Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation

COMMISSION DELEGATED REGULATION (EU) 2019/33

of 17 October 2018

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Article 109, Article 114 and Article 122 thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 repealed and replaced Council Regulation (EC) No 1234/2007[(2)]. Sections 2 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 lay down rules on designations of origin, geographical indications, traditional terms, labelling and presentation in the wine sector and empower the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the wine market in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace the provisions of Commission Regulation (EC) No 607/2009[(3)] which should therefore be repealed.

(2) Experience gained from the application of Regulation (EC) No 607/2009 has demonstrated that the current procedures for the registration, amendment and cancellation of Union or third country designations of origin or geographical indications can be intricate, burdensome and time consuming. Regulation (EU) No 1308/2013 has created legal vacuums, in particular as regards the procedure to be followed in applications to amend product specifications. Rules of procedure concerning designations of origin and geographical indications in the wine sector are inconsistent with the rules applicable to quality schemes in the foodstuffs, spirit drinks and aromatised wines sectors of Union law. This gives rise to inconsistencies in how this category of intellectual property rights is implemented. These discrepancies

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should be addressed in light of the right to protection of intellectual property established in Article 17(2) of the Charter of Fundamental Rights of the European Union. This Regulation should therefore simplify, clarify, complete and harmonise the relevant procedures. Procedures should be modelled as far as possible on the efficient and well tested procedures for protecting intellectual property rights relating to agricultural products and foodstuffs laid down in Regulation (EU) No 1151/2012 of the European Parliament and of the Council[(4)], Commission Delegated Regulation (EU) No 664/2014[(5)] and Commission Implementing Regulation (EU) No 668/2014[(6)], and adapted to take account of the specificities of the wine sector.

(3) Designations of origin and geographical indications are intrinsically linked to the territory of Member States. National and local authorities have the best expertise and knowledge of the relevant facts. This should be reflected in the relevant procedural rules, having regard to the principle of subsidiarity set out in Article 5(3) of the Treaty on European Union.

(4) The name to be protected as a designation of origin or a geographical indication should only be registered in a language that has at least a historical link with the geographical area in which the product is produced. Specific rules concerning the use of linguistic characters for a PDO and a PGI should be laid down in order to ensure that operators and consumers in all Member States are better able to read and understand such names.

(5) The conditions in which a single producer may qualify as an eligible applicant should be defined. Single producers should not be penalised if prevailing circumstances prevent the creation of a producer group. However, it should be clarified that the protected name may be used by other producers established in the demarcated geographical area provided the conditions laid down in the product specification are met, even where the protected name consists of or contains the name of the holding of the single applicant producer.

(6) Where a wine sector product bearing a designation of origin or geographical indication must only be packaged within a demarcated geographical area according to the product specification, this constitutes a restriction on the free movement of goods and freedom to provide services. In light of the case-law of the Court of Justice such restrictions may be imposed only if they are necessary and proportionate to safeguard quality, to certify the origin of the product or to ensure control. It is therefore necessary to provide that any restrictions on packaging should be duly justified from the point of view of the free movement of goods and the freedom to provide services.

(7) Regulation (EC) No 607/2009 laid down a number of derogations concerning production in the demarcated geographical area. These derogations should be maintained to preserve traditional production practices. They should be clearly set out for the sake of legal certainty and clarity.

(8) Applications for protection are examined by the national authorities of the Member State concerned through a preliminary national procedure. In the case of protected designations of origin, Member States should pay particular attention to the description of the link between the quality and characteristics of the product and the particular geographical environment. In the case of protected geographical indications, Member

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States should pay particular attention to the description of the link between a specific quality, reputation or other characteristic and the geographical origin of the product, taking into account the demarcated area and the characteristics of the product. The definition of the demarcated area should be detailed, precise and unambiguous so that producers, the competent authorities and the control bodies can ascertain whether operations are being carried out within the demarcated geographical area.

(9) The assessment carried out by the competent authorities of Member States is an essential step in the procedure. Member States have knowledge, expertise and access to data and facts that make them the best placed to assess whether an application concerning a designation of origin or a geographical indication fulfils the requirements for protection. Therefore, Member States should guarantee that the result of this assessment, which should be faithfully recorded in a single document summarising the relevant elements of the product specification, is reliable and accurate. Having regard to the principle of subsidiarity, the Commission should subsequently scrutinise applications to ensure that there are no manifest errors and that Union law and the interests of stakeholders outside the Member State of application have been taken into account.

(10) In order to facilitate joint applications for protection of designations of origin and geographical indications, the specific steps in the procedures for those applications should be defined.

(11) Where Member States consider that the name subject to the application for protection is eligible for registration as a protected designation of origin or geographical indication in compliance with Regulation (EU) No 1308/2013, Member States should be able to grant transitional protection at national level while the Commission is conducting the assessment on the application for protection.

(12) The information to be submitted by an applicant in order for applications for protection, amendment, objection or cancellation requests to be deemed admissible should be set out in order to facilitate the management of such applications and in order to speed up the examination of the files.

(13) The objection procedure should be shortened and improved. For the sake of legal certainty, deadlines should be fixed for the various steps in the procedure and grounds of objection should be specified. An amicable step should be introduced to allow the parties to communicate with a view to potentially reaching agreement.

(14) Provision should be made for specific derogations that permit grapevine products that do not comply with the product specification to use a protected name for a transitional period. In order to overcome temporary difficulties and in order to ensure that all producers comply with the specifications in the long term, Member States should be allowed to grant derogations for a period of up to 10 years in certain cases.

(15) Producers of grapevine products bearing a name protected as a designation of origin or geographical indication have to face a changing and challenging market. They require procedures allowing them to swiftly adapt to market demands, however, they are in fact penalised by the length and complexity of the current amendment procedure, the effect of which impedes their ability to react quickly to the market. Producers of

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grapevine products bearing a name protected as a designation of origin or geographical indication should also be allowed to take account of developments in scientific and technical knowledge and of environmental changes. In order to reduce the steps of such procedures and to give effect in this area to the principle of subsidiarity, decisions on amendments which do not concern essential elements of the product specification should be approved at Member State's level. Producers should be enabled to apply those amendments immediately on the conclusion of the national procedure. There should be no requirement to re-examine the application for approval at Union level.

(16) However, in order to protect the interests of third parties established in Member States other than the one in which the grapevine products is produced, the Commission should remain responsible for approving amendments for which an objection procedure is required at Union level. Therefore, a new classification of amendments should be introduced: standard amendments, which apply immediately following the approval by the Member State since they do not require an objection procedure at Union level, and Union amendments, which apply only following approval by the Commission subsequent upon the completion of an objection procedure at Union level.

(17) Temporary amendments should be introduced to allow grapevine products bearing a protected designation of origin or geographical indication to continue to be marketed under the protected names in cases of natural disaster or adverse weather conditions or adoption of sanitary or phytosanitary measures which temporarily prevent operators from complying with the product specification. Due to their emergency nature, temporary amendments should apply immediately following the approval by the Member State. The list of emergency grounds for temporary amendments is exhaustive due to the exceptional character of temporary amendments.

(18) Union amendments should follow the procedure governing applications for protection in order to have the same efficiency and guarantees. It should be applied *mutatis mutandis* with the exclusion of certain steps which should be omitted with a view to reducing the administrative burden. The procedure for standard amendments and temporary amendments should be established to allow Member States to carry out an appropriate assessment of the applications and to guarantee a consistent approach across Member States. The accuracy and exhaustiveness of Member States' assessment should be equivalent to the accuracy and exhaustiveness required for the assessment process within the procedure governing applications for the protection.

(19) Standard and temporary amendments related to the protected designations of origin and geographical indications of third countries should follow the approach provided for Member States, and the approval decision should be taken in accordance with the system in force in the third country in question.

(20) The cancellation procedure should be more transparent and clear. In particular, it should be possible to oppose the cancellation request. To that end, the cancellation procedure should follow the standard procedure governing applications for protection, *mutatis mutandis*, with the exclusion of certain steps which should be omitted to reduce the administrative burden. It should be possible to cancel protected names if a name is no longer in use in the market place.

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(21) Rules on temporary labelling and the presentation of grapevine products whose name has been the subject of an application for protection as a designation of origin or geographical indication should be adopted in order to ensure the protection of the legitimate interests of the operators while taking into account the principle of fair competition and the obligation to ensure that appropriate information is communicated to consumers.

(22) Certain protected designations of origin benefit from derogations from the obligation to use the term 'protected designation of origin' on labels. In order to maintain this historical concession it is appropriate to confirm the existence of this derogation for such names.

(23) The use of traditional terms to describe grapevine products is a long-established practice in the Union. Such terms designate a production or ageing method, the quality, colour, type of place or a particular event linked to the history of a grapevine product bearing a protected designation of origin or geographical indication or indicate that it is a grapevine product having a protected designation of origin or geographical indication. Articles 112 and 113 of Regulation (EU) No 1308/2013 lay down the general rules regarding the use and protection of traditional terms. So as to ensure fair competition and avoid misleading consumers, a common framework should be laid down regarding the protection and registration of such traditional terms. Furthermore, the procedures concerning the grant of protection to traditional terms should be simplified and harmonised, where possible, with the procedures applicable to the grant of protection to designations of origin and geographical indications.

(24) A traditional term may evoke the particular characteristics of the grapevine product bearing that traditional term. Therefore, in order to convey clear information, that term should be indicated only in the language customarily used, with its original spelling and script.

(25) In order to ensure that consumers are not misled, the use of traditional terms for grapevine products manufactured in third countries should be allowed provided they fulfil the same or equivalent conditions to those required from Member States. Therefore, both Member States and third countries should have the possibility to apply for the protection of a traditional term at Union level. Having regard to the fact that some third countries do not have the same centralised system of protection of traditional terms as the Union, the definition of 'representative professional organisations' operating in third countries should be laid down to ensure the same guarantees as those provided for in the Union rules.

(26) Member States, third countries or representative professional organisations operating in third countries should ensure that the application for protection submitted to the Commission is complete and contains all relevant information that allows the Commission to establish that the traditional term complies with the conditions laid down in Article 112 of Regulation (EU) No 1308/2013 and proves that the traditional term is already protected in the Member State.