

The Cornish Cyder Brandy Technical File Consultation

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A. Requirements for new applications for spirit drinks geographical indications

EU legislative requirements

1. In the EU, spirit drinks are subject to the requirements of Regulation (EC) No 110/2008 on definition, description, presentation, labelling and the protection of geographical indications and Commission Implementing Regulation (EU) No 716/2013 laying down rules for the application of Regulation (EC) No 110/2008. Regulation (EC) No 110/2008 sets out the technical standards for categories of spirit drinks as well as the procedures for seeking geographical indication (GI) status, for the purpose of protecting spirit drinks with specialised qualities and established reputations. Annex II of that Regulation lists the defined spirit drink categories, whilst Annex III list those spirit drinks with GI status within those categories. Regulation (EU) No 716/2013 sets out the procedures and templates for the submission of a spirit drinks GI. In the UK, the current spirit drink GIs are Scotch Whisky, Plymouth Gin, Irish Whiskey, Irish Cream, and Somerset Cider Brandy.
2. Although spirit drink GIs should not be confused with Protected Geographical Indications for other foodstuffs, it is worth noting that under Regulation (EC) No 110/2008 the spirit drink GI status provides similar protection against fraud and commercial misuse for premium spirit drink products produced in a specific geographical area. Consequently these products are of a higher value when they described using the GI term.
3. Regulation (EC) No 110/2008 sets out the procedures and criteria for new GI applications. The main element of new GI applications is the technical file which must set out the technical specification for the spirit drink for which GI status is being sought. Article 17 of that Regulation identifies the type of information which the technical file should contain to justify why GI status should be granted.

UK legislation concerning spirit drinks

4. The Spirit Drinks Regulations 2008 (SI 2008/3206) (the SDRs) make provision for the enforcement¹ of Regulation (EC) No 110/2008. The SDRs designate Her Majesty's Revenue and Customs (HMRC) as the Commissioners for verification of UK spirit drink GIs. HMRC are therefore the authority responsible for establishing and carrying out verification of spirit drinks in the UK for the purpose of compliance with Article 22 of Regulation (EC) No 110/2008.

The purpose and status of a technical file

5. Any manufacturer of a GI protected spirit drink, including EU exporters and bottlers, must, in accordance with Regulation (EC) No 110/2008, comply with the requirements of the technical specification for the GI as set out in the technical file submitted to the European Commission (the Commission). A finalised and official version of a GI's technical file must be made public for this purpose.

¹ Please see the Explanatory Notes of the SDRs for details of the enforcement provisions.

6. The final version of a GI's technical file (after any amendments required by the European Commission have been incorporated) will effectively become law and compliance with its technical specification will be mandatory. For a successful GI application, the standard specified in the technical file must be recognised and voted on by all Member States before the GI can be included in Annex III of Regulation (EC) No 110/2008.

What information must be included in a technical file?

7. Once a GI application is submitted, the technical file will be examined by the Commission to decide whether a GI can be validated. A decision on the application can be expected within one year from the date of submission, during which Member States will have the opportunity to raise points of refinement and/or objections.
8. Article 17 of Regulation (EC) No 110/008 specifies that the technical file must contain:
 - (a) the name and category of the spirit drink including the geographical indication;
 - (b) a description of the spirit drink including the principal physical, chemical and/or organoleptic characteristics of the product as well as the specific characteristics of the spirit drink as compared to the relevant category;
 - (c) the definition of the geographical area concerned;
 - (d) a description of the method for obtaining the spirit drink and, if appropriate, the authentic and unvarying local methods;
 - (e) the details bearing out the link with the geographical environment or the geographical origin;
 - (f) any requirements laid down by Community and/or national and/or regional provisions;
 - (g) the name and contact address of the applicant;
 - (h) any supplement to the geographical indication and/or any specific labelling rule, according to the relevant technical file.
9. Article 10 of Regulation (EU) No 716/2013 requires that where a technical file specifies that the packaging of the spirit drink must take place in the demarcated geographical area, or in its immediate proximity, justification must be given.

NB: Further guidance on the type of information required is provided in section C of this paper - 'Response rationale and questions'.

Verification of GI protected spirit drinks

10. Regulation 110/2008 requires MS to verify their spirit drink GIs in accordance with their technical specifications. HMRC, as the designated authority for verification in the UK, has already implemented a verification system for UK spirit drink GIs.
11. HMRC's verification responsibility stops at the EU borders but protection of a GI outside the EU can be required under Free Trade Agreements which the Union

may conclude with its trading partners, and under the World Trade Organisation agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS).

B. Purpose of this consultation

12. The purpose of this consultation is to seek views on the draft technical file for Cornish Cyder Brandy, which will form the basis of a new application for a Cornish Cyder Brandy GI. Cornish Cyder Brandy is produced by Healey's Cornish Cyder Farm, who are responsible for the content of the draft technical file. Views are welcome from stakeholders with interests in the manufacture of spirit drinks in the UK, including retailers and consumer representatives. These views will be evaluated before finalising the official UK version of the technical file and a submission of an application for scrutiny and approval by the Commission and MS.
13. In conducting this consultation, Defra's intention is to ensure that the official technical file reflects the requirements of national legislation, satisfies UK commercial interests and provides the Commission and EU Member States with sufficient evidence to support the entry of the Cornish Cyder Brandy GI in Annex III of Regulation (EC) No 110/2008.
14. This consultation will close on 28 November 2014. Defra will then aim to submit the application to the Commission in early 2015. However, it is important to realise that even after submission of the application, the Commission may request amendments to the technical file before they approve the application, which may happen within one year of the submission date.
15. This consultation will also help Defra to anticipate objections from other EU Member States, and prepare appropriate responses.

Post-consultation

16. All comments and suggestions from stakeholders will be evaluated in developing the official version of the technical file and where necessary Defra will seek further information or clarification from stakeholders. Defra hope to reach final agreement with Healey's Cornish Cyder Farm on the wording of the technical file by mid-December 2014.
17. Even though the technical file is subject to amendment after submission to the Commission, HMRC will be in a position after its submission to consider how the GI will in due course be verified.

C. Response rationale and questions

18. As previously mentioned, the technical file must contain the information required by Article 17 of Regulation (EC) No 110/2008. However, the information does not necessarily have to follow the same order as set out in Article 17. To assist stakeholders unfamiliar with the requirements of Article 17, some brief guidance on each of the categories of information described in a) to h) of Article 17 is

provided below. This guidance should help to evaluate the accuracy and validity of the content of the technical file.

19. Notes on paragraphs a) to h) of Article 17:

- a) Annex II of Regulation (EC) No 110/2008 contains a list of spirit drink categories such as rum, whisky and gin. Where a GI is sought for a spirit drink that drink must comply with the minimum standards of at least one of the categories in Annex II. Category 10 – ‘Cider Spirit’ will be the relevant category for ‘Cornish Cyder Brandy’.
- b) The description of the spirit drink should include any physical, chemical and/or organoleptic characteristics that support the product’s unique quality. In general, the description should identify primary characteristics associated with acceptable appearance, aromas, flavours, basic ingredients and permitted additives, as well as colourings and alcoholic strength.

Not only compliance with the relevant Annex II category should be demonstrated but also where the product goes beyond the minimum requirements of its category.

- c) As with Protected Geographical Indications for foodstuffs, the geographical area associated with a product should be accurately defined, especially if the area is a region or part of an MS. Likewise it is not necessary that all ingredients are sourced from the associated geographical area but, where this is relevant, those sources should be identified and mentioned when establishing the link between the product and its geographical area.
- d) Although there are common methods in the production of similar spirit drinks, it is necessary to provide a full description of how the product is manufactured, including the maturation and blending processes. It is also necessary to identify where those methods differ from those used in the production of products under the same Annex II category. These methods should be described in detail and also referred to when establishing the link with the geographical area or origin.
- e) Spirit drinks with a GI status are considered to be premium products that can command prices higher than non-GI products. The manufacture and maturation of GI spirit drinks can only take place in a specific geographical area. It is therefore essential that the technical file contains strong evidence to link the product with its geographical area or origin in order to demonstrate that product’s reputation and its unique qualities. It may be that a number of factors demonstrate that this product can only be manufactured in a specific locale. Factors to be considered range from climatic conditions, geology, historical reputation, recipes and/or equipment, specialised and local knowledge and expertise, local ingredients or fuels used in malting, traditional practices, unique production methods and external influences on fermentation and maturation. Where these factors are used as claims for uniqueness, the factors should be verifiable and where possible the effects quantifiable.

Under this category of information, it is therefore helpful to consider when a claim has been inadequately presented.

- f) Listing EU and national requirements is self-explanatory, although the technical file only needs to include national provisions in relation to the technical specification.
- g) Defra is the applicant in the UK on behalf of the relevant sector in the alcohol industry.
- h) Any other supplementary information or labelling rules necessary to support the GI status of the product.

Consultation questions

- Q.1 Do you consider that the technical file provides the information required by Article 17 of Regulation (EC) No 110/2008?**
- Q.2 Do you consider that the description of the product adequately covers its principal characteristics?**
- Q.3 Do you think that the links with the geographical area are adequately supported by evidence and sound reasoning?**
- Q.4 Does the technical file contain irrelevant information or make claims which are not properly substantiated?**
- Q.5 Has the technical file fully identified the processes necessary for verification by HMRC?**
- Q.6 What other supplementary information do you think is needed?**

Responses to the consultation

The preferred response would be a clean version of the attached technical file with tracked changes. Where respondents wish to provide a list of comments separately, they should where necessary make reference to paragraph numbers and/or headings. Responses should, where necessary, provide any relevant evidence in support of the views expressed.

All responses should be returned by no later than 28 November 2014 by email to:

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Consultees

Somerset Cider Brandy Company
Hogan's Cider Ltd
National Association of Cider Makers

The Scotch Whisky Association
The Wine and Spirit Trade Association
The British Retail Consortium

Pernod Ricard - Plymouth Gin contact
Welsh Whisky Company
English Whisky Company

HMRC
Kathryn Watkiss - Welsh Government
Dilys Parker - Welsh Government
David Millar - Northern Ireland Agriculture Department
Neil Sinclair - Scottish Government
Jennifer Staermose-Johnson - Scotland Office