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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a 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

Delegations will find attached document COM(2022) 593 final.

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Brussels, 17.11.2022
COM(2022) 593 final

2022/0372 (NLE)

Proposal for a

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

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). It is open to parties to the Paris Convention for the Protection of Industrial Property. Its contracting parties are obliged to protect on their territories the appellations of origin of products of the other contracting parties recognised and protected as such in the country of origin and registered at the International Bureau of WIPO, unless they declare within 1 year from the request for registration that they cannot ensure protection.

The Lisbon Agreement was reviewed from 2009 to 2015. The aim was to (i) refine its current framework; (ii) include provisions that specify that the Lisbon system also applies to geographical indications (GIs); and (iii) include the possibility of accession by intergovernmental organisations such as the EU.

On 7 May 2015, the Council adopted a Decision authorising the European Commission to participate in the WIPO Diplomatic Conference held in Geneva from 11 to 21 May 2015. The conference adopted the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (hereinafter ‘the Geneva Act’) on 20 May 2015. Having regard to the ruling of the Court of Justice of the European Union of 25 October 2017 in case C-389/15, this Decision was replaced by Council Decision (EU) 2018/416 of 5 March 2018. It authorised the opening of negotiations for a revised Lisbon Agreement on Appellations of Origin and Geographical Indications.

On 26 November 2019, the European Union acceded to the Geneva Act, with the accession entering into force on 26 February 2020. The Geneva Act itself entered into force on 26 February 2020.

Some key provisions on EU accession to the Geneva Act are laid down in Council Decision (EU) 2019/1754. In particular, Article 4(1) states that the Commission ‘shall be designated as the Competent Authority referred to in Article 3 of the Geneva Act, responsible for the administration of the Geneva Act in the territory of the Union and for communications with the International Bureau of Intellectual Property of the WIPO under the Geneva Act and the Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement.’

On 13 April 2022, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2007/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754 (COM(2022) 174 final – hereinafter referred to as the proposal on the protection of CI GIs Regulation.

Article 59 of the proposal on the protection of CI GIs Regulation aims at amending Council Decision (EU) 2019/1754. The amendment aims to establish the European Intellectual Property Office (EUIPO) as the Competent Authority under the Geneva Act of WIPO's Lisbon Agreement in respect of CI GIs. This has no bearing on the Commission being the Competent Authority under the Geneva Act in respect of agricultural and food products protected by the EU geographical indication schemes. In a similar vein, Article 60 of the proposal on the protection of CI GIs introduces amendments to Regulation (EU) 2019/1753 on the action of the Union following its accession to the Geneva Act. In this regard, and in line with the amendments proposed in Article 59, Article 60 proposes amending Regulation 2019/1753 so that the EUIPO is recognised as the Competent Authority under the Geneva Act in respect of international registrations related to geographical indications for craft and industrial (CI) products.

However, during the Council negotiations, procedural concerns emerged about Article 59 of the proposal on CI GIs. Article 59 intends to amend Council Decision (EU) 2019/1754, which is based on Articles 207 and 218(6) of the Treaty on the Functioning of the European Union (TFEU) and has therefore a different adoption procedure laid down in the TFEU than the one applicable for the Commission proposal on the protection of CI GIs Regulation based on Articles 118(1) and 207(2) TFEU. In this regard, it appears more appropriate to carry out such an amendment by means of a stand-alone Commission proposal for a Council Decision amending Council Decision 2019/1754, instead of including such a modification as an Article in the Commission proposal on the protection of CI GIs Regulation.

This Commission proposal for a Council Decision therefore intends to amend Article 4(1) of Council Decision (EU) 2019/1754 to establish the EUIPO as the competent authority under the Geneva Act in respect of geographical indications for craft and industrial products.

This proposal replaces Article 59 of the proposal on the protection of CI GIs Regulation.

1.2. Consistency with existing policy provisions in the policy area

The proposal establishes the connection between the EU geographical indication protection system for craft and industrial products and the Lisbon system for the international registration of appellations of origin and geographical indications. It does this by proposing an amendment to Council Decision (EU) 2019/1754.

1.3. Consistency with other Union policies

EU membership of the Geneva Act is consistent with the EU's general policy to promote and improve the protection of geographical indications through bilateral, regional and multilateral agreements.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

Considering the subject matter of the Treaty, the Council Decision should be based on Articles 207 and 218(6)(a)(v) TFEU.

2.2. Subsidiarity (for non-exclusive competence)

According to Article 5(3) of the Treaty on European Union, the subsidiarity principle does not apply to areas of exclusive EU competence.

2.3. Proportionality

Given the exclusive nature of the EU's commercial policy, including commercial aspects of intellectual property, EU Member States are not supposed to have GI protection systems of their own or themselves protect agricultural GIs of third country members of the Lisbon system. In order for the EU to properly exercise its exclusive competence for craft and industrial geographical indications in the Lisbon system, it should establish the EUIPO as the competent authority under Article 3 of the Geneva Act, in accordance with the administration at EU level of the registration system envisaged in the proposal on the protection of CI GIs Regulation. This would ensure coherence with the amendments proposed in Article 60 of the proposal on the protection of CI GIs Regulation to Regulation (EU) 2019/1753 of the European Parliament and of the Council on the action of the Union following its accession to the Geneva Act. In particular, Article 60 envisages that the EUIPO is in charge of administering the EU-level stage of the registration of CI GIs, and that it also plays the role of competent authority under the Geneva Act in respect of international registrations to protect geographical indications for craft and industrial products.

2.4. Choice of the instrument

A Council Decision on the amendment of Council Decision (EU) 2019/1754 is the appropriate legal instrument, having regard to Article 28 (Becoming Party to This Act) of the Geneva Act. Considering the subject matter of the Treaty, the Council Decision should be based on Articles 207 and 218(6) TFEU.

3. RESULTS OF EX POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Ex post evaluations/fitness checks of existing legislation

Not applicable. The assessment has already been completed as part of the proposal on the protection of CI GIs Regulation (SWD(2022) 115 final, impact assessment report on geographical indication protection for craft and industrial products).

3.2. Stakeholder consultations

Stakeholder consultations on the proposal on the protection of CI GIs Regulation and in particular more detailed feedback received from the 2021 public consultation has shown that the most preferred policy option according to most respondents is a

specific system establishing an EU title to protect GIs for CI products. Such a system has several features that are particular to the new EU GI scheme, as compared to the existing EU GI schemes for agricultural products.

3.3. Collection and use of expertise

In preparing the proposal on the protection of CI GIs Regulation, the Commission relied on technical cooperation with the EUIPO. It focused on various process models to enable a sound assessment of sub-options on the EU body in charge of registering CI GIs and of handling international applications under the Geneva Act, as well as the role of national authorities in the registration procedure. The outcome of such cooperation, based on the EUIPO's contribution, is in Annex 9 of the impact assessment relating to the proposal on the protection of CI GIs Regulation (SWD(2022) 115 final, impact assessment report on geographical indication protection for craft and industrial products).

3.4. Impact assessment

See SWD(2022) 115 final, impact assessment report on geographical indication protection for craft and industrial products accompanying the document proposal on the protection of CI GIs Regulation.

3.5. Regulatory fitness and simplification

Not applicable.

3.6. Fundamental rights

EU membership of the Geneva Act contributes to the fulfilment of Article 17(2) of the Charter of Fundamental Rights of the European Union, which provides that intellectual property must be protected.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

5.1. Implementation plans and monitoring, evaluation and reporting arrangements

Not applicable.

5.2. Explanatory documents (for directives)

Not applicable.

5.3. Detailed explanation of the specific provisions of the proposal

Not applicable.

Proposal for a

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

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) On 26 November 2019, the European Union acceded to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications¹ (the Geneva Act), its accession entering into force on 26 February, 2020. The Geneva Act itself entered into force on 26 February, 2020.
- (2) Under Article 4(1) of Council Decision (EU) 2019/1754², the Commission is to be the Competent Authority as referred to in Article 3 of the Geneva Act, responsible for the administration of the Geneva Act in the territory of the Union and for communications with the International Bureau of Intellectual Property of the World Intellectual Property Organization under the Geneva Act, as well as and the Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement.
- (3) With a view to the administration at Union level of the registration of geographical indications for craft and industrial products provided for in Regulation (EU) 2022/... of the European Parliament and of the Council of ... concerning geographical indication protection for craft and industrial products, and in line with the amendments introduced by that Regulation to Regulation (EU) 2019/1753 of the European Parliament and of the Council³, the European Intellectual Property Office should play

¹ Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (OJ L 271, 24.10. 2019, p. 15).

² 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).

³ 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).

the role of the Union's Competent Authority in respect of geographical indications for craft and industrial products under the Geneva Act,

HAS ADOPTED THIS DECISION:

Article 1

In Article 4(1) of Council Decision (EU) 2019/1754, the following subparagraph is added:

“In respect of geographical indications protecting craft and industrial products within the meaning of Regulation (EU) 2022/... of the European Parliament and of the Council⁴, the European Intellectual Property Office shall be designated as the Competent Authority referred to in Article 3 of the Geneva Act, and be responsible for the administration of the Geneva Act in the territory of the Union and for notifications and communications with the International Bureau of the WIPO under the Geneva Act and the Common Regulations.”

Article 2

This Decision shall enter into force on the twentieth day following that of the publication of Regulation 2022/... in the Official Journal of the European Union.

Done at Brussels,

For the Council

...

The President

⁴ Regulation (EU) 2022/... of the European Parliament and of the Council of ... concerning geographical indication protection for craft and industrial products (OJ ...)