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NOTE

From: Presidency
To: Permanent Representatives Committee

No. prev. doc.: 5404/19, 5410/19
No. Cion doc.: 11510/18 +ADD 1, 11515/18 + COR 1

Subject: a) 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 (2018/0124 (NLE))
- Examination of the compromise text
b) 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 (2018/0189 (COD))
- Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. The Lisbon Agreement of 1958 for the Protection of Appellations of Origin and their International Registration is a treaty administered by the World Intellectual Property Organization (WIPO) open to parties to the Paris Convention for the Protection of Industrial Property.
2. Seven Member States of the Union (Bulgaria, Czech Republic, Slovakia, France, Hungary, Italy and Portugal) are contracting parties to the Lisbon Agreement. Three Member States of the Union (Greece, Romania and Spain) have signed but not ratified the Agreement. The Union itself is not a contracting party as the Lisbon Agreement only provides for membership of States.

3. The Lisbon Agreement was reviewed from 2009 to 2015. The Diplomatic Conference held in Geneva from 11 to 21 May 2015 adopted the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (hereinafter 'the Geneva Act')¹ on 20 May 2015.
4. The Geneva Act expands the scope of the Lisbon system beyond appellations of origin to all geographical indications within the meaning of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and allows international organisations (such as the European Union) to become contracting parties.
5. On 7 May 2015 the Council adopted a Decision authorising the Commission to participate in the above mentioned Diplomatic Conference. Having regard to the ruling of the European Court of Justice of 25 October 2017 in case C-389/15, this Decision was replaced by the Council Decision (EU) 2018/416 of 5 March 2018.
6. The Union has exclusive competence for the areas covered by the Geneva Act. This was confirmed in the ruling of the European Court of Justice in case C-389/15 which clarified that the draft revised Lisbon Agreement, subsequently adopted as the Geneva Act, is essentially intended to facilitate and govern trade between the Union and third countries and has direct and immediate effects on such trade. Therefore the Geneva Act falls within the exclusive competence of the Union conferred by Article 3(1) of the Treaty on the Functioning of the European Union (TFEU) as it comes within the field of the common commercial policy referred to in Article 207(1) of that Treaty, in particular with regard to the commercial aspects of intellectual property.
7. Regarding certain agricultural products, the Union has established uniform and comprehensive protection systems for geographical indications for wines (1970), spirits (1989), aromatised wines (1991) and other agricultural products and foodstuffs (1992).
8. The Geneva Act is compatible with TRIPS and with the relevant Union legislation on the protection of designations of origin and geographical indications for agricultural products.

¹ http://www.wipo.int/edocs/lexdocs/treaties/en/lisbon/trt_lisbon_009en.pdf

9. In order for the Union to be able to exercise its exclusive competence for the areas covered by the Geneva Act and its functions in the context of its comprehensive protection systems for agricultural designations of origin and geographical indications, the Union should become a contracting party to the Geneva Act.

II. STATE OF PLAY

10. On 27 July 2018, the Commission submitted to the Council
- a) a proposal for a Council Decision on the Union's accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications²
 - b) a 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 the Appellations of Origin and Geographical Indications³.
11. Whereas the proposed Council Decision requires for its adoption the consent of the European Parliament, the proposed Regulation has to be adopted according to the Ordinary Legislative Procedure.
12. In terms of substance, both acts form part of a single package, with the proposed Council Decision providing the legal act allowing for the Union's accession to the Geneva Act, while the Regulation sets out the rules governing the action of the Union following its accession to the Geneva Act. The aim of the proposed Regulation is to ensure the legal framework for effective participation of the Union in the WIPO Lisbon Union once the EU will have become a contracting party to the Geneva Act.
13. The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) were consulted on the proposed Regulation. The EESC gave its opinion on 12 December 2018⁴. The CoR informed the General Secretariat of the Council by letter of 8 January 2019 that it would not deliver an opinion on the proposed Regulation.
14. The European Parliament JURI Committee voted its report and mandate for trilogue negotiations on the proposed Regulation on 23 January 2019, which was approved by the EP Plenary on 31 January 2019.

² 11510/18 + ADD 1

³ 11515/18 + COR1

⁴ See 5507/19 + COR 1

15. The Council Working Party on Intellectual Property discussed the package at several occasions during September 2018 and January 2019, and at its meeting on 24 January 2019 achieved broad agreement on the texts. Taking into account final comments made by delegations at that Working Party meeting and written remarks submitted following that meeting, the Presidency introduced some final adaptations into the compromise texts of the two proposals. These compromise texts, which represent a balance between different views expressed by delegations, are set out in documents 5711/19 (draft Council Decision) and 5713/19 (draft European Parliament and Council Regulation).

II. MAIN ISSUES

(a) Voting rights and continuity of rights resulting from the membership of seven Member States in the 'old' Lisbon Agreement

16. Under the Commission proposal for the Council Decision, it was proposed that the EU alone accedes to the Geneva Act.
17. However, under the rules of the Geneva Act (see point (b)(ii) of Article 22(4) of the Geneva Act) the EU will not have any voting rights under the Geneva Act, unless individual Member States as well become contracting parties of the Geneva Act. The EU has only as many voting rights as Member States are contracting party to the Geneva Act.
18. Discussions at Council Working Party level have made it very clear that a majority of Member States could not accept any solution that would leave the Union without any voting rights.
19. Therefore, the Presidency compromise text on the proposed Council Decision in full respect of the EU external competence also authorises the Member States, which wish to do so, to accede to, or ratify, as appropriate, the Geneva Act alongside with the EU and in the interest of the Union, in order to ensure the EU's voting rights in accordance with point (b)(ii) of Article 22(4) of the Geneva Act.
20. Authorising the Member States to conclude the Geneva Act alongside with the EU also ensures the continuity of rights resulting from the existing membership of seven Member States in the Special Union of the Lisbon Agreement.

(b) Non-agri geographical indications

21. Currently, there is no EU legal framework for the protection of non-agri geographical indications. Member State views diverge on the need/desirability of having such rules at Union level. The Presidency compromise text on the proposed Regulation is without prejudice to any future decision on this question.
22. It is clear that the protection that the EU can give under the Geneva Act/the proposed Regulation to third country geographical indications originating in a contracting party of the Geneva Act relates only to products covered by EU legislation, which currently exists only with regard to agricultural products, foodstuff, wines, spirits and aromatised wines, but not for non-agri products.

(c) Other issues

23. It was of particular concern of several delegations, particularly the seven Member States, which are members of the Lisbon Agreement, that the relationship between the Lisbon Agreement and the Geneva Act and the fate of geographical indications registered under the Lisbon Agreement is further clarified. Another concern was that the procedure under the proposed Regulation for the international registration of geographical indications be more streamlined. To address these concerns a whole new provision (Article 9a) was introduced in the Presidency compromise text and by merging Articles 3 and 4 of the proposed Regulation a single procedure was introduced for requesting international registration of geographical indications following the EU accession to the Geneva act and subsequently.

IV. CONCLUSION

24. The Permanent **Representatives' Committee** is thus invited

- a) to examine and approve the compromise text of the draft Council Decision on the Union's accession to the Geneva Act as set out in doc. 5711/19 with a view to submit this text to lawyer-linguistic review for preparing the request for consent of the European Parliament,

and
- b) to approve the compromise text of the draft Regulation setting out the rules governing the action of the Union following its accession to the Geneva Act as set out in doc. 5713/19 as negotiating mandate with a view of achieving a rapid first-reading agreement with Parliament on that Regulation.
