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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION amending Decision (EU) 2019/1754 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

COUNCIL DECISION (EU) 2023/...

of ...

amending Decision (EU) 2019/1754

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

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(6), point (a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958 ('the Lisbon Agreement') is a treaty administered by the World Intellectual Property Organization (WIPO). The Lisbon Agreement creates a special union ('the Special Union') within the framework of the Union for the Protection of Industrial Property. It is open to parties to the Paris Convention for the Protection of Industrial Property, signed in Paris, on 20 March 1883. Its contracting parties ('the parties') are to protect on their territories the appellations of origin of products of the other parties recognised and protected as such in the country of origin and registered at the International Bureau of WIPO, unless they declare within a period of one year from the receipt of the notification of registration that they cannot ensure protection.
- (2) Seven Member States are parties to the Lisbon Agreement, namely Bulgaria, Czechia, France, Italy, Hungary, Portugal and Slovakia. The Union itself is not a party to the Lisbon Agreement as only countries can accede to that Agreement.

- (3) Following a review of the Lisbon Agreement, on 20 May 2015 the WIPO Diplomatic Conference adopted the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications¹ ('the Geneva Act'). The Geneva Act extends the protection of appellations of origin to all geographical indications and allows intergovernmental organisations to become parties to it.
- (4) In its judgment of 25 October 2017², the Court of Justice of the European Union ('the Court') held that the negotiation of the Geneva Act fell within the exclusive competence conferred on the Union by Article 3(1) of the Treaty on the Functioning of the European Union (TFEU) in the field of the common commercial policy referred to in Article 207(1) TFEU.
- (5) On 27 July 2018, the Commission made a proposal for a Council decision on the accession of the Union to the Geneva Act on the basis of Article 207 and Article 218(6), point (a), TFEU. In view of the Union's exclusive competence as regards the negotiation of the Geneva Act, that proposal provided that the Union alone would accede to that Act.

¹ OJ L 271, 24.10. 2019, p. 15.

² Judgment of the Court of Justice of 25 October 2017, *Commission v Council (Revised Lisbon Agreement)*, C-389/15, ECLI:EU:C:2017:798.

- (6) On 7 October 2019, the Council unanimously adopted Decision (EU) 2019/1754¹ on the accession of the Union to the Geneva Act in accordance with Article 293(1) TFEU. Article 3 of Decision (EU) 2019/1754 provides that Member States which wish to do so are authorised to ratify or accede to, as appropriate, alongside the Union, the Geneva Act in the interest of the Union and in full respect of its exclusive competence. Article 4 of Decision (EU) 2019/1754 provides that, in the Special Union, the Union and any Member State which ratifies or accedes to the Geneva Act is represented by the Commission in accordance with Article 17(1) of the Treaty on European Union (TEU). Article 4 of Decision (EU) 2019/1754 further provides that the Union is responsible for ensuring the exercise of the rights and fulfilment of the obligations of the Union and of the Member States which ratify or accede to the Geneva Act.
- (7) In a statement entered in the Council minutes relating to the adoption of Decision (EU) 2019/1754, the Commission objected to the possibility for all Member States which wish to do so to be authorised to ratify or accede to the Geneva Act alongside the Union. However, the Commission also stated that it would have been ready to agree that the seven Member States which are already parties to the Lisbon Agreement and which have extensive intellectual property rights registered under that Agreement could be authorised to accede to the Geneva Act in the interest of the Union.

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, 24.10.2019, p. 12).

- (8) The Geneva Act entered into force on 26 February 2020, three months after the Union deposited its instrument of accession, bringing the number of parties to the requisite five.
- (9) On 17 January 2020, the Commission brought an action under Article 263 TFEU seeking the partial annulment of Decision (EU) 2019/1754 on the grounds of an infringement of Article 218(6) and Article 293(1) TFEU, of the principle of the conferral of powers laid down in Article 13(2) TEU, of the principle of institutional balance and of the Commission's right of initiative, and, in the alternative, on the grounds of an infringement of Article 2(1) and Article 207 TFEU and the duty to state reasons.
- (10) The Commission asked the Court to annul Decision (EU) 2019/1754, insofar as that Decision authorises all Member States to accede to the Geneva Act. However, the Commission also asked the Court to maintain the effects of the parts of that Decision which it sought to have annulled, in particular any use of the authorisation granted to accede to the Geneva Act, implemented before the date of delivery of the judgment by the seven Member States that are already parties to the Lisbon Agreement. The Commission indicated that it could, exceptionally, accept a compromise whereby the seven Member States which are parties to the Lisbon Agreement accede to the Geneva Act in order to avoid problems relating to the continuity of rights.

- (11) In its judgment of 22 November 2022¹, the Court annulled Article 3 and, to the extent that it contains references to the Member States, Article 4 of Decision (EU) 2019/1754.
- (12) In its judgment of 22 November 2022, the Court also acknowledged the necessity of preserving the seniority and continuity of the protection of appellations of origin registered under the Lisbon Agreement in the seven Member States that were already parties to that Agreement, in particular, in accordance with the principle of sincere cooperation between the Union and the Member States set out in Article 4(3) TEU, in order to protect acquired rights derived from those national registrations. The Court thus declared that the effects of the annulled parts of Decision (EU) 2019/1754 should be maintained for the Member States which have already availed themselves of the authorisation to ratify or accede to the Geneva Act until the entry into force, within a reasonable period not exceeding six months from the date of delivery of the judgment, of a new Council decision.
- (13) In view of the Union's exclusive competence and the possibility for the Union to accede to the Geneva Act, it is only in certain duly justified and specific circumstances that Member States can be authorised, in the interest of the Union, to accede alongside the Union.

¹ Judgment of the Court of Justice of 22 November 2022, *Commission v. Council*, C-24/20, ECLI:EU:C:2022:911.

- (14) Article 11 of Regulation (EU) 2019/1753 of the European Parliament and of the Council¹ provides for transitional provisions for appellations of origin originating in Member States already registered under the Lisbon Agreement. On the basis of those provisions, the seven Member States that are parties to the Lisbon Agreement notified the Commission by 14 November 2022 that they had chosen to request the international registration under the Geneva Act of appellations of origin already registered under the Lisbon Agreement.
- (15) Given those specific circumstances, it is appropriate to amend Decision (EU) 2019/1754 in order to authorise, in full respect of the exclusive competence of the Union, the seven Member States that were parties to the Lisbon Agreement prior to the entry into force of the Geneva Act to also ratify or accede to the Geneva Act, strictly to the extent that this is necessary to preserve, in the interest of the Union, the seniority and continuity of the protection of the appellations of origin already registered by those Member States under the Lisbon Agreement.
- (16) Decision (EU) 2019/1754 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

¹ 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).

Article 1
Amendments to Decision (EU) 2019/1754

Decision (EU) 2019/1754 is amended as follows:

(1) Article 3 is replaced by the following:

‘Member States which were parties to the Lisbon Agreement on 26 February 2020, namely Bulgaria, Czechia, France, Italy, Hungary, Portugal and Slovakia, are hereby authorised, in full respect of the Union’s exclusive competence, to ratify or accede, alongside the Union, to the Geneva Act, strictly to the extent that their accession is necessary to preserve, in the interest of the Union, the seniority and continuity of the protection of the appellations of origin already registered by those Member States under the Lisbon Agreement and to comply with the obligations provided for by Article 11 of Regulation (EU) 2019/1753 of the European Parliament and of the Council*.

* 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).’;

(2) in Article 4(1), the first subparagraph is replaced by the following:

‘In the Special Union, the Union and those Member States which have ratified or acceded to the Geneva Act pursuant to Article 3 of this Decision shall be represented by the Commission in accordance with Article 17(1) TEU. The Union shall be responsible for ensuring the exercise of the rights and fulfilment of the obligations of the Union pursuant to Article 3 of this Decision.’.

Article 2

Entry into force

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

Done at ...,

For the Council

The President
