

Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection
of Appellations of Origin and Their International Registration

Main Committee II

President Non-Paper 3 (May 19, 2015)

The Annex to this President Non-Paper proposes a consolidated version of the Administrative and Final Provisions, Articles 21 to 34, of the Draft New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

[Annex Follows]

Chapter V

Administrative Provisions

Article 21

Membership of the Lisbon Union

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

Article 22

Assembly of the Special Union

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]*

(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial Regulations of the Special Union;

(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 22 to 24 and 27;

(x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *[Quorum]* (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) *[Taking Decisions in the Assembly]* (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name, and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

Article 23 International Bureau

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 24 Finances

(1) *[Budget]* The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner.

(2) *[Sources of Financing of the Budget]* The income of the Special Union shall be derived from the following sources:

- (i) fees collected **[under Article 7(1) and (2)] / [in-respect of international registrations];**
- (ii) proceeds from the sale of, or royalties on, the publications of the International Bureau;
- (iii) gifts, bequests, and subventions;
- (iv) rent, investment revenue, and other, including miscellaneous, income;
- [(v) special contributions of the Contracting Parties for any alternative source derived from the Contracting Parties or beneficiaries, or both], if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly].**

(3) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General and shall be so fixed that, together with the income derived from other sources under paragraph (2), the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

(b) If the Program and Budget of the Organization is not adopted before the beginning of a new financial period, the authorization to the Director General to incur obligations and make payments shall be at the same level as it was in the previous financial period.

[(4) *[Establishing the Special Contributions Referred to in Paragraph (2)(v)]*

ALTERNATIVE A: For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one), unless otherwise unanimously decided by the Assembly.

ALTERNATIVE B: The contributions of each Contracting Party should be proportional to their relative number of registrations in the Lisbon System.

ALTERNATIVE C: For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one), unless otherwise unanimously decided by the Assembly. The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund, which shall be constituted by payments made by way of advance by each Member of the Special Union when the Special Union so decides. If the fund becomes insufficient, the Assembly may decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General. Should the Special Union record a surplus of income over expenditure in any financial period, the Working Capital Fund advances may be repaid to each member proportionate to their initial payments upon proposal by the Director General and decision by the Assembly.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

Article 25

Regulations

- (1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.
- (2) *[Amendment of Certain Provisions of the Regulations]* (a) The Assembly may decide that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.
- (b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.
- (c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.
- (3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

Chapter VI

Revision and Amendment

Article 26

Revision

- (1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.
- (2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

Article 27

Amendment of Certain Articles by the Assembly

- (1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.
- (2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.
- (3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.

(b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.

(c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII Final Provisions

Article 28 Becoming Party to This Act

- (1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,
- (i) any State which is party to the Paris Convention may sign and become party to this Act;
 - (ii) any other State member of the Organization may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;
 - (iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of geographical indications.
- (2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit
- (i) an instrument of ratification, if it has signed this Act, or
 - (ii) an instrument of accession, if it has not signed this Act.
- (3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

(b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29

Effective Date of Ratifications and Accessions

- (1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.
- (2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.
- (3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.
 (b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.
- (4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies, the provisions of this Act shall apply in respect of appellations of origin and geographical indications already registered under this Act at the time the accession becomes effective, subject to Article 7(5) as well as the provisions of Chapter IV, which shall apply *mutatis mutandis*. The acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), **[and the periods referred to in Article 17]**, in accordance with the procedures specified in the Regulations in that respect.

Article 30

Prohibition of Reservations

No reservations to this Act are permitted.

Article 31

Application of the Lisbon Agreement and the 1967 Act

- (1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act. However, with regard to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act, the States shall accord no lower protection than is required by the Lisbon Agreement or the 1967 Act.
- (2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

Article 32
Denunciation

- (1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.
- (2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33
Languages of this Act; Signature

- (1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.
- (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.
- (2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Act.

[End of Annex and of President
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