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## NOTE

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From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	6877/19, 6879/19
No. Cion doc.:	11515/18 + COR1
Subject:	Proposal for a Regulation of the European Parliament and 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 - Analysis of the final compromise text with a view to agreement

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## I. INTRODUCTION

1. On 27 July 2018, the Commission submitted to the Council 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 Indications and 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 Indications.
2. Whereas the proposed Council Decision requires for its adoption the consent of the European Parliament (see documents 6928/19 and 6929/19), the proposed Regulation has to be adopted according to the Ordinary Legislative Procedure.

3. 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.
4. 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 2018. 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.
5. The Permanent Representatives' Committee on 6 March 2018 granted the Presidency with a negotiating mandate for trilogue negotiations with the European Parliament with a view of achieving a rapid first-reading agreement on the draft Regulation (see 6879/19).
6. The European Parliament (EP) confirmed the JURI report (A8-0036/2019) in Plenary on 31 January 2019, and granted the Rapporteur Ms ROZIERE (S&D/FR) a mandate to start negotiations with the Council on this basis.
7. Two political trilogues took place on 11 and 13 March 2019, and intensive discussions at technical level were held to prepare for the trilogue negotiations.
8. A provisional agreement between the co-legislators was reached at the second trilogue on 13 March 2019. The full compromise text of this provisional agreement was circulated to delegations on 14 March 2019 (see WK 3748/2019).
9. The compromise text is set out in the ANNEX I to this note (changes compared to the text of the Council negotiation mandate set out in 6879/19 are indicated by using **bold underlined**).
10. This text represents a balanced compromise package that is also supported by the Commission.

## **II. MAIN ELEMENTS OF THE COMPROMISE**

### **(a) Treatment of non-agri geographical indications (GIs)**

The fact that there is currently no EU legal framework for the protection of non-agri geographical indications was of particular concern for Parliament and several delegations, and was the issue of highest political importance for Parliament in the trilogue negotiations.

The Presidency informed Parliament that the Member State views diverge on the desirability of having such rules at Union level, and in the end Parliament acknowledged that this was an issue that could not be solved in the proposed Regulation because of the rapidly approaching end of the current legislative period. Therefore, a compromise was found by addressing the matter in the review clause (see Article 13a). Parliament accepted the Council's approach of keeping the other parts of the compromise text on the proposed Regulation neutral so that it is without prejudice to any future decision on this question. Additional reassurance was given to Parliament by the Commission in accepting to make a declaration along the lines of the draft text set out in ANNEX II of this note.

### **(b) Transitional provisions regarding the seven Member States who are state parties to the Lisbon Agreement**

As the Commission had indicated at COREPER on 6 March 2019, the Commission was able to accept the compromise text on the draft Regulation only if a certain degree of oversight by the Commission (a "droit de regard") was introduced in Article 9a(3) with regard to the registration of new non-agricultural GIs by the seven Lisbon Member States under the Lisbon Agreement. The Commission made it very clear in the trilogue negotiations that this was a red line, given the Union's exclusive external competence.

The compromise found in the trilogue negotiations clarifies in the text of the Article 9a(3) that a negative opinion under this "droit de regard" may be issued only in exceptional and duly justified cases, and only after consultation with the Member State concerned.

With a view to giving further reassurance to the Member States concerned, the Commission accepted to give additional clarification in a declaration along the lines of the draft declaration set out in ANNEX II.

**(c) Other issues**

Parliament demonstrated a great spirit of constructive compromise in the trilogue negotiations and accepted nearly all of the conceptual and structural changes and the actual wording of the Council mandate.

**III. CONCLUSION**

In the light of the above, COREPER is invited

- to give its approval to the compromise text set out in the ANNEX I to this note, and
- to mandate the Presidency to inform the European Parliament that, should the Parliament adopt the text of the proposal in the exact form as set out in ANNEX I to this note - subject to legal-linguistic revision - at a forthcoming plenary meeting, the Council would adopt the proposed Regulation thus amended.

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

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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure

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<sup>1</sup> OJ C [...], [...], p. [...].

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')<sup>2</sup> pursuant to Council Decision (EU) .../...<sup>3</sup>, whilst authorising Member States to also ratify or accede 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<sup>4</sup> ('Special Union'). In accordance with Article **4** of Decision (EU).../..., the Union and those Member States having ratified or acceded are to be represented by the Commission in the Special Union as regards the Geneva Act.
- (2) It is appropriate to establish rules allowing the Union to exercise the rights and to fulfil the obligations under the Geneva Act of the Union and those Member States which ratify or accede.

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<sup>2</sup> [http://www.wipo.int/edocs/lexdocs/treaties/en/lisbon/trt\\_lisbon\\_009en.pdf](http://www.wipo.int/edocs/lexdocs/treaties/en/lisbon/trt_lisbon_009en.pdf).

<sup>3</sup> OJ L [...], [...], p. [...].

<sup>4</sup> [http://www.wipo.int/export/sites/www/lisbon/en/legal\\_texts/lisbon\\_agreement.pdf](http://www.wipo.int/export/sites/www/lisbon/en/legal_texts/lisbon_agreement.pdf).

- (3) The Geneva Act protects appellations of origin, including “designations of origin”, and geographical indications, as defined by Regulation (EC) No 110/2008<sup>5</sup>, Regulation (EU) No 1151/2012<sup>6</sup>, Regulation (EU) No 1308/2013<sup>7</sup> and Regulation. (EU) No 251/2014<sup>8</sup>, which are henceforth both referred to as 'geographical indications'.
- (4) Following the accession of the Union to the Geneva Act and subsequently, 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 its register ('the International Register'). These applications should be based on notifications from Member States acting on their own initiative or on request by a natural person or legal entity as referred to in paragraph 2(ii) of Article 5 of the Geneva Act or by a beneficiary as defined in paragraph (xvii) of Article 1 of the Geneva Act. When establishing these 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 export value, protection under other agreements as well as current or potential misuse in the third countries concerned.
- (5) *(merged into recital 4)*

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

- (5a) The addition of geographical indications to the International Register should serve the purposes of providing quality products, fair competition and consumer protection. While having a significant cultural and economic value, the addition 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.**
- (5b) The Commission should use existing regular mechanisms to consult Member States, trade associations and Union producers in order to establish an ongoing dialogue with relevant stakeholders.**
- (6) Appropriate procedures should be established in order for the Commission to assess geographical indications originating in the contracting parties to the Geneva Act which are not Member States ('third Contracting Parties') and registered in the International Register, in order to provide for a procedure to decide on protection in the Union and to invalidate such protection, where relevant.
- (7) Enforcement by the Union of the protection of geographical indications originating in third Contracting Parties and registered in the International Register should be done in accordance with Chapter III of the Geneva Act, in particular with Article 14 of the Geneva Act, which requires each Contracting Party to make available effective legal remedies for the protection of registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice. With a view to ensuring the protection of national, regional and Union 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.



- (7a) Given the exclusive competence of the Union, Member States which are not already contracting parties to the Lisbon Agreement 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.
- (7b) Member States which already are contracting parties to the Lisbon Agreement may remain as such, in particular to ensure the continuity of rights granted and the fulfilment of obligations under 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 the rules provided for in 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 Single Market, they should not register under the Lisbon Agreement any new appellations of origin for products falling within the scope of Regulation (EC) No 110/2008, Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013 or Regulation (EU) No 251/2014.
- (7c) Those Member States have registered appellations of origin under the Lisbon Agreement. Transitional arrangements should be provided for continued protection subject to the requirements of that Agreement, the Geneva Act and the Union *acquis*.
- (8) Those Member States accepted the protection of appellations of origin of third Contracting parties. In order to provide for them the means to fulfil their international obligations assumed before the accession of the Union to the Geneva Act, a transitional arrangement should be provided which should produce effects at national level only, and have no effect on intra-Union or international trade.

- (9) It appears equitable that the fees to be paid under the Geneva Act and the Common Regulations under the Lisbon Agreement and the Geneva Act 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 paragraph 2(ii) of Article 5 of the Geneva Act or by a beneficiary as defined in paragraph (xvii) of Article 1 of the Geneva Act. Member States should have the option to require that natural person, legal entity or beneficiary to pay some or all of the fees.
- (10) 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.**

- (11) In order to ensure uniform conditions for the implementation of the Union membership in the Special Union, implementing powers should be conferred on the Commission to establish a list of geographical indications for the filing of an application for their international registration with the International Bureau upon accession to the Geneva Act, for the subsequent filing of an application for international registration of a geographical indication with the International Bureau, for rejecting an opposition, for a decision on whether or not to grant protection of a geographical indication registered in the International Register, **for the withdrawal of refusal of the effects of an international registration**, for requesting the cancellation of an international registration, for notifying the invalidation of the protection in the Union of a geographical indication registered in the International Register, and for authorising the Member State to provide for any necessary modifications and notify the International Bureau in respect of the appellation of origin for a product which is protected under one of the Regulations referred to in Article 1 of this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>9</sup>.

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<sup>9</sup> 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).

**(11b) It is important to ensure that the Commission monitors and evaluates the participation of the Union in that 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, and 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 the EU acquis as regards geographical indications on the attractiveness of the Geneva Act to third countries, and the number and type of geographical indications originating from Contracting Parties of third countries and which have been rejected by the Union,**

HAVE ADOPTED THIS REGULATION:

*Article 1*  
*Subject matter*

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').

For the purpose of this Regulation, appellations of origin, including “designations of origin”, and “geographical indications”, as defined in Regulation (EC) No 110/2008, Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013 and Regulation (EU) No 251/2014, are henceforth both referred to as 'geographical indications'.

*Article 2*  
*International registration of geographical indications*

1. Following the accession of the Union to the Geneva Act and subsequently, on a regular basis, the Commission as Competent Authority shall file with the International Bureau of the World Intellectual Property Organization ('the International Bureau') 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.
2. To this end, Member States may request the Commission to register geographical indications originating in their territory, protected and registered under Union law, in the International Register. Such request may be based on:
  - (a) a request by a natural person or legal entity as referred to in paragraph 2(ii) of Article 5 of the Geneva Act or by a beneficiary as defined in paragraph (xvii) of Article 1 of the Geneva Act, or
  - (b) their own initiative.

3. On the basis of these requests, the Commission shall adopt implementing acts listing the geographical indications referred to in paragraph 1, in accordance with the examination procedure referred to in Article 13(2).

*(Article 3 was merged into Article 2)*

### *Article 3a*

#### *Cancellation of a geographical indication originating in a Member State of the Union registered in the International Register*

1. The Commission shall adopt an implementing act requesting the cancellation of a registration in the International Register of a geographical indication originating in a Member State of the Union:
  - (a) if that geographical indication is no longer protected in the Union or
  - (b) at the request of the Member State in which the geographical indication originates, which may be based on:
    - (i) a request by a natural person or legal entity as referred to in paragraph 2(ii) of Article 5 of the Geneva Act or by a beneficiary as defined in paragraph (xvii) of Article 1 of the Geneva Act, or
    - (ii) its own initiative.
2. The implementing act referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 13(2).
3. The Commission shall notify the International Bureau without delay of the request for cancellation.

*Article 3b*

*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 concerning the geographical indications registered in the International Register and in respect of which the Contracting Party of Origin, as defined under Article 1(xv) of the Geneva Act, is not a Member State, provided that the publication relates to a product in respect of which protection at Union level of geographical indications is provided.
2. The publication of the international registration shall be made in the Official Journal of the European Union, C series, and shall include the product type and country of origin.

*Article 4*  
*Assessment 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 concerning the geographical indications registered in the International Register and in respect of which the Contracting Party of Origin, as defined under Article 1(xv) of the Geneva Act, is not a Member State, in order to determine whether it contains the mandatory elements laid down in Rule 5(2) of the Common Regulations under the Lisbon Agreement and the Geneva Act (the 'Common Regulations')<sup>10</sup>, and the particulars concerning the quality, reputation or characteristics as laid down in Rule 5(3) of those Regulations, as well as to assess whether the publication relates to a product in respect of which protection at Union level of geographical indications is provided.
2. The period for carrying out such assessment shall not exceed four months from the date of the registration of the geographical indication in the International Register and shall not include assessment of other specific Union provisions relating to the placing of products on the market and, in particular, to sanitary and phytosanitary standards, the marketing standards, and to food labelling.

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<sup>10</sup> Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement as adopted by the Assembly of the Lisbon Union on 11 October 2017, [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=376416](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=376416), Doc. WIPO A/57/11 of 11 October 2017.



*Article 5*

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

1. Within four months from the date of publication of the name of the geographical indication in the Official Journal of the European Union in accordance with Article 3b, the authorities of a Member State or of a third country other than the Contracting Party of Origin, 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, in one of the official languages of the Union.
2. Such opposition, relating to a geographical indication published in the Official Journal of the European Union in accordance with Article 3b, shall be admissible only if it is lodged within the time limit set out in paragraph 1 and if it contains one or more of the following grounds:
  - (a) that 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) that the geographical indication registered in the International Register is wholly or partially homonymous with a geographical indication already protected in the Union and that there is no sufficient 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) that the protection in the Union of the geographical indication registered in the International Register would infringe a prior trade mark right at national, regional, or Union level;
- (d) that the protection in the Union of the geographical indication proposed would jeopardise the use of an entirely or partly identical name or the exclusive nature of a trade mark at national, regional, or Union 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 name of the geographical indication in the Official Journal of the European Union in accordance with Article 3**ab**;
- (e) that 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) that the name for which registration is requested is a generic term in the territory of the Union;
- (g) that the conditions referred to in paragraph 1 (i) and (ii) of Article 2 of the Geneva Act are not complied with;
- (h) that 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 as set out in paragraph 2 shall be assessed by the Commission in relation to the territory of the Union or part thereof.

*Article 6*

*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 4(1), the conditions laid down in that paragraph are fulfilled and no opposition or oppositions which are inadmissible have been received, the Commission shall, as appropriate, reject the inadmissible oppositions received and take a decision to grant protection of the geographical indication by means of an implementing act adopted in accordance with the examination procedure referred to in Article 13(2).
2. Where, based on the assessment carried out pursuant to Article 4(1), the conditions laid down in that paragraph are not fulfilled or an admissible opposition as set out in Article 5(2) has been received, the Commission shall take a decision on whether or not to grant protection of a geographical indication registered in the International Register by means of an implementing act which shall be adopted in accordance with the examination procedure referred to in Article 13(2). In respect of geographical indications covering products not falling within the competence of the Committees provided in Article 13(1) the decision will be adopted by the Commission.
3. The decision to grant protection of a geographical indication in accordance with paragraphs 1 or 2 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 within two years in cases referred to in the first paragraph of Article 5 of Council Decision (EU) ..../....<sup>11</sup>.
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, adopt in accordance with the examination procedure referred to in Article 13(2) an implementing act withdrawing, in whole or in part, a refusal previously notified to the International Bureau. The Commission shall notify the International Bureau of such withdrawal without delay.

#### *Article 7*

##### *Use of geographical indications*

1. The implementing acts adopted by the Commission on the basis of Article 6 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 the agricultural markets, sanitary and phytosanitary standards, and to food labelling.
2. Subject to paragraph 1 geographical indications protected under this Regulation may be used by any operator marketing a product in accordance with the international registration.

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<sup>11</sup> Council Decision (EU) ..../.... on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

*Article 8*

*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, adopt implementing acts invalidating, in whole or in part, the effects of protection in the Union of a geographical indication registered in the International Register 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) where compliance with the mandatory elements 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 those Regulations are no longer ensured.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 13(2), and only after the natural persons or legal entities referred to in paragraph 2(ii) of Article 5 of the Geneva Act or the beneficiaries, as defined in paragraph (xvii) of Article 1 of the Geneva Act have been given an opportunity to defend their rights.
3. Provided 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 9*  
*Relation to trade marks*

1. The protection of a geographical indication shall not prejudice the validity of a prior trade mark at national, regional, or Union 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 the said 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, registered or established by use, if that possibility is provided for by the legislation concerned, 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, 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 Council<sup>12</sup> or under Directive (EU) 2015/2436 of the European Parliament and the Council<sup>13</sup>. In such cases the use of the geographical indication shall be permitted as well as use of the trade mark concerned.

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<sup>12</sup> 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 of 16.07.2017, page 1).

<sup>13</sup> 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 of 23 December 2015).

*Article 9a*

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

1. In respect of each appellation of origin for a product, which is protected under one of the Regulations referred to in Article 1 of this Regulation, originating in an EU Member State, which is a contracting party to the Lisbon Agreement the Member State concerned shall choose to:
  - (a) request 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 in Article **3** of Council Decision (EU) .../....<sup>14</sup>, or
  - (b) request the cancellation of the registration of that appellation of origin in the International Register.

The Member States concerned shall choose on the basis of:

- (a) a request by a natural person or legal entity referred to in paragraph 2(ii) of Article 5 of the Geneva Act or a beneficiary as defined in paragraph (xvii) of Article 1 of the Geneva Act, or
- (b) their own initiative.

The Member States concerned shall notify the Commission of the choice referred to in the first sub-paragraph within 3 years from the date of the entry into force of this Regulation.

In cases referred to in point (a) of the first sub-paragraph of this paragraph, the Member State concerned in coordination with the Commission, shall verify with the International Bureau any modifications to be made under Rule 7 (4) of the Common Regulations for the purpose of registration under the Geneva Act.

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<sup>14</sup> Council Decision (EU) .../.... on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

The Commission shall authorise the Member State to provide for the necessary modifications and notify the International Bureau by means of an implementing act in accordance with the examination procedure referred to in Article 13(2).



2. In respect of each appellation of origin for a product, falling within the scope of one of the Regulations referred to in Article 1 of this Regulation, but not being protected under any of those Regulations, originating in an EU Member State, which is a contracting party to the Lisbon Agreement the Member State concerned shall:
- (a) request registration under the Regulation concerned, or
  - (b) request the cancellation of the registration of that appellation of origin in the International Register.

The Member States concerned shall choose on the basis of:

- (a) request by a natural person or legal entity referred to in paragraph 2(ii) of Article 5 of the Geneva Act or a beneficiary as defined in paragraph (xvii) of Article 1 of the Geneva Act, or
- (b) their own initiative.

The Member States concerned shall notify the Commission of the choice referred to in the first sub-paragraph of this paragraph, and make the respective request, within 3 years from the date of the entry into force of this Regulation.

In cases referred to in point (a) of the first sub-paragraph of this paragraph, the Member State concerned shall request 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 in Article 3 of Council Decision (EU) .../....<sup>15</sup>, within 1 year from the date of registration of the geographical indication under the Regulation concerned. The fourth and fifth sub-paragraph of paragraph 1 shall apply.

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<sup>15</sup> Council Decision (EU) .../.... on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

If the request for registration under the Regulation concerned 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 fourth sub-paragraph of this paragraph, the Member State concerned shall, without delay, request the cancellation of the registration of that geographical indication in the International Register.

3. In respect of appellations of origin for products not falling within the scope of one of the Regulations referred to in Article 1 of this Regulation, in respect of which protection at Union level of geographical indications is not provided, **a Member State which already is a contracting 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 draft application for registration of such appellations of origin to the Commission. 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 2 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 when 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 letter (a), the deadline for the Commission to act shall be 1 month from the receipt of the information requested.**

**The Commission shall immediately inform the other Member States about any notification made under letter (a).**

*Article 10*

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

1. Those Member States which were contracting parties of 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 a contracting 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 as at that date under the Lisbon Agreement.
  - 1a. Such protection under a national protection system shall
    - (a) be superseded by protection under the EU protection system for a particular appellation of origin if protection is provided pursuant to a decision under Article 6 of this Regulation subsequent to the accession of the third country concerned to the Geneva Act, provided that the protection provided pursuant to a decision under Article 6 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 effect of international registration ends.
2. 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 1(a), the consequences of such national protection shall be the sole responsibility of the Member State concerned.
3. 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.

4. The Member States referred to in paragraph 1 shall transmit to the Commission any notification made by the International Bureau under the Lisbon Agreement, which the Commission shall then transmit to all other Member States.
5. Member States referred to in paragraph 1 shall declare to the International Bureau that they cannot ensure national protection of an appellation of origin for a product, which falls within the scope of one of the Regulations referred to in Article 1 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 11*

##### *Fees*

Fees to be paid under Article 7 of the Geneva Act, as specified in the Common Regulations, 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 paragraph 2(ii) of Article 5 of the Geneva Act or by a beneficiary as defined in paragraph (xvii) of Article 1 of the Geneva Act. Member States may require that natural person or legal entity or a beneficiary to pay some or all of the fees.

#### *Article 12*

##### *Special financial contribution*

If the income from the Special Union is derived in accordance with Article 24(2)(v) 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 13*  
*Committees procedure*

1. 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 of the European Parliament and of the Council<sup>16</sup> 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 Council<sup>17</sup> by the Committee for Spirit Drinks established by Article 25 of that Regulation;
  - (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.

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<sup>16</sup> 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 aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

<sup>17</sup> 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).

## Article 13a

### Monitoring and review

Within two years 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:

- (a) the number of geographical indications protected and registered under Union law for which applications for international registration have been submitted, and cases where the protection has been rejected by third contracting parties;
- (b) the evolution of the number of third countries participating in the Geneva Act and the action taken by the Commission to increase the number as well as the impact of the current state of the EU acquis as regards geographical indications on the attractiveness of the Geneva Act to third countries; and
- (c) the number and type of geographical indications originating from third countries which have been rejected by the Union.

## *Article 14*

### *Entry into force*

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels

**Draft Commission declaration relating to the compromise text of Article 9a(3), row 116:**

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.

**Draft Commission declaration 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 Article [13a] of Regulation [...] and consider any possible next steps.