



ANALYSIS OF THE 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

INTRODUCTION

CONTEXT

The **Lisbon Agreement** of 1958 is a treaty administered by the **World Intellectual Property Organisation (WIPO)**, a specialised agency of the UN, which offers a way to secure protection for appellations of origin (AO) through a **single registration**. The Lisbon Agreement only provides for **membership of States**, not International Organisations.

It currently involves 28 contracting parties, of which **7 are EU member states**: Bulgaria (since 1975), Czech Republic (since 1993), Slovakia (since 1993), France (since 1966), Hungary (since 1967), Italy (since 1968) and Portugal (since 1966). Three EU member states have signed but not ratified the Agreement (Greece, Romania and Spain).

In May 2015, the Agreement seen its scope expanded by the **Geneva Act**, adopted during the diplomatic conference held by the World Intellectual Property Organisation (WIPO) in Geneva from 11 to 21 May 2015. Particularly, the Geneva Act **has expanded the scope of the Lisbon Agreement beyond AOs to all Geographical Indications (GIs) and allowed accession to International organisations such as the EU**.

KEY EVENTS

European Commission run a [public consultation](#) from 21 December 2017 until 18 January 2018.

[AREPO contributed to the EC consultation](#) on the EU accession to the **Geneva Act of Lisbon Agreement (LA)** for the protection of Appellations of Origin and Geographical Indications, highlighting that some EU Member States have already signed the Lisbon Agreement and that the EC should take it into account.

Furthermore, AREPO reminded the EC that in the event of accession to the Geneva Act, **all types of Appellations of Origin, agricultural as well as non-agricultural (artisanal and industrial products), should be recognized**. The accession of the European Union to the Geneva Act must include all GIs, as the EC simply has to join an existing agreement, there is no need to use a list: by joining the agreement, all European GIs will be protected, without having to resort to negotiations. The accession of the European Union to the Geneva Act must include non-agricultural GIs (industrial and artisanal products), especially to **avoid a double level of protection** that will be difficult to understand, and probably criticised by third countries where non-agricultural GIs are of paramount importance and their protection often demanded in exchange for the recognition of agri-food GIs.

Following the contributions received (just 8) through the public consultation, 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

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- 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.](#)

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.

From Council side, the Permanent Representatives' Committee on 6 March 2019 granted the Romanian Presidency with a negotiating mandate for trilogue negotiations with the European Parliament. For the European Parliament, JURI has been appointed as the competent committee and the nominated Rapporteur Ms ROZIERE (S&D/FR) has obtained the mandate to start negotiations with the Council on the basis of the vote during EP Plenary of January 31st 2019.

Two political trilogues took place and on March 13th 2019, a **provisional agreement between the co-legislators, also supported by the Commission, was reached.**

MAIN ELEMENTS OF THE INTERINSTITUTIONAL AGREEMENT

The agreement on the proposal for a Regulation concerning the accession of the EU to the Geneva Act, reached by the Commission, the Council and the European Parliament, **aims to establish rules enabling the Union and the Member States that ratify or accede to it, to exercise rights and fulfil obligations** arising from that Act, in full respect of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) and the relevant EU legislation on the protection of GIs on agricultural products.

Following accession to the Geneva Act, the Union and its States become members of a "**Special Union**", where the Union and even the States will be represented by European Commission.

THE INTERNATIONAL REGISTRATION OF GEOGRAPHICAL INDICATIONS

The Commission should file with the International Bureau of the World Intellectual Property Organization ("the International Bureau") applications for international registration in its **International Register** of Geographical Indications originating in and protected by the territory of the Union. Such requests should be based on **notifications from Member States acting on their own initiative or at the request of a natural or legal person.** When drawing up these notifications, Member States should take into account the economic interest of the international protection of the geographical indications concerned and in particular the value of production and the value of exports, protection under other agreements as well as actual or potential abuses in the third countries concerned.

The Commission may establish a **list of geographical indications** for the filing of the application for an international registration with the International Bureau, for the subsequent filing of the application for an international registration, for the rejection of an opposition or for the decision to grant or refuse protection, for the withdrawal of the refusal to produce the effects of an international registration, for the request for the cancellation of an international registration, for the notification of the invalidation of the protection in the EU of a GI registered in the International Register and for the authorization of the Member State to make any necessary amendments.

The Commission is also responsible for **monitoring and evaluating** the Union's participation in the Geneva Act over time.

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TRANSITIONAL PROVISIONS CONCERNING THE SEVEN MEMBER STATES THAT ARE PARTIES TO THE LISBON AGREEMENT

Member States that are already contracting parties to the Lisbon Agreement **may remain so**, in particular to ensure the continuity of the rights granted and the fulfilment of the obligations arising from that Agreement. However, they should act only in the Union's interest and in full respect of its exclusive competence, as they cannot register new appellations of origin under the Lisbon Agreement.

RELATION TO TRADE MARKS

The text on the EU's accession to the Geneva Act also considers the GI/trade marks relationship.

The protection of a Geographical Indication **shall not affect the validity of an earlier 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 or the Union.

In the event that a Geographical Indication registered in the International Register **may undermine a trademark**, taking into account the reputation of the trademark and the duration of its use, **and mislead the consumer** concerning the true identity of the product, **it shall not be protected in the territory of the Union**.

Finally, a trade mark which has been the subject of an application for registration, registration or which has been established by use in good faith in the territory of a Member State or the Union, **before the date on which the International Bureau notified the Commission of the publication of the international registration of the Geographical Indication**, whose use would be contrary to the protection of the GI, may continue to be used and renewed for the product concerned. Therefore, in this case, **the use of the geographical indication is authorized, as well as the use of the trademark concerned**.

MAIN ELEMENTS OF THE INTER-INSTITUTIONAL AGREEMENT: A COMPARISON WITH THE POSITION SUPPORTED BY AREPO AT THE TIME OF THE PUBLIC CONSULTATION

SHORTLIST OF GIs FOR PROTECTION

AREPO's priorities in the feedback given to the EC public consultation were not fully taken into account.

As a result, protection will not include all GIs: **lists of geographical indications to be registered**, should be drawn up by the Commission through **implementing acts**, with the possibility for Member States, either on their own initiative or on the initiative of a legitimate natural or legal person, to request the inclusion of their GIs in these lists.

When it comes to implementing acts, stakeholders may send feedback on the draft text for the four weeks preceding the relevant Committee's vote. Among other things, the text states in Recital 5b that *“Commission should use existing regular mechanisms to consult Member States, trade associations and EU producers in order to establish a permanent dialogue with stakeholders”*. This suggests, therefore, that **GI producers will somehow be able, albeit to a limited extent, to be consulted** in drawing up these lists.



NON-AGRICULTURAL GEOGRAPHICAL INDICATIONS

Protection **does not include non-agricultural geographical indications**, as a consequence of the lack of a specific regulation at EU level in this respect. However, also under pressure from European Parliament, there is still a chance for the inclusion of these products in the future. Specifically, in the annex to the text, there is a **Commission Declaration on the possible extension of protection to non-agricultural GIs** which states that the Commission will evaluate the results of the studies carried out on this matter and consider any possible next steps.

USEFUL LINKS

[The EC Press Release](#)

[The EC News: EU to join the Geneva Act of the Lisbon Agreement to better protect GIs](#)

[Council of the EU Press Release](#)

[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](#)

[EP Procedure File: 2018/0214\(NLE\), Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications: accession of the European Union](#)

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