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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

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2018/0189 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

This proposal is related to the Commission proposal for a Council Decision on the Union's accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (the "Geneva Act").

The aim of this Commission proposal is to ensure the legal framework for effective participation of the Union in the WIPO Lisbon Union once the Union will have become a Contracting Party to the Geneva Act.

Article 9 of the Geneva Act establishes a commitment for each Contracting Party to protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation by the Contracting Party of origin, invalidation or cancellation that may become effective with respect to its territory. Article 6 (5) (a) of the Geneva Act provides that a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau of the World Intellectual Property Organization a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration. Rule 9(1) (b) of the Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement (the "Common Regulations") specifies that the refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended by another year.

Against this background, upon becoming a Contracting Party to the Geneva Act, the Union should submit a list of EU geographical indications drawn from the EU registers for geographical indications (to be agreed with EU Member States) for protection under the Lisbon system. This list should be established in close consultation with the Member States, following this established practice and methodology which is used for some of the bilateral international agreements on Geographical indications which the EU has concluded (taking into account production value and export value, protection under other agreements as well as current or potential misuse in the third countries concerned, and balance between Member States), taking into account the scope of Geographical indications registered by third country Lisbon members. After the Union's accession to the Lisbon Union, applications for the international registration of additional geographical indications protected and registered in the Union shall be possible on the Commission's initiative or at the request of a Member State or of an interested group of producers.

Appropriate procedures for the assessment by the Commission of appellations of origin and geographical indications originating in third Contracting Parties and registered in the International Register, and for the related opposition procedure should be put in place, taking into account specificities of the Geneva Act.

Enforcement by the Union of appellations of origin and geographical indications originating in third Contracting Parties and registered in the International Register shall be in accordance with Chapter III of the Geneva Act. Article 14 of the Geneva Act in particular requires each Contracting Party to make available effective legal

remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice. Coexistence of prior trade marks and an appellations of origin or geographical indications registered in the International Register which are granted protection or used in the Union should be possible where the conditions laid down in the second paragraph of Article 15 of Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 are fulfilled *mutatis mutandis*.

Seven EU Member States are members of the Lisbon Union and as such have accepted protection of third-country names. In order to provide for them the means to fulfil their international obligations assumed before the accession of the Union to the Lisbon Union a transitional arrangement should be put into place which should produce effects at national level only, and have no effect on intra-Union or international trade.

It appears equitable that the fees to be paid under the Geneva Act and the Common Regulations for filing an application with the International Bureau for the international registration of an appellation of origin or 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 this international registration should be borne by the Member State in which the appellation of origin or the geographical indication is originating.

- **Consistency with existing policy provisions in the policy area**

Regarding agricultural products, the EU has established uniform and exhaustive GI protection systems for wines (1970), spirits (1989), aromatised wines (1991) and other agricultural products and foodstuffs (1992). Through these systems, protected names for the products covered enjoy far-reaching protection throughout the EU, based on a single application process. The key provisions are currently laid down for wine in Regulation (EU) No. 1308/2013 of 17 December 2013, for aromatised wines in Regulation (EU) No. 251/2014 of 26 February 2014, for spirits in Regulation (EC) No. 110/2008 of 15 January 2008, and for agricultural products and foodstuffs in Regulation (EU) No. 1151/2012 of 21 November 2012.

- **Consistency with other Union policies**

The proposal is consistent with the EU's general policy to promote and enhance the protection of geographical indications through bilateral, regional and multilateral agreements.

2. **LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Considering the subject matter of the Treaty, the Regulation should be based on Article 207 of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

The Union has exclusive competence to conclude the Geneva Act of the Lisbon Agreement. This follows from the ruling of the European Court of Justice of 25 October 2017 in case C-389/15 - Commission vs. Council - which clarified that the draft revised Lisbon Agreement, i.e. the Geneva Act, is essentially intended to

facilitate and govern trade between the European Union and third States and, secondly, that it is such as to have direct and immediate effects on such trade, so that its negotiation fell within the exclusive competence which Article 3(1) TFEU confers on the European Union in the field of the common commercial policy envisaged in Article 207(1) TFEU.

According to Article 5(3) of the Treaty of the European Union (TEU), the subsidiarity principle does not apply to areas of exclusive EU competence.

- **Proportionality**

The proposed measures do not go beyond what is necessary to achieve the objective of enabling the Union to participate in the Lisbon Union in a way which will ensure efficient protection of EU geographical indications.

- **Choice of the instrument**

A Regulation of the European Parliament and of the Council is the appropriate legal instrument for the implementation of the membership of the European Union in the Lisbon Union as it ensures the legislative prerogatives of both institutions.

3. **RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

The Roadmap on EU accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications was published on 21 December 2017 with a deadline for stakeholder comments until 18 January 2018. 8 comments were received within the deadline. All except one were basically positive regarding the initiative and supported EU accession. Three comments expressed the view that the EU should advance the discussion on recognition and protection of non-agricultural geographical indications. Two comments were against a shortlist as all of the Union's geographical indications should be eligible for protection under the Geneva Act.

- **Collection and use of expertise**

The study of October 2012 done by AND International on the "Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication (GI)" (http://ec.europa.eu/agriculture/external-studies/value-gi_en) identified a number of benefits of the EU's GI policy for consumers (quality assurance), producers (openness of the system to all producers complying with quality requirements; fair competition; price premium; efficient protection), society at large (link of valuable products to rural areas; preserving tradition; reconnection of producers and consumers) and the environment (Linking traditional products with landscapes and farming systems). Evaluating economic data on each of 2768 GIs registered in the EU 27 from 2005 to 2010, the study found in particular that on average, the price of a GI product is 2.23 times the price of a comparable non-GI product. The sales value of EU GIs (all sectors) was €54.3 billion in 2010 (5.7% of the total EU food and drink sector); the estimated EU GI exports value is € 11.5 billion (15% of EU food and drink industry exports).

- **Impact assessment**

The Better Regulation requirements for the initiative do not include an impact assessment, an implementation plan or a public consultation.

The Guidelines on Better Regulation clarify that an impact assessment should be carried out only when it is useful, to be assessed on a case-by-case basis. In principle, no impact assessment is needed, when there is little or no choice available for the Commission. This is the case here as accession to the Geneva Act of the Lisbon Agreement is warranted in view of the Union's exclusive competence for the matters covered by the Geneva Act, and as this step would also be the logical conclusion following the review process of the Lisbon system in which the EU has engaged. The measures proposed in the present draft Regulation are necessary in order to ensure the appropriate application of the Geneva Act by the European Union.

There would be a number of advantages in case of EU membership. It would ensure that current and future GIs registered at EU level but not registered by the 7 EU Member States in the Lisbon Union could become eligible for protection in the Lisbon system. EU GIs could in principle gain rapid, high level, indefinite protection in all current and future parties to the Geneva Act. The established multilateral register would increase the reputation of European GIs due to the wide geographic extent of protection under the Geneva Act. Improved international GI protection resulting from EU accession is expected to consolidate and potentially expand the positive impacts of GI protection on inclusive growth and employment in high added value production in the agricultural sector, on trade and investment flows, competitiveness of business and SMEs in particular, as well as for the functioning of the internal market and competition, and for the protection of IPR. Farmers' and food producers' intellectual property in their GI-protected products is vulnerable to exploitation and loss, especially in global markets. EU accession to the Lisbon system would help rural stakeholders protect at global level what is valuable at local level, thus countervailing the usual globalisation trend toward uniform commodity standards and downward pressure on agricultural product prices. In the current political and economic uncertainties, this would provide a visible demonstration to the rural community that the EU is acting to defend and protect their interests across the world. As the Geneva Act is broadly equivalent to EU legislation on GI protection for agricultural products, it is not expected that EU accession will require significant adjustments of the substance of this legislation.

From an administrative point of view, the Geneva Act provides a single set of rules for obtaining protection in all members and therefore a simpler and more efficient mechanism compared to the current EU practice of dealing with a variety of local procedures through bilateral agreements. In commercial policy terms, it will demonstrate the EU's responsible leadership role promoting multilateralism. EU accession is not expected to create additional costs or burdens on EU operators or EU Member States wanting to have GIs protected in the Lisbon system as compared to the status quo. On the contrary, it is expected to even result in a reduced level of these administrative costs and burdens.

For businesses, EU accession will entail no additional adjustment, compliance or transaction costs or administrative burdens other than potential individual examination fees which Lisbon Members may apply but which will be diminished by the savings resulting from the international procedure.

The Geneva Act allows for accession of the EU together with its Member States. However, in view of the uniform and exhaustive nature of the EU GI protection system for agricultural products, any AOs or GIs submitted for protection by the seven EU Member States in the Lisbon system (currently around 800) and eligible for protection under EU legislation should no longer be protected under national legislation, but exclusively through EU legislation. This will also be the case regarding protection of GIs originating in, and submitted for protection by, third country Lisbon members. As a consequence, EU accession will result in less administrative burden of participation in the Lisbon system for EU Member States.

Notably, once the EU has joined, there will be the option of referring to the Lisbon system register rather than negotiating in detail the bilateral protection of GIs. This would be in line with practice in other areas of Intellectual Property Rights (IPR) where the EU engages its partners to join and comply with international agreements on IPR such as the Berne Convention on Copyright and the Madrid protocol on Trade Marks, rather than creating a web of divergent undertakings that can confuse stakeholders.

Accession of the EU will likely give an incentive for more third countries to join the Lisbon system, since this would give them access to protection across the whole Lisbon Union, and they could benefit from an efficient examination procedure for individual GIs in case of equivalence of their system to that of the EU.

EU accession may in particular have positive effects for developing countries which consider joining the Geneva Act as their GIs could gain protection in the EU through the Lisbon system. The interest of the 17-member African IP office, OAPI, to join Lisbon is propitious and evidence of the attraction of the GI instrument to protect developing country farmers' rights and traditional value.

As regards potential disadvantages, these could be seen in the as yet limited membership of the Lisbon system, the concern that progress on GIs in the WTO might be put even further out of reach; scepticism of some EU Member States towards EU accession, and uncertainty in respect of financial impacts. However, the modernized system under the Geneva Act should be more attractive for potential new members; progress in WIPO might even have a positive repercussion on GI discussions in the WTO by creating appropriate synergies and bringing the revised Lisbon Agreement closer to the WTO process; EU member States with reservations about the Lisbon system will not be required to join; and Lisbon members have made progress in their efforts towards ensuring financial sustainability of the Lisbon system.

On balance, the advantages of EU accession to the Geneva Act of the Lisbon Agreement outweigh the disadvantages. In order to achieve EU accession to the Lisbon System, the Commission will have to prepare a proposal for the legal acts needed for accession of the EU to the Geneva Act of the Lisbon Agreement and its implementation.

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

The Union's participation in the Lisbon Union as a Contracting Party to the Geneva Act will be in accordance with Article 17 (2) of the Charter of Fundamental Right of the European Union, which provides that intellectual property shall be protected.

4. BUDGETARY IMPLICATIONS

See Financial Statement annexed.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**
Not applicable
- **Explanatory documents (for directives)**
Not applicable
- **Detailed explanation of the specific provisions of the proposal**
Not applicable

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order for the Union to be fully able to exercise its exclusive competence in relation to its common commercial policy, it will become a contracting party to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications ('the Geneva Act')² pursuant to Council Decision (EU) .../...³. 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 Registration⁴ ('Special Union'). In accordance with Article 3 of Decision (EU).../..., the Union is to be represented by the Commission in the Special Union.
- (2) It is appropriate to establish rules allowing the Union to fully exercise all its rights and obligations following its accession to the Geneva Act.
- (3) The Geneva Act protects appellations of origin, including “designations of origin” as defined by Regulation (EU) No 1151/2012 of the European Parliament and of the Council⁵ and Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁶, and geographical indications, which are henceforth both referred to as 'geographical indications'.
- (4) Following the accession of the Union to the Geneva Act, the Commission should as a first step file with the International Bureau of the World Intellectual Property Organization ('the International Bureau') an application for registration of a list of

¹ OJ C [...], [...], p. [...].

² http://www.wipo.int/edocs/lexdocs/treaties/en/lisbon/trt_lisbon_009en.pdf.

³ OJ L [...], [...], p. [...].

⁴ http://www.wipo.int/export/sites/www/lisbon/en/legal_texts/lisbon_agreement.pdf.

⁵ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

⁶ 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 (OJ L 347, 20.12.2013, p. 671).

geographical indications originating and protected in the territory of the Union in their register ('the International Register'). The criteria for the establishment of such a list should, as it is the case for some of the bilateral and regional agreements of the Union regarding protection of geographical indications, take into account in particular the production value and export value, protection under other agreements as well as current or potential misuse in the third countries concerned.

- (5) In order to ensure that additional geographical indications protected and registered in the Union are registered in the International Register, it is appropriate to authorise the Commission, at a later stage, to file applications for the international registration of such additional geographical indications, on its own initiative or at the request of a Member State or of an interested group of producers or, in exceptional cases, at the request of a single producer.
- (6) Appropriate procedures should be established in order for the Commission to assess geographical indications originating in the contracting parties to the Geneva Act which are not Member States ('third Contracting Parties') and registered in the International Register, in order to provide for a procedure to decide on protection in the Union and to cancel such protection, where relevant.
- (7) Enforcement by the Union of the protection of geographical indications originating in third Contracting Parties and registered in the International Register should be done in accordance with Chapter III of the Geneva Act, in particular with Article 14 of the Geneva Act, which requires each Contracting Party to make available effective legal remedies for the protection of registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice. With a view to ensuring the protection of 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 trademarks and geographical indications registered in the International Register which are granted protection or used in the Union should be safeguarded.
- (8) Seven Member States are members of the Special Union and as such have accepted the protection of the geographical indications of third Contracting parties. In order to provide for them the means to fulfil their international obligations assumed before the accession of the Union to the Geneva Act, a transitional arrangement should be provided which should produce effects at national level only, and have no effect on intra-Union or international trade.
- (9) It appears equitable that the fees to be paid under the Geneva Act and the Common Regulations under the Lisbon Agreement and the Geneva Act 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. This should be without prejudice to any decision by the Member State to seek reimbursement of those fees from the group of producers or single producer using the geographical indication for which international registration is sought.

- (10) In order to defray any shortfall in relation to the operating budget of the Special Union, the Union should be able to provide for a special contribution within the means available for this purpose in the annual budget of the Union.
- (11) In order to ensure uniform conditions for the implementation of the Union membership in the Special Union, implementing powers should be conferred on the Commission to establish a list of geographical indications for the filing of an application for their international registration with the International Bureau upon accession to the Geneva Act, for the subsequent filing of an application for international registration of a geographical indication with the International Bureau, for rejecting an opposition, for a decision on whether or not to grant protection of a geographical indication registered in the International Register, and for cancelling the protection in the Union of a geographical indication registered in the International Register. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation establishes rules concerning the implementation of the rights and obligations of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications ('the Geneva Act').

For the purpose of this Regulation, appellations of origin, including "designations of origin" as defined by Regulation (EU) No 1151/2012 and Regulation (EU) No 1308/2013, and geographical indications, are henceforth both referred to as 'geographical indications'.

Article 2
International registration of geographical indications upon accession

Upon the accession of the Union to the Geneva Act, the Commission shall file with the International Bureau of the World Intellectual Property Organization ('the International Bureau') 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.

The Commission shall adopt an implementing act establishing the list of geographical indications referred to in the first paragraph, in accordance with the examination procedure referred to in Article 13(2).

In order to establish the list referred to in the second paragraph, the Commission shall take into account, in particular, the following:

- (a) the production value of the geographical indication;
- (b) the export value of the geographical indication;
- (c) the protection of the geographical indication under other international agreements;
- (d) the current or potential misuse of the geographical indication in other members of the Special Union;

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (e) the overall number of geographical indications originating in the territories of the other members of the Special Union and registered in the register of the International Bureau ('the International Register').

Article 3

Subsequent international registration of geographical indications of the Union

Following the accession of the Union to the Geneva Act, the Commission may on its own initiative or at the request of a Member State or of an interested group of producers or of the single producer using a geographical indication protected and registered in the Union, adopt implementing acts in order to file an application for international registration of a geographical indication protected and registered under Union law and pertaining to a product originating in the Union with the International Bureau.

In order to assess whether or not to file an application for international registration, the Commission shall take into account the criteria set out in the third paragraph of Article 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(2).

Article 4

Assessment of third country geographical indications registered in the International Register

- (1) The Commission shall assess the publication notified by the International Bureau pursuant to Article 6(4) of the Geneva Act concerning the geographical indications registered in the International Register and in respect of which the Contracting Party of Origin, as defined under Article 1(xv) of the Geneva Act, is not a Member State, in order to determine whether it contains the mandatory elements laid down in Rule 5(2) of the Common Regulations under the Lisbon Agreement and the Geneva Act (the 'Common Regulations')⁸, and the particulars concerning the quality, reputation or characteristics as laid down in Rule 5(3) of those Regulations, as well as to assess whether the publication relates to a product in respect of which protection within the Union of geographical indications is currently provided. The period for carrying out such assessment shall not exceed four months and shall not include assessment of other specific Union provisions relating to the placing of products on the market and, in particular, to sanitary and phytosanitary standards, the marketing standards, and to food labelling.
- (2) Where, based on the assessment carried out pursuant to paragraph 1, the Commission considers that the conditions laid down in that paragraph are *prima facie* fulfilled, it shall publish the geographical indication proposed for protection in the Union together with the product type and country of origin in the Official Journal of the European Union, C series.
- (3) Where, based on the assessment carried out pursuant to paragraph 1, the Commission considers that the conditions laid down in that paragraph are not fulfilled, it shall take a decision to refuse protection of the geographical indication by means of an implementing act adopted in accordance with the examination procedure referred to in Article 13(2). In respect of geographical indications covering products not falling

⁸ Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement as adopted by the Assembly of the Lisbon Union on 11 October 2017, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=376416, Doc. WIPO A/57/11 of 11 October 2017

within the competence of the Committees provided in Article 13(1) the decision will be adopted by the Commission without application of the examination procedure referred to in Article 13(2).

In accordance with Article 15(1) of the Geneva Act, the Commission shall notify the International Bureau of the refusal of the effects of the international registration concerned in the territory of the Union, within one year from the receipt of the notification of international registration in accordance with Article 6(4) of the Geneva Act.

Article 5

Opposition procedure for third country geographical indications registered in the International Register

- (1) Within two months from the date of publication of the name of the geographical indication in the Official Journal of the European Union in accordance with Article 4(2), the authorities of a Member State or of a third country other than the Contracting Party of Origin, or a natural or legal person having a legitimate interest and established in the Union or in a third country other than the Contracting Party of Origin may lodge an opposition with the Commission, in one of the official languages of the Union.
- (2) Such opposition shall be admissible only if it is lodged within the time limit set out in paragraph 1 and if it contains one or more of the following claims:
 - (a) that the geographical indication registered in the International Register conflicts with a name of a plant variety or an animal breed and is likely to mislead the consumer as to the true origin of the product;
 - (b) that the geographical indication registered in the International Register is wholly or partially homonymous with a geographical indication already protected in the Union and that there is no sufficient distinction in practice between the conditions of local and traditional usage and presentation of the geographical indication proposed for protection and the geographical indication already protected in the Union, taking into account the need to ensure equitable treatment of the producers concerned and not to mislead consumers;
 - (c) that the protection in the Union of the geographical indication registered in the International Register would infringe a prior trade mark right;
 - (d) that the protection in the Union of the geographical indication proposed would jeopardise the use of an entirely or partly identical name or the exclusive nature of a trade mark or the economic value of products which have been legally placed on the market for at least five years preceding the date of the publication of the name of the geographical indication in the Official Journal of the European Union in accordance with Article 4(2);
 - (e) that the geographical indication registered in the International Register relates to a product in respect of which protection within the EU of geographical indications is currently not provided;
 - (f) that the name for which registration is requested is a generic term in the territory of the Union.
- (3) The grounds for opposition as set out in paragraph 2 shall be assessed by the Commission in relation to the territory of the Union or part thereof.

Article 6

Decision on protection in the Union of third country geographical indications registered in the International Register

- (1) Where the Commission receives no opposition or opposition which is inadmissible, it shall, as appropriate, reject the inadmissible oppositions received and take a decision to grant protection of the geographical indication by means of an implementing act adopted in accordance with the examination procedure referred to in Article 13(2).
- (2) Where the Commission receives an admissible opposition as set out in Article 5(2), it shall take a decision on whether or not to grant protection of a geographical indication registered in the International Register by means of an implementing act which shall be adopted in accordance with the examination procedure referred to in Article 13(2). In respect of geographical indications covering products not falling within the competence of the Committees provided in Article 13(1) the decision will be adopted by the Commission without application of the examination procedure referred to in Article 13(2).
- (3) The decision to grant protection of a geographical indication in accordance with paragraphs 1 or 2 shall set out the scope of protection granted and may include conditions which are compatible with the Geneva Act, and in particular grant a defined transitional period as specified in Article 17 of the Geneva Act and Rule 14 of the Common Regulations.
- (4) In accordance with Article 15(1) of the Geneva Act, the Commission shall notify the International Bureau of the refusal of the effects of the international registration concerned in the territory of the Union, within one year from the receipt of the notification of international registration in accordance with Article 6(4) of the Geneva Act

Article 7

Use of geographical indications

- (1) The implementing acts adopted by the Commission on the basis of Article 6 shall apply without prejudice to other specific Union provisions relating to the placing of products on the market and, in particular, to the common organisation of the agricultural markets, sanitary and phytosanitary standards, and to food labelling. The Commission shall inform the International Bureau accordingly of these conditions of use at the moment of accession.
- (2) Subject to paragraph 1 geographical indications protected under this Regulation may be used by any operator marketing a product in accordance with the international registration.

Article 8

Cancellation of a third country geographical indication registered in the International Register

The Commission may, on its own initiative or following a duly substantiated request by a Member State, a third country or a natural or legal person having a legitimate interest, adopt implementing acts cancelling the protection in the Union of a geographical indication registered in the International Register in one or more of the following circumstances:

- (a) the geographical indication, is no longer protected in the Contracting Party of Origin;

- (b) the geographical indication is no longer registered in the International Register;
- (c) where compliance with the mandatory elements laid down in Rule 5(2) of the Common Regulations or with the particulars concerning the quality, reputation or characteristics as laid down in Rule 5(3) of those Regulations are no longer ensured.

The implementing acts referred to in the first paragraph shall be adopted in accordance with the examination procedure referred to in Article 13(2).

The Commission shall notify the International Bureau without delay of the invalidation of the effects in the territory of the Union of the international registration of the geographical indication cancelled in accordance with the first paragraph.

Article 9

Relation to trade marks

- (1) The protection of a geographical indication shall not prejudice the validity of a prior trade mark applied for or registered in good faith, or acquired through use in good faith in the territory of the Union.
- (2) A geographical indication registered in the International Register shall not be protected in the territory of the Union where in the light of a trade mark's reputation and renown and the length of time it has been used, protection of the said geographical indication in the territory of the Union would be liable to mislead the consumer as to the true identity of the product.
- (3) Without prejudice to paragraph 2, a prior trade mark applied for or registered in good faith in the territory of the Union, or acquired through use in good faith the use of which would contravene the protection of a geographical indication, may continue to be used and renewed for the product concerned notwithstanding the protection of a geographical indication provided that no grounds for invalidity or revocation exist under Regulation (EU) 2017/1001 of the European Parliament and of the Council⁹. In such cases the use of the geographical indication shall be permitted as well as use of the trade mark concerned.

Article 10

Transitional protection

- (1) Those Member States which were members of the Special Union before the accession of the Union to the Geneva Act may grant protection to a third country contracting party to the Lisbon Agreement of 1958, or to that Agreement as revised at Stockholm on July 14, 1967 and amended on September 28, 1979 by means of a national protection system, with effect from the date on which the Union becomes a contracting party to the Geneva Act, as regards geographical indications registered as at that date under the Special Union, or with effect from the date on which the international registration in the International Register of the geographical indication is notified to the Member State by the Commission.

Such national protection systems shall cease either on the day when the decision on protection under this Regulation is taken or the day when the effect of international registration ends.

⁹ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154 of 16.07.2017, page 1).

- (2) Where a third country name is not registered under this Regulation, the consequences of such a national protection system shall be the sole responsibility of the Member State concerned.
- (3) The measures taken by Member States under paragraph 1 shall produce effects at national level only, and they shall have no effect on intra-Union or international trade.

Article 11

Fees

The fees to be paid under Article 7 of the Geneva Act, as specified in the Common Regulations, for the filing of an application with the International Bureau for the international registration of a geographical indication, in the International Register, and for the supply of extracts, attestations, or other information concerning the contents of this register shall be borne by the Member State in which the geographical indication originates.

This is without prejudice to any decision by a Member State to seek reimbursement of the amounts referred to in the first paragraph from the group of producers or single producer using the geographical indication for which international registration is sought.

Article 12

Special financial contribution

Where the income from the Special Union shall be derived in accordance with Article 24(2)(v) of the Geneva Act, the Union may make a special contribution within the means available for that purpose from the annual budget of the Union.

Article 13

Committees procedure

- (1) The Commission shall be assisted by the following Committees within the meaning of Regulation (EU) No 182/2011, in respect of the following products:
 - (a) for wine-sector products falling within the scope of Article 92(1) of Regulation (EU) No 1308/2013 by the Committee for the Common Organisation of the Agricultural Markets established by Article 229 of that Regulation;
 - (b) for aromatised wine products as defined in Article 3 of Regulation (EU) No 251/2014 of the European Parliament and of the Council¹⁰ by the Committee on aromatised wine products established by Article 34 of that Regulation;
 - (c) for spirit drinks as defined in Article 2 of Regulation (EC) No 110/2008 of the European Parliament and of the Council¹¹ by the Committee for Spirit Drinks established by Article 25 of that Regulation;

¹⁰ Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

¹¹ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

- (d) for products falling within the scope of the first subparagraph of Article 2(1) of Regulation (EU) No 1151/2012 by the Agricultural Product Quality Policy Committee established by Article 57 of that Regulation;
- (2) Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 14

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

FINANCIAL STATEMENT		FS/18/YG/mh agri.ddg1.a.2(2018)1387240 6.221.2018.1 DATE: 05.03.2018	
1. BUDGET HEADING: 05 06 01		APPROPRIATIONS: EUR 7.228 million	
2. TITLE: Proposal for a Regulation of the European Parliament and of the Council on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications			
3. LEGAL BASIS: Article 207 of the Treaty on the Functioning of the European Union			
4. AIMS: Establishing the rules on the implementation of the membership of the European Union in the Lisbon Union as a Contracting Party to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications			
5. FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2018 (EUR million)	FOLLOWING FINANCIAL YEAR 2019 (EUR million)
5.0 EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	-	1.0 1.0 - -	1.0 (estimate)
5.1 REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) - NATIONAL			
	2020	2021	2022
5.0.1 ESTIMATED EXPENDITURE			
5.1.1 ESTIMATED REVENUE			
5.2 METHOD OF CALCULATION: not determined at this stage			
6.0 CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?		YES NO	
6.1 CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?		YES NO	
6.2 WILL A SUPPLEMENTARY BUDGET BE NECESSARY?		YES NO	
6.3 WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?		YES NO	
OBSERVATIONS: The fees shall be borne by the Member State in which the the geographical indication is originating. However, the Union may make a special contribution pursuant to Article 24(2)(v) of the Geneva Act within the means available for this purpose in the annual budget of the Union. In 2018, an amount of EUR 1 million is allocated to budget line 05 06 01 to this purpose.			