

Working Group on the Development of the Lisbon System

Second Session
Geneva, May 27 and 28, 2019

DRAFT REPORT

prepared by the Secretariat

1. The Working Group on the Development of the Lisbon System (hereinafter referred to as “the Working Group”) met in Geneva, on May 27 and 28, 2019.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Burkina Faso, Czech Republic, France, Gabon, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Nicaragua, Peru, Portugal, Slovakia (13).
3. The following States were represented as observers: Afghanistan, Australia, Finland, Germany, Guyana, Honduras, India, Ireland, Japan, Kuwait, Nigeria, Paraguay, Poland, Republic of Korea, Romania, Russian Federation, Senegal, Spain, Switzerland, United States of America (20).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Union (EU), Food and Agriculture Organization of the United Nations (FAO), Organization of Islamic Cooperation (OIC), World Trade Organization (WTO) (4).
5. Representatives of the following national and international non-governmental organizations (NGOs) took part in the session in an observer capacity: *Association congolaise pour le développement agricole* (ACDA), Centre for International Intellectual Property Studies (CEIPI), Health and Environment Program (HEP), International Wine Law Association (AIDV), MARQUES – Association of European Trademark Owners, Organization for an International Geographical Indications Network (oriGIn) (6).
6. The list of participants is contained in Annex II.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the session and welcomed the participants.

8. The Director General started the meeting by providing a few updates on the Lisbon System.

9. First, the Director General indicated that the International Bureau had received the first two instruments of accession to the Geneva Act of the Lisbon Agreement, the first one by Cambodia and the second by Côte d'Ivoire. In addition, in February, Albania deposited its instrument of accession to the Lisbon Agreement, which brought the number of Contracting Parties to the Lisbon Agreement to 29. The Director General added that further accessions to the Geneva Act were expected in the coming months, which would pave the way towards the entry into force of the Geneva Act by the end of the current 2019/20 biennium, namely in December 2020.

10. Secondly, regarding the operations of the Lisbon Registry, the Director General indicated that they were operating at the same level than the previous years since the average number of applications received in 2018 corresponded to the number of applications received in the past few years. In particular, the Director General pointed out that in 2018, there had been 33 new registrations from Bosnia and Herzegovina, Iran (Islamic Republic of), Italy, Mexico and Peru.

11. Thirdly, the Director General recalled the decision taken by the Assemblies in October 2017 that fee-financed Unions with a projected biennial deficit in the 2018/19 biennium should examine measures in accordance with their own treaties to address that deficit. The Director General also referred to the decision that was taken by the Lisbon Working Group in June 2018 to further discuss different options on the financial sustainability of the Lisbon Union in future Working Group meetings or informal meetings that the Chair of the Working Group may request the Secretariat to organize.

12. Upon recalling that 2019 was a budgetary year and that the second session of the Program and Budget Committee would be held in July 2019 to make its recommendation to the WIPO Assemblies at the end of September 2019, for the Program and Budget for the 2020/21 biennium, the Director General urged the members of the Working Group to make progress on the issue under consideration at the present session, namely the financial sustainability of the Lisbon System.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

13. Mr. Csaba Baticz (Hungary) was unanimously elected as Chair of the Working Group.

14. Ms. Alexandra Grazioli (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

15. The Working Group adopted the draft Agenda (document LI/WG/DEV-SYS/2/1 Prov.) without modification.

GENERAL STATEMENTS

16. Referring to the introductory comments made by the Director General, the Delegation of France took note of the recent accessions to the Geneva Act of Cambodia and Côte d'Ivoire, as well as the accession of Albania to the Lisbon Agreement. The Delegation was of the view that those accessions bore witness to the fact that the Lisbon System and the Lisbon Union, generally speaking, were in a positive dynamic phase.

17. Upon welcoming the latest developments of the Lisbon System, the Delegation of Italy expressed its interest in the development of the Lisbon System and also pointed out that these were important times for the Lisbon System. The Delegation indicated its readiness to discuss all the possible solutions to achieve the financial sustainability of the System.

18. The Delegation of Iran (Islamic Republic of) pointed out that every society had developed knowledge-based economies and traditions over time. The development of such knowledge had resulted from some degree of human interaction with a particular geographical environment. In a globalized world, those knowledge-based economies were particularly vulnerable to misuse and it was therefore of the utmost importance to preserve those traditions and cultural heritage. The Delegation indicated that geographical indications helped identify the geographical origin of a good and its repercussion on the specific qualities and characteristics of the good under consideration. The Delegation was of the view that the protection of geographical indications not only helped achieve the United Nations Sustainable Development Goals, but could also provide adequate legal protection to traditional origin-based quality products in the current context of globalization. The Delegation concluded by saying that it attached great importance to the effective protection of appellations of origin and geographical indications through the Lisbon System, before pointing out that over the past year, Iran (Islamic Republic of) had submitted 20 new international applications under the Lisbon System, which brought the total number of Iranian registrations under the Lisbon System up to 61.

19. The Delegation of Hungary recalled that Hungary had always been a true promoter of the Lisbon System, and that it remained committed to finding a reasonable and balanced solution in order to ensure the financial sustainability of the System. The Delegation further indicated that Hungary had been carefully studying the various options put forward over the past few years. In that regard, the Delegation reiterated that the appropriate measures to be adopted should be based on the principle of solidarity and coordination of the budgets of the Unions administered by WIPO, while respecting the inherent nature of the Lisbon System and the legal provisions of the relevant agreements. The Delegation noted with satisfaction the intensified promotion of the Lisbon System by WIPO, which it believed was essential to attract new Contracting Parties to the System, and would also contribute to the establishment of a self-sustainable global intellectual property System.

20. The Delegation of Peru reiterated its strong commitment to contribute to strengthening the Lisbon System for the international registration of appellations of origin and geographical indications through increased promotion activities. In parallel, the Delegation commended WIPO for the organization of the next Worldwide Symposium on Geographical Indications in July of the current year, in Lisbon.

21. The Delegation of the United States of America reiterated that the issue of the financial sustainability of the Lisbon System was very important, not only for the future of the Lisbon Union but also as it affected the larger WIPO membership. The Delegation said that it remained concerned about the open question of whether the Lisbon System would ever become financially self-sustaining. In addition, the Delegation recalled that it still questioned whether WIPO should administer the Geneva Act at all since the Diplomatic Conference had been negotiated without meaningful input on its provisions by a majority of WIPO Member States. In that regard, the Delegation said that it also maintained its position that the Geneva Act could not

automatically be considered a WIPO administered treaty and that an affirmative decision had to be taken on that particular question. The Delegation further indicated that it was not aware of any submission by the Director General to the WIPO Coordination Committee and to the WIPO General Assembly for a determination that the Geneva Act of the Lisbon Agreement is a treaty administered by WIPO. The Delegation reminded the Working Group that promotional activities to attract membership to the Geneva Act could not be paid for or be staffed by WIPO in the absence of a formal agreement by WIPO Member States allowing WIPO to do so. Upon expressing its concerns about the solutions that would be put forward to address those matters, the Delegation said that it welcomed interventions from other countries, both Lisbon members and WIPO members, on creative ways forward for solving the persistent problem of the financial sustainability of the Lisbon System. Lastly, the Delegation said that it would be interesting to know how those interested in acceding to the Geneva Act were preparing to protect third-country non-agricultural geographical indications in order to meet their obligations, under both the TRIPS Agreement and the Geneva Act, to protect all eligible subject matter, including non-agricultural geographical indications.

22. The Delegation of the European Union (EU) and its member states provided a brief factual description of the state of play of the preparations within the European Union towards its accession to the Geneva Act. The Delegation recalled that a roadmap on the European Union accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications had been published on December 23, 2017, for comments from all stakeholders. On July 27, 2018, the Commission adopted the proposals for the European Union accession to the Geneva Act consisting of a draft Council Decision on accession and the draft Regulation of the European Parliament and the Council on the action of the European Union upon accession. After an intensive debate, in the legislative fora, a compromise text on the Regulation of the European Parliament and the Council on the action of the Union following its accession to the Geneva Act was agreed in a trilog held in Strasbourg on March 13, 2019, between the Commission, the European Parliament, and the Council. On April 16, 2019, the European Parliament in plenary gave the necessary consent to the Council Decision on the accession of the European Union and voted in favor of the Report of the Rapporteur on the European Parliament and Council Regulation, thereby endorsing the outcome of the trilog. However, for technical reasons, the Delegation pointed out that the text of the Regulation still had to be reviewed by lawyers and linguists, and that such corrigendum procedure would have to be endorsed in a meeting of the European Parliament in a Plenary session, which would presumably take place in mid-July. Since both legal acts would then have to be eventually adopted by the Council of the European Union, the Delegation expressed the view that there was a reasonable perspective that the European Union might be able to deposit its instrument of accession before the end of the current year.

23. The Representative of the Health and Environment Program (HEP), said that at a time when the need for organic farming continued to increase it became urgent to valorize the value chain in the distribution system of agricultural products by putting forward key elements such as authenticity and the use of ancestral gestures. In consequence, HEP very much relied on the legal protection of a geographical name granted on the basis of a product's long-established reputation in order to protect related products in several countries at the same time. The Representative of HEP further pointed out that the Cameroon International Crafts Fair, SIAC (*Salon International de l'Artisanat du Cameroun*), showcased exceptional art objects, sculptures, jewelry, pottery, embroidery, as well as technological know-how for alternative dietary food products and traditional pharmacopoeia. She then referred in particular to the white pepper of Penja, also presented at the fair, whose price per kilogram had risen from 2,500 CFA francs to 14,000 CFA francs thanks to the geographical indication granted to such flagship product from Cameroon. Upon specifying that *Penja Pepper* and *Oku White Honey* were the two Cameroonian products, which had been granted geographical indication protection, the Representative of HEP said that such protection clearly brought additional value

to agricultural products. In parallel, HEP encouraged countries to immerse themselves in digitization with regard to artisanal products in order to meet the international market demand and thus become competitive. She concluded by saying that, since the rapid development of certain activities generated strong financing needs that could not be met by the surplus generated by farm exploitation alone, HEP urged countries to explore the possibility of using external resources such as business angels, venture capital, subsidies, and so on.

24. In response to the statement made by the Delegation of the United States of America, in particular as regards the legitimacy of the Geneva Act and the Lisbon Union, the Delegation of France recalled that in previous meetings it already had the opportunity to demonstrate the undisputable legitimacy of the Geneva Act and its administration by WIPO. The Delegation indicated that the Lisbon Union was indeed a Special Union administered by WIPO. In that regard, the Delegation referred to Article 1 of the Paris Convention, which specifically applied to appellations of origin, whereas Article 1 of the Lisbon Agreement left no doubt that the Lisbon Union had been established under the framework of the Paris Convention, and was thereby part of WIPO. Moreover, the Delegation recalled that in May 2015 a Diplomatic Conference was held in line with the rules of the Organization. Under the sovereign will of the Lisbon Union members, the Conference explicitly adopted the Geneva Act of the Lisbon Agreement as a revision of the Lisbon Agreement. In consequence, since the Geneva Act was clearly covered by Article 30 of the Vienna Convention from the point of view of international law, it was therefore indisputable that no change to the statute of the Lisbon Agreement arose from such a revision. The Delegation further recalled that the Lisbon Union was a Special Union administered by WIPO and remained a separate Union administered by WIPO. The Delegation welcomed the possible European Union accession to the Geneva Act in the near future, as indicated by the Delegation of the European Union and its member states. The Delegation was of the view that other accessions from developing countries in particular, for whom geographical indications were important tools to improve the value of their food and cultural specificities, could also be reasonably expected in the coming months.

AGENDA ITEM 4: FINANCIAL SUSTAINABILITY OF THE LISBON UNION

25. Discussions were based on document LI/WG/DEV-SYS/2/2.

26. The Chair opened the discussions on Item 4 of the Agenda.

27. Referring to the long-term financial sustainability of the Lisbon System, the Delegation of Israel, underscored the importance of the System being self-financed and suggested a few practical measures to be taken. Firstly, given the fact that the protection provided under the Lisbon treaties was unlimited, the Delegation was of the view that there was a need to monitor the fee schedule on a regular basis and to envisage the introduction of new fees for the provision of administrative services by the International Bureau that would generate income and that could be gradually increased over time. Another possible measure would be the digitization of the Lisbon operations, the automation of proceedings and the establishment of electronic means for filing and processing international applications and other transactions, thereby eventually reducing operational expenses. Thirdly, the Delegation was of the view that it would be imperative to enhance promotional activities of the Lisbon System, including the Geneva Act of the Lisbon Agreement, with the understanding that the promotion of the System would most likely attract new members and also encourage existing members to file new applications. Yet, given the very nature of the treaty and the fact that there were only so many geographical names available for registration, the Delegation wondered whether all of the measures stated above would be sufficient to achieve the long-term financial sustainability of the Lisbon System.

28. The Delegation of Iran (Islamic Republic of) reiterated its commitment to contribute to finding a long-term solution for purposes of ensuring the financial sustainability of the Lisbon System. In that regard, the Delegation commended the efforts made by Lisbon Union members

in considering different options to achieve such financial-sustainability, according to the principle that the amount of the fees should be sufficient under normal circumstances to cover the expenses for maintaining the international registration service without requiring the payment of contributions by Lisbon Union members. The Delegation welcomed the new accessions to the Geneva Act and to the Lisbon Agreement and said that it looked forward to the entry into force of the Geneva Act, which would contribute positively to the financial sustainability of the System. The Delegation said that it continued to believe that promotion activities and the provision of high-quality services to the global intellectual property community was one of the main functions of WIPO. Lastly, the Delegation said that it looked forward to equal prominence given to the Lisbon Union along with other Unions administered by WIPO in full compliance with the mandate of the Organization.

29. Upon pointing out that the Working Document under consideration presented the same issues identified in the paper drafted for the first Working Group session, the Delegation of the United States of America said that it looked forward to hearing what innovative strategies had been discussed inter-sessionally to address the issue under consideration. The Delegation reiterated that any loan to address the deficit owed by the Lisbon Union would be repaid when the Lisbon Union reserves would allow it to do so. The uncertainty as to when such loan would be repaid brought into question whether the Lisbon Union would ever resolve its financial deficit issues. In as much as the Lisbon Union was a fee-financed Union, the Delegation encouraged the Working Group to look into how the fee revenues could be increased so as to eliminate the deficit. As it had indicated at the previous session of the Working Group, the Delegation said that one way to research solutions to the issue under consideration would be to understand the finances of the other fee-financed Unions. Whether the Lisbon Union would ever attain financial sustainability without the need to employ stop-gap methods such as subventions and loans was questionable. The Delegation went on to say that, unlike other international registration Unions, geographical indications were by their very nature an extremely limited subset of intellectual property. Other Unions had an infinite number of possible international applications being filed such as, for example, the Madrid Union, which had received 55,000 international applications in 2017. The Delegation further pointed out that the fee for the basic application under the Madrid System was 653 Swiss francs, which in turn meant that 36 million plus Swiss francs corresponding to filing fees alone had been collected in 2017. The Delegation added that there were other fees, such as designating extensions of protection to other countries, etc. By contrast, the number of appellations of origin and geographical indications recorded in the Lisbon Express database only amounted to 1130. Of which 118 had been canceled. It was therefore not surprising that the vast majority of Lisbon registrations originated in Europe, whereas other Contracting Parties from Sub-Saharan Africa, namely Burkina Faso, Congo, Gabon and Togo had not registered any single appellation of origin under the Lisbon System to the present date. Lastly, the Delegation objected to a prior measure put forward to address the financial shortfall, specifically the idea that the Geneva Act should be promoted in order to ensure the increased membership and that the measure would lead to increased income for the Union. The Delegation concluded by saying that it would appreciate confirmation that promotion activities towards increased membership for the Geneva Act were not being undertaken by WIPO using WIPO funds. Lastly, referring to the response from the Delegation of France, the Delegation reiterated its view that the Geneva was not a mere revision of the Lisbon Agreement as it expanded the scope of eligible subject matter to geographical indications.

30. The Delegation of Australia said that it continued to encourage the Lisbon Union to develop concrete, long-term solutions to address revenue deficits and ensure the long-term financial sustainability of the Lisbon System beyond the projected biannual deficit in the 2018/19 biennium. The Delegation went on to say that Australia anticipated that a suite of measures would be required to address the deficit, including measures in accordance with the Lisbon Union's own treaties. The Delegation said that it remained unconvinced that an increase

in registration fees would be sufficient to set the Lisbon System on a self-sustaining path over the long-term. In consequence, additional sources of funding for the System would have to be considered to the extent possible under the Geneva Act and the Common Regulations. Lastly, the Delegation also encouraged Lisbon Union members to look to other Unions to assist them in finding a feasible solution towards financial sustainability.

31. The Chair invited Lisbon Union members, observer Delegations, and international organizations that were planning to accede to the Geneva Act to pursue the discussions on the financial sustainability of the Lisbon System in an informal setting.

[Suspension]

32. The Chair re-opened the Plenary meeting to inform the members of the Working Group of the result of his informal consultations.

33. On the basis of the discussions that took place under Agenda item 4, the Working Group decided:

- (i) to take note of the declarations made and the different views expressed under Agenda Item 4; and
- (ii) to further discuss appropriate measures to ensure the financial sustainability of the Lisbon Union in the future, including the review of the Schedule of Fees on a regular basis, while recognizing the need to assess the impact of the entry into force of the Geneva Act on the financial situation of the Union.

AGENDA ITEM 5: ADOPTION OF THE SUMMARY BY THE CHAIR

34. The Chair introduced the discussion on Agenda item 5 concerning the adoption of the Summary by the Chair and opened the floor for comments by delegations.

35. The Delegation of the United States of America expressed its disappointment that the present Working Group session had not met its mandate to find solutions for the financial sustainability of the Lisbon Union and that the necessary discussions would be deferred until the Geneva Act would enter into force. The Delegation also expressed its disappointment that once again WIPO staff and WIPO funds would be used for the conduct of promotional activities to support the Geneva Act. Lastly, the Delegation deplored that the present Working Group session was a missed opportunity for resolving the issues within the Union.

36. The Delegation of France noted with satisfaction that the present session of the Working Group had provided Lisbon Union members with the opportunity of having open discussions on possible measures to ensure the financing of the Union and, more broadly, on the development of the Lisbon System. The Delegation further indicated that the upcoming entry into force of the Geneva Act and the accession of intergovernmental organizations, such as the European Union, to the Lisbon System would mark the beginning of a new era. The Delegation therefore remained confident that the conclusions of the present session of the Working Group in respect of the conduct of promotion activities and the necessary coordination among member States in that regard were ever more important and would help them increase the number of Contracting Parties to the Geneva Act in the near future.

37. The Working Group approved the Summary by the Chair, as contained in Annex I to the present document.

38. The Chair indicated that the draft of the full Report of the second session of the Working Group would be made available on the WIPO website for comments by the delegations and representatives that participated in the meeting. Participants would be informed once the draft

Report would be available on the WIPO website. Participants would be able to submit comments within one month from its publication date, after which a track-changes version of the document, taking into account all the comments received from participants, would be made available on the WIPO website. The availability of the comments and the track-changes version would also be communicated to participants, together with a deadline for the submission of final comments on that track-changes version. Thereafter, the Report, taking into account the final comments, as appropriate, would be published on the WIPO website without track-changes, indicating the date of such final publication. In the absence of comments within two weeks from that date the Report would be deemed adopted.

AGENDA ITEM 7: CLOSING OF THE SESSION

39. The Chair closed the session on May 28, 2019.

[Annexes follow]



Working Group on the Development of the Lisbon System

Second Session
Geneva, May 27 and 28, 2019

SUMMARY BY THE CHAIR

adopted by the Working Group

1. The Working Group on the Development of the Lisbon System (hereinafter referred to as “the Working Group”) met in Geneva, on May 27 and 28, 2019.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Burkina Faso, Czech Republic, France, Gabon, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Nicaragua, Peru, Portugal, Slovakia (13).
3. The following States were represented as observers: Afghanistan, Australia, Finland, Germany, Guyana, Honduras, India, Ireland, Japan, Kuwait, Nigeria, Paraguay, Poland, Republic of Korea, Romania, Russian Federation, Senegal, Spain, Switzerland, United States of America (20).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Union (EU), Food and Agriculture Organization of the United Nations (FAO), Organization of Islamic Cooperation (OIC), World Trade Organization (WTO) (4).
5. Representatives of the following national and international non-governmental organizations (NGOs) took part in the session in an observer capacity: *Association congolaise pour le développement agricole* (ACDA), Centre for International Intellectual Property Studies (CEIPI), Health and Environment Program (HEP), International Wine Law Association (AIDV),

MARQUES – Association of European Trademark Owners, Organization for an International Geographical Indications Network (oriGIn) (6).

6. The list of participants is contained in document LI/WG/DEV-SYS/2/INF/1 Prov*.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the session.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

8. Mr. Csaba Baticz (Hungary) was unanimously elected as Chair of the Working Group.

9. Ms. Alexandra Grazioli (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Working Group adopted the draft agenda (document LI/WG/DEV-SYS/2/1 Prov.) without modification.

AGENDA ITEM 4: FINANCIAL SUSTAINABILITY OF THE LISBON UNION

11. Discussions were based on document LI/WG/DEV-SYS/2/2.

12. The Chair took note of the positions expressed by all Delegations, including observer Delegations. These will be fully reflected in the Report of the present session.

13. The Working Group also emphasized the importance of promotion activities to increase the membership of the Lisbon System, including the Geneva Act, and the need to increase coordination among Lisbon members in that respect.

14. On the basis of the discussions that took place under Agenda item 4, the Working Group decided:

- (i) to take note of the declarations made and the different views expressed under Agenda Item 4; and
- (ii) to further discuss appropriate measures to ensure the financial sustainability of the Lisbon Union in the future, including the review of the Schedule of Fees on a regular basis, while recognizing the need to assess the impact of the entry into force of the Geneva Act on the financial situation of the Union.

AGENDA ITEM 5: ADOPTION OF THE SUMMARY BY THE CHAIR

15. The Working Group approved the Summary by the Chair, as contained in the present document.

* The final list of participants will be made available as an Annex to the Report of the session.

AGENDA ITEM 6: CLOSING OF THE SESSION

16. The Chair closed the session on May 28, 2019.

[Annex II follows]



LI/WG/DEV-SYS/2/INF/1
ORIGINAL: FRANCAIS / ANGLAIS
DATE: LE 28 MAI 2019 / MAY 28, 2019

Groupe de travail sur le développement du Système de Lisbonne

**Deuxième session
Genève, 27 et 28 mai 2019**

Working Group on the Development of the Lisbon System

**Second Session
Geneva, May 27 and 28, 2019**

LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS

*établie par le Secrétariat
prepared by the Secretariat*

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VI. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ
INTELLECTUELLE (OMPI)/SECRETARIAT OF THE WORLD INTELLECTUAL
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WANG Binying (Mme/Ms.), vice-directrice générale, Secteur des marques et des dessins et modèles/Deputy Director General, Brands and Designs Sector

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