

Working Group on the Development of the Lisbon System (Appellations of Origin)

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NOTES ON THE DRAFT REGULATIONS UNDER THE DRAFT NEW INSTRUMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF GEOGRAPHICAL
INDICATIONS AND APPELLATIONS OF ORIGIN

Document prepared by the Secretariat

1. The present document contains Notes on the Draft Regulations under the Draft New Instrument Concerning the International Registration of Geographical Indications and Appellations of Origin contained in document LI/WG/DEV/4/3 (hereinafter referred to as “Draft New Instrument”). Where a provision appears not to require explanation, no note has been provided.

[Annex follows]

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AND APPELLATIONS OF ORIGIN**

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NOTES ON RULE 1: ABBREVIATED EXPRESSIONS

1.01 Rule 1 lists a number of abbreviated expressions used throughout these Draft Regulations and corresponds to Rule 1 contained in the Regulations of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as “the Lisbon Regulations”), as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 2: CALCULATION OF TIME LIMITS

2.01 The provisions under this rule reproduce those contained in Rule 2 of the Lisbon Regulations.

NOTES ON RULE 3: WORKING LANGUAGES

3.01 The provisions under this rule reproduce those contained in Rule 3 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 4: COMPETENT AUTHORITY

4.01 This rule reflects a redraft of the corresponding provisions of Rule 4 of the Lisbon Regulations.

4.02 Paragraph (1), as proposed, would make clear what the objective of the provisions of Rule 4 is.

4.03 Paragraph (2) should be seen in light of the fact that, unlike in other areas of industrial property, there may be more than one authority in a contracting party that is responsible for the grant of protection in respect of geographical indications and/or appellations of origin.

4.04 Paragraph (3) has been drafted in recognition of the practical experience of the International Bureau with regard to changes of the name or of the contact details of a competent authority.

NOTES ON RULE 5: REQUIREMENTS CONCERNING THE INTERNATIONAL APPLICATION

5.01 Paragraph (1) corresponds to Rule 5(1) of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

5.02 The provisions under paragraph (2)(a) correspond to those of Rule 5(2)(a) of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

5.03 The provisions of paragraph (3) correspond to those of Rule 5(3) of the Lisbon Regulations, including the amendment adopted by the Assembly in September 2011, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 6: IRREGULAR APPLICATIONS

6.01 The provisions under this rule largely reproduce those contained in Rule 6 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 7: ENTRY OF THE GEOGRAPHICAL INDICATION OR APPELLATION OF ORIGIN IN THE INTERNATIONAL REGISTER

7.01 The provisions of paragraphs (1) and (2) of this rule largely reproduce those contained in Rule 7 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

7.02 A new paragraph (3) was added, though, to address the situation concerning international registrations of appellations of origin already recorded under the Lisbon Agreement, once the mutual relations between two States become governed by the provisions of Article 32(1) of the Draft New Instrument.

7.03 It is suggested that the International Bureau record these appellations of origin also under the Draft New Instrument, in consultation with the competent authority concerned. It should be noted that, as long as not all States that are party to the Lisbon Agreement have become party to the Draft New Instrument, depending on the nature of the Draft New Instrument, either two international registration systems will apply or one system based on two treaties. In drafting paragraph (3), the International Bureau has attempted not to prejudge the question as to the legal instrument by which the Draft New Instrument might be formalized, bearing in mind the request from the Working Group in this regard, as reflected in paragraph (1) of document LI/WG/DEV/4/2.

NOTES ON RULE 8: FEES

8.01 The provisions under this rule reproduce those contained in Rule 23 of the Lisbon Regulations.

8.02 In accordance with the provisions of Chapter II of the Draft New Instrument, the provisions are proposed to be put in the corresponding Chapter of these Draft Regulations*.

NOTES ON RULE 9: DECLARATION OF REFUSAL

9.01 The provisions under this rule reproduce those contained in Rule 9 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

9.02 Compared to the provisions of Rule 9 of the Lisbon Regulations, a new subparagraph is proposed, to address the specific situation concerning homonymous geographical indications and appellations of origin, in accordance with Article 9(6) of the Draft New Instrument, in case the international registration is refused, in whole or in part, by a contracting party because of the existence of a prior right based on a homonymous geographical indication or appellation of origin.

* Provisions which correspond to those contained in Rule 8 of the Lisbon Regulations are reflected in Article 8 of the Draft New Instrument.

9.03 Reference is also made to Article 9(5) of the Draft New Instrument, as Contracting Parties may want to opt, in appropriate cases, for the practice, currently applicable under the Lisbon Agreement, to issue a partial refusal based on the existence of a homonymous geographical indication or appellation of origin.

NOTES ON RULE 10: IRREGULAR DECLARATION OF REFUSAL

10.01 The provisions under this rule reproduce those contained in Rule 10 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 11: WITHDRAWAL OF A DECLARATION OF REFUSAL

11.01 The provisions under this rule reproduce those contained in Rule 11 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

11.02 Compared to the provisions of Rule 11 of the Lisbon Regulations, a new subparagraph is proposed, to address the withdrawal of a refusal concerning the specific situation of homonymous geographical indications and appellations of origin, in accordance with Article 9(5) of the Draft New Instrument, and other partial withdrawals corresponding to partial refusals, as referred to in Rule 9(2)(v) of these Draft Regulations.

NOTES ON RULE 12: OPTIONAL STATEMENTS OF GRANT OF PROTECTION

12.01 The provisions under this rule reproduce those contained in Rule 11*bis* of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

12.02 Compared to the provisions of Rule 11*bis* of the Lisbon Regulations, a new subparagraph is proposed, requiring the reason for the withdrawal to be mentioned in the statement, in particular in case of statements of grant of protection concerning the specific situation of homonymous geographical indications and appellations of origin, in accordance with Article 9(5) of the Draft New Instrument, and other partial statements of grant of protection corresponding to partial refusals, as referred to in Rule 9(2)(v) of these Draft Regulations.

NOTES ON RULE 13: NOTIFICATION OF INVALIDATION OF THE EFFECTS OF AN INTERNATIONAL REGISTRATION IN A CONTRACTING PARTY

13.01 The provisions under this rule reproduce those contained in Rule 16 of the Lisbon Regulations, including the amendment adopted by the Assembly in September 2011, as adapted in accordance with the provisions of the Draft New Instrument.

13.02 In accordance with the provisions of Chapter IV of the Draft New Instrument, the provisions are proposed to be put in the corresponding Chapter IV of these Draft Regulations.

13.03 Compared to the provisions of Rule 16 of the Lisbon Regulations, it is proposed to mirror in subparagraph (iv) not only the situations covered by Rule 9(2)(v) of these Draft Regulations, but also the specific case of homonymous geographical indications and appellations of origin, as covered by Rule 9(2)(iv).

NOTES ON RULE 14: PERIOD GRANTED TO THIRD PARTIES

14.01 The provisions under this rule reproduce those contained in Rule 12 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 15: MODIFICATIONS

15.01 The provisions under this rule reproduce those contained in Rule 13 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 16: RENUNCIATION OF PROTECTION

16.01 The provisions under this rule reproduce those contained in Rule 14 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 17: CANCELLATION OF AN INTERNATIONAL REGISTRATION

17.01 The provisions under this rule reproduce those contained in Rule 15 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 18: CORRECTIONS MADE TO THE INTERNATIONAL REGISTER

18.01 The provisions under this rule reproduce those contained in Rule 17 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 19: PUBLICATION

19.01 The provisions under this rule largely reproduce those contained in Rule 18 of the Lisbon Regulations. However, as publication may, in the future, take place by other means, the reference to the Bulletin has not been retained.

NOTES ON RULE 20: EXTRACTS FROM THE INTERNATIONAL REGISTER AND OTHER INFORMATION PROVIDED BY THE INTERNATIONAL BUREAU

20.01 The provisions under this rule reproduce those contained in Rule 19 of the Lisbon Regulations, as adapted in accordance with the provisions of the Draft New Instrument.

NOTES ON RULE 21: SIGNATURE

21.01 The provisions under this rule reproduce those contained in Rule 20 of the Lisbon Regulations.

NOTES ON RULE 22: DATE OF DISPATCH OF VARIOUS COMMUNICATIONS

22.01 The provisions under this rule reproduce those contained in Rule 21 of the Lisbon Regulations.

NOTES ON RULE 23: MODES OF NOTIFICATION BY THE INTERNATIONAL BUREAU

23.01 The provisions under this rule reproduce those contained in Rule 22 of the Lisbon Regulations.

NOTES ON RULE 24: ADMINISTRATIVE INSTRUCTIONS

24.01 The provisions under this rule reproduce those contained in Rule 23*bis* of the Lisbon Regulations. However, the reference to the Bulletin has not been retained, for the reason mentioned in the Notes to Rule 19, above.

NOTES ON RULE 25: ENTRY INTO FORCE

25.01 The provisions under this rule reproduce those contained in Rule 24 of the Lisbon Regulations.

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