

STATUS AND COMPETENCE OF THE APPLICANT

I. The European Union common agriculture and fisheries policy and related objectives

The European Union has legal personality, as set out in Article 47 of the Treaty on European Union¹.

Article 4(2) of the Treaty on the Functioning of the European Union² (TFEU) provides for the European Union and Member States' shared competence in the area of agriculture and fisheries.

Under Article 38(1) of the TFEU, The European Union "shall define and implement a common agriculture and fisheries policy".

Based on Article 43(2) of the TFEU, The European Parliament and the Council are the European Union co-legislators in the area of agriculture, that establish the common organisation of agricultural markets the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.

II. The European Union's competence in establishing measures for the creation of European intellectual property rights

Pursuant to Article 118 of the TFEU, "In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements".

III. The European Union quality schemes for agricultural products and foodstuffs

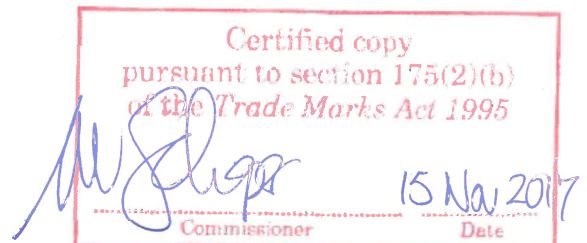
According Article 22(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights, "Members shall provide legal means for interested parties to prevent: (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good.; ...

Having regard to Article 43(2) and the first paragraph of Article 118 of the TFEU, both referred to above, the European Union has adopted Regulation (EU) no 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs³

¹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C 326 , 26.10.2012 P. 0001)

² *Ibidem*

³ OJ L 343, 14.12.2012, p. 1



(the Regulation (EU) no 1151/2012). Other legal basis have been established for wines and spirits, respectively Regulation (EU) no 1308/2013 and Regulation (EU) no 110/2008 for spirits.

Regulation (EU) no 1151/2012 establishes quality schemes which provide the basis for the identification of names and terms of agricultural products and foodstuffs.

Under Article 4, "A scheme for protected designations of origin and protected geographical indications is established in order to help producers of products linked to a geographical area by: (a) securing fair returns for the qualities of their products; (b) ensuring uniform protection of the names as an intellectual property right in the territory of the Union; (c) providing clear information on the value adding attributes of the product to consumers."

Under Article 17, "A scheme for traditional specialities guaranteed is established to safeguard traditional methods of production and recipes by helping producers of traditional product in marketing and communicating the value-adding attributes of their traditional recipes and products to consumers."

According to its Article 12(2) of Regulation (EU) no 1151/2012, "Union symbols designed to publicise protected designations of origin and protected geographical indications shall be established." Under Article 23(2), "A Union symbol shall be established in order to publicise the traditional specialities guaranteed." Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 establishes the Union symbols for the protected designations of origin, protected geographical indications and the traditional specialities guaranteed.

IV. The systems

The systems set up under the aforementioned Regulations allow producers to communicate to buyers and consumers that their product complies with requirements linked to their geographical origin (PDO, PGI), or to the criteria in Article 18 of Regulation (EU) no 1151/2012 for TSG's .

Under the schemes specific protected designations of origin, protected geographical indications and traditional specialities guaranteed are registered in relation to a specific good, which comes in the list of goods for which the certification mark is applied. Examples of a registered PDO, PGI and TSG are respectively "White Stilton cheese", "Rutland Bitter" and "Traditionally Framed Gloucestershire Old Spots Pork".

A group of producers can apply for a geographical indication to be registered as a protected designation of origin, protected geographical indication or as traditional specialities guaranteed.

If, at the end of the procedure, a name is registered as a protected designation of origin, protected geographical indication or as traditional specialities guaranteed, producers whose product complies with the specific characteristics may use it to identify that this is the case. A negative decision may be appealed before the Court of Justice of the European Union.

The European Commission established a publicly accessible updated register of protected designations of origin, protected geographical indications and traditional specialities guaranteed, recognised under the present scheme.

<http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=pL0hLqqLXhNmFQyF11b24mY3t9dJQPflg3xbL2YphGT4k6zdWn34!-370879141>

Producers shall use the symbol (the certification mark) to identify that their product is a protected designation of origin, a protected geographical indication or a traditional specialities guaranteed which complies with the specific requirements for each registered name.

Controls to verify compliance with the legal requirements related to the quality schemes and each registered name shall be carried out by Member States competent authorities. In the event of breaches, Member States shall take all necessary measures. (Title V, Chapter 1, of Regulation (EU) no 1151/2012).

The symbols are recognised internationally and used on goods throughout the European Union and beyond the borders thereof. The consumer's interest is served by the quality symbols systems, in that it identifies the authenticity of the geographical origin of the products (PDO, PGI) or its production process (TSG).

CERTIFICATION MARK REGULATIONS

In accordance with Schedule 2 of the Trade Marks Act 1994, the present certification mark Regulations govern the use of the certification mark depicted in the Annex I ("the certification marks) for goods and classes set out in Annex II.

The provisions of these Regulations are in accordance with Regulation (EU) no 1151/2012, Commission Delegated Regulation (EU) No 664/2014 and Commission implementing Regulation (EU) No 668/2014⁴

The Certification trade mark is the property of the European Union, and it shall not be used by any manufacturer or merchant except in accordance with these regulations.

I. WHO IS AUTHORISED TO USE THE MARK

The mark shall be used by any producer from a Member State of the European Union or a third-country producer that may use a name registered as a 'traditional speciality guaranteed'. The latter is the case if the product complies with the specific requirements for the registered name.

II. CERTIFIABLE GOODS - THE CHARACTERISTICS CERTIFIED BY THE MARKS

Each name registered as a 'traditional speciality guaranteed' is related to a traditional practice or use and to a specific category of goods within the list of goods set out in Annex II. The goods it may be used for are identified in the "Database of Origin and Registration" (DOOR) operated by the EU, available on the website of the European Commission - policy for Agriculture and Rural Development - Policy Areas - Quality Policy, at:

<http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=pL0hLqqLXhNmFQyFl1b24mY3t9dJQPflg3xbL2YphGT4k6zdWn34!-370879141>

In accordance with Article 5 and Article 7(1) of Regulation (EU) No 1151/2012⁵ of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (hereinafter "Regulation No 1151/2012"), read in conjunction with Article 2 of Commission Delegated Regulation (EU) No 664/2014⁶ of 18 December 2013 supplementing Regulation (EU) No 1151/2012, the name and symbol 'Traditional speciality guaranteed' shall identify the products having the certain characteristics (A) and complying with certain specifications (B).

⁴ Commission implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council (OJ L 179, 19.6.2014, p. 36)

⁵ OJ L 343, 14.12.2012, p. 1

⁶ OJ L 179, 19.6.2014, p. 17

A. Characteristics of products identified by the name and symbol 'Traditional speciality guaranteed'

'Traditional speciality guaranteed'⁷:

A name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that:

- (a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or
- (b) is produced from raw materials or ingredients that are those traditionally used.

For a name to be registered as a traditional speciality guaranteed, it shall:

- (a) have been traditionally used to refer to the specific product; or
- (b) identify the traditional character or specific character of the product.

B. Specifications of products identified by the name and symbol 'Traditional speciality guaranteed'

Specifications of **traditional speciality guaranteed**⁸ shall comprise:

- (a) the name proposed for registration, in the appropriate language versions;
- (b) a description of the product including its main physical, chemical, microbiological or organoleptic characteristics, showing the product's specific character;
- (c) a description of the production method that the producers must follow, including, where appropriate, the nature and characteristics of the raw materials or ingredients used, and the method by which the product is prepared; and
- (d) the key elements establishing the product's traditional character.

III. HOW THE CERTIFYING BODY IS TO TEST THOSE CHARACTERISTICS AND SUPERVISE THE USE OF THE MARK

Only producers who work with the products with the name to be registered may apply for registration of names as 'Traditional speciality guaranteed' (A). Applications are addressed to the authorities of European Union Member States, where an application for 'traditional speciality guaranteed' is prepared by a group established in a Member State. If the Member State considers that the requirements of Regulation No 1151/2012 are met, it may take a favourable decision and lodge

⁷ As provided in Article 18 of Regulation (EU) No 1151/2012

⁸ As provided in Article 19 of Regulation (EU) No 1151/2012

an application dossier with the Commission (B). Also, both Member States authorities, and the European Commission shall supervise the adequate use of the marks (C). The European Commission may adopt implementing acts to cancel the registration of a protected 'Traditional speciality guaranteed'.

A. Applications for registration of names as 'Traditional speciality guaranteed'

Applications for registration of names 'Traditional speciality guaranteed' **may only be submitted by groups** who work with the products with the name to be registered.

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.

'Groups' are defined by Regulation No 1151/2012 as "any association, irrespective of its legal form, mainly composed of producers or processors working with the same product".

A single natural or legal person may be treated as a group where it is shown that the person concerned is the only producer willing to submit an application.

Applications for traditional speciality guaranteed shall be filed in accordance with the requirements of Article 6 of Commission implementing Regulation (EU) No 668/2014.

In addition, the European Union will inform all producers complying with the product specification that they are not to use the Certification Mark in any printed advertisement or printed publicity matter directed primarily to the mark in the United Kingdom and the Isle of Man without indicating that it is a Certification Mark.

B. Competent authorities

1. Member States' authorities

Where an application for 'traditional speciality guaranteed' is prepared by a group established in a Member State, the application is 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.

As part of the scrutiny it carries out, the Member State initiates 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 examines the admissibility of oppositions it receives. The grounds for opposition shall be assessed in relation to the territory of the Union.

2. European Commission

a) application for registration of names

If, after assessment of any opposition received, the Member State considers that the requirements of the applicable Regulations are met, it may take a favourable decision and lodge an application dossier with the Commission.

The Member State ensures 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 ensures 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.

Where an application for a 'traditional speciality guaranteed' 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.

b) scrutiny by the Commission and publication for opposition

In accordance with Article 50 of Regulation No 1151/2012, the Commission shall scrutinise by appropriate means any application that it receives pursuant to Article 49 Regulation (EU) No 1151/2012, in order to check that it is justified and that it meets the conditions of the respective scheme. Where, based on the scrutiny carried out the Commission considers that the conditions regarding the applications for 'traditional speciality guaranteed', laid down in this Regulation No 1151/2012, are fulfilled, it shall publish the specification in the Official Journal of the European Union.

c) opposition procedure

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.

d) decision on registration

Where, on the basis of the information available to the Commission from the scrutiny carried out, the Commission considers that the conditions for registration are not fulfilled, it shall adopt implementing acts rejecting the application.

If the Commission receives no notice of opposition or no admissible reasoned statement of opposition, it shall adopt implementing acts registering the name.

If the Commission receives an admissible reasoned statement of opposition, following appropriate consultations carried out between the authority or person that lodged the opposition and the authority or body that lodged the application, and taking into account the results thereof, it shall, either:

- if an agreement has been reached, register the name by means of implementing acts, or

- 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).

The acts of registration and decisions on rejection shall be published in the Official Journal of the European Union.

C. Supervision of the use of the mark

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 Regulation No 1151/2012. 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. The list of the names and addresses of those authorities is published on the website of the European Commission - policy for Agriculture and Rural Development - Policy Areas - Quality Policy, the PDO-PGI-TSG, in the section that provides information on 'who is in charge of controls', at:

http://ec.europa.eu/agriculture/quality/schemes/compliance-authorities_en.pdf

The EU monitors use of the Certification trade mark. If a product does not comply with the requirements or if a producer commits any breach of these Regulations of use, the authorisation to use the Certification trade mark shall be withdrawn.

IV. THE FEES TO BE PAID IN CONNECTION WITH THE OPERATION OF THE MARK

The European Union does not charge any fees for use of the symbols.

V. THE PROCEDURES FOR RESOLVING DISPUTES

European Commission decisions rejecting the applications may be appealed before the Court of Justice of the European Union in accordance with the Treaties of the European Union.

Annex I

Union symbol for 'Traditional speciality guaranteed':



Annex II

Nice Classification, classes 29, 30, and 32:

Class 29: Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs; Milk and milk products; Edible oils and fats; Prepared meals.

Class 30: Coffee, tea, cocoa and artificial coffee; Rice; Tapioca and sago; Flour and preparations made from cereals; Bread, pastry and confectionery; Ices; Sugar, honey, treacle; Yeast, baking-powder; Salt; Mustard; Vinegar, sauces (condiments); Spices; Ice.

Class 32: Beers; Mineral and aerated waters and other non-alcoholic beverages; Fruit beverages and fruit juices; Syrups and other preparations for making beverages; Beverages made from plant extracts.