



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 April 2010

8510/10

PI 37

NOTE

from:	General Secretariat of the Council
to:	Working Party on Intellectual Property (Trade Marks)
No. prev. doc.:	8179/10 PI 33
Subject:	Draft Council conclusions on the future revision of the Trade Mark system in the European Union - Drafting suggestions by the Hungarian delegation

In view of the meeting of the Working Party on Intellectual Property (Trade Marks) on 15 April 2010, delegations will find in Annex drafting suggestions, submitted by the Hungarian delegation, to the Draft Council conclusions on the future revision of the Trade Mark system in the European Union (8179/10).

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 (OHIM) and the further development of the Community trade mark system;
2. ACKNOWLEDGES the agreement reached in September 2008 between Member States and the OHIM within its Administrative Board and Budget Committee 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 the renewal fees to the National Trade Mark Offices of Member States;
3. AGREES that these budgetary measures do not only constitute appropriate and useful instruments to guarantee a balanced budget for OHIM in the future, but also to 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 National Trade Mark Offices;
4. WELCOMES 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 as from 1 May 2009;
5. WELCOMES the significant progress made by the OHIM towards the setting up of a Cooperation Fund and ENCOURAGES the OHIM to finalise this work with priority to have the Fund fully operational as a matter of urgency and with the active participation of the National Trade Mark Offices;
6. RECALLS the Commission Communication of 16 July 2008 on an Industrial Property Rights Strategy for Europe;

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 25 March 2010;
9. ACKNOWLEDGES the fact that most associations of users of the Community trade mark system are to a large extent 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 as well as to better balance the relationship between the Community and national trade mark systems;
- 9a. RECOGNIZES that national trade marks continue to meet the economic needs of a large number of applicants, in particular those of SMEs, and that, therefore, national trade mark protection should be maintained as a reasonable option for these applicants;
10. RECALLS the Commission Communication of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market;
11. RECALLS its Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market;
12. ENCOURAGES the Commission to finalise the Study in the light of these conclusions and with the aim of building a solid foundation for its subsequent legislative initiatives;
13. 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 Member States' 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 and coordinated by the OHIM's Administrative Board and its subsidiary bodies;
- the involvement of the OHIM in enforcement-related activities, including the combat against counterfeiting, in particular through fostering its cooperation with the National Offices and the European Observatory on Counterfeiting and Piracy;
- the creation of a legal basis for allocating the necessary funds to the National Offices of Member States to improve, streamline and harmonise the services rendered to users and to step up efforts at local level to better fight against counterfeiting by an amount equivalent to 50% of the renewal fees of OHIM 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;
- amendments and other measures to improve the balance between the Community and national trade mark systems[, concerning, in particular, the role and structure of the OHIM's fees, the quality of examination and dispute settlement in *inter partes* proceedings by the OHIM, and the territorial dimension of the genuine use requirement];

- the introduction of appropriate mechanisms to ensure that the funds transferred to Member States' National Offices will be available to them and will be used exclusively for purposes closely related to the protection, promotion and/or enforcement of trade marks, including combating counterfeiting;

 - measures to make Directive 2008/95/EC more consistent with Regulation No 207/2009 and thus to further contribute to reducing areas of divergence within the trade mark system in Europe as a whole.
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