographical indication and of sparkling wines and liqueur wines.

3 Member States may allow the experimental use of unauthorised oenological practices.

4 In order to ensure the correct and transparent application of this Article, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 setting out the conditions for the application of paragraphs 1, 2 and 3 of this Article, as well as the conditions for the holding, circulation and use of the products obtained from the experimental practices referred to in paragraph 3 of this Article.

5 Member States may only adopt or maintain additional national provisions on products covered by a Union marketing standard if those provisions comply with Union law, in particular the principle of free movement of goods, and subject to Directive 98/34/EC of the European Parliament and of the Council⁽²⁾.

Subsection 3

Optional reserved terms

Article 84

General provision

A scheme for optional reserved terms by sector or by product shall be established in order to make it easier for producers of agricultural products that have value-adding characteristics or attributes to communicate those characteristics or attributes within the internal market, and in particular to support and complement the specific marketing standards.

This Subsection shall not apply to wine products referred to in Article 92(1).

Article 85

Existing optional reserved terms

1 The optional reserved terms covered by this scheme on 20 December 2013 are listed in Annex IX and the conditions of their use shall be laid down pursuant to point (a) of Article 86.

2 The optional reserved terms referred to in paragraph 1 of this Article shall remain in force, subject to any amendment, unless cancelled pursuant to Article 86.

Article 86

Reservation, amendment and cancellation of optional reserved terms

In order to take account of the expectations of consumers, developments in scientific and technical knowledge, the situation in the market and developments in marketing standards and in international standards, the Commission shall be empowered to adopt delegated acts in accordance with Article 227:

- (a) reserving an additional optional reserved term, laying down its conditions of use;
- (b) amending the conditions of use of an optional reserved term; or
- (c) cancelling an optional reserved term.

Article 87

Additional optional reserved terms

1 A term shall be eligible to be reserved as an additional optional reserved term only if it fulfils all of the following requirements:

- a the term relates to a characteristic of a product or to a farming or processing attribute and relates to a sector or product;
- b the use of the term enables clearer communication of the added value of the product by its specific characteristics or farming or processing attributes;

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- c when the product is placed on the market, the characteristic or attribute referred to in point (a) is identifiable by consumers in several Member States;
- d the conditions and use of the term are in conformity with Directive 2000/13/EC of the European Parliament and of the Council⁽³⁾ or Regulation (EU) No 1169/2011.

When introducing an additional optional reserved term, the Commission shall take account of any relevant international standard and of the existing reserved terms for the products or sectors involved.

2 In order to take the characteristics of certain sectors as well as consumer expectations into account, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down further details on the requirements for the introduction of an additional reserved term, as referred to in paragraph 1 of this Article.

Article 88

Restrictions on use of optional reserved terms

1 An optional reserved term may only be used to describe products that conform to the applicable conditions of use.

2 Member States shall adopt appropriate measures to ensure that product labelling does not give rise to confusion with optional reserved terms.

3 In order to ensure that products described by means of optional reserved terms conform to the applicable conditions of use, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down additional rules on the use of optional reserved terms.

Subsection 4

Marketing standards related to import and export

Article 89

General provisions

In order to take into account the specific characteristics of trade between the Union and certain third countries and the special character of certain agricultural products, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning:

- (a) the conditions under which imported products are considered to have an equivalent level of conformity to the Union marketing standards and conditions allowing derogation from Article 74; and
- (b) the rules concerning the application of the marketing standards to products exported from the Union.

Article 90

Special provisions for the imports of wine

1 Save as otherwise provided for in international agreements concluded in accordance with the TFEU, the provisions concerning designation of origin and geographical indications and labelling of wine set out in Section 2 of this Chapter, and the definitions, designations and sales descriptions referred to in Article 78 of this Regulation shall apply to products imported into the Union and falling within CN codes 2009 61, 2009 69 and 2204.

2 Save as otherwise provided for in international agreements concluded in accordance with the TFEU, products referred to in paragraph 1 of this Article shall be produced in accordance with oenological practices authorised by the Union pursuant to this Regulation or, prior to the authorisation pursuant to Article 80(3), produced in accordance with oenological practices recommended and published by the OIV.

3 The import of the products referred to in paragraph 1 shall be subject to the presentation of:

- a a certificate evincing compliance with the provisions referred to in paragraphs 1 and 2, drawn up by a competent body, included on a list to be made public by the Commission, in the product's country of origin;
- b an analysis report drawn up by a body or department designated by the product's country of origin, if the product is intended for direct human consumption.

Subsection 5

Common provisions

Article 91

Implementing powers in accordance with the examination procedure

The Commission may adopt implementing acts:

- (a) establishing the list of milk and milk products referred to in the second paragraph of point 5 of Part III of Annex VII and spreadable fats referred to in point (a) of the sixth paragraph of Section I of Part VII of Annex VII, on the basis of indicative lists of products which Member States regard as corresponding, in their territory, to those provisions and which Member States shall send to the Commission;
- (b) laying down rules for the implementation of the marketing standards by sector or product;
- (c) laying down rules for determining whether products have undergone processes contrary to the authorised oenological practices;
- (d) laying down rules for the methods of analysis for determining the characteristics of products;
- (e) laying down rules for fixing the tolerance level;
- (f) laying down rules for the implementation of the measures referred to in Article 89;

- (g) laying down rules for the identification or registration of the producer and/or the industrial facilities in which the product has been prepared or processed, for the certification procedures and for the commercial documents, accompanying documents and records to be kept.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

Section 2

Designations of origin, geographical indications and traditional terms in the wine sector

Subsection 1

Introductory provisions

Article 92

Scope

1 Rules on designations of origin, geographical indications and traditional terms laid down in this Section shall apply to the products referred to in points 1, 3 to 6, 8, 9, 11, 15 and 16 of Part II of Annex VIII.

- 2 The rules referred to in paragraph 1 shall be based on:
- a protecting the legitimate interests of consumers and producers;
 - b ensuring the smooth operation of the internal market in the products concerned; and
 - c promoting the production of quality products referred to in this Section, whilst allowing national quality policy measures.

Subsection 2

Designations of origin and geographical indications

Article 93

Definitions

- 1 For the purposes of this Section, the following definitions shall apply:
- a "a designation of origin" means the name of a region, a specific place or, in exceptional and duly justifiable cases, a country used to describe a product referred to in Article 92(1) fulfilling the following requirements:
 - (i) the quality and characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
 - (ii) the grapes from which the product is produced come exclusively from that geographical area;

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- (iii) the production takes place in that geographical area; and
 - (iv) the product is obtained from vine varieties belonging to *Vitis vinifera*;
- b "a geographical indication" means an indication referring to a region, a specific place or, in exceptional and duly justifiable cases, a country, used to describe a product referred to in Article 92(1) fulfilling the following requirements:
- (i) it possesses a specific quality, reputation or other characteristics attributable to that geographical origin;
 - (ii) at least 85 % of the grapes used for its production come exclusively from that geographical area;
 - (iii) its production takes place in that geographical area; and
 - (iv) it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*.
- 2 Certain traditionally used names shall constitute a designation of origin where they:
- a designate a wine;
 - b refer to a geographical name;
 - c fulfil the requirements referred to in points (a)(i) to (iv) of paragraph 1; and
 - d have undergone the procedure conferring protection on designations of origin and geographical indications laid down in this Subsection.
- 3 Designations of origin and geographical indications, including those relating to geographical areas in third countries, shall be eligible for protection in the Union in accordance with the rules laid down in this Subsection.
- 4 Production as referred to in point (a)(iii) of paragraph 1 shall cover all the operations involved, from the harvesting of the grapes to the completion of the wine-making processes, with the exception of any post-production processes.
- 5 For the purpose of the application of point (b)(ii) of paragraph 1, the maximum 15 % share of grapes which may originate outside the demarcated area shall originate from the Member State or third country in which the demarcated area is situated.

Article 94

Applications for protection

- 1 Applications for protection of names as designations of origin or geographical indications shall include a technical file containing:
- a the name to be protected;
 - b the name and address of the applicant;
 - c a product specification, as referred to in paragraph 2; and
 - d a single document summarising the product specification referred to in paragraph 2.
- 2 The product specification shall enable interested parties to verify the relevant conditions of production relating to the designation of origin or geographical indication.
- The product specification shall at least consist of:
- a the name to be protected;

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- b a description of the wine or wines:
 - (i) in respect of a designation of origin, the principal analytical and organoleptic characteristics;
 - (ii) in respect of a geographical indication, the principal analytical characteristics as well as an evaluation or indication of its organoleptic characteristics;
 - c where applicable, the specific oenological practices used to make the wine or wines, as well as the relevant restrictions on making them;
 - d the demarcation of the geographical area concerned;
 - e the maximum yields per hectare;
 - f an indication of the wine grape variety or varieties that the wine or wines are obtained from;
 - g the details bearing out the link referred to in point (a)(i) or, as the case may be, in point (b)(i) of Article 93(1);
 - h applicable requirements laid down in Union or national legislation or, where provided for by Member States, by an organisation which manages the protected designation of origin or the protected geographical indication, having regard to the fact that such requirements must be objective, non-discriminatory and compatible with Union law;
 - i the name and address of the authorities or bodies verifying compliance with the provisions of the product specification, and their specific tasks.
- 3 Where the application for protection concerns a geographical area in a third country, it shall contain, in addition to the elements provided for in paragraphs 1 and 2, proof that the name concerned is protected in its country of origin.

Article 95

Applicants

- 1 Any interested group of producers, or in exceptional and duly justifiable cases a single producer, may apply for the protection of a designation of origin or geographical indication. Other interested parties may participate in the application.
- 2 Producers may apply for protection only for wines which they produce.
- 3 In the case of a name designating a trans-border geographical area or a traditional name connected to a trans-border geographical area, a joint application may be submitted.

Article 96

Preliminary national procedure

- 1 Applications for protection of a designation of origin or a geographical indication for wines originating in the Union shall be subject to a preliminary national procedure.
- 2 The application for protection shall be filed with the Member State in the territory of which the designation of origin or geographical indication originates.
- 3 The Member State with which the application for protection is filed shall examine it in order to verify whether it meets the conditions set out in this Subsection.

That Member State shall carry out a national procedure ensuring adequate publication of the application and providing for a period of at least two months from the date of publication within which any natural or legal person having a legitimate interest and resident or established on its territory may object to the proposed protection by lodging a duly substantiated statement with that Member State.

4 If the Member State assessing the application considers that the designation of origin or the geographical indication does not comply with the conditions laid down in this Subsection or is incompatible with Union law, it shall reject the application.

5 If the Member State assessing the application considers that the requirements are fulfilled, it shall carry out a national procedure which ensures adequate publication of the product specification at least on the Internet and forward the application to the Commission.

Article 97

Scrutiny by the Commission

1 The Commission shall make public the date of submission of the application for protection of the designation of origin or geographical indication.

2 The Commission shall examine whether the applications for protection as referred to in Article 94 meet the conditions laid down in this Subsection.

3 Where the Commission considers that the conditions laid down in this Subsection are met, it shall adopt implementing acts concerning the publication, in the *Official Journal of the European Union*, of the single document referred to in point (d) of Article 94(1) and of the reference to the publication of the product specification made in the course of the preliminary national procedure. Those implementing acts shall be adopted without applying the procedure referred to in Article 229(2) or (3).

4 Where the Commission considers that the conditions laid down in this Subsection are not met, it shall adopt implementing acts rejecting the application.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

Article 98

Objection procedure

Within two months from the date of the publication of the single document as referred to in point (d) of Article 94(1), any Member State or third country, or any natural or legal person having a legitimate interest and resident or established in a Member State other than that applying for the protection or in a third country, may object to the proposed protection by submitting to the Commission a duly substantiated statement concerning the conditions of eligibility as laid down in this Subsection.

In the case of natural or legal persons resident or established in third countries, such a statement shall be submitted, either directly or via the authorities of the third country concerned, within the two month period referred to in the first paragraph.

Article 99

Decision on protection

On the basis of the information available to the Commission upon the completion of the objection procedure referred to in Article 98, the Commission shall adopt implementing acts either conferring protection on the designation of origin or geographical indication which meets the conditions laid down in this Subsection and is compatible with Union law, or rejecting the application where those conditions are not met.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

Article 100

Homonyms

1 A name for which an application is submitted and which is wholly or partially homonymous with a name already registered under this Regulation shall be registered with due regard to local and traditional usage and any risk of confusion.

A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of those products is concerned.

A registered homonymous name may be used only if there is a sufficient distinction in practice between the homonym registered subsequently and the name already in the register, having regard to the need to treat the producers concerned in an equitable manner and the need to avoid misleading the consumer.

2 Paragraph 1 shall apply *mutatis mutandis* if a name for which an application is submitted is wholly or partially homonymous with a geographical indication protected under the national law of Member States.

3 Where the name of a wine grape variety contains or consists of a protected designation of origin or a protected geographical indication, that name shall not be used for the purposes of labelling agricultural products.

In order to take into account existing labelling practices, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down exceptions from that rule.

4 The protection of designations of origin and geographical indications of products covered by Article 93 of this Regulation shall be without prejudice to protected geographical indications applying to spirit drinks as defined in Article 2 of Regulation (EC) No 110/2008 of the European Parliament and of the Council⁽⁴⁾.

Article 101

Additional grounds for refusal of protection

1 A name that has become generic shall not be protected as a designation of origin or a geographical indication.

For the purposes of this Section, a "name that has become generic" means the name of a wine which, although it relates to the place or the region where this product was originally produced or marketed, has become the common name of a wine in the Union.

To establish whether or not a name has become generic, the relevant factors shall be taken into account, in particular:

- a the existing situation in the Union, notably in areas of consumption;
- b the relevant Union or national law.

2 A name shall not be protected as a designation of origin or geographical indication where, in the light of a trade mark's reputation and renown, protection could mislead the consumer as to the true identity of the wine.

Article 102

Relationship with trade marks

1 The registration of a trade mark that contains or consists of a protected designation of origin or a geographical indication which does not comply with the product specification concerned or the use of which falls under Article 103(2), and that relates to a product falling under one of the categories listed in Part II of Annex VII shall be:

- a refused if the application for registration of the trade mark is submitted after the date of submission of the application for protection of the designation of origin or geographical indication to the Commission and the designation of origin or geographical indication is subsequently protected; or
- b invalidated.

2 Without prejudice to Article 101(2), a trade mark referred to in paragraph 1 of this Article which has been applied for, registered or established by use in good faith, if that possibility is provided for by the law concerned, in the territory of the Union either before the date of protection of the designation of origin or geographical indication in the country of origin, or before 1 January 1996, may continue to be used and renewed notwithstanding the protection of a designation of origin or geographical indication, provided that no grounds for the trade mark's invalidity or revocation exist under Directive 2008/95/EC of the European Parliament and of the Council⁽⁵⁾ or under Council Regulation (EC) No 207/2009⁽⁶⁾.

In such cases, the use of the designation of origin or geographical indication shall be permitted alongside the relevant trade marks.

Article 103

Protection

1 A protected designation of origin and a protected geographical indication may be used by any operator marketing a wine which has been produced in conformity with the corresponding product specification.

2 A protected designation of origin and a protected geographical indication, as well as the wine using that protected name in conformity with the product specifications, shall be protected against:

- a any direct or indirect commercial use of that protected name:

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- (i) by comparable products not complying with the product specification of the protected name; or
 - (ii) in so far as such use exploits the reputation of a designation of origin or a geographical indication;
- b any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar;
 - c any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, as well as the packing of the product in a container liable to convey a false impression as to its origin;
 - d any other practice liable to mislead the consumer as to the true origin of the product.
- 3 Protected designations of origin and protected geographical indications shall not become generic in the Union within the meaning of Article 101(1).

Article 104

Register

The Commission shall establish and maintain an electronic register of protected designations of origin and protected geographical indications for wine which shall be publicly accessible. Designations of origin and geographical indications pertaining to products of third countries that are protected in the Union pursuant to an international agreement to which the Union is a contracting party may be entered in the register. Unless specifically identified in that agreement as protected designations of origin within the meaning of this Regulation, such names shall be entered in the register as protected geographical indications.

Article 105

Amendments to product specifications

An applicant satisfying the conditions laid down in Article 95 may apply for approval of an amendment to the product specification of a protected designation of origin or of a protected geographical indication, in particular to take account of developments in scientific and technical knowledge or to redemarcate the geographical area referred to in point (d) of the second subparagraph of Article 94(2). Applications shall describe and state reasons for the amendments requested.

Article 106

Cancellation

The Commission may, on its own initiative or on a duly substantiated request by a Member State, a third country or a natural or legal person having a legitimate interest, adopt implementing acts cancelling the protection of a designation of origin or a geographical indication if compliance with the corresponding product specification is no longer ensured.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

Article 107

Existing protected wine names

1 Wine names referred to in Articles 51 and 54 of Council Regulation (EC) No 1493/1999⁽⁷⁾ and Article 28 of Commission Regulation (EC) No 753/2002⁽⁸⁾ shall be automatically protected under this Regulation. The Commission shall list them in the register provided for in Article 104 of this Regulation.

2 The Commission shall take the corresponding formal step of removing wine names to which Article 118s(3) of Regulation (EC) No 1234/2007 applies from the register provided for in Article 104 of this Regulation by means of implementing acts adopted without applying the procedure referred to in Article 229(2) or (3) of this Regulation.

3 Article 106 shall not apply to existing protected wine names referred to in paragraph 1 of this Article.

Until 31 December 2014, the Commission may, on its own initiative, adopt implementing acts cancelling the protection of existing protected wine names referred to in paragraph 1 of this Article if they do not meet the conditions laid down in Article 93.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

4 For Croatia, the wine names published in the *Official Journal of the European Union*⁽⁹⁾ shall be protected under this Regulation, subject to a favourable outcome of the objection procedure. The Commission shall list them in the register provided for in Article 104.

Article 108

Fees

Member States may charge fees to cover their costs, including those incurred in examining the applications for protection, statements of objections, applications for amendments and requests for cancellations under this Subsection.

Article 109

Delegated powers

1 In order to take into account the specific characteristics of the production in the demarcated geographical area, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down:

- a the additional criteria for the demarcation of the geographical area; and
- b the restrictions and derogations concerning the production in the demarcated geographical area.

2 In order to ensure product quality and traceability, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down the conditions under which product specifications may include additional requirements.

3 In order to ensure the protection of the legitimate rights and interests of producers and operators, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 on:

- a the type of applicant that may apply for the protection of a designation of origin or geographical indication;
- b the conditions to be followed in respect of an application for the protection of a designation of origin or geographical indication, scrutiny by the Commission, the objection procedure, and procedures for amendment, cancellation and conversion of protected designations of origin or protected geographical indications;
- c the conditions applicable to trans-border applications;
- d the conditions for applications concerning geographical areas in a third country;
- e the date from which a protection or an amendment to a protection shall apply;
- f the conditions related to amendments to product specifications.

4 In order to ensure an adequate level of protection, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 on restrictions regarding the protected name.

5 In order to ensure that economic operators and competent authorities are not unduly affected by the application of this Subsection as regards wine names which have been granted protection prior to 1 August 2009, or for which an application for protection has been made prior to that date, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down transitional rules concerning:

- a wine names recognised by Member States as designations of origin or geographical indications by 1 August 2009, and wine names for which an application for protection has been made prior to that date;
- b wines placed on the market or labelled before a specific date; and
- c amendments to the product specifications.

Article 110

Implementing powers in accordance with the examination procedure

1 The Commission may adopt implementing acts laying down necessary measures concerning:

- a the information to be provided in the product specification with regard to the link between the geographical area and the final product;
- b the making of decisions on protection or rejection available to the public;
- c the establishment and the maintenance of the register referred to in Article 104;
- d the conversion from protected designation of origin to protected geographical indication;
- e the submission of trans-border applications.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

2 The Commission may adopt implementing acts laying down necessary measures concerning the procedure for the examination of applications for protection or for the approval of an amendment of a designation of origin or a geographical indication, as well as the procedure for requests for objection, cancellation, or conversion, and the submission of information related to existing protected wine names, in particular with respect to:

- a models for documents and the transmission format;
- b time limits;
- c the details of the facts, evidence and supporting documents to be submitted in support of an application or a request.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

Article 111

Other implementing powers

Where an objection is deemed inadmissible, the Commission shall adopt an implementing act rejecting it as inadmissible. That implementing act shall be adopted without applying the procedure referred to in Article 229(2) or (3).

Subsection 3

Traditional terms

Article 112

Definition

A "traditional term" means a term traditionally used in Member States for the products referred to in Article 92(1) to designate:

- (a) that the product has a protected designation of origin or a protected geographical indication under Union or national law; or
- (b) the production or ageing method or the quality, colour, type of place, or a particular event linked to the history of the product with a protected designation of origin or a protected geographical indication.

Article 113

Protection

1 A protected traditional term may only be used for a product which has been produced in conformity with the definition provided for in Article 112.

Traditional terms shall be protected against unlawful use.

2 Traditional terms shall be protected, only in the language and for the categories of grape vine products claimed in the application, against:

- a any misuse of the protected term, including where it 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, placed on the inner or outer packaging, advertising material or documents relating to it;

- c any other practice likely to mislead the consumer, in particular to give the impression that the wine qualifies for the protected traditional term.
- 3 Traditional terms shall not become generic in the Union.

Article 114

Delegated powers

1 In order to ensure an adequate level of protection, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 regarding the language and the spelling of the traditional term to be protected.

2 In order to ensure the protection of the legitimate rights and interests of producers and operators, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 establishing:

- a the type of applicants that may apply for the protection of a traditional term;
- b the conditions of validity of an application for protection of a traditional term;
- c the grounds for objecting to a proposed recognition of a traditional term;
- d the scope of the protection, the relationship with trade marks, protected traditional terms, protected designations of origin or geographical indications, homonyms, or certain wine grape names;
- e the grounds for cancellation of a traditional term;
- f the date of submission of an application or of a request for objection or cancellation;
- g the procedures to be followed in respect of an application for the protection of a traditional term, including scrutiny by the Commission, the objection procedure and the procedures on cancellation and modification.

3 In order to take into account the specific characteristics of trade between the Union and certain third countries, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 laying down the conditions under which traditional terms may be used on products from third countries and providing for derogations from Article 112 and Article 113(2).

Article 115

Implementing powers in accordance with the examination procedure

1 The Commission may adopt implementing acts laying down necessary measures concerning the procedure for the examination of applications for protection or for the approval of a modification of a traditional term, as well as the procedure for requests for objection or cancellation, in particular with respect to:

- a models for documents and the transmission format;
- b time limits;
- c the details of the facts, evidence and supporting documents to be submitted in support of the application or request;
- d detailed rules on making protected traditional terms available to the public.

2 The Commission shall adopt implementing acts accepting or rejecting an application for protection of a traditional term or a request for a modification of the protected term or the cancellation of the protection of a traditional term.

3 The Commission shall adopt implementing acts providing for the protection of traditional terms in respect of which an application for protection has been accepted, in particular by classifying them in accordance with Article 112 and by publishing a definition and/or the conditions of use.

4 The implementing acts referred to in paragraphs 1, 2 and 3 of this Article shall be adopted in accordance with the examination procedure referred to in Article 229(2).

Article 116

Other implementing powers

Where an objection is deemed inadmissible, the Commission shall adopt an implementing act rejecting it as inadmissible. That implementing act shall be adopted without applying the procedure referred to in Article 229(2) or (3).

Section 3

Labelling and presentation in the wine sector

Article 117

Definition

For the purposes of this Section:

- (a) "labelling" means any words, particulars, trade marks, brand name, pictorial matter or symbol placed on any packaging, document, notice, label, ring or collar accompanying or referring to a given product;
- (b) "presentation" means any information conveyed to consumers by virtue of the packaging of the product concerned, including the form and type of bottles.

Article 118

Applicability of horizontal rules

Save as otherwise provided for in this Regulation, Council Directive 89/396/EEC⁽¹⁰⁾, Directive 2000/13/EC, Directive 2007/45/EC of the European Parliament and of the Council⁽¹¹⁾, Directive 2008/95/EC and Regulation (EU) No 1169/2011 shall apply to the labelling and presentation.

The labelling of the products referred to in points 1 to 11, 13, 15 and 16 of Part II of Annex VII may not be supplemented by any particulars other than those provided for in this Regulation unless those particulars satisfy the requirements of Directive 2000/13/EC or Regulation (EU) No 1169/2011.

Article 119

Compulsory particulars

1 Labelling and presentation of the products referred to in points 1 to 11, 13, 15 and 16 of Part II of Annex VII marketed in the Union or for export shall contain the following compulsory particulars:

- a the designation for the category of the grapevine product in accordance with Part II of Annex VII;
- b for wines with a protected designation of origin or a protected geographical indication:
 - (i) the term "protected designation of origin" or "protected geographical indication"; and
 - (ii) the name of the protected designation of origin or the protected geographical indication;
- c the actual alcoholic strength by volume;
- d an indication of provenance;
- e an indication of the bottler or, in the case of sparkling wine, aerated sparkling wine, quality sparkling wine or quality aromatic sparkling wine, the name of the producer or vendor;
- f an indication of the importer in the case of imported wines; and
- g in the case of sparkling wine, aerated sparkling wine, quality sparkling wine or quality aromatic sparkling wine, an indication of the sugar content.

2 By way of derogation from point (a) of paragraph 1, the reference to the category of the grapevine product may be omitted for wines whose labels include the name of a protected designation of origin or a protected geographical indication.

3 By way of derogation from point (b) of paragraph 1, the reference to the terms "protected designation of origin" or "protected geographical indication" may be omitted in the following cases:

- a where a traditional term in accordance with point (a) of Article 112 is displayed on the label in accordance with the product specification referred to in Article 94(2);
- b in exceptional and duly justified circumstances to be determined by the Commission by means of delegated acts adopted in accordance with Article 227 in order to ensure compliance with existing labelling practices.

Article 120

Optional particulars

1 Labelling and presentation of the products referred to in points 1 to 11, 13, 15 and 16 of Part II of Annex VII may, in particular, contain the following optional particulars:

- a the vintage year;
- b the name of one or more wine grape varieties;
- c in the case of wines other than those referred to in point (g) of Article 119(1), terms indicating the sugar content;
- d for wines with a protected designation of origin or a protected geographical indication, traditional terms in accordance with point (b) of Article 112;

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- e the Union symbol indicating the protected designation of origin or the protected geographical indication;
- f terms referring to certain production methods;
- g for wines bearing a protected designation of origin or a protected geographical indication, the name of another geographical unit that is smaller or larger than the area underlying the designation of origin or geographical indication.

2 Without prejudice to Article 100(3), as regards the use of particulars referred to in points (a) and (b) of paragraph 1 of this Article for wines without a protected designation of origin or a protected geographical indication:

- a Member States shall introduce laws, regulations or administrative provisions to ensure certification, approval and verification procedures so as to guarantee the veracity of the information concerned;
- b Member States may, on the basis of non-discriminatory and objective criteria and with due regard to fair competition, for wine produced from wine grape varieties on their territory, draw up lists of excluded wine grape varieties, in particular if:
 - (i) there is a risk of confusion for consumers as to the true origin of the wine due to the fact that the wine grape variety forms an integral part of an existing protected designation of origin or a protected geographical indication;
 - (ii) checks would not be cost-effective due to the fact that the given wine grape variety represents a very small part of the Member State vineyard;
- c mixtures of wines from different Member States shall not give rise to labelling of the wine grape variety unless the Member States concerned agree otherwise and ensure the feasibility of the relevant certification, approval and verification procedures.

Article 121

Languages

1 The compulsory and optional particulars referred to in Articles 119 and 120 shall, where expressed in words, appear in one or more official language of the Union.

2 Notwithstanding paragraph 1, the name of a protected designation of origin or a protected geographical indication or a traditional term as referred to in point (b) of Article 112 shall appear on the label in the language or languages for which the protection applies. In the case of a protected designation of origin or a protected geographical indication or a national specific designation using a non-Latin alphabet, the name may also appear in one or more official languages of the Union.

Article 122

Delegated powers

1 In order to take into account the specific characteristics of the wine sector, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning rules and restrictions on:

- a the presentation and use of labelling particulars other than those provided for in this Section;
- b compulsory particulars concerning:

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- (i) terms to be used to formulate the compulsory particulars and their conditions of use;
 - (ii) terms referring to a holding and the conditions for their use;
 - (iii) provisions allowing the producing Member States to establish additional rules relating to compulsory particulars;
 - (iv) provisions allowing further derogations in addition to those referred to in Article 119(2) as regards the omission of the reference to the category of the grapevine product; and
 - (v) provisions on the use of languages;
- c optional particulars concerning:
- (i) terms to be used to formulate the optional particulars and their conditions of use;
 - (ii) provisions allowing the producing Member States to establish additional rules relating to optional particulars;
- d the presentation concerning:
- (i) the conditions of use of certain bottle shapes, and a list of certain specific bottle shapes;
 - (ii) the conditions of use of "sparkling wine"-type bottles and closures;
 - (iii) provisions allowing the producing Member States to establish additional rules relating to presentation;
 - (iv) provisions on the use of languages.

2 In order to ensure the protection of the legitimate interests of operators, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning rules as regards temporary labelling and presentation of wines bearing a designation of origin or a geographical indication, where that designation of origin or geographical indication fulfils the necessary requirements.

3 In order to ensure that economic operators are not prejudiced, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning transitional provisions as regards wine placed on the market and labelled in accordance with the relevant rules applying before 1 August 2009.

4 In order to take account of the specific characteristics in trade between the Union and certain third countries, the Commission shall be empowered to adopt delegated acts in accordance with Article 227 concerning derogations from this Section as regards products to be exported where required by the law of the third country concerned.

Article 123

Implementing powers in accordance with the examination procedure

The Commission may adopt implementing acts laying down necessary measures concerning the procedures and technical criteria applicable to this Section, including the necessary measures for the certification, approval and verification procedures applicable to wines without a protected designation of origin or a protected geographical indication.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

- (1) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).
- (2) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37).
- (3) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000, p. 29).
- (4) Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (OJ L 39, 13.2.2008, p. 16).
- (5) 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 (OJ L 299, 8.11.2008, p. 25).
- (6) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ L 78, 24.3.2009, p. 1).
- (7) Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ L 179, 14.7.1999, p. 1).
- (8) Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (OJ L 118, 4.5.2002, p. 1).
- (9) OJ C 116, 14.4.2011, p. 12.
- (10) Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs (OJ L 186, 30.6.1989, p. 21).
- (11) Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC (OJ L 247, 21.9.2007, p. 17).