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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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**SPECIAL UNION FOR THE PROTECTION OF
APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION
(LISBON UNION)**

ASSEMBLY

**Twenty-Fifth (18th Ordinary) Session
Geneva, September 22 to October 1, 2009**

**PROPOSED AMENDMENTS TO THE REGULATIONS
UNDER THE LISBON AGREEMENT**

Document prepared by the International Bureau

I. INTRODUCTION

1. At its twenty-third (6th extraordinary) session held in Geneva from September 22 to 30, 2008, the Assembly of the Lisbon Union decided to establish a Working Group responsible for exploring possible improvements of the procedures under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration¹. The first session of the Working Group on the Development of the Lisbon System (Appellations of Origin)² was held in Geneva from March 17 to 20, 2009.
2. The discussions of the Working Group were based on document LI/WG/DEV/1/2 Rev. The Summary by the Chair is contained in document LI/WG/DEV/1/3.
3. At the conclusion of that session, the Working Group agreed to recommend that the Assembly of the Lisbon Union amend the Regulations Under the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration³ (document LI/WG/DEV/1/3., paragraph 19).

¹ Hereinafter referred to as “the Agreement”.

² Hereinafter referred to as “the Working Group”.

³ Hereinafter referred to as “the Regulations”.

4. The purpose of the present document is to submit the amendments referred to above for adoption by the Assembly. For ease of reference, the proposed amendments are first reproduced in Annex I in “track changes” mode, i.e., with the text that is proposed to be deleted, struck through, and the text that is proposed to be added, appearing underlined. For additional clarity, the final text of the Regulations, as it would appear following the adoption of the proposed amendments, is reproduced in Annex II to the present document.
5. It is proposed that, if adopted, the amendments would take effect on January 1, 2010.
6. Chapter II, below, provides notes in support of the proposed amendments.

II. NOTES ON THE PROPOSED AMENDMENTS

New Rule 11bis – Optional Statements of Grant of Protection

7. Under Article 5(3) of the Agreement, the Authority of any country may declare that it cannot ensure the protection of an appellation of origin, but only insofar as its declaration of refusal is notified to the International Bureau within a period of one year from the receipt of the notification of registration. If a contracting country has not, with respect to the international registration of a given appellation of origin, communicated a refusal to the International Bureau within the applicable time limit, then, in principle, Article 7 and, for newly acceding contracting countries, Article 14(2)(b) of the Agreement require that the international registration shall have the effect that the contracting country in question shall undertake to protect the appellation of origin as stipulated in Articles 1(2) and 3 of the Agreement⁴.
8. This principle, often referred to as *tacit acceptance*, is also fundamental to the Madrid System for the International Registration of Marks and the Hague System for the International Registration of Industrial Designs. However, as developments under these systems have shown, the Offices of Madrid and Hague Contracting Parties are nowadays often, well before the expiry of the applicable refusal period, already in a position to know that they will not issue a refusal of protection. In order to respond to this, the Assemblies of the Madrid Union and of the Hague Union have both established facilities for the issuing of statements of grant of protection. The facilities in question are not features of the Madrid or Hague treaties, but rather of the Common Regulations under those treaties.
9. At present, Chapter 4 of the Regulations (currently entitled *Declarations of Refusal of Protection*) lays down the procedures applicable in case of the notification by the competent authority of a contracting country of a declaration of refusal (Rules 9 and 10) or the withdrawal, in whole or in part, of such a declaration of refusal (Rule 11). What is not provided for in Chapter 4, however, is the possibility for the competent

⁴ Rule 8(3) of the Regulations further provides that an appellation of origin that is the subject of an international registration shall, in each contracting country that has not notified a declaration in accordance with Article 5(3), be protected from the date of the international registration, or from a later date specified in a declaration provided that it be no later than the expiry of the refusal period.

authority of a contracting country to send to the International Bureau a statement of grant of protection in case a decision has been made, within the applicable refusal period, to grant protection to an appellation of origin, or where an earlier notification of refusal has subsequently been withdrawn.

10. At the conclusion of its session, the Working Group agreed that the International Bureau should submit to the Assembly of the Lisbon Union, for adoption, new Rule 11*bis* in Chapter 4 of the Regulations, aimed at providing for an additional optional procedure enabling the competent authority of a contracting country to notify, in certain circumstances, a statement of grant of protection. If new Rule 11*bis* is adopted by the Assembly, the title of Chapter 4 will then read *Declarations of Refusal of Protection; Optional Statements of Grant of Protection* and new Rule 11*bis* will be entitled *Optional Statements of Grant of Protection*.

11. It bears emphasizing that, if adopted by the Assembly, this new facility provided for in proposed new Rule 11*bis* is not intended to impose an obligation where none previously existed. The facility enabling a competent authority to send a statement of grant of protection will be entirely optional.

Paragraph (1)(a) – Statement of Grant of Protection Where No Declaration of Refusal Has Been Notified

12. Paragraph (1)(a) of proposed new Rule 11*bis* is entitled *Statement of Grant of Protection Where No Declaration of Refusal Has Been Notified*. This paragraph is intended to provide for the straightforward situation where, within the prescribed refusal period of one year, no declaration of refusal is to be notified and, in such a case, paragraph (1)(a) is intended to enable the competent authority of a contracting country, optionally, to send to the International Bureau a statement of grant of protection. Thus, rather than necessarily being obliged to await the expiry of the refusal period, the recorded holder of an appellation of origin may be in a position to ascertain, *prior* to the expiration of that period, that the appellation of origin has been granted protection in the contracting country concerned.

Paragraph (2)(a) – Statement of Grant of Protection Following a Refusal

13. Paragraph (2)(a) of proposed new Rule 11*bis* is in parallel with the provisions of current Rule 11 (*Withdrawal of a Declaration of Refusal*), and provides, optionally, for the possibility for the competent authority of a contracting country of issuing a statement of grant of protection on the occasion of the withdrawal of a refusal, as an alternative to a notification of withdrawal, as such, under current Rule 11. This more affirmative approach is in line with recent amendments to the Common Regulations under both the Madrid Agreement and Protocol, and the Hague Agreement, as already noted.

Paragraphs (1)(b) and (2)(b) – Elements to Indicate in the Statement of Grant of Protection

14. These paragraphs provide for the elements that should be indicated when a competent authority decides to send a statement of grant of protection. In both cases, there is a requirement to provide an indication of the competent authority of the contracting country making the statement, along with the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin. In addition, in paragraph (1)(b) it is required to indicate the date of the statement, and in paragraph (2)(b) there is a requirement to indicate the date on which protection was granted (i.e., following the withdrawal of a notification of refusal).

Paragraph (3) – Entry in the International Register and Notification to the Competent Authority of the Country of Origin

15. Finally, paragraph (3) of proposed new Rule 11*bis* provides for the entry in the International Register of any statement received under the Rule, along with notification of such a statement to the competent authority of the country of origin.

New Rule 23*bis* – Administrative Instructions

16. The Working Group also agreed that the International Bureau should submit to the Assembly of the Lisbon Union, for adoption, new Rule 23*bis*, to provide for the streamlining of notification procedures through the establishment of Administrative Instructions.

17. It is recalled that Rule 22 of the Regulations stipulates the modes of notification to be used by the International Bureau. Under paragraph 1 of Rule 22, notifications of international registrations are to be addressed by the International Bureau to the competent authorities of the contracting countries by registered mail, with acknowledgement of receipt, or by any other means enabling the International Bureau to establish the date on which the notification was received. Under paragraph 2 of Rule 22, any other notification by the International Bureau is to be addressed to the competent authorities by registered post or by any other means enabling the International Bureau to establish that the notification was received.

18. At the same time, due to the fact that the time-limit under the refusal procedures of Article 5(3) of the Agreement starts running from the moment on which the competent authority of a contracting country receives the notification of a new international registration from the International Bureau, different starting-points for the refusal period may apply – and in practice frequently do apply – in the various contracting countries notified.

19. It was noted by the Working Group that the International Bureau does not always receive the required acknowledgements of receipt or such acknowledgements sometimes show a date of receipt, by the contracting country concerned, which is much later than the date of dispatch by the International Bureau. For this reason, a number of years ago, the International Bureau instituted the practice of sending such notifications by telefacsimile, in an attempt to align the applicable refusal periods per international registration as much as possible. However, communication by telefacsimile did not always prove to be successful, in which case the International Bureau was obliged to revert to registered mail, or utilize an express delivery service.

20. As mentioned above, Rule 22 stipulates that notifications be addressed by the International Bureau to the competent authorities of the contracting countries by any means enabling the International Bureau to establish the date on which the notification was received. It was agreed by the Working Group that implementation of Rule 22 might be elaborated in the context of Administrative Instructions, and that proposed new Rule 23*bis* (modeled after Rule 41 of the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement and Rule 34 of the Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement) should be submitted to the Assembly for adoption.

21. Paragraph (1)(a) of proposed new Rule 23*bis* provides that the Director General shall establish or modify Administrative Instructions, in consultation with the competent authority of the contracting countries which have direct interest in such Administrative Instructions.

22. The remaining paragraphs (2), (3) and (4) of proposed new Rule 23*bis* provide respectively for control of the Administrative Instructions by the Assembly, their publication in the Bulletin and their effective date, and conflict between the Administrative Instructions on the one hand and the Agreement or the Regulations on the other.

23. If the Assembly were to adopt proposed new Rule 23*bis*, provision for electronic communication for the purpose of the notifications referred to above could then be taken up in a Section of the Administrative Instructions dealing with electronic communication more generally.

Amendments Consequential to Proposed New Rules 11*bis* and 23*bis*

24. The Working Group also agreed that the International Bureau should submit to the Assembly of the Lisbon Union for adoption any further amendments consequential to the adoption of new Rule 11*bis* and new Rule 23*bis*. Apart from the proposed amendment of Rule 22, just referred to, the proposed amendments are as follows:

Rule 1 – Abbreviated Expressions

25. In anticipation of the adoption by the Assembly of proposed new Rule 23*bis*, it is proposed that a new item be added to the list of abbreviated expressions, as follows:

(xiv) “Administrative Instructions” means the Administrative Instructions referred to in Rule 23*bis*.

Rule 4 – Competent Authority

26. Paragraph (1)(b) requires that each contracting country shall notify the International Bureau of the name and address of its authority competent to, *inter alia*, notify the withdrawal of a refusal in accordance with current Rule 11. Assuming the adoption by the Assembly of proposed new Rule 11*bis*, it is proposed to expand the scope of this provision, to also include the sending of statements of grant of protection in accordance with new Rule 11*bis*.

27. Technically speaking, the proposed amendment to Rule 4(1)(b), if adopted, would entail the necessity for countries already party to the Agreement that intend to issue statements of grant of protection to notify the details of the competent authority for this purpose. To the extent that this authority would likely be the same as that competent for the other purposes listed under Rule 4(1)(b), that appears unnecessary. It is thus proposed to the Assembly that, when it adopts the amendment to Rule 4(1)(b), it does so with the understanding that, with respect to contracting countries already party to the Agreement, no new declaration is required to the extent that the competent authority for sending a statement of grant of protection is the same as that already notified under Rule 4(1)(b) before the entry into force of Rule 11*bis*. That understanding would then be recalled in a footnote to Rule 4(1)(b), as proposed in Annex I.

Rule 8 – Date of the International Registration

28. Paragraph (3) of current Rule 8 deals, in particular, with the date of effect of an international registration. It provides that an appellation of origin that is the subject of an international registration shall, in each contracting country that has not declared in accordance with Article 5(3) that it cannot ensure the protection of the appellation, be protected from the date of the international registration or, where a contracting country has made a declaration in accordance with subparagraph (b), from the date mentioned in that declaration. Assuming the adoption by the Assembly of proposed new Rule 11*bis*, it is proposed that following the words “that it cannot ensure the protection of the appellation” there be added “or that has sent to the International Bureau a statement of grant of protection in accordance with Rule 11*bis*”.

Rule 17 – Corrections Made to the International Register

29. Paragraph (3) of Rule 17 currently provides for the application of Rules 9 to 11 following the correction of an error concerning an appellation of origin or the product to which an appellation of origin applies. It is proposed to amend this Rule so that in its title, and in the body of the paragraph, reference is made to Rules 9 to 11*bis*.

Rule 22 – Modes of Notification by the International Bureau

30. In anticipation of the adoption by the Assembly of proposed new Rule 23*bis*, it is also proposed to submit for adoption by the Assembly an amendment of current Rule 22 so as to make specific reference to the Administrative Instructions.

31. The Assembly of the Lisbon Union is invited to adopt new Rules 11bis and 23bis of the Regulations and to adopt the consequential amendment of Rules 1, 4, accompanied by the understanding appearing in the proposed footnote to paragraph (1)(b), 8, 17 and 22, as set out in Annex I hereto, with effect from January 1, 2010.

[Annex I follows]

ANNEX I

**Regulations Under the Lisbon Agreement
for the Protection of Appellations of Origin
and Their International Registration**

(as in force on [January 1, 2010](#) ~~April 1, 2002~~)

LIST OF RULES

[...]

Chapter 4: Declarations of Refusal of Protection; [Optional Statements of Grant of Protection](#)

[...]

[Rule 11bis: Optional Statements of Grant of Protection](#)

[...]

Chapter 6: Miscellaneous Provisions and Fees

[...]

[Rule 23bis: Administrative Instructions](#)

[...]

**Chapter 1
General Provisions**

*Rule 1
Abbreviated Expressions*

[...]

(xiii) “Bulletin” means the periodical referred to in Article 5(2) of the Agreement, whatever the medium used for its publication;

[\(xiv\) “Administrative Instructions” means the Administrative Instructions referred to in Rule 23bis.](#)

[...]

Rule 4
Competent Authority

(1) [...]

[...]

(b) [...]

(i) to notify a declaration of refusal, to notify the withdrawal of a declaration of refusal in accordance with Rule 11, [to send a statement of grant of protection in accordance with Rule 11bis¹](#), to notify an invalidation in accordance with Rule 16(1), to request correction of the International Register in accordance with Rule 17(1) and to declare, in accordance with Rule 17(3), that it cannot ensure the protection of a corrected international registration and

[...]

Chapter 3
International Registration

[...]

Rule 8
Date of the International Registration

[...]

(3) *[Date of Effect of International Registration]* (a) An appellation of origin that is the subject of an international registration shall, in each contracting country that has not declared in accordance with Article 5(3) that it cannot ensure the protection of the appellation, [or that has sent to the International Bureau a statement of grant of protection in accordance with Rule 11bis](#), be protected from the date of the international registration or, where a contracting country has made a declaration in accordance with subparagraph (b), from the date mentioned in that declaration.

[...]

¹ [When the Lisbon Union Assembly adopted Rule 11bis, it understood that, with respect to contracting countries already party to the Agreement, no new declaration is required to the extent that the competent authority for sending a statement of grant of protection is the same as that already notified under Rule 4\(1\)\(b\) before the entry into force of Rule 11bis.](#)

Chapter 4

Declarations of Refusal of Protection; Optional Statements of Grant of Protection

[...]

Rule 11bis

Optional Statements of Grant of Protection

(1) [Statement of Grant of Protection Where No Declaration of Refusal Has Been Notified] (a) The competent authority of a contracting country which has not notified a declaration of refusal to the International Bureau may, within the one-year period referred to in Article 5(3) of the Agreement, send to the International Bureau a statement to the effect that protection is granted to the appellation of origin that is the subject of an international registration in the contracting country concerned.

(b) The statement shall indicate:

(i) the competent authority of the contracting country making the statement,

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and

(iii) the date of the statement.

(2) [Statement of Grant of Protection Following a Refusal] (a) The competent authority of a contracting country which has notified a declaration of refusal to the International Bureau may, instead of notifying a withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the appellation of origin that is the subject of an international registration in the contracting country concerned.

(b) The statement shall indicate:

(i) the competent authority of the contracting country making the statement,

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and

(iii) the date on which protection was granted.

(3) [Entry in the International Register and Notification to the Competent Authority of the Country of Origin] The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and notify such statement to the competent authority of the country of origin.

[...]

Chapter 5 Other Entries Concerning an International Registration

[...]

Rule 17 *Corrections Made to the International Register*

[...]

(3) *[Application of Rules 9 to 11bis]* Where the correction of the error concerns the appellation of origin or the product to which the appellation of origin applies, the competent authority of a contracting country has the right to declare that it cannot ensure the protection of the international registration so corrected. The declaration shall be addressed to the International Bureau by such competent authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 11bis shall apply *mutatis mutandis*.

[...]

Chapter 6 Miscellaneous Provisions and Fees

[...]

Rule 22 *Modes of Notification by the International Bureau*

(1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(1), shall be addressed by the International Bureau to the competent authority of each contracting country by registered mail with acknowledgement of receipt or by any other means enabling the International Bureau to establish the date on which notification was received, as provided for in the Administrative Instructions.

[...]

Rule 23bis *Administrative Instructions*

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions. The Director General may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the competent authorities of the contracting countries which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) [Control by the Assembly] The Assembly may invite the Director General to modify any provision of the Administrative Instructions, and the Director General shall proceed accordingly.

(3) [Publication and Effective Date] (a) The Administrative Instructions and any modification thereof shall be published in the Bulletin.

(b) Each publication shall specify the date on which the published provisions become effective. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication in the Bulletin.

(4) [Conflict with the Agreement or These Regulations] In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Agreement or these Regulations, the latter shall prevail.

[...]

[Annex II follows]

ANNEX II

**Regulations Under the Lisbon Agreement
for the Protection of Appellations of Origin
and Their International Registration**

(as in force on January 1, 2010)

LIST OF RULES

[...]

Chapter 4: Declarations of Refusal of Protection; Optional Statements of Grant of Protection

[...]

Rule 11*bis*: Optional Statements of Grant of Protection

[...]

Chapter 6: Miscellaneous Provisions and Fees

[...]

Rule 23*bis*: Administrative Instructions

[...]

**Chapter 1
General Provisions**

*Rule 1
Abbreviated Expressions*

[...]

(xiii) “Bulletin” means the periodical referred to in Article 5(2) of the Agreement, whatever the medium used for its publication;

(xiv) “Administrative Instructions” means the Administrative Instructions referred to in Rule 23*bis*.

[...]

Rule 4
Competent Authority

(1) [...]

[...]

(b) [...]

(i) to notify a declaration of refusal, to notify the withdrawal of a declaration of refusal in accordance with Rule 11, to send a statement of grant of protection in accordance with Rule 11*bis*¹, to notify an invalidation in accordance with Rule 16(1), to request correction of the International Register in accordance with Rule 17(1) and to declare, in accordance with Rule 17(3), that it cannot ensure the protection of a corrected international registration and

[...]

Chapter 3
International Registration

[...]

Rule 8
Date of the International Registration

[...]

(3) [*Date of Effect of International Registration*] (a) An appellation of origin that is the subject of an international registration shall, in each contracting country that has not declared in accordance with Article 5(3) that it cannot ensure the protection of the appellation, or that has sent to the International Bureau a statement of grant of protection in accordance with Rule 11*bis*, be protected from the date of the international registration or, where a contracting country has made a declaration in accordance with subparagraph (b), from the date mentioned in that declaration.

[...]

¹ When the Lisbon Union Assembly adopted Rule 11*bis*, it understood that, with respect to contracting countries already party to the Agreement, no new declaration is required to the extent that the competent authority for sending a statement of grant of protection is the same as that already notified under Rule 4(1)(b) before the entry into force of Rule 11*bis*.

Chapter 4

Declarations of Refusal of Protection; Optional Statements of Grant of Protection

[...]

Rule 11bis

Optional Statements of Grant of Protection

(1) *[Statement of Grant of Protection Where No Declaration of Refusal Has Been Notified]* (a) The competent authority of a contracting country which has not notified a declaration of refusal to the International Bureau may, within the one-year period referred to in Article 5(3) of the Agreement, send to the International Bureau a statement to the effect that protection is granted to the appellation of origin that is the subject of an international registration in the contracting country concerned.

(b) The statement shall indicate:

- (i) the competent authority of the contracting country making the statement,
- (ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and
- (iii) the date of the statement.

(2) *[Statement of Grant of Protection Following a Refusal]* (a) The competent authority of a contracting country which has notified a declaration of refusal to the International Bureau may, instead of notifying a withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the appellation of origin that is the subject of an international registration in the contracting country concerned.

(b) The statement shall indicate:

- (i) the competent authority of the contracting country making the statement,
- (ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and
- (iii) the date on which protection was granted.

(3) *[Entry in the International Register and Notification to the Competent Authority of the Country of Origin]* The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and notify such statement to the competent authority of the country of origin.

[...]

Chapter 5

Other Entries Concerning an International Registration

[...]

Rule 17

Corrections Made to the International Register

[...]

(3) *[Application of Rules 9 to 11bis]* Where the correction of the error concerns the appellation of origin or the product to which the appellation of origin applies, the competent authority of a contracting country has the right to declare that it cannot ensure the protection of the international registration so corrected. The declaration shall be addressed to the International Bureau by such competent authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 11*bis* shall apply *mutatis mutandis*.

[...]

Chapter 6

Miscellaneous Provisions and Fees

[...]

Rule 22

Modes of Notification by the International Bureau

(1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(1), shall be addressed by the International Bureau to the competent authority of each contracting country by registered mail with acknowledgement of receipt or by any other means enabling the International Bureau to establish the date on which notification was received, as provided for in the Administrative Instructions.

[...]

Rule 23bis

Administrative Instructions

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions. The Director General may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the competent authorities of the contracting countries which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) [*Control by the Assembly*] The Assembly may invite the Director General to modify any provision of the Administrative Instructions, and the Director General shall proceed accordingly.

(3) [*Publication and Effective Date*] (a) The Administrative Instructions and any modification thereof shall be published in the Bulletin.

(b) Each publication shall specify the date on which the published provisions become effective. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication in the Bulletin.

(4) [*Conflict with the Agreement or These Regulations*] In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Agreement or these Regulations, the latter shall prevail.

[...]

[End of Annex II and of document]