Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	6 April 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 136 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Assembly of the Lisbon Union

Delegations will find attached document COM(2020) 136 final.

Encl.: COM(2020) 136 final

EUROPEAN
COMMISSION

Brussels, 6.4.2020
COM(2020) 136 final

2020/0052 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Assembly of the Lisbon Union

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the annual Assembly of the Lisbon Union of the World Intellectual Property Organization (WIPO), in particular in connection with the envisaged adoption of a decision on special contributions of the Contracting Parties pursuant to Article 24(2)(v) of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

2. CONTEXT OF THE PROPOSAL

2.1. The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications of 2015 ('the Agreement') aims to offer comprehensive and effective international protection for the names of origin-based quality products. It updates and enhances the existing international registration system protecting names that identify the geographic origin of products: the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958. The Agreement entered into force on 26 February 2020.

The European Union is a party to the Agreement[1].

2.2. The Assembly of the Lisbon Union

The Lisbon Union is a Special Union administrated by WIPO. It is composed of the Contracting Parties to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (the "Geneva Act") and the States party to the Lisbon Agreement of 1958 for the Protection of Appellations of Origin and their International Registration or to the 1967 Act (the Lisbon Agreement as revised at Stockholm on July 14, 1967). The Assembly of the Lisbon Union meets annually in the context of the WIPO General Assembly. Its tasks are set out in Article 22 (2) of the Geneva Act. In particular, it has the following tasks: It deals with all matters concerning the maintenance and development of the Special Union and the implementation of the Geneva Act. It amends the Regulations establishing the details for carrying out the Geneva Act. It adopts the financial Regulations of the Special Union and amendments of the Articles of the Geneva Act on the Assembly of the Special Union (Article 22), the International Bureau of WIPO (Article 23), and on Finances (Article 24) as well as on the amendment procedure for these Articles (Article 27). Regarding finances more specifically, it may decide on whether and to which extent receipts from the sources of income of the Special Union do not suffice to cover the expenses, entailing the obligation of Contracting Parties to pay special contributions pursuant to Article 24 (2) (v) of the Geneva Act. The present Commission proposal only concerns decisions pursuant to Article 24 (2) (v) of the Geneva Act. The Assembly shall endeavour to take its decisions by consensus. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case, each Contracting Party that is a State shall have one vote and shall vote only in its own name; and any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. Article 4 paragraph 2 of Council Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act stipulates that the

[1] Council Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, OJ L 271/2019, p. 12-14.

Union shall vote in the Assembly of the Special Union and the Member States which have ratified or acceded to the Geneva Act shall not exercise their right to vote.

2.3. The envisaged act of the Assembly of the Lisbon Union

During its annual meetings in the framework of the WIPO General Assembly, the Assembly of the Lisbon Union may adopt decisions regarding the extent to which receipts from the sources of income of the Special Union do not suffice to cover the expenses, entailing the obligation of Contracting Parties to pay special contributions pursuant to Article 24 (2) (v) of the Geneva Act ('the envisaged act').

The purpose of the envisaged act is to constitute a basis for the payment of special contributions by the Contracting Parties of the Geneva Act to be able to cover the expenses of the Special Union.

The envisaged act will become binding on the parties in accordance with Article 24 (2) (v) of the Agreement, which provides: '(2) [Sources of Financing of the Budget] The income of the Special Union shall be derived from the following sources:[...] (v) special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly.'.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The proposed position is to join a potential consensus on a decision of the Assembly of the Lisbon Union regarding the extent to which receipts from the sources of income indicated in items (i) to (iv) of Article 24 (2) of the Geneva Act do not suffice to cover the expenses. In that case, the income of the Lisbon Union shall be derived to that extent by special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both.

The proposed Council decision would enable the EU, within the means available for that purpose from the annual budget of the Union, to join the consensus regarding a decision by the Assembly pursuant to Article 24 (2) (v) of the Geneva Act.

The EU budget for 2020 provides for 1 million € under budget line 05.06.01 as EU contribution to the functioning of the Lisbon Union in WIPO (the World Intellectual property Organisation) on the basis of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. The EU should be able to join a consensus on a decision of the Assembly of the Lisbon Union pursuant to Article 24 (2) (v) of the Geneva Act. Such a decision is needed for the Union to be able to make the payment in accordance with the basic act providing the legal basis for the implementation of the expenditure entered in the budget[2]. This basic act provides as follows: "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."

[2] Article 14 (Special financial contribution) of Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[3].

4.1.2. Application to the present case

The Assembly of the Lisbon Union is a body set up by an agreement, namely the Geneva Act.

The act that the Assembly of the Lisbon Union is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 24 (2) (v) of the Geneva Act.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207 TFUE.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFUE, in conjunction with Article 218(9) TFEU.

[3] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The European Union acceded to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications ('the Agreement') by Council Decision (EU) 2019/1754 of 7 October 2019[1]. The Agreement entered into force on 26 February 2020.

(2) Pursuant to Article 22 (2) (a) (i) of the Agreement, the Assembly of the Lisbon Union may adopt decisions concerning the maintenance and development of the Special Union and the implementation of the Agreement.

(3) The Assembly of the Lisbon Union, in its annual meeting during the WIPO General Assembly on 21-29 September 2020, may adopt a decision on whether and to which extent receipts from the sources of income of the Special Union do not suffice to cover the expenses, entailing the obligation of Contracting Parties to pay special contributions pursuant to Article 24 (2) (v) of the Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Assembly of the Lisbon Union in that meeting, as the decision will be binding on the Union.

(5) The Union should be able to join a consensus on a decision of the Assembly of the Lisbon Union pursuant to Article 24 (2) (v) of the Agreement within the budgetary resources available. Such a decision is needed for the Union to be able to make the payment in accordance with Article 14 of Regulation (EU) 2019/1753 of the European Parliament and of the Council[2].

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meeting of the Assembly of the Lisbon Union during the WIPO General Assembly on 21-29 September 2020 as regards a special

[1] OJ L 271, 24.10.2019, p. 12.

[2] Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (OJ L 271, 24.10. 2019, p. 1).

contribution pursuant to Article 24 (2) (v) of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications shall be the following:

The Union may join a consensus regarding a decision as to which extent receipts from the sources of income of the Special Union do not suffice to cover the expenses, entailing the obligation of Contracting Parties to pay special contributions pursuant to Article 24 (2) (v) of the Geneva Act. The maximum Union special contribution for 2020 shall not exceed the appropriations provided for in the general budget.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

FINANCIAL STATEMENT				Fin Stat/2020/LK/GH/pl/1406340 agri.ddg3.a.2(2020)1398840 *6.22.2020* DATE: 24/02/2020
1.	BUDGET HEADING: Chapter 05 06 INTERNATIONAL ASPECTS OF 'AGRICULTURE AND RURAL DEVELOPMENT' POLICY AREA 05 06 01 International agricultural agreements			APPROPRIATIONS: B2020:EUR 6.300.000
2.	TITLE: Proposal for a Council Decision on the position to be taken on behalf of the European Union in the annual Assembly of the Lisbon Union of the World Intellectual Property Organization			
3.	LEGAL BASIS: The legal basis for this proposal is Article 207, in conjunction with Article 218(9), of the Treaty on the Functioning of the European Union.			
4.	AIMS: To constitute a basis for the payment of special contributions to be able to cover the expenses of the Special Union.			
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR)	CURRENT FINANCIAL YEAR 2020 (EUR)	FOLLOWING FINANCIAL YEAR 2021 (EUR)
5.0	EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	1 million	1 million	1 million
5.1	REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) - NATIONAL			
5.0.1 5.1.1	ESTIMATED EXPENDITURE ESTIMATED REVENUE			
5.2	METHOD OF CALCULATION:			
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?			YES
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?			NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?			YES
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 2020, an amount of EUR 1 million is allocated to budget line 05 06 01 for this purpose.				