



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 May 2010**

**9412/10**

**PI 52**

**NOTE**

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from:	General Secretariat of the Council
to:	Council (Competitiveness)
No. prev. doc.:	9405/10 PI 51
Subject:	Future revision of the trade mark system in the European Union - Adoption of Council conclusions

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1. In line with an invitation received by the Council in May 2007 (9427/07), the Commission has launched a study on the overall functioning of the trade mark system in Europe. This study should be finalised towards the end of 2010.
2. The preliminary findings of the study were presented to delegations at the meeting of the Working Party on Intellectual Property on 25 March 2010. Following this presentation, the Presidency proposed to delegations a set of Council conclusions aimed at providing the Commission with input for its ongoing reflection on the future revision of the trade mark system in the European Union.
3. The latest version of the draft Council conclusions, which was broadly endorsed by the Permanent Representatives Committee (Part 1) on 12 May 2010, is set out in the Annex. The United Kingdom delegation maintains a parliamentary scrutiny reservation on these conclusions.

4. **The Council is therefore invited to adopt the conclusions set out in the Annex to this Note and to decide to have them published in the Official Journal of the European Union.**
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***DRAFT***  
**Council conclusions**  
**of 25 May 2010**  
**on the**  
**future revision of the Trade Mark system in the European Union**

THE COUNCIL OF THE EUROPEAN UNION,

1. RECALLS that in May 2007 it adopted conclusions regarding the financial perspectives of the Office for Harmonization in the Internal Market (Trademarks and Designs) (hereinafter referred to as "OHIM") and the further development of the Community trade mark system;<sup>1</sup>
2. ACKNOWLEDGES the agreement reached on 18/19 September 2008 at the joint meeting of the Administrative Board and the Budget Committee of the OHIM on a package of budgetary measures aiming at better balancing OHIM's budget in the future, this package consisting of three major elements: (i) the reduction of fees for obtaining Community trade mark protection, (ii) the creation of a Cooperation Fund and (iii) the future distribution of 50% of renewal fees to Member States' national trade mark offices (hereinafter referred to as "National Offices");
3. AGREES that these budgetary measures not only constitute appropriate and useful instruments to guarantee a balanced budget for OHIM in the future, but also contribute to modernising, streamlining, harmonising and strengthening the trade mark system in Europe as a whole within the framework of enhanced cooperation between the OHIM and the National Offices;

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<sup>1</sup> Council document 9427/07.

4. WELCOMES the fact that further to the September 2008 agreement, the fees for obtaining a Community trade mark registration were substantially reduced by Commission Regulation (EC) No 355/2009 with effect from 1 May 2009;
5. WELCOMES the significant progress made by the OHIM towards setting up a Cooperation Fund and ENCOURAGES the OHIM to finalise this work as a priority, in order to have the Fund fully operational as a matter of urgency and with the active participation of the National Offices;
6. RECALLS the Commission Communication of 16 July 2008 on an Industrial Property Rights Strategy for Europe;<sup>2</sup>
7. WELCOMES the launch by the Commission of the study on the overall functioning of the trade mark system in Europe and SUPPORTS its objectives as specified in the terms of reference;
8. TAKES NOTE of the interim results of the study presented to the Council Working Party on Intellectual Property on 25 March 2010;
9. ENCOURAGES the Commission to finalise the study with the aim of building a solid foundation for its subsequent legislative initiatives;
10. ACKNOWLEDGES the fact that most associations of users of the Community trade mark system are satisfied with this system, as well as with the principle of coexistence between Community and national trade marks, and see the need to fine tune it through a future revision, taking into account the need for a balanced relationship between the Community and national trade mark systems;

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<sup>2</sup> Council document 12267/08.

11. RECOGNIZES that national trade marks continue to meet the needs of large numbers of applicants, and that, therefore, national trade mark protection should be maintained as an option for these applicants;
12. RECALLS the Commission Communication of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market;<sup>3</sup>
13. RECALLS its Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market;<sup>4</sup>
14. CALLS ON the Commission to present proposals for the revision of Council Regulation (EC) No 207/2009 on the Community trade mark and Directive 2008/95/EC approximating the laws of the Member States relating to trade marks.

The revision should include in particular:

- the introduction of a specific provision to define the framework for cooperation between the OHIM and the National Offices;
- making explicit that harmonization of practice and tools is an aim which all trade mark offices in the EU should pursue and that efforts in this area should be supported and facilitated by the OHIM with the active involvement of its Administrative Board;
- the establishment of a clear legal basis for the involvement of the OHIM in enforcement-related activities, including the fight against counterfeiting, in particular through fostering its cooperation with the National Offices, in accordance with their national competences, and the European Observatory on Counterfeiting and Piracy<sup>5</sup>;

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<sup>3</sup> Council document 13286/09.

<sup>4</sup> OJ C 56, 6.3.2010, p. 1.

<sup>5</sup> With special regard to points 24 and 38 of the Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market.

- the creation of a legal basis for distributing an amount equivalent to 50% of OHIM's renewal fees to the National Offices in accordance with fair, equitable and relevant distribution criteria, to be defined in a way which would guarantee, *inter alia*, a minimum amount for each Member State, as well as the introduction of appropriate mechanisms which have due regard to the financial arrangements applicable to individual National Offices, to ensure that these funds will be available to the National Offices and will be used for purposes closely related to the protection, promotion and/or enforcement of trade marks, including combating counterfeiting;
- amendments and other measures, where appropriate, aimed at supporting the complementary relationship between the Community and national trade mark systems;
- measures to make Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (codified version)<sup>6</sup> more consistent with Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version)<sup>7</sup> and thus to further contribute to reducing areas of divergence within the trade mark system in Europe as a whole.

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<sup>6</sup> OJ L 299, 8.11.2008, p. 25.

<sup>7</sup> OJ L 78, 24.3.2009, p. 1.