

Special Union for the Protection of Appellations of Origin and their International Registration (Lisbon Union)

Assembly

Thirty-Third (12th Extraordinary) Session
Geneva, October 3 to 11, 2016

REPORT

adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/56/1): 1, 2, 3, 4, 5, 6, 9(ii), 10, 22, 30 and 31.
2. The reports on the said items, with the exception of item 22, are contained in the General Report (document A/56/17).
3. The report on item 22 is contained in the present document.
4. Mr. João Pina de Morais (Portugal) was elected Acting Chair of the Assembly.

ITEM 22 OF THE CONSOLIDATED AGENDA

LISBON SYSTEM

5. Discussions were based on documents LI/A/33/1 and LI/A/33/2.

6. The Acting Chair of the Lisbon Union Assembly recalled a number of developments concerning the Lisbon System since the last meeting of the Lisbon Union Assembly the previous year. First he indicated that the total number of signatures of the Geneva Act to the Lisbon Agreement had grown to 15 following the signatures by Costa Rica on October 13, 2015, and by the Republic of Moldova on April 11, 2016. Secondly, he pointed out that 50 new international applications had been submitted under the Lisbon System since the previous Lisbon Union Assembly in 2015, namely 34 applications from Italy and 16 applications from Iran (Islamic Republic of), which in turn brought the total number of international registrations under the Lisbon System to 1,060, of which 954 were in force. In that regard, he stressed that since 2009 there had been a growth in registrations of approximately 14 per cent and that the share of registrations of appellations of origin from developing countries had risen from 7 per cent at the end of 2009 to 10 per cent in 2015. He indicated that those numbers confirmed the renewed interest of Lisbon member States in the Lisbon System. Turning to the two documents included on the agenda he indicated that the first document dealt with "Financial Matters Concerning the Lisbon Union" (document LI/A/33/1) while the other contained a "Proposal on Financial Matters Concerning the Lisbon Union" (document LI/A/33/2). Upon indicating that both documents would be dealt with together as they both concerned the financial matters of the Lisbon Union, he pointed out that those documents reflected the work carried out by the Lisbon member States in order to implement the mandate that had been agreed to at the previous meeting of the Lisbon Union Assembly. The Acting Chair invited the Chair of the Working Group for the Preparation of Common Regulations Under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement (hereinafter referred to as "the Working Group") to introduce the document entitled a "Proposal on Financial Matters Concerning the Lisbon Union" (document LI/A/33/2).

7. The Chair of the Working Group recalled that his proposal was divided in two parts. The first part referred to the proposed measures for the elimination of the projected deficit of the Lisbon Union for the 2016/17 biennium. The Chair proposed that the Lisbon Union Assembly took note of the statements made concerning the confirmations of payment of subventions and regarded those subventions as measures to eliminate the Lisbon Union's projected biennial deficit for the 2016/17 biennium, in accordance with the decision of the 2015 Lisbon Union Assembly. The second part of the proposal referred to the proposal on the long-term financial sustainability of the Lisbon Union. In light of the discussions held among the Lisbon Union members, the Chair of the Working Group proposed that the Lisbon Union Assembly decide that the promotion activities of the Lisbon System including the Geneva Act of the Lisbon Agreement be emphasized. He also proposed that the Lisbon Union members continue to consider the establishment of a contribution system in the framework of the unitary contribution system, including the methodology for calculating such contributions, and to monitor the Lisbon Fee Schedule. In order to continue such discussions, he indicated an interest of the Lisbon Union members to take advantage of the next meeting of the Working Group and informal meetings.

8. The Delegation of Slovakia, speaking on behalf of the European Union and its member states, said that it had taken due note that the Lisbon members had worked on measures to eliminate the projected 2016/17 deficit of the Lisbon Union and had also considered the long-term financial viability of the Lisbon System, in accordance with the decision of the previous Lisbon Union Assembly. In that regard, the Delegation welcomed the progress made during the meetings of the Working Group and those meetings which had taken place in Geneva in June, July and August, respectively, and also called for new ideas regarding the financial support of the Lisbon Union while also securing full respect of the principles of

solidarity and equality of treatment for each area of intellectual property. The Delegation further underlined the importance of a robust and focused promotion of the Lisbon System, including the Geneva Act, which would underline the development potential of geographical indications with a view to attracting new Contracting Parties. As regards possible measures to be adopted by the 2016 Assemblies in order to eliminate the projected deficit of the Lisbon Union described in the WIPO Program and Budget for the current biennium, the Delegation indicated that the European Union and its member states had taken note of the readiness announced by a number of Lisbon Union members during the meeting of the Working Group to make voluntary payments in order to eliminate the projected deficit of the Lisbon Union for the current biennium. By way of conclusion, the Delegation stressed the importance that the Lisbon Union be placed on an equal footing with all other WIPO-administered Unions.

9. Upon supporting the position expressed by the Delegation of Slovakia on behalf of the European Union and its member states, the Delegation of Italy recalled that the WIPO General Assembly had decided in 2015 that the Lisbon Union would adopt all possible measures to eliminate the projected deficit for the 2016/17 biennium. In that regard, the Delegation indicated that Italy had been ready to contribute for its part according to the Paris Convention and that it remained fully committed to providing its active and concrete support to find a solution for the long-term financial sustainability of the Lisbon System. The Delegation went on to say that at the national level they would continue to promote the Lisbon System to encourage further Italian applications and also recalled that, in the last three years, Italy had submitted more than 100 applications under the Lisbon System. As regards international promotion activities, the Delegation reiterated the importance of promotion campaigns sponsored by the International Bureau, the Lisbon Registry and WIPO external offices. In that regard, the Delegation referred to Article 3 of the WIPO Convention which stated that WIPO was committed “to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization” and “to ensure administrative cooperation among the Unions”. Referring to the short PCT promotional movie that had been presented earlier that morning, the Delegation expressed the view that something similar could also be done for the promotion of the Lisbon System. Hence, the Delegation expressed the wish to receive more information about the programs that would be implemented in the near future. With reference to the strategic plan for 2016-2021, as referred to in document A/56/10, the Delegation reiterated that both the Lisbon Agreement and the Geneva Act were fully entitled to be included in the Strategic Plan. By way of conclusion, the Delegation said that Italy was firmly convinced that a close collaboration and the joint efforts of WIPO and all involved parties would contribute to making the Lisbon Agreement and the Geneva Act more attractive to potential new Member States, which would in turn also constitute a great opportunity for developing countries as the Lisbon System would help them protect their products linked to their territories and to find their own place in the global market.

10. Upon reiterating its commitment to find solutions to ensure the financial sustainability of the Lisbon Agreement in the long term, the Delegation of Mexico welcomed the documents under consideration, which gave a detailed summary of the results that had emerged from the Working Group and the meetings that had been held in the current year. In order to deal with the financial deficit for 2016/17, and on the basis of the political commitment made by Mexico during the 2015 Assemblies, the Delegation said that they would continue to analyze steps which would enable them to make a voluntary contribution. In doing so, Mexico would like to give a positive sign of its firm commitment to the Lisbon System but also to WIPO in the wider sense. Regarding the long-term financial sustainability of the Lisbon System, the Delegation supported the conclusions of the Working Group, in particular those relating to the promotion of the Lisbon System as a way to attract new Contracting Parties and encourage additional registrations. Furthermore, Mexico continued to work closely with the members of the Lisbon Union in order to supervise and monitor the fee system. The Delegation reiterated its full commitment to try to find, together with the other members of the Lisbon Union, the best way of putting in place a mechanism to update fees on the basis of market conditions that would help

increase the Lisbon Union income and ensure its sustainability. In doing so, they would have to make sure that any new fee that would be created or any fee that would be increased would not end up being too onerous and inaccessible for the users as that might ultimately discourage them from using the Lisbon System altogether, which would in turn be detrimental to the level of registrations and to the sustainability of the system.

11. Upon expressing its support for the statements made by the previous delegations, the Delegation of France said that it was very attached to the good management of the Lisbon System for the protection of appellations of origin and that it was particularly committed to achieving a balanced budget. The Delegation therefore welcomed the conclusions of the Lisbon Working Group and the informal meetings which provide the opportunity to examine on the one hand the long-term financial sustainability of the Lisbon Union, and on the other hand to address the financial deficit for the current biennium. In that spirit, the Delegation of France, acknowledging the importance of continuing to look at the issue of the viability of the Lisbon Union, urged that the Working Group and informal meetings be continued so as to make it possible to find a satisfactory and well-adapted solution to the problem over the next few months. Furthermore, the Delegation reiterated its commitment to participating in reabsorbing the current deficit of the Union by making an exceptional subvention in accordance with Article 11 of the Lisbon Agreement. Lastly, as it was fully aware of the interests of the Lisbon Union itself and of those that might be interested in becoming members of the Lisbon Union, as well as the interest of the users of the system worldwide, the Delegation urged the Secretariat to step up its promotion activities as they related to the Lisbon System, including the Geneva Act.

12. Upon endorsing the statements delivered by the previous Delegations, the Delegation of the Czech Republic indicated that it attached great importance to the Lisbon Union. Moreover, the Delegation expressed the firm belief that the Geneva Act of the Lisbon Agreement, which modernized the Lisbon System, would contribute to the geographical expansion and financial sustainability of the Lisbon System. In that regard, the Delegation expressed the view that in order to attract new Contracting States an intensive promotion of the Lisbon System both by the Lisbon members themselves and by the Secretariat would be necessary. The Delegation said that it fully endorsed the proposal made by the Chair of the Working Group, as contained in document LI/A/33/2 "Proposal on Financial Matters Concerning the Lisbon Union" as it was confident that all the elements of the proposal represented the best options for the financial sustainability of the Lisbon Union. Finally, the Delegation confirmed its readiness to make an appropriate financial contribution to eliminate the deficit for the current biennium in accordance with the Lisbon Union Assembly decision of 2015.

13. The Delegation of Georgia aligned itself with the statements delivered by the previous delegations. It welcomed the work done in order to deal with the financial sustainability of the Lisbon Union. The Delegation supported the continuation of the discussions in the framework of the Working Group to find specific solutions as soon as possible. Finally, the Delegation highlighted the complexity of the discussions relating to financial sustainability. It indicated that its financial commitments would be carried out in accordance with Article 11.

14. The Delegation of Israel reiterated that each of the fee-financed Unions, including the Lisbon Union, should be self-sustained. The Delegation stated that as a Lisbon Union member, Israel was prepared to commit itself to contribute its share in order to cover the deficit of the Lisbon budget. The Delegation indicated that the number of Israeli registrations under the Lisbon System as well as the Paris Union class should be taken into account for the calculation of the amount of its voluntary contribution.

15. The Delegation of Iran (Islamic Republic of) supported the statements made by the Delegation of Slovakia on behalf of the European Union and its member states and those made by the Delegations of Mexico, France, Italy, the Czech Republic and Georgia.

16. The Delegation of Portugal supported the statements made by the Delegation of Slovakia on behalf of the European Union and its member states and those made by the Delegations of Mexico, France, Italy, the Czech Republic and Georgia. The Delegation welcomed the progress made by the Working Group for the Preparation of the Common Regulations Under the Lisbon Agreement and the Geneva Act to improve the financial situation in the long and short term on the basis of the principles of solidarity and equal treatment for all intellectual property rights. With regard to the deficit for the 2016/17 biennium, the Delegation of Portugal said that it had actively participated in the discussions of the Working Group and that it would fulfil its responsibilities as a Lisbon member. In that context, the Delegation ensured that it would participate in a joint effort to cover the projected biennial deficit, as established by Article 11(3)(iii) of the Lisbon Agreement. Referring to the long-term deficit, the Delegation said that it would continue to discuss possible solutions to avoid the systematic use of extraordinary mechanisms to solve the deficit. Concerning the possible solutions, the Delegation said that it would continue to assess the various options while bearing in mind the specific nature of geographical indications. Hence it would continue to discuss possible methods to calculate the amount of their respective contributions as well as a possible review of the fees. The Delegation firmly supported the promotion of the Lisbon System in order to broaden the membership and the number of users as it was convinced that further promotion would also help to improve the financial situation and have a positive effect on the level of income. The Delegation concluded by saying that such promotion activities should be conducted not only by Lisbon member States but also by WIPO.

17. The Delegation of Montenegro expressed its support for the positions taken by the Delegation of Slovakia on behalf of the European Union and its member states and the Delegations of Italy, Mexico, France, the Czech Republic, Georgia and Portugal. The Delegation recalled that the Lisbon Union was a specific Union administered by WIPO and that it should be equal to the other Unions in accordance with Article 4(ii) of the WIPO Convention. The Delegation of Montenegro expressed its readiness to support the Lisbon Union. In that respect, the Delegation said that it would prepare a proposal for a subvention in accordance with Article 11 of the Lisbon Agreement that would be submitted to its Government for its consideration and adoption.

18. The Delegation of Slovakia, speaking in its national capacity, supported the previous speakers and emphasized that further promotion would be essential for the viability of the Lisbon System in order to attract new Contracting Parties and to further develop the system.

19. The Delegation of Hungary aligned itself with the statements delivered by, among others, the Delegation of Slovakia on behalf of the European Union and its member states and the Delegations of Italy, Mexico, France and the Czech Republic. With regard to the financial sustainability of the Lisbon System, the Delegation endorsed the proposal of the Chair of the Lisbon Working Group. The Delegation said that it welcomed the voluntary contributions offered by many members of the Lisbon Union and remained committed to finding a reasonable and balanced solution in order to ensure the long-term financial sustainability of the Lisbon System. The Delegation underlined the importance of an enhanced promotion of the current Lisbon System, including the Geneva Act, with a view to attracting new Contracting Parties.

20. The Delegation of Serbia indicated that it fully endorsed the "Proposal on Financial Matters Concerning the Lisbon Agreement" prepared by the Chair of the Working Group. The Delegation supported the initiative for a better promotion of the Lisbon System in order to attract new Contracting Parties. In that regard, the Delegation called on WIPO to intensify the activities for the promotion of geographical indications and the Lisbon System. The Delegation indicated that these included, among other things, the better visibility of geographical indications and the Lisbon System on the WIPO website. As far as the sustainability of the Lisbon System was concerned, the Delegation stressed that geographical indications could not be compared with

the other intellectual property rights. The Delegation said that the number of geographical indications was relatively small in every country but they could be significant for a country economy. That being so, the Delegation believed that the question of the financial sustainability of the Lisbon System should be solved taking the principle of solidarity as the guiding principle. The Delegation of Serbia indicated that it would actively take part in the future work of the Lisbon Union and its Working Group.

21. The Delegation of Japan expressed its appreciation for the proposal to address the financial sustainability of the Lisbon Union described in document LI/A/33/2. However, the Delegation said that such proposal was not concrete. The Delegation said that it hoped that Lisbon Union members would advance their discussions on the issue so as to make the proposal more concrete and to be able to implement it in the near future. As for the second item of paragraph 8, the Delegation sought clarification on the meaning of “the establishment of the contribution system in the framework of the unitary contribution system”. The Delegation was concerned about how that would affect the existing unitary contribution system. The Delegation said that it could not agree to divert the funds of the unitary contribution system to the Lisbon Union in times of financial fairness and transparency.

22. The Delegation of the United States of America said that it appreciated that the Lisbon Union was taking steps to explore solutions to the Union’s short and long-term financial situation. The Delegation noted the statements by Lisbon members who planned to make contributions. The Delegation said that it had heard many calls from Lisbon members for an increase promotion of the system and statements that more promotion would help to solve financial problems. The Delegation stated that it could have understood that perspective if the treaty had been created in a manner that genuinely attracted additional members. The Delegation, however, believed that revising the system without the participation of the full WIPO membership would lead to the consequence that the attractiveness of the system would be likely limited by virtue of that non-inclusive approach. The Delegation strongly believed that it would be essential for WIPO to take a balanced approach and therefore encouraged a balanced discussion in the context of promoting geographical indication systems, both internally and externally, whether in technical assistance activities, on the WIPO website or in committee discussions, particularly within the Standing Committee on Trademarks, Designs and Geographical Indications (SCT). The Delegation believed that if the Lisbon System had to be raised as an option for those interested in international geographical indication protection, it would have to be as part of a comprehensive balanced discussion. With regard to the contribution system, the Delegation said that the unitary contribution system did not fund the fee-funded Unions, which were PCT, Madrid, Hague and Lisbon, but funded other Unions such as Locarno, Nice, Budapest. The rationale for that system was originally for administrative convenience and facilitation of accession to several Unions by developing countries. Such a rationale held true with regard to the contribution-financed Unions but did not justify the diversion of funds from other fee-financed registration systems to the Lisbon Union. The Delegation said that the Lisbon Union finances were governed by the Lisbon Agreement itself and Article 11 required fees and, if necessary, Lisbon member contributions to fund its operations. The Delegation noted that those contributions were clearly not the same as those of the unitary contribution system. Therefore, the Delegation said that it was somehow confused by the Lisbon Union proposal to consider the establishment of a contribution system in the framework of the unitary contribution system. The Delegation indicated that the Director General and the Secretariat had repeatedly noted that the unitary contribution system applied to contribution-financed unions and did not apply to finance the fee-financed Unions. In that respect, the Delegation quoted document WO/PBC/24/16 Rev., paragraph 16: “Were Member States to agree to invoke the Lisbon Agreement’s provisions to assess and collect contributions, it is important to note the distinction between ‘contributions of the countries of the [Lisbon] Union’ under Article 11(3)(v) of the Lisbon Agreement and the unitary contribution system currently in place. As the Lisbon Union is not a contribution-financed Union, but rather a

fee-financed Union, Member States would therefore need to be aware that the assessment and collection of contributions from Lisbon Union members under Article 11 is an issue separate from and unrelated to contributions assessed under the unitary contribution system". As a result, the Delegation did not understand why Lisbon members were considering the establishment of a contribution system within the framework of an unrelated system.

23. The Delegation of Costa Rica underlined the importance to ensure protection of appellations of origin and geographical indications for social development. The Delegation said that such was the reason why it had specifically supported the proposal made by the Chair of the Working Group. The Delegation hoped that the Lisbon Union would not take measures which could make it difficult to access or disproportionately affect certain Lisbon member States. The Delegation of Costa Rica requested WIPO to take measures that would allow an effective promotion of the system to make it more attractive and in order to receive revenue from new members.

24. The Delegation of the Democratic People's Republic of Korea supported the interventions made by the Delegations of France, Portugal, the Czech Republic and the other countries which had positively supported the Lisbon Union.

25. The Delegation of the Republic of Korea expressed its thanks to the Lisbon Union members for their efforts to find solutions regarding the financial problems. The Delegation stressed the significance of not only eliminating the projected biennium deficit but also achieving the long-term financial sustainability of the Lisbon Union. The Delegation indicated that the Lisbon Union was facing a contribution to the common expenses as the other fee-financed Unions. However, the Delegation was of the view that the measures proposed by the Lisbon Union were not sufficient to overcome the 2016/17 deficit and to reach financial sustainability. Therefore, the Delegation considered that it was necessary to take adequate steps to solve this situation. The Delegation asked the Lisbon Union members to endeavor in attempts to handle their financial matters in a responsible manner.

26. The Delegation of Bulgaria associated itself with the statements previously made by the Delegation of Slovakia on behalf of the European Union and its member states and the Delegations of Italy, Mexico, France, the Czech Republic, Georgia, Portugal, Iran (Islamic Republic of), Montenegro, Slovakia, Hungary, Serbia and Costa Rica. The Delegation considered that it was beneficial to all interested parties to take measures to eliminate the budgetary deficits and to find financial solutions to both short and long-term issues. The Delegation said that it had taken the necessary steps in order to guarantee the necessary financial resources from the state budget and to ensure that the country was capable of financing the deficit for the 2016/17 biennium. The Delegation indicated that it preferred that the contribution of the Member States followed the criterion of the contribution class according to the Paris Union. At the same time, the Delegation believed that the discussions on finding a long-standing solution for ensuring the financial sustainability of the Lisbon Union should continue to identify any possible measures.

27. The Delegation of Switzerland expressed its thanks to the Delegations of France, Italy, the Czech Republic and Georgia for their financial commitments. The Delegation encouraged further discussions within the Union with regard to the financial matters under consideration.

28. The Assembly of the Lisbon Union:

(i) took note of document LI/A/33/1 (Financial Matters Concerning the Lisbon Union) and document LI/A/33/2 (Proposal on Financial Matters Concerning the Lisbon Union);

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(ii) took note of the statements made by Lisbon Union members and of the additional information regarding subventions under Article 11(3)(iii) of the Lisbon Agreement referred to in the Annex to document LI/A/33/2, as well as of the statements made by Delegations regarding such subventions at the present Lisbon Union Assembly noting that the subventions collected at this stage amount to over one million Swiss francs;

(iii) agreed that the payment of subventions under Article 11(3)(iii) of the Lisbon Agreement referred to in paragraph (ii), above, would constitute measures to eliminate the projected biennial deficit of the Lisbon Union, in accordance with the decisions taken at the 2015 Assemblies (see documents LI/A/32/5, paragraphs 73(i) and (ii), and A/55/13, paragraphs 231(ii) and (iii), and 235); and

(iv) requested the International Bureau to take the necessary administrative steps to receive subventions under Article 11(3)(iii) of the Lisbon Agreement to be made by Lisbon Union members;

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(v) decided to emphasize promotion activities of the Lisbon System including the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications;

(vi) decided to continue consideration of the establishment of a contribution system in the framework of the unitary contribution system, as well as the methodology for calculating such contributions;

(vii) decided to continue monitoring the Lisbon Fee Schedule with a view to reviewing it, for an eventual increase in the future; and

(viii) decided to take advantage of the next meeting of the Lisbon Working Group, and informal meeting(s) that the Chair of the Working Group might request the Secretariat to organize, to further discuss the financial sustainability of the Lisbon Union, in particular items referred to in paragraphs (vi) and (vii), above.

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