



## WORLD INTELLECTUAL PROPERTY ORGANIZATION

34, chemin des Colombettes, P.O. Box 18, CH-1211 Geneva 20 (Switzerland)  
Telephone: (41) 22 338 91 11 – Facsimile (International Appellations of Origin Registry): (41) 22 740 14 29  
e-mail: lisbon.system@wipo.int – Internet: <http://www.wipo.int/lisbon/>

### **LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION**

#### **Amendments to the Regulations under the Lisbon Agreement and Establishment of Administrative Instructions**

1. At its twenty-fifth (18<sup>th</sup> extraordinary) session, which took place in Geneva from September 22 to October 1, 2009, the Assembly of the Lisbon Union adopted new Rules 11*bis* and 23*bis* of the Regulations under the Lisbon Agreement as well as a modification of Rule 22(1), together with a number of consequential amendments to Rules 1, 4, 8 and 17.
2. New Rule 11*bis* lays down an optional procedure for the notification and registration of statements of grant of protection and is reproduced in Annex I to the present Information Notice. The new procedure is explained below.
3. New Rule 23*bis* is also reproduced in Annex I to the present document and defines the procedure governing the establishment or modification of Administrative Instructions. Pursuant to this new Rule, the Director General has consulted the member countries on the establishment of Administrative Instructions and, as a result, Administrative Instructions as reproduced in Annex II to the present Information Notice were established. The content of these Administrative Instructions is explained below.
4. Rule 22(1) was amended so as to require the Administrative Instructions to specify the means of communication that the International Bureau would use in order to be in a position to establish the dates on which notifications of new international registrations under Rule 7(1) were received by the competent authorities concerned. The amended provision is equally reproduced in Annex I to the present document.
5. The amendments to the Lisbon Regulations, as adopted by the Assembly, and the Administrative Instructions, as established by the Director General and published in the Bulletin *Appellations of Origin* (No. 38 of December 2009) will all become effective as from January 1, 2010.

New Rule 11bis – Optional Statement of Grant of Protection

6. Under Article 5(3) of the Lisbon Agreement, any contracting country may declare that it cannot ensure the protection of an appellation of origin that is the subject of an international registration in the contracting country concerned, provided its declaration of refusal is notified to the International Bureau within a period of one year from the receipt of the notification of registration.

7. However, in light of the fact that contracting countries are often in a position to know that they will not issue a declaration of refusal well before the expiry of the applicable refusal period, and in order to speed up the process and improve legal certainty, a new optional facility has been introduced allowing for the notification and registration of statements of grant of protection. Such statements have the advantage that one is not obliged to await the expiry of the refusal period to know whether protection is actually granted to the appellation of origin concerned.

8. The new optional facility is embodied in new Rule 11bis which lays down the possibility for the competent authority of a contracting country to send to the International Bureau a statement of grant of protection (a) in case a decision has been taken, within the abovementioned time-limit of Article 5(3), to grant protection to an appellation of origin, or (b) where a decision has been taken to withdraw a declaration of refusal, as had been notified pursuant to Article 5(3).

9. In the case mentioned under (a) in the previous paragraph, such a statement of grant of protection can be notified before the expiry of the time-limit of Article 5(3), provided that no declaration of refusal has been notified yet.

10. In the case mentioned under (b) in paragraph 8 above, the competent authority will have the option to notify at any time either, under Rule 11, a withdrawal, in whole or in part, of the declaration of refusal, or, under new Rule 11bis, a statement of grant of protection, in whole or in part.

Administrative Instructions Established under New Rule 23bis

11. The overall purpose of the provisions contained in the Administrative Instructions is to streamline the notification procedures under the Lisbon Agreement and its Regulations, in particular by explicitly allowing for the establishment of standard forms for the various procedures under the Agreement and its Regulations, but also by allowing for the use of electronic means for the transmittal of communications between the International Bureau and the competent authorities of Member States.

12. The Administrative Instructions are composed of nine Sections divided over three Parts and entitled, respectively, “Definitions” (Part One), “Forms” (Part Two) and “Communications between Competent Authorities and the International Bureau” (Part Three).

### *Forms*

13. Sections 2 to 4 of the Administrative Instructions provide a legal framework for the existing situation. In addition, they allow the International Bureau to improve the content and availability of existing forms and add new ones, as and when necessary.

14. Currently, the use of a form is only prescribed in respect of the presentation of an international application (Rule 5). Optional forms are available from the International Bureau for the presentation of a declaration of refusal (Rule 9); for the presentation of the withdrawal of a declaration of refusal (Rule 11); for the presentation of a notification of invalidation (Rule 16); and for the presentation of a notification concerning the grant of a period within which third parties must discontinue use of a registered appellation of origin (Rule 12).

### *Communications between Competent Authorities and the International Bureau*

15. Sections 5 to 9 of the Administrative Instructions regulate the modes by which declarations and notifications can be communicated under the procedures of the Lisbon Agreement and its Regulations.

16. Section 5 requires that competent authorities and the International Bureau effect communications in writing by typewriter or other machine and also that, in case a communication contains several documents, it should be accompanied by a list identifying each of these documents. These provisions apply in respect of all communications, whether they will be transmitted by a postal service, by a delivery service, by facsimile or by electronic means.

17. Section 6 allows for the transmission of communications by facsimile. Its provisions apply to communications transmitted by competent authorities and the International Bureau alike and speak for themselves.

18. Under Section 7, electronic means are allowed for transmitting communications, but only to the extent that a competent authority has consented to the use of electronic communications and the International Bureau and the competent authority concerned have agreed on the way in which such communications are to take place.

19. Section 8 implements amended Rule 22(1). Its provisions specify the various modes of communication that can be used by the International Bureau and how, in respect of each of these modes, the date of receipt of a notification under Rule 7(1) by a competent authority is determined. The International Bureau is required to confirm the date so determined to the competent authority concerned and inform the competent authority of the country of origin.

20. Section 9 complements Rule 21 of the Regulations under the Lisbon Agreement in respect of two aspects. Rule 21 lays down, in respect of the declarations referred to in Rules 9(1) and 17(3) of the Regulations under the Lisbon Agreement as well as the notice referred to in Rule 12(1) thereof, how the date of dispatch is determined in case the communications in question have been dispatched through a postal service or through a delivery service. Section 9 specifies how the date of dispatch is determined when the communications in question are transmitted by facsimile or by electronic means.

21. In addition, Section 9 provides that the International Bureau acknowledges receipt to the competent authority that communicated the declaration. In case the declaration received is regular, the International Bureau communicates to the competent authority that the declaration has been recorded in the International Register as is, including its date of dispatch, as determined in accordance with Rule 21 or Section 9, and that it has been notified to the competent authority of the country of origin. In case the declaration received is irregular, the acknowledgement of receipt will take the form of an irregularity letter.

#### Consequential Amendments

22. In connection with the adoption of new Rules 11*bis* and 23*bis*, consequential amendments were necessary in Rules 1(xiv), 4(1)(b), 8(3)(a) and 17. The amendments to the provisions in question speak for themselves, including the new footnote to Rule 4(1)(b).

#### Further Information

23. For those who seek more detailed background information concerning the new Rules and the amendments referred to above, reference is made to Lisbon Assembly document LI/A/25/1, which is available at the following address:

*[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=18650](http://www.wipo.int/meetings/en/details.jsp?meeting_id=18650)*

December 10, 2009

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)

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*<sup>1</sup>, 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.

[...]

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<sup>1</sup> 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.

[...]

[Annex II follows]

## ANNEX II

### **Administrative Instructions for the Application of the Lisbon Agreement**

(as in force on January 1, 2010)

#### LIST OF SECTIONS

<i>Part One:</i>	<i>Definitions</i>
Section 1:	Abbreviated Expressions
<i>Part Two:</i>	<i>Forms</i>
Section 2:	Prescribed Forms
Section 3:	Optional Forms
Section 4:	Availability of Forms
<i>Part Three:</i>	<i>Communications between Competent Authorities and the International Bureau</i>
Section 5:	Communication in Writing; Communication Containing Several Documents
Section 6:	Communications by Facsimile
Section 7:	Electronic Communications
Section 8:	Notifications Communicated by the International Bureau
Section 9:	Notifications Communicated by a Competent Authority

## **Part One Definitions**

### *Section 1: Abbreviated Expressions*

- (a) For the purposes of these Administrative Instructions:
- (i) “Regulations” means the Regulations under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration;
  - (ii) “Rule” means a Rule of the Regulations.
- (b) For the purposes of these Administrative Instructions an expression which is referred to in Rule 1 has the same meaning as in the Regulations.

## **Part Two Forms**

### *Section 2: Prescribed Forms*

For any procedure for which the Regulations prescribe the use of a form, the International Bureau shall establish such a form.

### *Section 3: Optional Forms*

In respect of procedures under the Regulations other than those referred to in Section 2, the International Bureau may establish optional forms.

### *Section 4: Availability of Forms*

The International Bureau shall make available all prescribed and optional forms, as referred to in Sections 2 and 3, on its website and, upon request, on paper.

## **Part Three Communications between Competent Authorities and the International Bureau**

### *Section 5: Communication in Writing; Communication Containing Several Documents*

- (a) Communications shall be effected in writing by typewriter or other machine.
- (b) A communication containing several documents should be accompanied by a list identifying each of these documents.

*Section 6: Communications by Facsimile*

(a) Communications between competent authorities and the International Bureau may be transmitted by facsimile. Where a competent authority must present a communication on an official form, the official form must be used for the purposes of the facsimile communication.

(b) The International Bureau shall inform a competent authority from which it has received a communication by facsimile whenever the communication is incomplete or otherwise unusable.

*Section 7: Electronic Communications*

(a) Where a competent authority so desires, communications between that competent authority and the International Bureau, including the presentation of an international application, shall take place by electronic means in a way agreed upon between the International Bureau and the competent authority concerned.

(b) The International Bureau shall inform a competent authority from which it has received a communication by electronic means whenever the communication is incomplete or otherwise unusable.

*Section 8: Notifications Communicated by the International Bureau*

(a) The date of the receipt of a notification by the International Bureau to a competent authority, as referred to in Rule 22(1), shall, when communicated through a postal service or a delivery service, be determined by the information provided by such postal service or delivery service on the basis of the details of the mailing as recorded by it. When such a notification has been communicated by facsimile or by electronic means and, because of the time difference between the place from where the communication is sent and the place where it is received, the date on which the transmittal started is different from the date of receipt of the transmittal, the later of the two dates shall be considered as the date of receipt.

(b) The International Bureau shall send confirmation of the date so determined to the competent authority concerned and inform the competent authority of the country of origin.

*Section 9: Notifications Communicated by a Competent Authority*

(a) The International Bureau shall, upon receipt of a declaration as referred to in Rule 21, acknowledge receipt to the competent authority that communicated the declaration.

(b) When a declaration as referred to in Rule 21 has been communicated by facsimile or by electronic means and, because of the time difference between the place from where the communication is sent and the place where it is received, the date on which the transmittal started is different from the date of receipt of the transmittal, the earlier of the two dates shall be considered as the date of dispatch.