Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

REGULATION (EU) 2019/1753 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 October 2019

on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) In order for the Union to be fully able to exercise its exclusive competence in relation to its common commercial policy, and in full compliance with its commitments under the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization, it will become a Contracting Party to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications ('the Geneva Act') pursuant to Council Decision (EU) 2019/1754[(3)] which also authorises Member States to ratify the Geneva Act or accede to it in the interest of the Union. The contracting parties to the Geneva Act are members of a Special Union created by the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration ('Special Union'). In accordance with Decision (EU) 2019/1754, the Union and the Member States that have ratified the Geneva Act or acceded to it are to be represented by the Commission in the Special Union as regards the Geneva Act.

(2) It is appropriate to lay down rules allowing the Union to exercise the rights and to fulfil the obligations laid down in the Geneva Act, on its behalf and on behalf of the Member States which ratify or accede to that Act.

(3) The Geneva Act protects appellations of origin, including designations of origin within the meaning of Regulations (EU) No 1151/2012[(4)] and (EU) No 1308/2013[(5)] of the European Parliament and of the Council, as well as geographical indications within the meaning of Regulations (EU) No 1151/2012, (EU) No 1308/2013, (EU) No 251/2014[(6)] and (EU) 2019/787[(7)] of the European Parliament and of the Council, which are together referred to as 'geographical indications' in this Regulation.

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(4) Upon the accession of the Union to the Geneva Act and thereafter on a regular basis, the Commission should file with the International Bureau of the World Intellectual Property Organization ('the International Bureau') applications for the international registration of geographical indications originating and protected in the territory of the Union in the register of the International Bureau ('the International Register'). Such applications should be based on notifications from Member States that act on their own initiative or at the request of a natural person or legal entity as referred to in point (ii) of Article 5(2) of the Geneva Act or of a beneficiary as defined in point (xvii) of Article 1 thereof. When preparing the notifications, Member States should consider the economic interest in international protection of the geographical indications concerned and take into account, in particular, the production value and the export value, protection under other agreements, as well as current or potential misuse in third countries.

(5) The registration of geographical indications in the International Register should serve the purposes of providing quality products, fair competition and consumer protection. Given their significant cultural and economic value, the registration of geographical indications should be assessed with respect to the value created for local communities, with a view to supporting rural development and promoting new job opportunities in production, processing and other related services.

(6) In order to establish an ongoing dialogue with relevant stakeholders, the Commission should use existing mechanisms to consult Member States, trade associations and Union producers regularly.

(7) Appropriate procedures should be established for the Commission to assess geographical indications originating in the Contracting Parties to the Geneva Act that are not Member States ('third Contracting Parties'), and registered in the International Register, in order to take decisions with regard to protection in the Union and to invalidate such protection, where relevant.

(8) Enforcement by the Union of the protection of geographical indications that originate in third Contracting Parties and that are registered in the International Register should be carried out in accordance with Chapter III of the Geneva Act, in particular with Article 14 thereof, which requires each Contracting Party to make effective legal remedies available for the protection of registered geographical indications and provide that legal proceedings for ensuring protection of such indications can be brought by a public authority or by any interested party, whether a natural person or a legal entity, whether public or private, in accordance with that Contracting Party's legal system and practice.

(9) With a view to ensuring the protection of Union, regional and national trade marks alongside geographical indications, having regard to the safeguard in respect of prior trade mark rights as set out in Article 13(1) of the Geneva Act, coexistence of prior trade marks and geographical indications registered in the International Register which are granted protection or used in the Union should be safeguarded.

(10) Given the exclusive competence of the Union in relation to the common commercial policy, Member States which are not already party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958 as

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revised at Stockholm on July 14, 1967 and amended on September 28, 1979 ('the Lisbon Agreement'), should not ratify or accede to that Agreement.

(11) The Member States which are already party to the Lisbon Agreement should be allowed to remain as such, in particular to ensure the continuity of rights granted under, and the fulfilment of obligations laid down in, that agreement. However, they should act solely in the interest of the Union and in full respect of the exclusive competence of the Union. Those Member States should therefore exercise their rights and obligations under the Lisbon Agreement in full compliance with the authorisation granted by the Union pursuant to this Regulation. In order to respect the uniform protection system for geographical indications established in the Union as regards agricultural products and in order to further enhance harmonisation within the internal market, those Member States should not register under the Lisbon Agreement any new appellations of origin for products falling within the scope of Regulation (EU) No 1151/2012, (EU) No 1308/2013, (EU) No 251/2014 or (EU) 2019/787.

(12) The Member States which are already party to the Lisbon Agreement have registered appellations of origin under the Lisbon Agreement. Transitional arrangements should be provided for so as to make continued protection of those appellations of origin possible, subject to the requirements of that agreement, the Geneva Act and Union law.

(13) The Member States which are already party to the Lisbon Agreement protect appellations of origin of third parties to that agreement. In order to provide them with the means to fulfil their international obligations assumed before the accession of the Union to the Geneva Act, a transitional arrangement, which should produce effects at national level only and have no effect on intra-Union or international trade, should be provided for.

(14) It is appropriate that the fees to be paid under the Geneva Act and the Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement (the 'Common Regulations') for filing an application with the International Bureau for the international registration of a geographical indication, as well as the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of that international registration, should be borne by the Member State in which the geographical indication originates, by a natural person or legal entity as referred to in point (ii) of Article 5(2) of the Geneva Act or by a beneficiary as defined in point (xvii) of Article 1 thereof. Member States should have the option of requiring that natural person, legal entity or beneficiary to pay some or all of the fees.

(15) In order to defray any shortfall in relation to the operating budget of the Special Union, the Union should be able to provide, within the means available for this purpose in the annual budget of the Union, for a special contribution as decided by the Assembly of the Special Union pursuant to Article 24(4) of the Geneva Act, given the economic and cultural value of geographical indications protection.

(16) In order to ensure uniform conditions for the implementation of the Union's membership of the Special Union, implementing powers should be conferred on the Commission to establish a list of geographical indications to be included in the

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application to be filed for their international registration with the International Bureau upon accession to the Geneva Act and for any subsequent filing of an application, to reject an opposition, to decide whether to grant protection of a geographical indication registered in the International Register, to withdraw the refusal of the effects of an international registration, to request the cancellation of an international registration, to notify the invalidation of the protection in the Union of a geographical indication registered in the International Register, as well as to authorise Member States to provide for any necessary modifications in respect of the appellation of origin for a product which is protected under Regulation (EU) No 1151/2012, (EU) No 1308/2013, (EU) No 251/2014 or (EU) 2019/787 and to notify the International Bureau thereof. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[8].

(17) In accordance with the principle of proportionality, it is necessary and appropriate, for the achievement of the basic objective of enabling the Union to participate in the Special Union in a way which will ensure efficient protection of EU geographical indications at international level, to lay down rules and procedures concerning actions of the Union following its accession to the Geneva Act. This Regulation does not go beyond what is necessary in order to achieve the objective pursued, in accordance with Article 5(4) of the Treaty on European Union.

(18) It is important to ensure that the Commission monitors and evaluates the participation of the Union in the Geneva Act over time. In order to conduct such an evaluation, the Commission should, inter alia, take into account the number of geographical indications protected and registered under Union law for which applications for international registration have been submitted, cases where protection has been rejected by third Contracting Parties, the evolution of the number of third countries participating in the Geneva Act, the action taken by the Commission to increase that number, as well as the impact of the current state of Union law as regards geographical indications on the attractiveness of the Geneva Act to third countries, and the number and type of geographical indications that originate from third Contracting Parties and that have been rejected by the Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1 This Regulation establishes rules and procedures concerning actions of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (‘the Geneva Act’).

2 For the purpose of this Regulation, the term ‘geographical indications’ covers appellations of origin within the meaning of the Geneva Act, including designations of origin within the meaning of Regulations (EU) No 1151/2012 and (EU) No 1308/2013, as well as geographical indications within the meaning of Regulations (EU) No 1151/2012, (EU) No 1308/2013, (EU) No 251/2014 and (EU) 2019/787.

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Article 2

International registration of geographical indications

1 Upon the accession of the Union to the Geneva Act and thereafter on a regular basis, the Commission shall, in its capacity as Competent Authority within the meaning of Article 3 of the Geneva Act, file applications for the international registration of geographical indications protected and registered under Union law and pertaining to products originating in the Union pursuant to Article 5(1) and (2) of the Geneva Act with the International Bureau of the World Intellectual Property Organization ('the International Bureau').

2 For the purpose of paragraph 1, Member States may request the Commission to register in the International Register geographical indications that originate in their territory and that are protected and registered under Union law. Such requests shall be based on:

a a request by a natural person or legal entity as referred to in point (ii) of Article 5(2) of the Geneva Act or by a beneficiary as defined in point (xvii) of Article 1 of the Geneva Act; or

b their own initiative.

3 On the basis of such requests, the Commission shall adopt implementing acts listing the geographical indications referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

Article 3

Cancellation of a geographical indication that originates in a Member State and is registered in the International Register

1 The Commission shall adopt an implementing act in order to request the International Bureau to cancel a registration in the International Register of a geographical indication originating in a Member State, in any of the following circumstances:

a the geographical indication is no longer protected in the Union;

b at the request of the Member State in which the geographical indication originates, based on:

(i) a request by a natural person or legal entity as referred to in point (ii) of Article 5(2) of the Geneva Act or by a beneficiary as defined in point (xvii) of Article 1 of the Geneva Act; or

(ii) its own initiative.

2 The implementing act referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 15(2).

3 The Commission shall, without delay, notify the International Bureau of the request for cancellation.