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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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Delegations will find attached document COM(2023) 54 final.

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2023/0022 (NLE)

Proposal for a

COUNCIL DECISION

amending Council 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

- **Reasons for and objectives of the proposal**

The Lisbon Agreement of 1958 for the Protection of Appellations of Origin and their International Registration created a special union ('the Special Union') within the framework of the Union for the Protection of Industrial Property which was established by the Convention for the Protection of Industrial Property signed in Paris on 20 March 1883 ('the Paris Convention'). 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. 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.

On 27 July 2018, the Commission made a proposal for a Council Decision on the accession of the European Union to the Geneva Act (document COM(2018) 350 final), on the basis of Article 207 of the Treaty on the Functioning of the European Union (TFEU) and Article 218(6)(a) TFEU. In view of the European Union's exclusive competence as regards the negotiation of that act, that proposal provided that the European Union alone would accede thereto.

On 15 March 2019, the Council sent the European Parliament a draft Council decision on the accession of the European Union to the Geneva Act, authorising all Member States which wished to do so to accede to that act alongside the European Union. On 16 April 2019, the Parliament approved the draft decision.

Since the Commission did not support that draft, the Council unanimously adopted Decision (EU) 2019/1754 on 7 October 2019, in accordance with Article 293(1) TFEU.

Article 3 of Decision (EU) 2019/1754 provides:

'Member States which wish to do so, are hereby authorised to ratify or accede to, as appropriate, alongside the [European] Union, the Geneva Act in the interest of the [European] Union and in full respect of its exclusive competence.'

Article 4(1) of the same decision provides:

'In the Special Union, the [European] Union and any Member States which ratifies or accedes 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 [European] Union shall be responsible for ensuring the exercise of the rights and fulfilment of the obligations of the

[European] Union and of the Member States which ratify or accede to the Geneva Act pursuant to Article 3 of this Decision. ’

In a statement entered in the Council minutes relating to the adoption of that decision, the Commission, on the one hand, objected to the possibility for all EU Member States which wish to do so to be authorised to ratify or accede to the Geneva Act alongside the European Union, and, on the other hand, stated that it would have been ready to agree that the seven Member States which had been parties to the Lisbon Agreement for a long time and had extensive intellectual property rights registered under that agreement could have been authorised to accede to the Geneva Act in the interest of the European Union.

The European Union deposited its instrument of accession to the Geneva Act on 26 November 2019, bringing the number of members to the requisite five for entry into force. The Geneva Act entered into force three months later on 26 February 2020.

On 17 January 2020, the Commission brought an action under Article 263 TFEU seeking the partial annulment of Decision (EU) 2019/1754. The Commission challenged the Council Decision before the Court of Justice on the main grounds that the Council had violated the principle of conferral of powers and the Commission’s right of initiative. While the Commission asked the Court of Justice to annul Decision (EU) 2019/1754 in so far that it authorises all Member States to accede to the Geneva Act, it also asked the Court to maintain the effects of the decision for the seven Member States that are already members of the Lisbon Agreement. Those Member States would otherwise lose the priority rights linked to the Appellations of Origin already registered in their names under the Lisbon Agreement.

The Court of Justice delivered its judgment on 22 November 2022. The Court essentially followed the arguments put forward by the Commission and the opinion of the Advocate General of 19 May 2022. The Court notably acknowledged in the findings on substance that preservation of the seniority and continuity of the protection of appellations of origin registered under the Lisbon Agreement in the seven Member States which are already parties to that agreement is necessary, in particular, in accordance with the principle of sincere cooperation between the European 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 annulled Article 3, and to the extent that it contains references to the Member States, Article 4 of Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act.

The Court declared that the effects of the parts of Decision (EU) 2019/1754 which have been annulled are to be maintained only in so far as they relate to Member States which, on the date of delivery of the judgment, have already availed themselves of the authorisation under Article 3 of that decision to ratify or accede to the Geneva Act, alongside the European Union, until the entry into force, within a reasonable period which should not exceed six months from that date, of a new decision of the Council.

Therefore, it is necessary to adopt within six months amendments to Decision (EU) 2019/1754 so that the Member States that are members of the Lisbon Agreement can also be members of the Geneva Act, to ensure that they can preserve the priority rights linked to the Appellations of Origin already registered in their names under the Lisbon Agreement.

The present proposal sets out these suggested amendments.

- **Consistency with existing policy provisions in the policy area**

Regarding agricultural products, the EU has established uniform and exhaustive GI protection systems for wines (1970), spirits (1989), aromatised wines (1991) and other agricultural products and foodstuffs (1992). Through these systems, protected names for the products covered enjoy far-reaching protection throughout the EU, based on a single application process. The key provisions are currently laid down for wine in Regulation (EU) No. 1308/2013 of 17 December 2013, for spirits in Regulation (EU) 2019/787 of 17 April 2019, and for agricultural products and foodstuffs and aromatised wines in Regulation (EU) No 1151/2012 of 21 November 2012.

- **Consistency with other Union policies**

The proposal is consistent with the EU's general policy to promote and enhance the protection of geographical indications through bilateral, regional and multilateral agreements.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

- **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.

- **Proportionality**

The suggested amendments are necessary to preserve the seniority and continuity of the protection of appellations of origin registered under the Lisbon Agreement in the seven Member States which are already parties to that agreement, in accordance with the principle of sincere cooperation between the European Union and the Member States set out in Article 4(3) TEU, in order to protect acquired rights derived from those national registrations.

- **Choice of the instrument**

A Council Decision amending 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 amending Council Decision should be based on Articles 207 and 218(6) TFEU.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The Roadmap on EU accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications was published on 21 December 2017 with a deadline for stakeholder comments until 18 January 2018. 8 comments were received.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

The Guidelines on Better Regulation clarify that an impact assessment should be carried out only when it is useful, to be assessed on a case-by-case basis. In principle, no impact assessment is needed, when there is little or no choice available for the Commission. This is the case here, as the Court judgment of 22 November 2022 requires expeditious action to adopt a Council Decision amending Council Decision (EU) 2019/1754 that safeguards the rights of the Member States concerned.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The Union's accession to the Geneva Act of the Lisbon Agreement will contribute to the fulfilment of Article 17 (2) of the Charter of Fundamental Rights of the European Union, which provides that intellectual property shall be protected.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable.

Proposal for a

COUNCIL DECISION

amending Council 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. 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 one year from the request for 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, the WIPO Diplomatic Conference adopted the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications ('the Geneva Act') on 20 May 2015. The Geneva Act extends the protection of appellations of origin to all geographical indications and allows intergovernmental organisations to become contracting parties to it.
- (4) By its judgment of 25 October 2017¹, the Court held that the negotiation of the Geneva Act fell within the exclusive competence conferred on the European Union by Article 3(1) TFEU in the field of the common commercial policy referred to in Article 207(1) TFEU.

¹ Judgement of the Court of Justice of 25 October 2017, *Commission v Council (Revised Lisbon Agreement)*, C-389/15, EU:C:2017:798.

- (5) On 27 July 2018, the Commission made a proposal for a Council Decision on the accession of the European Union to the Geneva Act² on the basis of Articles 207 and 218(6), point (a) of the Treaty on the Functioning of the European Union (TFEU). In view of the Union's exclusive competence as regards the negotiation of that act, that proposal provided that the Union alone would accede thereto.
- (6) On 7 October 2019, the Council unanimously adopted Decision (EU) 2019/1754³ on the accession of the European Union to the Geneva Act in accordance with Article 293(1) TFEU. Article 3 of that Decision provides that Member States which wish to do so are authorised to ratify or accede to the Geneva Act alongside the Union. Article 4 of the Decision 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 of the Union (TEU). Article 4 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 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 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.
- (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 members 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. The Commission challenged that Decision before the European Court of Justice on the main grounds that the Council had violated the principle of conferral of powers and 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) While the Commission asked the Court of Justice to annul Decision (EU) 2019/1754, in so far that it authorises all Member States to accede to the Geneva Act, it also asked the Court to maintain the effects of the decision for the seven Member States that are already members of the Lisbon Agreement. It would be contrary to the interest of the Union if the priority rights linked to the appellations of origin already registered by these Member States under the Lisbon Agreement were lost.
- (11) The Court of Justice delivered its judgment on 22 November 2022⁴. The Court annulled Article 3, and to the extent that it contains references to the Member States, Article 4 of Decision (EU) 2019/1754.

² COM(2018) 350 final

³ Council Decision 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act (OJ L 271, 24.10. 2019, p. 12).

⁴ Judgment of the Court of Justice of 22 November 2022, *Commission v. Council*, C-24/20, ECLI:EU:C:2022:911.

- (12) However, the Court judgement also acknowledges the necessity to preserve the seniority and continuity of the protection of appellations of origin registered under the Lisbon Agreement in the seven Member States that are already parties to that agreement. The Court thus declared that the effects of the annulled parts of Decision 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, 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 strictly justified and exceptional circumstances that Member States can be authorised, for as long as such participation is duly justified, in the interest of the Union, to accede, alongside the Union, and such accession has to remain functionally limited.
- (14) Article 11 of Regulation (EU) 2019/1753⁵ 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 their choice to request the international registration under the Geneva Act of appellations of origin already registered under the Lisbon Agreement.
- (15) Therefore, 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 are members of the Lisbon Agreement prior to the Geneva Act to also ratify or accede to the Geneva Act, to the strict extent that this is necessary to preserve, in the interest of the Union, the priority rights linked to the appellations of origin already registered by these Member States under the Lisbon Agreement.
- (16) Decision (EU) 2019/1754 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments to Council Decision (EU) 2019/1754

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

- (1) Article 3 is replaced by the following:

⁵ 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).

‘Member States which were parties to the Lisbon Agreement on 26 February 2020⁶ are hereby authorised, in full respect of the Union’s exclusive competence, to ratify or accede, alongside the Union, to the Geneva Act, to the strict extent that this accession is necessary to preserve, in the interest of the Union, the priority rights linked to the appellations of origin already previously registered by these Member States under the Lisbon Agreement and to comply with the obligations provided for by Article 11 of Regulation (EU) 2019/1753.’;

(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

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

Done at Brussels,

For the Council
The President

⁶ Bulgaria, Czechia, France, Italy, Hungary, Portugal and Slovakia.