

## REGULATIONS OF USE — EU CERTIFICATION MARKS

- Should be drafted in a **clear** and **accessible** manner.

*i.e. with sufficient clarity and precision to enable the reader to understand the requirements that must be met for using the EU certification mark.*

- Must be filed within **two months** from the date of submission of the EU certification mark application.

- Must **comply with public policy and accepted principles of morality**.

*e.g. the applicant would not be entitled to carry out the certification (for example, for lack of compliance with statutory provisions); the authorisation or conditions of use discriminate between market operators without due justification (such as a lack of objective criteria or application of inadmissible criteria).*

- Must be a stand-alone document. Therefore, the regulations governing use must **contain** the following **obligatory information** as required in Article 17 of the Commission Implementing Regulation (EU) 2018/626, of 5 March 2018 (hereinafter, 'EUTMIR'), preferably structured as provided in Article 17 EUTMIR:

1. Name of the applicant.
<i>The name of the applicant must be <u>exactly the same</u> in the regulations governing use as the one reflected <u>in the application</u>.</i>
2. A declaration of the applicant stating that it does not carry on a business involving the supply of goods or services of the kind certified.
<i>'I hereby declare that I do not carry on a business involving the supply of [goods] [services] [goods and services] of the kind certified'.</i>  <i>'[Name of the applicant] declares to comply with the requirements laid down in Article 83(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June of 2017 on the European Union trade mark'.</i>
3. Representation of the EU certification mark.
<i>The representation of the sign must be <u>exactly the same in the regulations governing use as the one reflected in the application</u>. E.g. In case the sign is applied in colour, the regulations governing use must contain a coloured representation of the sign.</i>
4. The goods or services covered by the EU certification mark.

*The list of goods and/or services must be exactly the same in the regulations governing use as the one provided in the application. The reference to the EUTM application number or IR number is not sufficient.*

*Any subsequent restriction of the specification of the goods and/or services should be equally reflected in a new version of the regulations governing use.*

5. The characteristics of the goods or services to be certified by the EU certification mark (e.g. material, mode of manufacture of goods or performance of services, quality or accuracy).

- *The characteristics, in respect of which goods or services are being certified, must be clearly specified and explained, with the need to allow the relevant public to clearly and precisely understand them.*
- *In case the specification covers a variety of goods or services, with different characteristics to be certified, depending on the individual good/service category, characteristics to be certified must be specified for each of the different types of goods/services.*
- *With regard to services, their characteristics and not the features of the service providers must be specified for each of the different types of services.*
- *The description of the characteristics of what the applicant is actually certifying can be described in general terms, with no need to detail all technical aspects and specifications. However, it should be distinguished that:*
  - *when the certification scheme involves **publicly available standards** stemming from **official sources** (e.g. ISO, DIN norms, EU Regulations and Directives, etc.), a reference to the specific norms must be inserted in the regulations governing use as these are the parameters that serve the certifying body as basis for assessing and testing the characteristics of the goods or services being certified;*
  - *whereas, when the certification scheme involves **private standards** (i.e. set up by the applicant himself), the level of disclosure of the standards does not need to be of a detailed nature and, therefore, a description in general terms of the same ones within the regulations governing use should be deemed sufficient.*

*Additional technical information can be simply completed by reference to the relevant sources by means of **working internet links** or **annexes**.*

- *The goods or services at issue cannot be certified in respect of their geographical origin, as established in Article 83.1 of the EUTMR.*

6. The conditions governing the use of the EU certification mark, including sanctions.

- *Need to include specific conditions of use imposed upon the authorised user:*
  - *that the mark is to be used as an EU certification mark;*
  - *whether there are fees to be paid in connection with the use of the mark;*
  - *etc.*

- *The use and conditions of use within the regulations governing use must refer to the representation of the sign as applied for (see point 3). Therefore, any variations in colour are not permissible, nor in case of figurative marks, their use as word marks.*
- *It is mandatory to specify the appropriate sanctions in case that the conditions governing use are not respected.*

7. The persons authorised to use the EU certification mark.

- *Clear indication of who is entitled to use the EU certification mark:*
  - (i) *Any person meeting the required standard of the characteristics being certified (point 5 above) and the conditions governing use (point 6)*
  - (ii) *A specific category of persons (the objective criteria to be clearly set out)*
- *If the applicant intends to list the authorised users of the EU certification mark, it can be referred to by means of a website link that will allow a systematic update without the need to modify the regulations governing use.*
- *The persons entitled to use the EU certification mark must be referred to as 'authorised users'.*
- *'Authorised users' are not entitled to transfer or license the use of the EU certification mark to any third party.*

8. How the certifying body is to test those characteristics and to supervise the use of the EU certification mark.

- *Need to specify the testing methods used and the supervision system employed by the applicant/owner of the EU certification mark to make sure that the goods and/or services marked actually possess the certified characteristics. These measures (testing and supervision) can relate to:*
  - *the methods and frequency of the testing and supervision;*
  - *the qualification of the persons carrying out the tests and the supervision;*
  - *the 'triggers' of additional or enhanced tests or supervision measures;*
  - *etc.*

*The measures have to be described by the applicant with sufficient clarity in order to ensure that the certification mark covers goods or services that are effectively certified.*
- *The applicant does not necessarily need to carry out the tests or supervise the conditions of use. In some cases, it might be necessary to cooperate with more specialised external testers and/or supervisors.*
- *Likewise, testing the goods and/or services marked, as well as supervising the conditions of use, can be limited to sample or random checks and do not need to extend to the entirety of certified goods or users.*

- Additional considerations:
  - The Office recommends avoiding the submission of **additional documents or annexes**. However, in case that in the regulations governing use reference is made to any additional documents (e.g. standards regulated in ISO, DIN, norms...), the Office recommends the submission of **working internet links** where their latest version is easily accessible. Annexes form part of the regulations governing use. Therefore, any modification to the documents submitted as annexes or internet links must be notified to the Office.
  - In the event the applicant supplements the obligatory information contained in the regulations governing use with **annexes**, these should be clearly identified with a number within the text of the regulations governing use and in the attached documents, with a view to enable the reader to easily identify their connection and maintain consistency.
  - In case the applicant modifies the regulations governing use in order to overcome any deficiencies identified by the Office, the applicant must **submit the revised regulations governing use in full** (not excerpts).
  - Once the EU Certification mark has been registered, **any amended version of the regulations governing use shall be submitted to the Office** by the proprietor of the EU Certification mark pursuant to Article 88 EUTMR. Such **amendment will be re-examined** with a view to meet the requirements of Article 84 EUTMR and ensure that it does not involve one of the grounds for refusal enshrined in Article 85 EUTMR. Amendments to the regulations governing use will take effect only from the date of entry of the mention of the amendment in the Register.
- Additional information on the examination of EU Certification marks is available at the EUIPO Guidelines:  
<https://guidelines.euipo.europa.eu/1803422/1789398/trade-mark-guidelines/1-introduction>
  - Part B Examination, Section 2 Formalities, Chapter 8 Kind of Mark, Paragraph 8.3 Certification marks
  - Part B Examination, Section 3 Absolute Grounds for refusal, Chapter 16 European Union Certification marks