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### DECLASSIFICATION<sup>1</sup>

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of document:	ST7678/15 RESTREINT UE/EU RESTRICTED
dated:	31 March 2015
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Subject:	Recommendation for a COUNCIL DECISION authorizing the opening of negotiations on a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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<sup>1</sup> Document declassified by the European Commission on 08/06/2018.

**RESTREINT UE/EU RESTRICTED**

Delegations will find attached document COM(2015) 142 final.



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**RESTREINT UE/EU RESTRICTED**

PI 21  
COMER 49  
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**COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 March 2015
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2015) 142 final
Subject:	Recommendation for a COUNCIL DECISION authorizing the opening of negotiations on a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications

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Encl.: COM(2015) 142 final

**RESTREINT UE**



EUROPEAN  
COMMISSION

Brussels, 30.3.2015  
COM(2015) 142 final

Recommendation for a

**COUNCIL DECISION**

**authorizing the opening of negotiations on a Revised Lisbon Agreement on Appellations  
of Origin and Geographical Indications**

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**RESTREINT UE**

**EXPLANATORY MEMORANDUM****1. CONTEXT OF THE PROPOSAL**

The 1958 Lisbon Agreement<sup>2</sup> is a treaty administered by the World Intellectual Property Organization (WIPO) open to parties to the Paris Convention for the Protection of Industrial Property. Its aim is to provide for the protection of appellations of origin. Contracting States are obliged to protect on their territories the appellations of origin of products of the other countries recognized and protected as such in the country of origin and registered at the WIPO International Bureau, unless they declare within one year from the request for registration that they cannot ensure protection (Article 5(3) of the Lisbon Agreement).

The Lisbon Agreement is in force in seven EU Member States: Bulgaria (since 1975), Czech Republic (since 1993), Slovakia (since 1993), France (since 1966), Hungary (since 1967), Italy (since 1968) and Portugal (since 1966). Three EU Member States have signed but not ratified the Agreement (Greece, Romania and Spain). The EU is not a member but has observer status as the Lisbon Agreement only provides for membership of States.

The international system of the Lisbon Agreement is currently being reviewed with a view to improving it so that it might attract a wider membership, while preserving the principles and objectives of the Lisbon Agreement. On this basis, a Working Group worked from 2009 until 2014 towards a revision of the Lisbon Agreement that would involve: (i) the refinement of its current framework; (ii) the inclusion of provision specifying that the Lisbon System also applies in respect of geographical indications; and (iii) the inclusion of the possibility of accession by intergovernmental organizations, such as the European Union. Having regard to the progress made in the sessions of the Working Group, the Lisbon Union Assembly approved, at its twenty-ninth (20th ordinary) session in September/October 2013, the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015<sup>3</sup>. At its 10<sup>th</sup> meeting in October 2014, the Working Group established a basic proposal (including pending issues), for consideration by the Diplomatic Conference for the Adoption of a Revised Lisbon Agreement<sup>4</sup>. The Preparatory Committee of the Diplomatic Conference which convened in October 2014 decided that the Conference will be held in Geneva on 11-21 May 2015<sup>5</sup>.

**2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

Not applicable

<sup>2</sup> Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958, as revised at Stockholm on 14 July 1967, and as amended on 28 September 1979.

<sup>3</sup> See document LI/A/29/2 of October 2, 2013 (Report adopted by the Assembly), [http://www.wipo.int/edocs/mdocs/govbody/en/li\\_a\\_29/li\\_a\\_29\\_2.pdf](http://www.wipo.int/edocs/mdocs/govbody/en/li_a_29/li_a_29_2.pdf); and document LI/A/29/1 of June 24, 2013 (Review of the Lisbon System) [http://www.wipo.int/edocs/mdocs/govbody/en/li\\_a\\_29/li\\_a\\_29\\_1.pdf](http://www.wipo.int/edocs/mdocs/govbody/en/li_a_29/li_a_29_1.pdf)

<sup>4</sup> See documents as retained at the end of the 10<sup>th</sup> session of the Lisbon Working Group in October 2014, [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=32430](http://www.wipo.int/meetings/en/details.jsp?meeting_id=32430)

<sup>5</sup> See Par. 13 of document LI/R/PM/6 of October 31, 2014 (Report adopted by the Preparatory Committee), [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=34262](http://www.wipo.int/meetings/en/details.jsp?meeting_id=34262)

### 3. LEGAL ELEMENTS OF THE PROPOSAL

In accordance with Article 207(1) TFEU, the common commercial policy, which falls within the exclusive competence of the European Union pursuant to Article 3(1)(e) TFEU, relates inter alia to the commercial aspects of intellectual property. The Lisbon Agreement falls within the common commercial policy. It relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade.

The design and structure of the Lisbon Agreement show that the aim and objective of the Lisbon Agreement is to protect appellations of origin in countries other than the producing country. This is done in view and with the objective of promoting, facilitating and governing trade between these countries in these products. Indeed, the protection of appellations of origin in third countries is crucial for the creation of fair trading conditions for products of the European Union. Moreover, the granting of exclusive rights has the effect of preventing trade on goods wrongly characterised as benefitting from an appellation of origin. Many countries have put in place special systems aimed at identifying the specific features for which such indications are known to designate the products in question and deserve special protection. Securing protection for such indications in other countries has, however, been complicated due to differences in legal concepts existing from country to country in this regard and developed in accordance with different national legal traditions within a framework of specific historical and economic conditions.

The Lisbon Agreement was concluded in response to a need for an international system that would facilitate the protection of a special category of such geographical indications, i.e. “appellations of origin”, in countries other than the country of origin, by means of their registration at the International Bureau of WIPO. This confirms that the primary objective of the Lisbon Agreement is to facilitate the protection of the geographical indications of each party in other countries, and hence international trade in products covered by geographical indications, rather than harmonizing the laws of the parties.

The Lisbon Agreement has thus immediate effects on trade and relates specifically to trade as by the European Court of Justice most recently in the *Daiichi Sankyo* case<sup>6</sup> where the Court held that the TRIPS Agreement falls into the exclusive Union competence for the “commercial aspects of intellectual property” pursuant to Article 207(1) TFEU. The Lisbon Agreement also falls within the common commercial policy and as such the EU has exclusive competence pursuant to Article 3(1)(e) TFEU.

The consequence of the exclusive nature of EU competence means that EU has the sole responsibility to conclude international agreements in the field of protection of geographical indications.

As the Lisbon Agreement in its current version only provides for membership of States, the EU Member States participating in the Lisbon Agreement must allow the Union (which is not, and cannot be, a party) to exercise its exclusive competence in the context of negotiations among contracting parties about possible amendments of the Lisbon Agreement.

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<sup>6</sup> Judgment *Daiichi*, C-414/11, EU:C:2013:520

## **RESTREINT UE**

The Council shall authorize the opening of negotiations on the Revised Lisbon Agreement and adopt negotiating directives on the basis of Article 207 in conjunction with Article 218(3) and (4). Furthermore, according to Article 207(3) in conjunction with 218(3) TFEU the Council shall adopt a decision nominating the Commission as the Union negotiator in the field of the Union's exclusive competence.

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**RESTREINT UE**

Recommendation for a

**COUNCIL DECISION****authorizing the opening of negotiations on a Revised 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 and Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958 is a treaty administered by the World Intellectual Property Organization (WIPO) open to parties to the Paris Convention for the Protection of Industrial Property. Its aim is to provide for the protection of appellations of origin. It has a membership of 28 contracting parties, including seven EU Member States (Bulgaria, Czech Republic, France, Hungary, Italy, Portugal and Slovakia).
- (2) The international system of the Lisbon Agreement is currently being reviewed with a view to improving it so that it might attract a wider membership, while preserving the principles and objectives of the Lisbon Agreement. On the basis of progress made by a Working Group which established a basic proposal (including pending issues) for the revision in October 2014, a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications will be convened in Geneva in May 2015.
- (3) The Lisbon Agreement falls within the common commercial policy of the Union since it relates specifically to international trade, having regard to its objective which is to protect appellations of origin in countries other than the producing country. The common commercial policy falls within the exclusive competence of the Union pursuant to Article 3(1)(e) TFEU. As a consequence, the Union must be given the possibility to exercise its exclusive competence in the context of negotiations among contracting parties about possible amendments of the Lisbon Agreement.
- (4) In accordance with Article 207(3) and Article 218(3), the Council shall nominate the Commission as the Union negotiator in the field of the Union's exclusive competence and may address negotiating directives to the Commission.

HAS ADOPTED THIS DECISION:

*Article 1*

The Commission is hereby authorized to negotiate, on behalf of the Union, a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications.

*Article 2*

The negotiating directives are set out in the Annex.

*Article 3*

The negotiations shall be conducted in consultation with the special committee referred to in Article 207(3) TFEU.

*Article 4*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*

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