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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading and Corrigendum procedure (Strasbourg, 16 April 2019 and 17 September 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint Declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this legislative file at first reading.

¹ OJ C 145, 30.6.2007, p.5

This file was expected² to undergo the Corrigendum procedure³ in the new European Parliament after adoption by the previous Parliament of its position at first reading.

II. VOTES

At its sitting of 16 April 2019, and following informal interinstitutional negotiations, the European Parliament adopted the amendment number 20 (without legal linguistic revision) to the Commission proposal and a legislative resolution with a view to the adoption of the abovementioned proposal, constituting the European Parliament's position at first reading. It reflects what had been previously agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, on 17 September 2019 the European Parliament approved a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex⁴ hereto, thus bringing to a close the first reading for both institutions.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² 8507/19

³ Rule 241, EP Rules of Procedure.

⁴ The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex. The amendments are presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol "■" indicates deleted text.

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

European Parliament legislative resolution of 16 April 2019 on the 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 (COM(2018)0365 – C8-0383/2018 – 2018/0189(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0365),
 - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0383/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 12 December 2018¹,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 20 March 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on International Trade, the Committee on the Environment, Public Health and Food Safety and the Committee on Agriculture and Rural Development (A8-0036/2019),
1. Adopts its position at first reading hereinafter set out;
 2. Takes note of the three statements by the Commission annexed to this resolution, the first and second of which will be published in the L series of the Official Journal of the European Union together with the final legislative act;
 3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 110, 22.3.2019, p.55.

Position of the European Parliament adopted at first reading on 16 April 2019 with a view to the adoption of Regulation (EU) 2019/... 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 Committee⁶,

Acting in accordance with the ordinary legislative procedure⁷,

⁶ *OJ C 110, 22.3.2019, p. 55.*

⁷ Position of the European Parliament of 16 April 2019.

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) .../...⁸⁺ ***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).../...⁺⁺, 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***.

⁸ Council Decision (EU) .../... of ... on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (OJ L [...], [...], p. [...]).

⁺ OJ: Please insert in the text the number of the Decision contained in document ST 6929/19 and insert the number, date, title and OJ reference of that Decision in the footnote.

⁺⁺ OJ: Please insert in the text the number of the Decision contained in document ST 6929/19.

- (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 1151/2012⁹ and (EU) No 1308/2013¹⁰ 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 251/2014¹¹ and (EU) 2019/787¹² of the European Parliament and of the Council ■ , which are together referred to as 'geographical indications' in this Regulation.

⁹ *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).*

¹⁰ *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).*

¹¹ *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 aromatized wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).*

¹² *Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ L 130, 17.5.2019, p. 1).*

- (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 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 the 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 to require 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 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 Council¹³.
- (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.***

¹³ 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).

- (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*.

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).*
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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.*

Article 4

Publication of third country geographical indications registered in the International Register

1. *The Commission shall publish any international registration notified by the International Bureau pursuant to Article 6(4) of the Geneva Act, that:*
 - (a) concerns geographical indications registered in the International Register in respect of which the Contracting Party of Origin, as defined under point (xv) of Article 1 of the Geneva Act, is not a Member State; and*
 - (b) relates to a product in respect of which protection at Union level of geographical indications is provided.*
2. *The international registration referred to in paragraph 1 shall be published in the C series of the Official Journal of the European Union. The publication shall include a reference to the product type and country of origin.*

Article 5

Assessment of third country geographical indications registered in the International Register

1. The Commission shall **assess any international registration** 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 **point (xv) of Article 1** of the Geneva Act, is not a Member State, in order to determine whether it includes the mandatory contents laid down in Rule 5(2) of the Common Regulations under the Lisbon Agreement and the Geneva Act (the 'Common Regulations'), and the particulars concerning the quality, reputation or characteristics as laid down in Rule 5(3) of **the Common** Regulations, and to verify whether the publication referred to in Article 4 relates to a product in respect of which protection **at Union level** of geographical indications is provided.

2. The assessment referred to in paragraph 1 shall be carried out within four months *from the date of the registration of the geographical indication in the International Register* and shall not include an assessment of other specific Union provisions relating to the placing of products on the market and, in particular, to sanitary and phytosanitary standards, marketing standards or food labelling.

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Article 6

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

1. Within *four* months from the date of publication of the international registration in accordance with Article 4, the authorities of a Member State or of a third country other than the Contracting Party of Origin as defined under point (xv) of Article 1 of the Geneva Act, 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.

The opposition shall be in one of the official languages of the institutions of the Union.

2. The opposition referred to in paragraph 1 of this Article shall be admissible only if it is lodged within the time limit set out in paragraph 1 *of this Article* and if it is based upon one or more of the following *grounds*:
- (a) 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) the geographical indication registered in the International Register is wholly or partially homonymous with a geographical indication already protected in the Union and there is insufficient 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) the protection in the Union of the geographical indication registered in the International Register would infringe a prior trade mark right *at Union, regional or national level*;
- (d) the protection in the Union of the third country geographical indication would jeopardise the use of an entirely or partly identical name or the exclusive nature of a trade mark *at Union, regional, or national level* or the *existence* of products which have been legally placed on the market for at least five years preceding the date of the publication of the international registration in accordance with Article 4;
- (e) the geographical indication registered in the International Register relates to a product in respect of which protection *at Union level* of geographical indications is **■** not provided;
- (f) the name for which registration is requested is a generic term in the territory of the Union;

(g) the conditions referred to in points (i) and (ii) of Article 2(1) of the Geneva Act are not complied with;

(h) the geographical indication registered in the International Register is a homonymous name which misleads the consumer into believing that products come from another territory, even if the name is accurate as far as the actual territory, region or place of origin of the products in question is concerned.

3. The grounds for opposition set out in paragraph 2 shall be assessed by the Commission in relation to the territory of the Union or part thereof.

Article 7

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

1. *Where, based on the assessment carried out pursuant to Article 5, the conditions laid down in that Article are fulfilled and no opposition or no admissible **opposition has been received, the Commission** shall, as appropriate, by means of an implementing act, reject any inadmissible opposition and decide to grant protection of the geographical indication. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).*

2. *Where, based on the assessment carried out pursuant to Article 5, the conditions laid down in that Article are not fulfilled or an admissible opposition as set out in Article 6(2) has been received, the Commission* shall, by means of an implementing act, decide whether to grant protection of a geographical indication registered in the International Register. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2). In respect of geographical indications covering products not falling within the competence of the committees provided in Article 15(1), the decision whether to grant protection shall be adopted by the Commission ■ .
3. The decision to grant protection of a geographical indication in accordance with *paragraph 1 or 2 of this Article* 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, ***or, in the cases referred to in the first paragraph of Article 5 of Decision (EU) .../...⁺, within two years from the receipt of that notification.***
5. ***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, withdraw, in whole or in part, by means of an implementing act, a refusal previously notified to the International Bureau. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).***

The Commission shall notify the International Bureau of such withdrawal without delay.

⁺ ***OJ: Please insert in the text the number of the Decision contained in document ST 6929/19.***

Article 8
Use of geographical indications

1. The implementing acts adopted by the Commission pursuant to Article 7 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 agricultural markets, sanitary and phytosanitary standards, and food labelling. ■
2. Subject to paragraph 1, geographical indications protected pursuant to this Regulation may be used by any operator marketing a product in accordance with the international registration of those geographical indications.

Article 9
Invalidation of effects in the Union of a third country geographical indication
registered in the International Register

1. 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, ***invalidate, in whole or in part***, by means of an implementing act, ***the effects of*** protection in the Union of a geographical indication, 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) compliance with the mandatory contents 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 *the Common* Regulations is no longer ensured.


2. The implementing acts referred to in ■ paragraph *1 of this Article* shall be adopted in accordance with the examination procedure referred to in Article 15(2) *and only after the natural persons or legal entities as referred to in point (ii) of Article 5(2) of the Geneva Act or the beneficiaries as defined in point (xvii) of Article 1 of the Geneva Act have been given an opportunity to defend their rights.*

3. *Where the invalidation is no longer subject to appeal, 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 ■ in accordance with *point (a) or (c) of paragraph 1.*

Article 10

Relationship with trade marks

- 1.** The protection of a geographical indication shall not prejudice the validity of a prior trade mark *at Union, regional or national level* applied for or registered in good faith, or acquired through use in good faith in the territory of *a Member State, regional union of Member States or* 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 that 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  trade mark *which has been* applied for *or* registered in good faith, *or acquired through use, if that possibility is provided for by the applicable law*, in good faith *within the territory of a Member State, regional union of Member States, or the Union, before the date on which the International Bureau has notified the Commission of the publication of the International Registration of the geographical indication*, and the use of which would contravene the protection of *the* geographical indication, may continue to be used and renewed for the product concerned notwithstanding the protection of *the* geographical indication, provided that no grounds for invalidity or revocation exist under Regulation (EU) 2017/1001 of the European Parliament and of the Council¹⁴ *or under Directive (EU) 2015/2436 of the European Parliament and the Council*¹⁵. In such cases, both the use of the geographical indication and the use of the trade mark concerned shall be permitted.

¹⁴ 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, 16.07.2017, p. 1).

¹⁵ *Directive (EU) 2015/2436 of the European Parliament and the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L336, 23.12.2015, p. 1).*

Article 11

Transitional provisions for appellations of origin originating in Member States already registered under the Lisbon Agreement

- 1. In respect of each appellation of origin originating in a Member State which is party to the Lisbon Agreement, for a product that is protected under one of the Regulations referred to in Article 1 of this Regulation, the Member State concerned shall, on the basis of a request by a natural person or legal entity as referred to in point (ii) of Article 5(2) of the Geneva Act or a beneficiary as defined in point (xvii) of Article 1 of the Geneva Act, or on its own initiative, choose to request either:*
 - (a) the international registration of that appellation of origin under the Geneva Act, if the Member State concerned has ratified or acceded to the Geneva Act pursuant to the authorisation referred to in Article 3 of Decision (EU)/....⁺, or*
 - (b) the cancellation of the registration of that appellation of origin in the International Register.*

⁺ *OJ: Please insert in the text the number of the Decision contained in document ST 6929/19.*

The Member State concerned shall notify the Commission of the choice referred to in the first subparagraph by ... [three years from the date of the entry into force of this Regulation].

In the situations referred to in point (a) of the first subparagraph, the Member State concerned shall, in coordination with the Commission, verify with the International Bureau whether there are any modifications to be made under Rule 7 (4) of the Common Regulations for the purpose of registration under the Geneva Act.

The Commission shall, by means of an implementing act, authorise the Member State concerned to provide for the necessary modifications and to notify the International Bureau. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).

2. In respect of each appellation of origin originating in a Member State which is party to the Lisbon Agreement, for a product falling within the scope of one of the Regulations referred to in Article 1(2) of this Regulation, but not protected under any of those Regulations, the Member State concerned shall, on the basis of a request by a natural person or legal entity referred to in point (ii) of Article 5(2) of the Geneva Act or a beneficiary as defined in point (xvii) of Article 1 of the Geneva Act, or on its own initiative, choose to request either:

- (a) the registration of that appellation of origin under the Regulation concerned, or*
- (b) the cancellation of the registration of that appellation of origin in the International Register.*

The Member State concerned shall notify the Commission of the choice referred to in the first subparagraph, and lodge the respective request, by ... [three years from the date of the entry into force of this Regulation].

In the situations referred to in point (a) of the first subparagraph, the Member State concerned shall request the international registration of that appellation of origin under the Geneva Act, if that Member State has ratified or acceded to the Geneva Act pursuant to the authorisation referred to in Article 3 of Decision (EU) .../...⁺, within one year from the date of registration of the geographical indication under the applicable Regulation. The third and fourth subparagraphs of paragraph 1 shall apply.

If the request for registration under the applicable Regulation is refused and related administrative and judicial remedies have been exhausted, or if the request for registration under the Geneva Act has not been made pursuant to the third subparagraph of this paragraph, the Member State concerned shall, without delay, request the cancellation of the registration of that appellation of origin in the International Register.

⁺ *OJ: Please insert in the text the number of the Decision contained in document ST 6929/19.*

3. *In respect of appellations of origin for products not falling within the scope of one of the Regulations referred to in Article 1(2) of this Regulation, in respect of which protection at Union level of geographical indications is not provided, a Member State which is already party to the Lisbon Agreement may maintain any existing registration in the International Register.*

Such a Member State may also submit further applications for registration in the International Register under the Lisbon Agreement of such appellations of origin originating in its territory if the following conditions are met:

- (a) *the Member State concerned notified the Commission of the draft application for registration of such appellations of origin ; such notification shall include evidence that the application satisfies the requirements for registration under the Lisbon Agreement; and*

(b) the Commission has not issued a negative opinion within two months of such notification; a negative opinion may only be issued after consultation with the Member State concerned, and in the exceptional and duly justified cases where the evidence required under point (a) does not sufficiently substantiate that the requirements for registration under the Lisbon Agreement are met, or if the registration would have an adverse impact on the Union trade policy.

In the case of a request for further information from the Commission on the notification made under point (a) of the second subparagraph, the deadline for the Commission to act shall be one month from the receipt of the information requested.

The Commission shall immediately inform the other Member States about any notification made under point (a) of the second subparagraph.

Article 12

Transitional protection *for appellations of origin originating in a third country registered under the Lisbon Agreement*

1. The Member States which were *party* to the *Lisbon Agreement* before the accession of the Union to the Geneva Act may *continue to protect appellations of origin originating in a third country which is* party to the Lisbon Agreement ■ 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 *appellations of origin* registered by that date under the *Lisbon Agreement*.
2. The *protection referred to in paragraph 1 shall:*
 - (a) *be superseded by protection under the Union protection system for a particular appellation of origin if it is provided by a decision taken under Article 7 of this Regulation subsequent to the accession of the third country concerned to the Geneva Act, on condition that the protection provided by a decision taken under Article 7 of this Regulation preserves the continuity of protection of the respective appellation of origin in the respective Member State;*

(b) cease for a particular appellation of origin when the effects of international registration end.

3. Where *an appellation of origin originating in* a third country ■ is not registered under this Regulation, *or the national protection is not superseded in accordance with point (a) of paragraph 2*, the consequences of such ■ national protection ■ shall be the sole responsibility of the Member State concerned.
4. The measures taken by Member States under paragraph 1 shall **have** effects at national level only, and they shall have no effect on intra-Union or international trade.
5. *The Member States referred to in paragraph 1 shall transmit to the Commission any notification made by the International Bureau under the Lisbon Agreement. The Commission shall then transmit that notification to all other Member States.*

6. *The Member States referred to in paragraph 1 of this Article shall declare to the International Bureau that they cannot ensure national protection of an appellation of origin for a product falling within the scope of one of the Regulations referred to in Article 1(2) of this Regulation, registered and notified to them under the Lisbon Agreement from the date on which the Union becomes a Contracting Party to the Geneva Act.*

Article 13

Fees

*Fees to be paid under Article 7 of the Geneva Act, as specified in the Common Regulations, **I** shall be borne by the Member State in which the geographical indication originates, **or 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.** Member States may require that natural person or legal entity or a beneficiary pay some or all of the fees.*

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Article 14
Special financial contribution

If the income from the Special Union *is* derived in accordance with *point (v) of* Article 24(2) ■ 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 15
Committee procedure

- I.* 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, ■ 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 Council¹⁶, ■ by the Committee for Spirit Drinks referred to in Article 47 of Regulation (EU) 2019/787 ;
- (d) for *agricultural* products *and foodstuffs* 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 16

Monitoring and review

By ... [two years from the date of the entry into force of this Regulation], the Commission shall assess the participation of the Union in the Geneva Act and submit a report on the main findings to the European Parliament and to the Council. The assessment shall be based, inter alia, on the following aspects:

¹⁶ 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), partly in force until 24 May 2021.

- (a) *the number of geographical indications which are protected and registered under Union law and for which applications for international registration have been submitted, and the cases in which the protection was rejected by third Contracting Parties;*
- (b) *the evolution in the number of third countries participating in the Geneva Act and 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*
- (c) *the number and type of third country geographical indications which have been rejected by the Union.*

Article 17

Entry into force

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

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

Done at ...

For the European Parliament

For the Council

The President

The President

ANNEX TO THE LEGISLATIVE RESOLUTION

Commission statement on the possible extension of EU geographical indication protection to non-agricultural products

The Commission takes note of the European Parliament resolution of 6 October 2015 on the possible extension of EU geographical indication protection to non-agricultural products.

The Commission launched a study in November 2018 to get further economic and legal evidence on the protection of non-agricultural GIs within the Single Market, as a complement to a study of 2013, and to obtain further data on issues such as competitiveness, unfair competition, counterfeiting, consumer perceptions, costs/benefits as well as on the effectiveness of non-agricultural GI protection models in light of the proportionality principle.

In accordance with the principles of Better Regulation and to the commitments laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission will examine the study as well as the report on the participation of the Union in the Geneva Act as referred to in the Article on monitoring and review of the Regulation on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and consider any possible next steps.

Commission statement on the procedure set out in Article 9a(3) of the Regulation

The Commission notes that whilst the procedure set out in Article 9a(3) of the Regulation is a legal necessity given the exclusive competence of the Union it can nevertheless state that in the context of the current EU acquis any such intervention of the Commission would be exceptional and duly justified. During consultations with a Member State, the Commission will make every effort in order to resolve together with the Member State any concerns in order to avoid the issuing of a negative opinion. The Commission notes that any negative opinion would be notified in writing to the Member State concerned and pursuant to Article 296 TFEU would state the reasons on which it was based. The Commission would further note that a negative opinion would not preclude the submission of a further application concerning the same appellation of origin, if the reasons for the negative opinion have been duly addressed thereafter or are no longer applicable.

Commission statement concerning the proposal for a Council Decision on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

The Commission notes that the Union has exclusive external competence on geographical indications and is acceding to the Geneva Act of the Lisbon Agreement as a Party on its own right. This follows from the ruling of the European Court of Justice of 25/10/2017 (case C-389/15-Commission v. Council). Given the EU's exclusive external competence, Member States are prevented from becoming Parties to the Geneva Act in their own right and should no longer themselves protect geographical indications newly registered by third country members of the Lisbon system. The Commission, mindful of the exceptional circumstances given that seven Member States have been Parties to the Lisbon Agreement for a long time, that they have extensive intellectual property registered under it and that a smooth transition is needed, would exceptionally have been ready to agree that, in this particular case, Bulgaria, Czechia, Slovakia, France, Hungary, Italy, Portugal could have been authorised to accede to the Geneva Act in the interest of the EU.

The Commission strongly objects to the Council's continued insistence on the possibility for all EU Member States which wish to do so to be authorized to ratify or accede to the Geneva Act alongside

the Union, while giving as a reason the regularisation of the Union's voting rights in view of point (b)(ii) of Article 22(4) of the Geneva Act rather than the aforesaid exceptional circumstances.

Further, the Commission would like to recall that, given that the Union has exercised its internal competence for agricultural geographical indications, the EU Member States cannot have national agricultural GI protection systems of their own.

Therefore the Commission reserves its rights including the right to avail itself of legal remedies against the Council's decision and, in any event, considers that this case cannot constitute a precedent for any other existing or future international/WIPO agreements, in particular but not only where the EU has already ratified international agreements by itself on the basis of its exclusive competence.