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►B REGULATION (EU) 2015/2424 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2015

amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)

(Text with EEA relevance)

(OJ L 341, 24.12.2015, p. 21)

Corrected by:

- ►C1 Corrigendum, OJ L 71, 16.3.2016, p. 322 (2015/2424)
- ►C2 Corrigendum, OJ L 110, 26.4.2016, p. 4 (2015/2424)
- ►C3 Corrigendum, OJ L 267, 30.9.2016, p. 1 (2015/2424)

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REGULATION (EU) 2015/2424 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2015

amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)

(Text with EEA relevance)

Article 1

Regulation (EC) No 207/2009 is amended as follows:

(1) In the title, ‘Community trade mark’ is replaced by ‘European Union trade mark’.

(2) The term ‘Community trade mark’ is replaced by ‘European Union trade mark (“EU trade mark”)’ in Article 1(1); and elsewhere in the Regulation, it is replaced by ‘EU trade mark’ and any necessary grammatical changes are made.

(3) Throughout the Regulation, the term ‘Community trade mark court’ is replaced by ‘EU trade mark court’ and any necessary grammatical changes are made.

(4) The term ‘Community collective mark’ is replaced by ‘European Union collective mark (“EU collective mark”)’ in Article 66(1); and elsewhere in the Regulation, it is replaced by ‘EU collective mark’ and any necessary grammatical changes are made.

(5) Throughout the Regulation, except in the cases referred to in points (2), (3) and (4), the words ‘Community’, ‘European Community’ and ‘European Communities’ are replaced by ‘Union’ and any necessary grammatical changes are made.

(6) Throughout the Regulation, the term ‘President of the Office’ and all references to that President are replaced by ‘Executive Director of the Office’ or ‘Executive Director’, as appropriate, and any necessary grammatical changes are made.

(7) Article 2 is replaced by the following:

‘Article 2

Office

1. A European Union Intellectual Property Office (“the Office”) is hereby established.

2. All references in Union law to the Office for Harmonization in the Internal Market (trade marks and designs) shall be read as references to the Office.’.

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(8) Article 4 is replaced by the following:

'Article 4

Signs of which an EU trade mark may consist

An EU trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

(a) distinguishing the goods or services of one undertaking from those of other undertakings; and

(b) being represented on the Register of European Union trade marks, ("the Register"), in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.'.

(9) Article 7(1) is amended as follows:

(a) point (e) is replaced by the following:

'(e) signs which consist exclusively of:

(i) the shape, or another characteristic, which results from the nature of the goods themselves;

(ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result;

(iii) the shape, or another characteristic, which gives substantial value to the goods;';

(b) points (j) and (k) are replaced by the following:

'(j) trade marks which are excluded from registration, pursuant to Union legislation or national law or to international agreements to which the Union or the Member State concerned is party, providing for protection of designations of origin and geographical indications;

(k) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine;';

(c) the following points are added:

'(l) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional specialities guaranteed;

(m) trade marks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or national law, or international agreements to which the Union or the Member State concerned is a party, providing for protection of plant variety rights, and which are in respect of plant varieties of the same or closely related species.'.

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(10) Article 8 is amended as follows:

(a) the following paragraph is inserted:

‘4a. Upon opposition by any person authorised under the relevant law to exercise the rights arising from a designation of origin or a geographical indication, the trade mark applied for shall not be registered where and to the extent that, pursuant to the Union legislation or national law providing for the protection of designations of origin or geographical indications:

(i) an application for a designation of origin or a geographical indication had already been submitted, in accordance with Union legislation or national law, prior to the date of application for registration of the EU trade mark or the date of the priority claimed for the application, subject to its subsequent registration;

(ii) that designation of origin or geographical indication confers the right to prohibit the use of a subsequent trade mark.’;

(b) paragraph 5 is replaced by the following:

‘5. Upon opposition by the proprietor of a registered earlier trade mark within the meaning of paragraph 2, the trade mark applied for shall not be registered where it is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied are identical with, similar to or not similar to those for which the earlier trade mark is registered, where, in the case of an earlier EU trade mark, the trade mark has a reputation in the Union or, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned, and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.’.

(11) Article 9 is replaced by the following:

‘Article 9

Rights conferred by an EU trade mark

1. The registration of an EU trade mark shall confer on the proprietor exclusive rights therein.

2. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:

(a) the sign is identical with the EU trade mark and is used in relation to goods or services which are identical with those for which the EU trade mark is registered;

(b) the sign is identical with, or similar to, the EU trade mark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the EU trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

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(c) the sign is identical with, or similar to, the EU trade mark irrespective of whether it is used in relation to goods or services which are identical with, similar to or not similar to those for which the EU trade mark is registered, where the latter has a reputation in the Union and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the EU trade mark.

3. The following, in particular, may be prohibited under paragraph 2:

(a) affixing the sign to the goods or to the packaging thereof;

(b) offering the goods, putting them on the market, or stocking them for those purposes under the sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under the sign;

(d) using the sign as a trade or company name or part of a trade or company name;

(e) using the sign on business papers and in advertising;

(f) using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC of the European Parliament and of the Council (*).

4. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall also be entitled to prevent all third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trade mark which is identical with the EU trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

The entitlement of the proprietor of an EU trade mark pursuant to the first subparagraph shall lapse if, during the proceedings to determine whether the EU trade mark has been infringed, initiated in accordance with Regulation (EU) No 608/2013 of the European Parliament and of the Council (**) concerning customs enforcement of intellectual property rights, evidence is provided by the declarant or the holder of the goods that the proprietor of the EU trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

(*) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21).

(**) Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15).'.

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(12) The following articles are inserted:

'Article 9a

Right to prohibit preparatory acts in relation to the use of packaging or other means

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices or any other means to which the mark is affixed could be used in relation to goods or services and such use would constitute an infringement of the rights of the proprietor of an EU trade mark under Article 9(2) and (3), the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

(a) affixing a sign identical with, or similar to, the EU trade mark on packaging, labels, tags, security or authenticity features or devices or any other means to which the mark may be affixed;

(b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices or any other means to which the mark is affixed.

Article 9b

Date from which rights against third parties prevail

1. The rights conferred by an EU trade mark shall prevail against third parties from the date of publication of the registration of the trade mark.

2. Reasonable compensation may be claimed in respect of acts occurring after the date of publication of an EU trade mark application, where those acts would, after publication of the registration of the trade mark, be prohibited by virtue of that publication.

3. A court seized of a case shall not decide upon the merits of that case until the registration has been published.'.

(13) Article 12 is replaced by the following:

'Article 12

Limitation of the effects of an EU trade mark

1. An EU trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(a) the name or address of the third party, where that third party is a natural person;

(b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of the goods or services;

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(c) the EU trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular, where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

2. Paragraph 1 shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters.'.

(14) Article 13(1) is replaced by the following:

'1. An EU trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trade mark by the proprietor or with his consent.'.

(15) The following article is inserted:

'Article 13a

Intervening right of the proprietor of a later registered trade mark as a defence in infringement proceedings

1. In infringement proceedings, the proprietor of an EU trade mark shall not be entitled to prohibit the use of a later registered EU trade mark where that later trade mark would not be declared invalid pursuant to Article 53(1), (3) or (4), 54(1) or (2), or 57(2) of this Regulation.

2. In infringement proceedings, the proprietor of an EU trade mark shall not be entitled to prohibit the use of a later registered national trade mark where that later registered national trade mark would not be declared invalid pursuant to Article 8, or Article 9(1) or (2), or 46(3) of Directive (EU) 2015/2436 of the European Parliament and of the Council (*).

3. Where the proprietor of an EU trade mark is not entitled to prohibit the use of a later registered trade mark pursuant to paragraph 1 or 2, the proprietor of that later registered trade mark shall not be entitled to prohibit the use of that earlier EU trade mark in infringement proceedings.

(*) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L 336, 23.12.2015, p. 1)'.

(16) In Article 15(1), the second subparagraph is replaced by the following:

'The following shall also constitute use within the meaning of the first subparagraph:

(a) use of the EU trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor;

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(b) affixing of the EU trade mark to goods or to the packaging thereof in the Union solely for export purposes.'.

(17) In Article 16(1), the introductory sentence is replaced by the following:

'1. Unless Articles 17 to 24 provide otherwise, an EU trade mark as an object of property shall be dealt with in its entirety, and for the whole area of the Union, as a national trade mark registered in the Member State in which, according to the Register:'.

(18) Article 17 is amended as follows:

(a) paragraph 4 is deleted;

(b) the following paragraphs are inserted:

'5a. An application for registration of a transfer shall contain information to identify the EU trade mark, the new proprietor, the goods and services to which the transfer relates, as well as documents duly establishing the transfer in accordance with paragraphs 2 and 3. The application may further contain, where applicable, information to identify the representative of the new proprietor.

5b. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in the application for registration of a transfer;

(b) the kind of documentation required to establish a transfer, taking account of the agreements given by the registered proprietor and the successor in title;

(c) the details of how to process applications for partial transfers, ensuring that the goods and services in the remaining registration and the new registration do not overlap and that a separate file, including a new registration number, is established for the new registration.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).

5c. Where the conditions applicable to the registration of a transfer, as laid down in paragraphs 1 to 3, or in the implementing acts referred to in paragraph 5b, are not fulfilled, the Office shall notify the applicant of the deficiencies. If the deficiencies are not remedied within a period to be specified by the Office, it shall reject the application for registration of the transfer.

5d. A single application for registration of a transfer may be submitted for two or more trade marks, provided that the registered proprietor and the successor in title are the same in each case.

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5e. Paragraphs 5a to 5d shall also apply to applications for EU trade marks.

5f. In the case of a partial transfer, any application made by the original proprietor pending with regard to the original registration shall be deemed to be pending with regard to the remaining registration and the new registration. Where such application is subject to the payment of fees and those fees have been paid by the original proprietor, the new proprietor shall not be liable to pay any additional fees with regard to such application.'.

(19) Article 18 is replaced by the following:

'Article 18

Transfer of a trade mark registered in the name of an agent

1. Where an EU trade mark is registered in the name of the agent or representative of a person who is the proprietor of that trade mark, without the proprietor's authorisation, the latter shall be entitled to demand the assignment of the EU trade mark in his favour, unless such agent or representative justifies his action.

2. The proprietor may submit a request for assignment pursuant to paragraph 1 of this Article to the following:

(a) the Office, pursuant to Article 53(1)(b), instead of an application for a declaration of invalidity;

(b) a European Union trade mark court ("EU trade mark court") as referred to in Article 95, instead of a counterclaim for a declaration of invalidity based on Article 100(1).'.

(20) Article 19 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. At the request of one of the parties, the rights referred to in paragraph 1 or the transfer of those rights shall be entered in the Register and published.';

(b) the following paragraph is added:

'3. An entry in the Register effected pursuant to paragraph 2 shall be cancelled or modified at the request of one of the parties.'.

(21) In Article 20, the following paragraph is added:

'4. An entry in the Register effected pursuant to paragraph 3 shall be cancelled or modified at the request of one of the parties.'.

(22) In Article 22, the following paragraph is added:

'6. An entry in the Register effected pursuant to paragraph 5 shall be cancelled or modified at the request of one of the parties.'.

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(23) The following article is inserted:

'Article 22a

Procedure for entering licences and other rights in the Register

1. Article 17(5a) and (5b) and the rules adopted pursuant to it, and Article 17(5d) shall apply *mutatis mutandis* to the registration of a right *in rem* or transfer of a right *in rem* as referred to in Article 19(2), the levy of execution as referred to in Article 20(3), the involvement in insolvency proceedings as referred to in Article 21(3), as well as to the registration of a licence or transfer of a licence as referred to in Article 22(5), subject to the following:

(a) the requirement relating to the identification of goods and services to which the transfer relates shall not apply in respect of a request for registration of a right *in rem*, of a levy of execution or of insolvency proceedings;

(b) the requirement relating to the documents proving the transfer shall not apply where the request is made by the proprietor of the EU trade mark.

2. The application for registration of the rights referred to in paragraph 1 shall not be deemed to have been filed until the required fee has been paid.

3. The application for registration of a licence may contain a request to record a licence in the Register as one or more of the following:

(a) an exclusive licence;

(b) a sub-licence in the event that the licence is granted by a licensee whose licence is recorded in the Register;

(c) a licence limited to only part of the goods or services for which the mark is registered;

(d) a licence limited to part of the Union;

(e) a temporary licence.

Where a request is made to record the licence as a licence listed in points (c), (d) and (e) of the first subparagraph, the application for registration of a licence shall indicate the goods and services, the part of the Union and the time period for which the licence is granted.

4. Where the conditions applicable to registration, as laid down in Articles 19 to 22, paragraphs 1 and 3 of this Article, and in the other applicable rules adopted pursuant to this Regulation, are not fulfilled, the Office shall notify the applicant of the deficiency. If the deficiency is not corrected within a period specified by the Office, it shall reject the application for registration.

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5. Paragraphs 1 and 3 shall apply *mutatis mutandis* to applications for EU trade marks.'.

(24) The following article is inserted:

'Article 24a

Procedure for cancelling or modifying the entry in the Register of licences and other rights

1. A registration effected under Article 22a(1) shall be cancelled or modified at the request of one of the persons concerned.

2. The application shall contain the registration number of the EU trade mark concerned and the particulars of the right for which registration is requested to be cancelled or modified.

3. The application for cancellation of a licence, a right *in rem* or an enforcement measure shall not be deemed to have been filed until the required fee has been paid.

4. The application shall be accompanied by documents showing that the registered right no longer exists or that the licensee or the holder of another right consents to the cancellation or modification of the registration.

5. Where the requirements for cancellation or modification of the registration are not satisfied, the Office shall notify the applicant of the deficiency. If the deficiency is not corrected within a period to be specified by the Office, it shall reject the application for cancellation or modification of the registration.

6. Paragraphs 1 to 5 of this Article shall apply *mutatis mutandis* to entries made in the files pursuant to Article 22a(5).'.

(25) Article 25 is replaced by the following:

'Article 25

Filing of applications

1. An application for an EU trade mark shall be filed at the Office.

2. The Office shall issue to the applicant, without delay, a receipt which shall include at least the file number, a representation, description or other identification of the mark, the nature and the number of the documents and the date of their receipt. That receipt may be issued by electronic means.'.

(26) Article 26 is amended as follows:

(a) in paragraph 1, point (d) is replaced by the following:

'(d) a representation of the mark, which satisfies the requirements set out in Article 4(b).';

(b) paragraphs 2 and 3 are replaced by the following:

'2. The application for an EU trade mark shall be subject to the payment of the application fee covering one class of goods or services and, where appropriate, of one or more class fees for each class of goods and services exceeding the first class and, where applicable, the search fee.

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3. In addition to the requirements referred to in paragraphs 1 and 2, an application for an EU trade mark shall comply with the formal requirements laid down in this Regulation and in the implementing acts adopted pursuant to it. If those conditions provide for the trade mark to be represented electronically, the Executive Director may determine the formats and maximum size of such an electronic file.';

(c) the following paragraph is added:

'4. The Commission shall adopt implementing acts specifying the details to be contained in the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(27) Article 27 is replaced by the following:

'Article 27

Date of filing

The date of filing of an EU trade mark application shall be the date on which the documents containing the information specified in Article 26(1) are filed with the Office by the applicant, subject to payment of the application fee within one month of filing those documents.'.

(28) Article 28 is replaced by the following:

'Article 28

Designation and classification of goods and services

1. Goods and services in respect of which trade mark registration is applied for shall be classified in conformity with the system of classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 ("the Nice Classification").

2. The goods and services for which the protection of the trade mark is sought shall be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that sole basis, to determine the extent of the protection sought.

3. For the purposes of paragraph 2, the general indications included in the class headings of the Nice Classification or other general terms may be used, provided that they comply with the requisite standards of clarity and precision set out in this Article.

4. The Office shall reject an application in respect of indications or terms which are unclear or imprecise, where the applicant does not suggest an acceptable wording within a period set by the Office to that effect.

5. The use of general terms, including the general indications of the class headings of the Nice Classification, shall be interpreted as including all the goods or services clearly covered by the literal meaning of the indication or term. The use of such terms or indications shall not be interpreted as comprising a claim to goods or services which cannot be so understood.

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6. Where the applicant requests registration for more than one class, the applicant shall group the goods and services according to the classes of the Nice Classification, each group being preceded by the number of the class to which that group of goods or services belongs, and shall present them in the order of the classes.

7. Goods and services shall not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification. Goods and services shall not be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

8. Proprietors of EU trade marks applied for before 22 June 2012 which are registered in respect of the entire heading of a Nice class may declare that their intention on the date of filing had been to seek protection in respect of goods or services beyond those covered by the literal meaning of the heading of that class, provided that the goods or services so designated are included in the alphabetical list for that class in the edition of the Nice Classification in force at the date of filing.

The declaration shall be filed at the Office by 24 September 2016, and shall indicate, in a clear, precise and specific manner, the goods and services, other than those clearly covered by the literal meaning of the indications of the class heading, originally covered by the proprietor's intention. The Office shall take appropriate measures to amend the Register accordingly. The possibility to make a declaration in accordance with the first subparagraph of this paragraph shall be without prejudice to the application of Article 15, Article 42(2), Article 51(1)(a), and Article 57(2).

EU trade marks for which no declaration is filed within the period referred to in the second subparagraph shall be deemed to extend, as from the expiry of that period, only to goods or services clearly covered by the literal meaning of the indications included in the heading of the relevant class.

9. Where the register is amended, the exclusive rights conferred by the EU trade mark under Article 9 shall not prevent a third party from continuing to use a trade mark in relation to goods or services where and to the extent that the use of the trade mark for those goods or services:

(a) commenced before the register was amended; and

(b) did not infringe the proprietor's rights based on the literal meaning of the record of the goods and services in the register at that time.

In addition, the amendment of the list of goods or services recorded in the register shall not give the proprietor of the EU trade mark the right to oppose or to apply for a declaration of invalidity of a later trade mark where and to the extent that:

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(a) the later trade mark was either in use, or an application had been made to register the trade mark, for goods or services before the register was amended; and

(b) the use of the trade mark in relation to those goods or services did not infringe, or would not have infringed, the proprietor's rights based on the literal meaning of the record of the goods and services in the register at that time.'.

(29) Article 29 is amended as follows:

(a) in paragraph 5, the following sentences are added:

'The Executive Director shall, where necessary, request the Commission to consider enquiring as to whether a State within the meaning of the first sentence accords that reciprocal treatment. If the Commission determines that reciprocal treatment in accordance with the first sentence is accorded, it shall publish a communication to that effect in the *Official Journal of the European Union*.';

(b) the following paragraphs are added:

'6. Paragraph 5 shall apply from the date of publication in the *Official Journal of the European Union* of the communication determining that reciprocal treatment is accorded, unless the communication states an earlier date from which it is applicable. It shall cease to apply from the date of publication in the *Official Journal of the European Union* of a communication of the Commission to the effect that reciprocal treatment is no longer accorded, unless the communication states an earlier date from which it is applicable.

7. Communications as referred to in paragraphs 5 and 6 shall also be published in the Official Journal of the Office.'.

(30) Article 30 is replaced by the following:

'Article 30

Claiming priority

1. Priority claims shall be filed together with the EU trade mark application and shall include the date, number and country of the previous application. The documentation in support of priority claims shall be filed within three months of the filing date.

2. The Commission shall adopt implementing acts specifying the kind of documentation to be filed for claiming the priority of a previous application in accordance with paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).

3. The Executive Director may determine that the documentation to be provided by the applicant in support of the priority claim may consist of less than what is required under the specifications adopted in accordance with paragraph 2, provided that the information required is available to the Office from other sources.'.

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(31) Article 33 is amended as follows:

(a) in paragraph 1, the following sentence is added:

‘The priority claim shall be filed together with the EU trade mark application.’;

(b) paragraph 2 is replaced by the following:

‘2. An applicant who wishes to claim priority pursuant to paragraph 1 shall file evidence of the display of goods or services under the mark applied for within three months of the filing date.’;

(c) the following paragraph is added:

‘4. The Commission shall adopt implementing acts specifying the type and details of evidence to be filed for claiming an exhibition priority in accordance with paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).’.

(32) Article 34 is amended as follows:

(a) the following paragraph is inserted:

‘1a. Seniority claims shall either be filed together with the EU trade mark application or within two months of the filing date of the application, and shall include the Member State or Member States in or for which the mark is registered, the number and the filing date of the relevant registration, and the goods and services for which the mark is registered. Where the seniority of one or more registered earlier trade marks is claimed in the application, the documentation in support of the seniority claim shall be filed within three months of the filing date. Where the applicant wishes to claim the seniority subsequent to the filing of the application, the documentation in support of the seniority claim shall be submitted to the Office within three months of receipt of the seniority claim.’;

(b) paragraph 3 is replaced by the following:

‘3. The seniority claimed for the EU trade mark shall lapse where the earlier trade mark the seniority of which is claimed is declared to be invalid or revoked. Where the earlier trade mark is revoked, the seniority shall lapse provided that the revocation takes effect prior to the filing date or priority date of that EU trade mark.’;

(c) the following paragraphs are added:

‘4. The Office shall inform the Benelux Office for Intellectual Property or the central industrial property office of the Member State concerned of the effective claiming of seniority.

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5. The Commission shall adopt implementing acts specifying the kind of documentation to be filed for claiming the seniority of a national trade mark or a trade mark registered under international agreements having effect in a Member State in accordance with paragraph 1a of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).

6. The Executive Director may determine that the documentation to be provided by the applicant in support of the seniority claim may consist of less than what is required under the specifications adopted in accordance with paragraph 5, provided that the information required is available to the Office from other sources.'.

(33) Article 35 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Seniority claims filed pursuant to paragraph 1 of this Article shall include the registration number of the EU trade mark, the name and address of its proprietor, the Member State or Member States in or for which the earlier mark is registered, the number and the filing date of the relevant registration, the goods and services for which the mark is registered and those in respect of which seniority is claimed, and supporting documentation as provided for in the rules adopted pursuant to Article 34(5).';

(b) the following paragraphs are added:

'3. If the requirements governing the claiming of seniority are not fulfilled, the Office shall communicate the deficiency to the proprietor of the EU trade mark. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the claim.

4. Article 34(2), (3), (4) and (6) shall apply.'.

(34) Article 36 is amended as follows:

(a) point (b) of paragraph 1 is replaced by the following:

'(b) the EU trade mark application complies with the conditions and requirements referred to in Article 26(3).';

(b) in paragraph 2 the words 'within the prescribed period' are replaced by 'within two months of the receipt of the notification';

(c) in paragraph 5, the following sentences are added:

'In the absence of other criteria to determine which classes are intended to be covered, the Office shall take the classes in the order of the classification. The application shall be deemed to have been withdrawn with regard to those classes for which the class fees have not been paid or have not been paid in full.';

(d) the following paragraph is added:

'8. Where failure to satisfy the requirements referred to in paragraph 1(b) and (c) concerns only some of the goods or services, the Office shall refuse the application, or the right of priority or the right of seniority shall be lost, only in so far as those goods and services are concerned.'.

▼B

(35) Article 37 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 3 is replaced by the following:

‘(3) The application shall not be refused before the applicant has been allowed the opportunity to withdraw or amend the application or to submit his observations. To this effect, the Office shall notify the applicant of the grounds for refusing registration and shall specify a period within which he may withdraw or amend the application or submit his observations. Where the applicant fails to overcome the grounds for refusing registration, the Office shall refuse registration in whole or in part.’.

(36) Article 38 is replaced by the following:

‘Article 38

Search report

1. The Office shall, at the request of the applicant for the EU trade mark when filing the application, draw up a European Union search report (“EU search report”) citing those earlier EU trade marks or EU trade mark applications discovered which may be invoked under Article 8 against the registration of the EU trade mark applied for.

2. Where, at the time of filing an EU trade mark application, the applicant requests that a search report be prepared by the central industrial property offices of the Member States and where the appropriate search fee has been paid within the time limit for the payment of the filing fee, the Office shall transmit without delay a copy of the EU trade mark application to the central industrial property office of each Member State which has informed the Office of its decision to operate a search in its own register of trade marks in respect of EU trade mark applications.

3. Each of the central industrial property offices of the Member States referred to in paragraph 2 of this Article shall communicate a search report which shall either cite any earlier national trade marks, national trade mark applications or trade marks registered under international agreements, having effect in the Member State or Member States concerned, which have been discovered and which may be invoked under Article 8 against the registration of the EU trade mark applied for, or state that the search has revealed no such rights.

4. The Office, after consulting the Management Board provided for in Article 124 (“the Management Board”), shall establish the contents and modalities for the reports.

5. The Office shall pay an amount to each central industrial property office for each search report provided by the office in accordance with paragraph 3. The amount, which shall be the same for each office, shall be fixed by the Budget Committee by means of a decision adopted by a majority of three quarters of the representatives of the Member States.

▼B

6. The Office shall transmit to the applicant for the EU trade mark the EU search report requested and any requested national search reports received.

7. Upon publication of the EU trade mark application, the Office shall inform the proprietors of any earlier EU trade marks, or EU trade mark applications cited in the EU search report of the publication of the EU trade mark application. The latter shall apply irrespective of whether the applicant has requested to receive the EU search report, unless the proprietor of an earlier registration or application requests not to receive the notification.'.

(37) Article 39 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. If the conditions which the application for an EU trade mark is required to satisfy have been fulfilled, the application shall be published for the purposes of Article 41 to the extent that it has not been refused pursuant to Article 37. The publication of the application shall be without prejudice to information already made available to the public otherwise in accordance with this Regulation or acts adopted pursuant to this Regulation.';

(b) the following paragraphs are added:

'3. Where the publication of the application contains an error attributable to the Office, the Office shall of its own motion or at the request of the applicant correct the error and publish the correction.

The rules adopted pursuant to Article 43(3) shall apply *mutatis mutandis* where a correction is requested by the applicant.

4. Article 41(2) shall apply also where the correction concerns the list of goods or services or the representation of the mark.

5. The Commission shall adopt implementing acts laying down the details to be contained in the publication of the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(38) Article 40 is replaced by the following:

'Article 40

Observations by third parties

1. Any natural or legal person and any group or body representing manufacturers, producers, suppliers of services, traders or consumers may submit to the Office written observations, explaining on which grounds, under Articles 5 and 7, the trade mark should not be registered *ex officio*.

Persons and groups or bodies as referred to in the first subparagraph shall not be parties to the proceedings before the Office.

2. Third party observations shall be submitted before the end of the opposition period or, where an opposition against the trade mark has been filed, before the final decision on the opposition is taken.

▼B

3. The submission referred to in paragraph 1 shall be without prejudice to the right of the Office to re-open the examination of absolute grounds on its own initiative at any time before registration, where appropriate.

4. The observations referred to in paragraph 1 shall be communicated to the applicant who may comment on them.'.

(39) Article 41 is amended as follows:

(a) in paragraph 1, the following point is added:

'(d) by the persons authorised under the relevant Union legislation or national law to exercise the rights referred to in Article 8(4a).';

(b) paragraph 3 is replaced by the following:

'3. Opposition shall be expressed in writing, and shall specify the grounds on which it is made. It shall not be considered as duly entered until the opposition fee has been paid.';

(c) the following paragraph is added:

'4. Within a period to be fixed by the Office, the opponent may submit facts, evidence and arguments in support of his case.'.

(40) In Article 42, paragraph 2 is replaced by the following:

'2. If the applicant so requests, the proprietor of an earlier EU trade mark who has given notice of opposition shall furnish proof that, during the five-year period preceding the date of filing or the date of priority of the EU trade mark application, the earlier EU trade mark has been put to genuine use in the Union in connection with the goods or services in respect of which it is registered and which he cites as justification for his opposition, or that there are proper reasons for non-use, provided the earlier EU trade mark has at that date been registered for not less than five years. In the absence of proof to this effect, the opposition shall be rejected. If the earlier EU trade mark has been used in relation to only part of the goods or services for which it is registered it shall, for the purposes of the examination of the opposition, be deemed to be registered in respect only of that part of the goods or services.'.

(41) The following article is inserted:

'Article 42a

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the details of the procedure for filing and examining an opposition set out in Articles 41 and 42.'.

(42) In Article 43, the following paragraph is added:

'3. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the details of the procedure governing the amendment of the application.'.

▼B

(43) Article 44 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

‘(b) before the date of filing referred to in Article 27 has been accorded by the Office and during the opposition period provided for in Article 41(1).’;

(b) paragraph 3 is deleted;

(c) the following paragraph is inserted:

‘4a. Where the Office finds that the requirements laid down in paragraph 1 and in the rules adopted pursuant to paragraph 9(a) are not fulfilled, it shall invite the applicant to remedy the deficiencies within a period to be specified by the Office. If the deficiencies are not remedied before the time limit expires, the Office shall refuse the declaration of division.’;

(d) the following paragraphs are added:

‘8. Where the declaration of division relates to an application which has already been published pursuant to Article 39, the division shall be published. The divisional application shall be published. The publication shall not open a new period for the filing of oppositions.

9. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in a declaration of the division of an application made pursuant to paragraph 1;

(b) the details as to how to process a declaration of the division of an application, ensuring that a separate file, including a new application number, is established for the divisional application;

(c) the details to be contained in the publication of the divisional application pursuant to paragraph 8.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).’.

(44) Article 45 is replaced by the following:

‘Article 45

Registration

1. Where an application meets the requirements set out in this Regulation and where no notice of opposition has been given within the period referred to in Article 41(1) or where any opposition entered has been finally disposed of by withdrawal, rejection or other disposition, the trade mark and the particulars referred to in Article 87(2) shall be recorded in the Register. The registration shall be published.

2. The Office shall issue a certificate of registration. That certificate may be issued by electronic means. The Office shall provide certified or uncertified copies of the certificate subject to the payment of a fee, where those copies are issued other than by electronic means.

▼B

3. The Commission shall adopt implementing acts specifying the details to be contained in and the form of the certificate of registration referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(45) Article 47 is replaced by the following:

'Article 47

Renewal

1. Registration of the EU trade mark shall be renewed at the request of the proprietor of the EU trade mark or any person expressly authorised by him, provided that the fees have been paid.

2. The Office shall inform the proprietor of the EU trade mark, and any person having a registered right in respect of the EU trade mark, of the expiry of the registration at least six months before the said expiry. Failure to give such information shall not involve the responsibility of the Office and shall not affect the expiry of the registration.

3. The request for renewal shall be submitted in the six-month period prior to the expiry of the registration. The basic fee for the renewal, and where appropriate, one or more class fees for each class of goods or services exceeding the first one shall also be paid within this period. Failing this, the request may be submitted and the fees paid within a further period of six months following the expiry of registration, provided that an additional fee for late payment of the renewal fee or late submission of the request for renewal is paid within this further period.

4. The request for renewal shall include:

(a) the name of the person requesting renewal;

(b) the registration number of the EU trade mark to be renewed;

(c) if the renewal is requested for only part of the registered goods and services, an indication of those classes or those goods and services for which renewal is requested, or those classes or those goods and services for which renewal is not requested, grouped according to the classes of the Nice classification, each group being preceded by the number of the class of that classification to which that group of goods or services belongs, and presented in the order of classes of that classification.

If the payment referred to in paragraph 3 is made, it shall be deemed to constitute a request for renewal provided that it contains all necessary indications to establish the purpose of the payment.

5. Where the request is submitted or the fees paid in respect of only some of the goods or services for which the EU trade mark is registered, registration shall be renewed for those goods or services only. Where the fees paid are insufficient to cover all the classes of goods and services for which renewal is requested, registration shall be renewed if it is clear which class or classes are to be covered. In the absence of other criteria, the Office shall take the classes into account in the order of classification.

▼B

6. Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be registered.

7. Where the request for renewal is filed within the periods provided for in paragraph 3, but the other conditions governing renewal provided for in this Article are not satisfied, the Office shall inform the applicant of the deficiencies found.

8. Where a request for renewal is not submitted or is submitted after the expiry of the period provided for in paragraph 3, or where the fees are not paid or are paid only after the period in question has expired, or where the deficiencies referred to in paragraph 7 are not remedied within that period, the Office shall determine that the registration has expired and shall notify the proprietor of the EU trade mark accordingly. Where the determination has become final, the Office shall cancel the mark from the register. The cancellation shall take effect from the day following the date on which the existing registration expired. Where the renewal fees have been paid but the registration is not renewed, those fees shall be refunded.

9. A single request for renewal may be submitted for two or more marks, upon payment of the required fees for each of the marks, provided that the proprietors or the representatives are the same in each case.'.

(46) Article 48 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The request for alteration shall include the element of the mark to be altered and that element in its altered version.

The Commission shall adopt implementing acts specifying the details to be contained in the request for alteration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).';

(b) the following paragraphs are added:

'4. The request shall be deemed not to have been filed until the required fee has been paid. If the fee has not been paid or has not been paid in full, the Office shall inform the applicant accordingly. A single request may be made for the alteration of the same element in two or more registrations of the same proprietor. The required fee shall be paid in respect of each registration to be altered. If the requirements governing the alteration of the registration are not fulfilled, the Office shall communicate the deficiency to the applicant. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the request.

5. The publication of the registration of the alteration shall contain a representation of the EU trade mark as altered. Third parties whose rights may be affected by the alteration may challenge the registration thereof within the period of three months following publication. Articles 41 and 42, and rules adopted pursuant to Article 42a shall apply to the publication of the registration of the alteration.'.

▼B

(47) The following article is inserted:

'Article 48a

Change of the name or address

1. A change of the name or address of the proprietor of the EU trade mark which is not an alteration of the EU trade mark pursuant to Article 48(2) and which is not the consequence of a whole or partial transfer of the EU trade mark shall, at the request of the proprietor, be recorded in the Register.

The Commission shall adopt implementing acts specifying the details to be contained in a request for the change of name or address pursuant to the first subparagraph of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).

2. A single request may be made for the change of the name or address in respect of two or more registrations of the same proprietor.

3. If the requirements governing the recording of a change are not fulfilled, the Office shall communicate the deficiency to the proprietor of the EU trade mark. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the request.

4. Paragraphs 1 to 3 shall also apply to a change of the name or address of the registered representative.

5. Paragraphs 1 to 4 shall apply to applications for EU trade marks. The change shall be recorded in the files kept by the Office on the EU trade mark application.'.

(48) Article 49 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. If the requirements laid down in paragraph 1 and pursuant to the implementing acts referred to in paragraph 8 are not fulfilled, or the list of goods and services which form the divisional registration overlap with the goods and services which remain in the original registration, the Office shall invite the proprietor of the EU trade mark to remedy the deficiencies within such period as it may specify. If the deficiencies are not remedied before the time period expires, the Office shall refuse the declaration of division.';

(b) the following paragraph is added:

'8. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in a declaration of the division of a registration pursuant to paragraph 1;

(b) the details as how to process a declaration of the division of a registration, ensuring that a separate file, including a new registration number, is established for the divisional registration.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

▼B

(49) Article 50 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The surrender shall be declared to the Office in writing by the proprietor of the trade mark. It shall not have effect until it has been entered in the Register. The validity of the surrender of an EU trade mark which is declared to the Office subsequent to the submission of an application for revocation of that trade mark pursuant to Article 56(1) shall be conditional upon the final rejection or withdrawal of the application for revocation.

3. Surrender shall be entered only with the agreement of the proprietor of a right relating to the EU trade mark and which is entered in the Register. If a licence has been registered, surrender shall be entered in the Register only if the proprietor of the EU trade mark proves that he has informed the licensee of his intention to surrender. The entry of the surrender shall be made on expiry of the three-month period after the date on which the proprietor satisfies the Office that he has informed the licensee of his intention to surrender, or before the expiry of that period, as soon as he proves that the licensee has given his consent.’;

(b) the following paragraphs are added:

‘4. If the requirements governing surrender are not fulfilled, the Office shall communicate the deficiencies to the declarant. If the deficiencies are not remedied within a period to be specified by the Office, the Office shall reject the entry of surrender in the Register.

5. The Commission shall adopt implementing acts specifying the details to be contained in a declaration of surrender pursuant to paragraph 2 of this Article and the kind of documentation required to establish a third party's agreement pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).’.

(50) In Article 53, paragraph 1 is amended as follows:

(a) the following point is added:

‘(d) where there is an earlier designation of origin or geographical indication as referred to in Article 8(4a) and the conditions set out in that paragraph are fulfilled.’;

(b) the following subparagraph is added:

‘All the conditions referred to in the first subparagraph shall be fulfilled at the filing date or the priority date of the EU trade mark.’.

▼B

(51) In Article 54, paragraphs 1 and 2 are replaced by the following:

‘1. Where the proprietor of an EU trade mark has acquiesced, for a period of five successive years, in the use of a later EU trade mark in the Union while being aware of such use, he shall no longer be entitled on the basis of the earlier trade mark to apply for a declaration that the later trade mark is invalid in respect of the goods or services for which the later trade mark has been used, unless registration of the later EU trade mark was applied for in bad faith.

2. Where the proprietor of an earlier national trade mark as referred to in Article 8(2) or of another earlier sign referred to in Article 8(4) has acquiesced, for a period of five successive years, in the use of a later EU trade mark in the Member State in which the earlier trade mark or the other earlier sign is protected while being aware of such use, he shall no longer be entitled on the basis of the earlier trade mark or of the other earlier sign to apply for a declaration that the later trade mark is invalid in respect of the goods or services for which the later trade mark has been used, unless registration of the later EU trade mark was applied for in bad faith.’.

(52) Article 56 is amended as follows:

(a) in paragraph 1, point (c), the phrase ‘under the law of the Member State concerned’ is replaced by the phrase ‘under Union legislation or the law of the Member State concerned’;

(b) paragraph 3 is replaced by the following:

‘3. An application for revocation or for a declaration of invalidity shall be inadmissible where an application relating to the same subject matter and cause of action, and involving the same parties, has been adjudicated on its merits, either by the Office or by an EU trade mark court as referred to in Article 95, and the decision of the Office or that court on that application has acquired the authority of a final decision.’.

(53) In Article 57, paragraph 2 is replaced by the following:

‘2. If the proprietor of the EU trade mark so requests, the proprietor of an earlier EU trade mark, being a party to the invalidity proceedings, shall furnish proof that, during the period of five years preceding the date of the application for a declaration of invalidity, the earlier EU trade mark has been put to genuine use in the Union in connection with the goods or services in respect of which it is registered and which the proprietor of that earlier trade mark cites as justification for his application, or that there are proper reasons for non-use, provided the earlier EU trade mark has at that date been registered for not less than five years. If, at the date on which the EU trade mark application was filed or at the priority date of the EU trade mark application, the earlier EU trade mark had been registered for not less than five years, the proprietor of the earlier EU trade mark shall furnish proof that, in addition, the conditions set out in Article 42(2) were satisfied at that date. In the absence of proof to this effect, the application for a declaration of invalidity shall be rejected. If the earlier EU trade mark has been used only in relation to part of the goods or services for which it is registered, it shall, for the purpose of the examination of the application for a declaration of invalidity, be deemed to be registered in respect of that part of the goods or services only.’.

▼B

(54) The following article is inserted:

'Article 57a

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the details of the procedures governing the revocation and declaration of invalidity of an EU trade mark as referred to in Articles 56 and 57, as well as the transfer of an EU trade mark registered in the name of an agent as referred to in Article 18.'.

(55) In Article 58, paragraph 1 is replaced by the following:

'1. An appeal shall lie from decisions of any of the decision-making instances of the Office listed in points (a) to (d) of Article 130, and, where appropriate, point (f) of that Article. Those decisions shall take effect only as from the date of expiration of the appeal period referred to in Article 60. The filing of the appeal shall have suspensive effect.'.

(56) Article 60 is replaced by the following:

'Article 60

Time limit and form of appeal

1. Notice of appeal shall be filed in writing at the Office within two months of the date of notification of the decision. The notice shall be deemed to have been filed only when the fee for appeal has been paid. It shall be filed in the language of the proceedings in which the decision subject to appeal was taken. Within four months of the date of notification of the decision, a written statement setting out the grounds of appeal shall be filed.

2. In *inter partes* proceedings, the defendant may, in his response, seek a decision annulling or altering the contested decision on a point not raised in the appeal. Such submissions shall cease to have effect should the appellant discontinue the proceedings.'.

(57) Article 62 is deleted.

(58) In Article 64, paragraph 3 is replaced by the following:

'3. The decisions of the Board of Appeal shall take effect only as from the date of expiry of the period referred to in Article 65(5) or, if an action has been brought before the General Court within that period, as from the date of dismissal of such action or of any appeal filed with the Court of Justice against the decision of the General Court.'.

(59) Article 65 is amended as follows:

(a) paragraph 1 is replaced by the following:

▼B

‘1. Actions may be brought before the General Court against decisions of the Boards of Appeal in relation to appeals.’;

(b) paragraph 3 is replaced by the following:

‘3. The General Court shall have jurisdiction to annul or to alter the contested decision.’;

(c) paragraphs 5 and 6 are replaced by the following:

‘5. The action shall be brought before the General Court within two months of the date of notification of the decision of the Board of Appeal.

6. The Office shall take the necessary measures to comply with the judgment of the General Court or, in the event of an appeal against that judgment, the Court of Justice.’.

(60) The following article is inserted:

‘Article 65a

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying:

(a) the formal content of the notice of appeal referred to in Article 60 and the procedure for the filing and the examination of an appeal;

(b) the formal content and form of the Board of Appeal's decisions as referred to in Article 64;

(c) the reimbursement of the appeal fee as referred to in Article 60.’.

(61) The title of Title VIII is replaced by the following:

‘SPECIFIC PROVISIONS ON EUROPEAN UNION COLLECTIVE MARKS AND CERTIFICATION MARKS’.

(62) The following section heading is inserted before Article 66:

‘SECTION 1

EU collective marks’.

(63) In Article 66, paragraph 3 is replaced by the following:

‘3. Titles I to VII and IX to XIV shall apply to EU collective marks to the extent that this section does not provide otherwise.’.

(64) Article 67 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. An applicant for an EU collective mark shall submit regulations governing its use within two months of the date of filing.’;

▼B

(b) the following paragraph is added:

‘3. The Commission shall adopt implementing acts specifying the details to be contained in the regulations referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).’.

(65) Article 69 is replaced by the following:

‘Article 69

Observations by third parties

Where written observations on an EU collective mark are submitted to the Office pursuant to Article 40, those observations may also be based on the particular grounds on which the application for an EU collective mark should be refused pursuant to Article 68.’.

(66) In Article 71, paragraph 3 is replaced by the following:

‘3. Written observations made in accordance with Article 69 may also be submitted with regard to amended regulations governing use.’.

(67) In Title VIII, the following section is added:

‘SECTION 2

EU certification marks

Article 74a

EU certification marks

1. An EU certification mark shall be an EU trade mark which is described as such when the mark is applied for and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified.

2. Any natural or legal person, including institutions, authorities and bodies governed by public law, may apply for EU certification marks provided that such person does not carry on a business involving the supply of goods or services of the kind certified.

3. Titles I to VII and IX to XIV shall apply to EU certification marks to the extent that this Section does not provide otherwise.

Article 74b

Regulations governing use of the EU certification mark

1. An applicant for an EU certification mark shall submit regulations governing the use of the certification mark within two months of the date of filing.

▼B

2. The regulations governing use shall specify the persons authorised to use the mark, the characteristics to be certified by the mark, how the certifying body is to test those characteristics and to supervise the use of the mark. Those regulations shall also specify the conditions of use of the mark, including sanctions.

3. The Commission shall adopt implementing acts specifying the details to be contained in the regulations referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).

Article 74c

Refusal of the application

1. In addition to the grounds for refusal of an EU trade mark application provided for in Articles 36 and 37, an application for an EU certification mark shall be refused where the conditions set out in Articles 74a and 74b are not satisfied, or where the regulations governing use are contrary to public policy or to accepted principles of morality.

2. An application for an EU certification mark shall also be refused if the public is liable to be misled as regards the character or the significance of the mark, in particular if it is likely to be taken to be something other than a certification mark.

3. An application shall not be refused if the applicant, as a result of an amendment of the regulations governing use, meets the requirements of paragraphs 1 and 2.

Article 74d

Observations by third parties

Where written observations on an EU certification mark are submitted to the Office pursuant to Article 40, those observations may also be based on the particular grounds on which the application for an EU certification mark should be refused pursuant to Article 74c.

Article 74e

Use of the EU certification mark

Use of an EU certification mark by any person who has authority to use it according to the regulations governing use referred to in Article 74b shall satisfy the requirements of this Regulation, provided that the other conditions laid down in this Regulation with regard to the use of EU trade marks are fulfilled.

Article 74f

Amendment of the regulations governing use of the mark

1. The proprietor of an EU certification mark shall submit to the Office any amended regulations governing use.

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2. Amendments shall not be mentioned in the Register where the regulations as amended do not satisfy the requirements of Article 74b or involve one of the grounds for refusal referred to in Article 74c.

3. Written observations in accordance with Article 74d may also be submitted with regard to amended regulations governing use.

4. For the purposes of this Regulation, amendments to the regulations governing use shall take effect only as from the date of entry of the mention of the amendment in the Register.

Article 74g

Transfer

By way of derogation from Article 17(1), an EU certification mark may only be transferred to a person who meets the requirements of Article 74a(2).

Article 74h

Persons who are entitled to bring an action for infringement

1. Only the proprietor of an EU certification mark, or any person specifically authorised by him to that effect, shall be entitled to bring an action for infringement.

2. The proprietor of an EU certification mark shall be entitled to claim compensation on behalf of persons who have authority to use the mark where they have sustained damage as a consequence of unauthorised use of the mark.

Article 74i

Grounds for revocation

In addition to the grounds for revocation provided for in Article 51, the rights of the proprietor of an EU certification mark shall be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings, where any of the following conditions is fulfilled:

(a) the proprietor no longer complies with the requirements set out in Article 74a(2);

(b) the proprietor does not take reasonable steps to prevent the mark being used in a manner that is incompatible with the conditions of use laid down in the regulations governing use, amendments to which have, where appropriate, been mentioned in the Register;

(c) the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in Article 74c(2);

▼B

(d) an amendment to the regulations governing use of the mark has been mentioned in the Register in breach of Article 74f(2), unless the proprietor of the mark, by further amending the regulations governing use, complies with the requirements of that Article.

Article 74j

Grounds for invalidity

In addition to the grounds for invalidity provided for in Articles 52 and 53, an EU certification mark which is registered in breach of Article 74c shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings, unless the proprietor of the mark, by amending the regulations governing use, complies with the requirements of Article 74c.

Article 74k

Conversion

Without prejudice to Article 112(2), conversion of an application for an EU certification mark or of a registered EU certification mark shall not take place where the national law of the Member State concerned does not provide for the registration of guarantee or certification marks pursuant to Article 28 of Directive (EU) 2015/2436 of the European Parliament and of the Council.'.

(68) Article 75 is replaced by the following:

'Article 75

Decisions and communications of the Office

1. Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments. Where oral proceedings are held before the Office, the decision may be given orally. Subsequently, the decision shall be notified in writing to the parties.

2. Any decision, communication or notice from the Office shall indicate the department or division of the Office as well as the name or the names of the official or officials responsible. They shall be signed by that official or those officials, or, instead of a signature, carry a printed or stamped seal of the Office. The Executive Director may determine that other means of identifying the department or division of the Office and the name of the official or officials responsible, or an identification other than a seal, may be used where decisions, communications or notices from the Office are transmitted by telecopier or any other technical means of communication.

3. Decisions of the Office which are open to appeal shall be accompanied by a written communication indicating that any notice of appeal is to be filed in writing at the Office within two months of the date of notification of the decision in question. The communications shall also draw the attention of the parties to the provisions laid down in Articles 58, 59 and 60. The parties may not plead any failure on the part of the Office to communicate the availability of appeal proceedings.'.

▼B

(69) In Article 76(1), the following sentence is added:

‘In invalidity proceedings taken pursuant to Article 52, the Office shall limit its examination to the grounds and arguments submitted by the parties.’.

(70) In Article 77, the following paragraph is added:

‘4. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the detailed arrangements for oral proceedings, including the detailed arrangements for the use of languages in accordance with Article 119.’.

(71) Article 78 is amended as follows:

(a) in paragraph 3, the following sentence is added:

‘The period of notice provided in such summons shall be at least one month, unless they agree to a shorter period.’;

(b) the following paragraphs are added:

‘5. The Executive Director shall determine the amounts of expenses to be paid, including advances, as regards the costs of taking of evidence as referred to in this Article.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the detailed arrangements for the taking of evidence.’.

(72) Article 79 is replaced by the following:

‘Article 79

Notification

1. The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned are to be notified under other provisions of this Regulation or of acts adopted pursuant to this Regulation, or of which notification has been ordered by the Executive Director.

2. The Executive Director may determine which documents other than decisions subject to a time limit for appeal and summonses shall be notified by registered letter with proof of delivery.

3. Notification may be effected by different means, including by electronic means. The details regarding electronic means shall be determined by the Executive Director.

4. Where notification is to be effected by public notice, the Executive Director shall determine how the public notice is to be given and shall fix the beginning of the one-month period on the expiry of which the document shall be deemed to have been notified.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the detailed arrangements for notification.’.

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(73) The following articles are inserted:

'Article 79a

Notification of loss of rights

Where the Office finds that the loss of any rights results from this Regulation or acts adopted pursuant to this Regulation, without any decision having been taken, it shall communicate this to the person concerned in accordance with Article 79. The latter may apply for a decision on the matter within two months of notification of the communication, if he considers that the finding of the Office is incorrect. The Office shall adopt such a decision only where it disagrees with the person requesting it; otherwise the Office shall amend its finding and inform the person requesting the decision.

Article 79b

Communications to the Office

1. Communications addressed to the Office may be effected by electronic means. The Executive Director shall determine to what extent and under which technical conditions those communications may be submitted electronically.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the rules on the means of communication, including the electronic means of communication, to be used by the parties to proceedings before the Office and the forms to be made available by the Office.

Article 79c

Time limits

1. Time limits shall be laid down in terms of full years, months, weeks or days. Calculation shall start on the day following the day on which the relevant event occurred. The duration of time limits shall be no less than one month and no more than six months.

2. The Executive Director shall determine, before the commencement of each calendar year, the days on which the Office is not open for receipt of documents or on which ordinary post is not delivered in the locality in which the Office is located.

3. The Executive Director shall determine the duration of the period of interruption in the case of a general interruption in the delivery of post in the Member State where the Office is located or, in the case of an actual interruption of the Office's connection to admitted electronic means of communication.

4. If an exceptional occurrence, such as a natural disaster or strike, interrupts or interferes with proper communication from the parties to the proceedings to the Office or vice-versa, the Executive Director may determine that for parties to the proceedings having their residence or registered office in the Member State concerned or who have appointed a representative

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with a place of business in the Member State concerned, all time limits that otherwise would expire on or after the date of commencement of such occurrence, as determined by him, shall extend until a date to be determined by him. When determining that date, he shall assess when the exceptional occurrence comes to an end. If the occurrence affects the seat of the Office, such determination of the Executive Director shall specify that it applies in respect of all parties to the proceedings.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the details regarding the calculation and duration of time limits.

Article 79d

Correction of errors and manifest oversights

1. The Office shall correct any linguistic errors or errors of transcription and manifest oversights in its decisions, or technical errors attributable to it in registering a trade mark or in publishing the registration of its own motion or at the request of a party.

2. Where the correction of errors in the registration of a trade mark or the publication of the registration is requested by the proprietor, Article 48a shall apply *mutatis mutandis*.

3. Corrections of errors in the registration of a trade mark and in the publication of the registration shall be published by the Office.'.

(74) Article 80 is replaced by the following:

'Article 80

Revocation of decisions

1. Where the Office has made an entry in the Register or taken a decision which contains an obvious error attributable to the Office, it shall ensure that the entry is cancelled or the decision is revoked. Where there is only one party to the proceedings and the entry or the act affects its rights, cancellation or revocation shall be determined even if the error was not evident to the party.

2. Cancellation or revocation as referred to in paragraph 1 shall be determined, *ex officio* or at the request of one of the parties to the proceedings, by the department which made the entry or took the decision. The cancellation of the entry in the Register or the revocation of the decision shall be effected within one year of the date on which the entry was made in the Register or that decision was taken, after consultation with the parties to the proceedings and any proprietor of rights to the EU trade mark in question that are entered in the Register. The Office shall keep records of any such cancellation or revocation.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the procedure for the revocation of a decision or for the cancellation of an entry in the Register.

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4. This Article shall be without prejudice to the right of the parties to submit an appeal under Articles 58 and 65, or to the possibility of correcting errors and manifest oversights under Article 79d. Where an appeal has been filed against a decision of the Office containing an error, the appeal proceedings shall become devoid of purpose upon revocation by the Office of its decision pursuant to paragraph 1 of this Article. In the latter case, the appeal fee shall be reimbursed to the appellant.'.

(75) Article 82 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. This Article shall not apply to the time limits laid down in Article 27, Articles 29(1), 33(1), 36(2), 41(1) and (3), 47(3), Article 60, Articles 65(5) and 81(2), and Article 112, or to the time limits laid down in paragraph 1 of this Article or the time limit for claiming seniority pursuant to Article 34 after the application has been filed.';

(b) paragraph 4 is replaced by the following:

'4. If the Office accepts the application, the consequences of having failed to observe the time limit shall be deemed not to have occurred. If a decision has been taken between the expiry of that time limit and the request for the continuation of proceedings, the department competent to decide on the omitted act shall review the decision and, where completion of the omitted act itself is sufficient, take a different decision. If, following the review, the Office concludes that the original decision does not require to be altered, it shall confirm that decision in writing.'.

(76) The following Article is inserted:

'Article 82a

Interruption of proceedings

1. Proceedings before the Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for, or proprietor of, an EU trade mark or of the person authorised by national law to act on his behalf. To the extent that that death or incapacity does not affect the authorisation of a representative appointed under Article 93, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for, or proprietor of, an EU trade mark being prevented, for legal reasons resulting from action taken against his property, from continuing the proceedings before the Office;

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(c) in the event of the death or legal incapacity of the representative of an applicant for, or proprietor of, an EU trade mark, or of that representative being prevented, for legal reasons resulting from action taken against his property, from continuing the proceedings before the Office.

2. Proceedings before the Office shall be resumed as soon as the identity of the person authorised to continue them has been established.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the detailed arrangements for the resumption of proceedings before the Office.'.

(77) Article 83 is replaced by the following:

'Article 83

Reference to general principles

In the absence of procedural provisions in this Regulation or in acts adopted pursuant to this Regulation, the Office shall take into account the principles of procedural law generally recognised in the Member States.'.

(78) Article 85 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The losing party in opposition proceedings, proceedings for revocation, proceedings for a declaration of invalidity or appeal proceedings shall bear the fees paid by the other party. Without prejudice to Article 119(6), the losing party shall also bear all costs incurred by the other party that are essential to the proceedings, including travel and subsistence and the remuneration of a representative within the meaning of Article 93(1), within the limits of the scales set for each category of costs in the implementing act to be adopted in accordance with paragraph 1a of this Article. The fees to be borne by the losing party shall be limited to the fees paid by the other party for opposition, for an application for revocation or for a declaration of invalidity of the EU trade mark and for appeal.';

(b) the following paragraph is inserted:

'1a. The Commission shall adopt implementing acts specifying the maximum rates for costs essential to the proceedings and actually incurred by the successful party. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).

When specifying such amounts with respect to travel and subsistence costs, the Commission shall take into account the distance between the place of residence or business of the party, representative or witness or expert and the place where the oral proceedings are held, the procedural stage at which the costs have been incurred, and, as far as costs of representation within the meaning of Article 93(1) are concerned, the need to ensure that the obligation to bear the costs may not be misused for tactical reasons by the

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other party. Subsistence expenses shall be calculated in accordance with the Staff Regulations of Officials of the Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (*).

The losing party shall bear the costs for one opposing party only and, where applicable, one representative only.

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(*) OJ L 56, 4.3.1968, p. 1.';

(c) paragraph 6 is replaced by the following:

'6. The Opposition Division or Cancellation Division or Board of Appeal shall fix the amount of the costs to be paid pursuant to paragraphs 1 to 5 of this Article when the costs to be paid are limited to the fees paid to the Office and the representation costs. In all other cases, the registry of the Board of Appeal or a member of the staff of the Opposition Division or Cancellation Division shall fix, on request, the amount of the costs to be reimbursed. The request shall be admissible only for the period of two months following the date on which the decision for which an application was made for the costs to be fixed becomes final and shall be accompanied by a bill and supporting evidence. For the costs of representation pursuant to Article 93(1), an assurance by the representative that the costs have been incurred shall be sufficient. For other costs, it shall be sufficient if their plausibility is established. Where the amount of the costs is fixed pursuant to the first sentence of this paragraph, representation costs shall be awarded at the level laid down in the act adopted pursuant to paragraph 1a of this Article and irrespective of whether they have been actually incurred.';

(d) the following paragraph is added:

'7. The decision on the fixing of costs, stating the reasons on which it is based, may be reviewed by a decision of the Opposition Division or Cancellation Division or Board of Appeal on a request filed within one month of the date of notification of the awarding of costs. It shall not be deemed to be filed until the fee for reviewing the amount of the costs has been paid. The Opposition Division, the Cancellation Division or the Board of Appeal, as the case may be, shall take a decision on the request for a review of the decision on the fixing of costs without oral proceedings.'.

(79) In Article 86(2), the second sentence is replaced by the following:

'Each Member State shall designate a single authority responsible for verifying the authenticity of the decision referred to in paragraph 1 and shall communicate its contact details to the Office, the Court of Justice and the Commission. The order for the enforcement of the decision shall be appended to the decision by that authority, with the verification of the authenticity of the decision as the sole formality.'.

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(80) Article 87 is replaced by the following:

'Article 87

Register of EU trade marks

1. The Office shall keep a Register of EU trade marks which it shall keep up to date.

2. The Register shall contain the following entries relating to EU trade mark applications and registrations:

(a) the date of filing the application;

(b) the file number of the application;

(c) the date of the publication of the application;

(d) the name and address of the applicant;

(e) the name and business address of the representative, other than a representative as referred to in the first sentence of Article 92(3);

(f) the representation of the mark, with indications as to its nature; and, where applicable, a description of the mark;

(g) an indication of the goods and services by their names;

(h) particulars of claims of priority pursuant to Article 30;

(i) particulars of claims of exhibition priority pursuant to Article 33;

(j) particulars of claims of seniority of a registered earlier trade mark as referred to in Article 34;

(k) a statement that the mark has become distinctive in consequence of the use which has been made of it, pursuant to Article 7(3);

(l) an indication that the mark is a collective mark;

(m) an indication that the mark is a certification mark;

(n) the language in which the application was filed and the second language which the applicant has indicated in his application, pursuant to Article 119(3);

(o) the date of registration of the mark in the Register and the registration number;

(p) a statement that the application is the result of a transformation of an international registration designating the Union, pursuant to Article 161 of this Regulation, together with the date of the international registration pursuant to Article 3(4) of the Madrid Protocol or the date on which the territorial extension to the Union made subsequent to the international registration pursuant to Article 3*ter*(2) of the Madrid Protocol was recorded and, where applicable, the date of priority of the international registration.

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3. The Register shall also contain the following entries, each accompanied by the date of recording of such entry:

(a) changes in the name, address or nationality of the proprietor of an EU trade mark or a change in the State in which he is domiciled or has his seat or establishment;

(b) changes in the name or business address of the representative, other than a representative as referred to in the first sentence of Article 92(3);

(c) where a new representative is appointed, the name and business address of that representative;

(d) amendments and alterations of the mark, pursuant to Articles 43 and 48, and corrections of errors;

(e) notice of amendments to the regulations governing the use of the collective mark pursuant to Article 71;

(f) particulars of claims of seniority of a registered earlier trade mark as referred to in Article 34, pursuant to Article 35;

(g) total or partial transfers pursuant to Article 17;

(h) creation or transfer of a right *in rem* pursuant to Article 19, and the nature of the right *in rem*;

(i) levy of execution pursuant to Article 20 and insolvency proceedings pursuant to Article 21;

(j) the grant or transfer of a licence pursuant to Article 22 and, where applicable, the type of licence;

(k) renewal of a registration pursuant to Article 47, the date from which it takes effect and any restrictions pursuant to Article 47(4);

(l) a record of a determination of the expiry of a registration pursuant to Article 47;

(m) declarations of withdrawal or surrender by the proprietor of the mark pursuant to Articles 43 and 50 respectively;

(n) the date of submission and the particulars of an opposition pursuant to Article 41, of an application pursuant to Article 56, or a counterclaim pursuant to Article 100(4) for revocation, or for a declaration of invalidity, or of an appeal pursuant to Article 60;

(o) the date and content of a decision on an opposition, on an application or counterclaim pursuant to Article 57(6) or the third sentence of Article 100(6), or on an appeal pursuant to Article 64;

(p) a record of the receipt of a request for conversion pursuant to Article 113(2);

(q) the cancellation of the representative recorded pursuant to point (e) of paragraph 2 of this Article;

(r) the cancellation of the seniority of a national mark;

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(s) the modification to or cancellation from the Register of the items referred to in points (h), (i) and (j) of this paragraph;

(t) the replacement of the EU trade mark by an international registration pursuant to Article 157;

(u) the date and number of international registrations based on the EU trade mark application which has been registered as an EU trade mark pursuant to Article 148(1);

(v) the date and number of international registrations based on the EU trade mark pursuant to Article 148(2);

(w) the division of an application pursuant to Article 44 and the division of a registration pursuant to Article 49, together with the items referred to in paragraph 2 of this Article in respect of the divisional registration, as well as the list of goods and services of the original registration as amended;

(x) the revocation of a decision or an entry in the Register pursuant to Article 80, where the revocation concerns a decision or entry which has been published;

(y) notice of amendments to the regulations governing the use of the certification mark pursuant to Article 74f.

4. The Executive Director may determine that items other than those referred to in paragraphs 2 and 3 of this Article are to be entered in the Register, subject to Article 123(4).

5. The Register may be maintained in electronic form. The Office shall collect, organise, make public and store the items referred to in paragraphs 2 and 3, including any personal data, for the purposes laid down in paragraph 9. The Office shall keep the register easily accessible for public inspection.

6. The proprietor of an EU trade mark shall be notified of any change in the Register.

7. The Office shall provide certified or uncertified extracts from the Register on request and on payment of a fee.

8. The processing of the data concerning the entries set out in paragraphs 2 and 3, including any personal data, shall take place for the purposes of:

(a) administering the applications and/or registrations as described in this Regulation and acts adopted pursuant to it;

(b) maintaining a public register for inspection by, and the information of, public authorities and economic operators, in order to enable them to exercise the rights conferred on them by this Regulation and be informed about the existence of prior rights belonging to third parties; and

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(c) producing reports and statistics enabling the Office to optimise its operations and improve the functioning of the system.

9. All the data, including personal data, concerning the entries in paragraphs 2 and 3 shall be considered to be of public interest and may be accessed by any third party. For reasons of legal certainty, the entries in the Register shall be kept for an indefinite period of time.'.

(81) The following articles are inserted:

'Article 87a

Database

1. In addition to the obligation to keep a Register within the meaning of Article 87, the Office shall collect and store in an electronic database all the particulars provided by applicants or any other party to the proceedings under this Regulation or acts adopted pursuant to it.

2. The electronic database may include personal data, beyond those included in the Register pursuant to Article 87, to the extent that such particulars are required by this Regulation or acts adopted pursuant to it. The collection, storage and processing of such data shall serve the purposes of:

(a) administering the applications and/or registrations as described in this Regulation and acts adopted pursuant to it;

(b) accessing the information necessary for conducting the relevant proceedings more easily and efficiently;

(c) communicating with the applicants and other parties to the proceedings;

(d) producing reports and statistics enabling the Office to optimise its operations and improve the functioning of the system.

3. The Executive Director shall determine the conditions of access to the electronic database and the manner in which its contents, other than the personal data referred to in paragraph 2 of this Article but including those listed in Article 87, may be made available in machine-readable form, including the charge for such access.

4. Access to the personal data referred to in paragraph 2 shall be restricted and such data shall not be made publicly available unless the party concerned has given his express consent.

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5. All data shall be kept indefinitely. However, the party concerned may request the removal of any personal data from the database after 18 months from the expiry of the trade mark or the closure of the relevant *inter partes* procedure. The party concerned shall have the right to obtain the correction of inaccurate or erroneous data at any time.

Article 87b

Online access to decisions

1. The decisions of the Office shall be made available online for the information and consultation of the general public in the interest of transparency and predictability. Any party to the proceedings that led to the adoption of the decision may request the removal of any personal data included in the decision.

2. The Office may provide online access to judgments of national and Union courts related to its tasks in order to raise public awareness of intellectual property matters and promote convergence of practices. The Office shall respect the conditions of the initial publication with regard to personal data.'.

(82) Article 88 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. Where the files are inspected pursuant to paragraph 2 or 3 of this Article, documents relating to exclusion or objection pursuant to Article 137, draft decisions and opinions, and all other internal documents used for the preparation of decisions and opinions, as well as parts of the file which the party concerned showed a special interest in keeping confidential before the request for inspection of the files was made, unless inspection of such parts of the file is justified by overriding, legitimate interests of the party seeking inspection, may be withheld from inspection.';

(b) the following paragraphs are added:

'5. Inspection of the files of EU trade mark applications and of registered EU trade marks shall be of the original document, or of copies thereof, or of technical means of storage if the files are stored in this way. The Executive Director shall determine the means of inspection.

6. Where inspection of files takes place as provided for in paragraph 7, the request for inspection of the files shall not be deemed to have been made until the required fee has been paid. No fee shall be payable if inspection of technical means of storage takes place online.

7. Inspection of the files shall take place at the premises of the Office. On request, inspection of the files shall be effected by means of issuing copies of file documents. The issuing of such copies shall be conditional on the payment of a fee. The Office shall also issue on request certified or uncertified copies of the application for an EU trade mark upon payment of a fee.

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8. The files kept by the Office relating to international registrations designating the Union may be inspected on request as from the date of publication referred to in Article 152(1), in accordance with the conditions laid down in paragraphs 1, 3 and 4 of this Article.

9. Subject to the restrictions provided for in paragraph 4, the Office may, on request, communicate information from any file of an EU trade mark applied for or of a registered EU trade mark, subject to payment of a fee. However, the Office may require the exercise of the option to obtain inspection of the file itself should it deem this to be appropriate in view of the quantity of information to be supplied.'.

(83) The following article is inserted:

'Article 88a

Keeping of files

1. The Office shall keep the files of any procedure relating to an EU trade mark application or EU trade mark registration. The Executive Director shall determine the form in which those files shall be kept.

2. Where the files are kept in electronic format, the electronic files, or back-up copies thereof, shall be kept indefinitely. The original documents filed by parties to the proceedings, and forming the basis of such electronic files, shall be disposed of after a period following their reception by the Office, which shall be determined by the Executive Director.

3. Where and to the extent that files or parts of the files are kept in any form other than electronically, documents or items of evidence constituting part of such files shall be kept for at least five years from the end of the year in which the application is rejected or withdrawn or is deemed to be withdrawn, the registration of the EU trade mark expires completely pursuant to Article 47, the complete surrender of the EU trade mark is registered pursuant to Article 50, or the EU trade mark is completely removed from the Register pursuant to Article 57(6) or 100(6).'.

(84) Article 89 is replaced by the following:

'Article 89

Periodical publications

1. The Office shall periodically publish:

(a) a European Union Trade Marks Bulletin containing publications of applications and of entries made in the Register as well as other particulars relating to applications or registrations of EU trade marks the publication of which is required under this Regulation or by acts adopted pursuant to it;

(b) an Official Journal of the Office containing notices and information of a general character issued by the Executive Director, as well as any other information relevant to this Regulation or its implementation.

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The publications referred to in points (a) and (b) of the first subparagraph may be effected by electronic means.

2. The European Union Trade Marks Bulletin shall be published in a manner and at a frequency to be determined by the Executive Director.

3. The Official Journal of the Office shall be published in the languages of the Office. However, the Executive Director may determine that certain items shall be published in the Official Journal of the Office in the official languages of the Union.

4. The Commission shall adopt implementing acts specifying:

(a) the date to be taken as the date of publication in the European Union Trade Marks Bulletin;

(b) the manner of publication of entries regarding the registration of a trade mark which do not contain changes as compared to the publication of the application;

(c) the forms in which editions of the Official Journal of the Office may be made available to the public.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(85) Article 90 is amended as follows:

(a) the number '1' shall be inserted before the first paragraph;

(b) the following paragraphs are added:

'2. The Office shall not charge fees for the communication of information or the opening of files for inspection.

3. The Commission shall adopt implementing acts specifying the detailed arrangements as to how the Office and the authorities of the Member States are to exchange information between each other and open files for inspection, taking into account the restrictions to which the inspection of files relating to EU trade mark applications or registrations is subject, pursuant to Article 88, when it is opened to third parties. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(86) In Article 92, paragraphs 2 to 4 are replaced by the following:

'2. Without prejudice to the second sentence of paragraph 3 of this Article, natural or legal persons having neither their domicile nor their principal place of business or a real and effective industrial or commercial establishment in the European Economic Area shall be represented before the Office in accordance with Article 93(1) in all proceedings provided for by this Regulation, other than the filing of an application for an EU trade mark.

3. Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the European Economic Area may be represented before the Office by an employee. An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the

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first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the European Economic Area. Employees who represent persons, within the meaning of this paragraph, shall, at the request of the Office or, where appropriate, of the party to the proceedings, file with it a signed authorisation for insertion in the files.

4. Where there is more than one applicant or more than one third party acting in common, a common representative shall be appointed.'.

(87) Article 93 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Representation of natural or legal persons before the Office may only be undertaken by:

(a) a legal practitioner qualified in one of the Member States of the European Economic Area and having his place of business within the European Economic Area, to the extent that he is entitled, within the said Member State, to act as a representative in trade mark matters;

(b) professional representatives whose names appear on the list maintained for this purpose by the Office.

Representatives acting before the Office shall, at the request of the Office or, where appropriate, of the other party to the proceedings, file with it a signed authorisation for insertion on the files.

2. Any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) being a national of one of the Member States of the European Economic Area;

(b) having his place of business or employment in the European Economic Area;

(c) being entitled to represent natural or legal persons in trade mark matters before the Benelux Office for Intellectual Property or before the central industrial property office of a Member State of the European Economic Area. Where, in the State concerned, the entitlement is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in trade mark matters before the Benelux Office for Intellectual Property or those central industrial property offices shall have habitually so acted for at least five years. However, persons whose professional qualification to represent natural or legal persons in trade mark matters before the Benelux Office for Intellectual Property or those central industrial property offices is officially recognised in accordance with the regulations laid down by the State concerned shall not be required to have exercised the profession.';

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(b) paragraphs 4 and 5 are replaced by the following:

‘4. The Executive Director may grant an exemption from:

(a) the requirement in the second sentence of paragraph 2(c), if the applicant furnishes proof that he has acquired the requisite qualification in another way;

(b) the requirement set out in paragraph 2(a) in the case of highly qualified professionals, provided that the requirements set out in paragraphs 2(b) and (c) are fulfilled.

5. A person may be removed from the list of professional representatives at his request or when no longer in a capacity to represent. The amendments of the list of professional representatives shall be published in the Official Journal of the Office.’.

(88) The following article is inserted:

‘Article 93a

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying:

(a) the conditions and the procedure for the appointment of a common representative as referred to in Article 92(4);

(b) the conditions under which employees referred to in Article 92(3) and professional representatives referred to in Article 93(1) shall file with the Office a signed authorisation in order to undertake representation, and the content of that authorisation;

(c) the circumstances in which a person may be removed from the list of professional representatives referred to in Article 93(5).’.

(89) In Title X, the title of Section 1 is replaced by the following:

‘Application of Union rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters’.

(90) Article 94 is amended as follows:

(a) the title is replaced by the following:

‘Application of Union rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters’;

(b) in paragraph 1, ‘Regulation (EC) No 44/2001’ is replaced by ‘the Union rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters’;

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(c) the following paragraph is added:

‘3. References in this Regulation to Regulation (EC) No 44/2001 shall include, where appropriate, the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters done on 19 October 2005.’.

(91) In Article 96(c), ‘Article 9(3), second sentence’ is replaced by ‘Article 9b(2)’.

(92) In Article 99, paragraph 3 is replaced by the following:

‘3. In the actions referred to in points (a) and (c) of Article 96, a plea relating to revocation of the EU trade mark submitted otherwise than by way of a counterclaim shall be admissible where the defendant claims that the EU trade mark could be revoked for lack of genuine use at the time the infringement action was brought.’.

(93) Article 100 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The EU trade mark court with which a counterclaim for revocation or for a declaration of invalidity of the EU trade mark has been filed shall not proceed with the examination of the counterclaim, until either the interested party or the court has informed the Office of the date on which the counterclaim was filed. The Office shall record that information in the Register. If an application for revocation or for a declaration of invalidity of the EU trade mark had already been filed before the Office before the counterclaim was filed, the court shall be informed thereof by the Office and stay the proceedings in accordance with Article 104(1) until the decision on the application is final or the application is withdrawn.’;

(b) paragraph 6 is replaced by the following:

‘6. Where an EU trade mark court has given a judgment which has become final on a counterclaim for revocation or for a declaration of invalidity of an EU trade mark, a copy of the judgment shall be sent to the Office without delay, either by the court or by any of the parties to the national proceedings. The Office or any other interested party may request information about such transmission. The Office shall mention the judgment in the Register and shall take the necessary measures to comply with its operative part.’.

(94) In Article 101, paragraph 2 is replaced by the following:

‘2. On all trade mark matters not covered by this Regulation, the relevant EU trade mark court shall apply the applicable national law.’.

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(95) In Article 102, paragraph 2 is replaced by the following:

‘2. The EU trade mark court may also apply measures or orders available under the applicable law which it deems appropriate in the circumstances of the case.’.

(96) The title ‘Section 4. Transitional provision’ and Article 108 are deleted.

(97) Article 113 is replaced by the following:

‘Article 113

Submission, publication and transmission of the request for conversion

1. A request for conversion shall be filed with the Office within the relevant period pursuant to Article 112(4), (5) or (6), and shall include an indication of the grounds for conversion in accordance with Article 112(1)(a) or (b), the Member States in respect of which conversion is requested, and the goods and services subject to conversion. Where conversion is requested following a failure to renew the registration, the period of three months provided for in Article 112(5) shall begin to run on the day following the last day on which the request for renewal can be presented pursuant to Article 47(3). The request for conversion shall not be deemed to be filed until the conversion fee has been paid.

2. Where the request for conversion relates to an EU trade mark application which has already been published or where the request for conversion relates to an EU trade mark, receipt of any such request shall be recorded in the Register and the request for conversion shall be published.

3. The Office shall check whether the conversion requested fulfils the conditions set out in this Regulation, in particular Article 112(1), (2), (4), (5) and (6), and paragraph 1 of this Article, together with the formal conditions specified in the implementing act adopted pursuant to paragraph 6 of this Article. If the conditions governing the request are not fulfilled, the Office shall notify the applicant of the deficiencies. If the deficiencies are not remedied within a period to be specified by the Office, the Office shall reject the request for conversion. Where Article 112(2) applies, the Office shall reject the request for conversion as inadmissible only with respect to those Member States for which conversion is excluded under that provision. Where the conversion fee has not been paid within the relevant period of three months pursuant to Article 112(4), (5) or (6), the Office shall inform the applicant that the request for conversion is deemed not to have been filed.

4. If the Office or an EU trade mark court has refused the EU trade mark application or has declared the EU trade mark invalid on absolute grounds by reference to the language of a Member State, conversion shall be excluded under Article 112(2) for all the Member States in which that language is one of the official languages. If the Office or an EU trade mark court has refused the EU trade mark application or has declared the EU trade mark invalid on absolute grounds which are found to apply throughout the Union or on account of an earlier EU trade mark or other Union industrial property right, conversion shall be excluded under Article 112(2) for all Member States.

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5. Where the request for conversion complies with the requirements referred to in paragraph 3 of this Article, the Office shall transmit the request for conversion and the data referred to in ►C2 Article 87(2) ◄ to the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, for which the request has been found admissible. The Office shall inform the applicant of the date of transmission.

6. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in a request for conversion of an EU trade mark application or a registered EU trade mark into a national trade mark application pursuant to paragraph 1;

(b) the details which are to be contained in the publication of the request for conversion pursuant to paragraph 2.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(98) In Article 114, paragraph 2 is replaced by the following:

'2. An EU trade mark application or a European Union trade mark transmitted in accordance with Article 113 shall not be subject to formal requirements of national law which are different from or additional to those provided for in this Regulation or in acts adopted pursuant to this Regulation.'.

(99) In Article 115(1), the first sentence is replaced by the following:

'The Office shall be an agency of the Union.'.

(100) In Article 116, paragraph 2 is replaced by the following:

'2. Without prejudice to paragraph 1, the Office may make use of seconded national experts or other staff not employed by the Office. The Management Board shall adopt a decision laying down rules on the secondment to the Office of national experts.'.

(101) In Article 117, the words 'to the Office' are replaced by 'to the Office and its staff'.

(102) Article 119 is amended as follows:

(a) paragraph 5 is replaced by the following:

'5. The notice of opposition and an application for revocation or a declaration of invalidity shall be filed in one of the languages of the Office.';

(b) the following paragraph is inserted:

'5a. Without prejudice to paragraph 5:

(a) any application or declaration relating to an EU trade mark application may be filed in the language used for filing the application for that EU trade mark or in the second language indicated by the applicant in his application;

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(b) any application or declaration relating to a registered EU trade mark may be filed in one of the languages of the Office.

However, when the application is filed by using any form provided by the Office as referred to in Article 79b(2), such forms may be used in any of the official languages of the Union, provided that the form is completed in one of the languages of the Office, as far as textual elements are concerned.';

(c) in the second subparagraph of paragraph 6, the second sentence is replaced by the following:

'The translation shall be produced within one month of the expiry of the opposition period or of the date of filing an application for revocation or a declaration of invalidity.';

(d) the following paragraphs are added:

'8. Without prejudice to paragraphs 4 and 7, and unless provided otherwise, in written proceedings before the Office any party may use any language of the Office. If the language chosen is not the language of the proceedings, the party shall supply a translation into that language within one month of the date of the submission of the original document. Where the applicant for an EU trade mark is the sole party to proceedings before the Office and the language used for the filing of the application for the EU trade mark is not one of the languages of the Office, the translation may also be filed in the second language indicated by the applicant in his application.

9. The Executive Director shall determine the manner in which translations are to be certified.

10. The Commission shall adopt implementing acts specifying:

(a) the extent to which supporting documents to be used in written proceedings before the Office may be filed in any language of the Union, and the need to supply a translation;

(b) the requisite standards of translations to be filed with the Office.

Those implementing acts shall be adopted in accordance with the examination procedure referred to Article 163(2).'.

(103) In Article 120(1), the words 'the Implementing Regulation' are replaced by 'an act adopted pursuant to this Regulation'.

(104) Article 122 is deleted.

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(105) Article 123 is replaced by the following:

'Article 123

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Office.

2. The Management Board shall adopt detailed rules for applying Regulation (EC) No 1049/2001.

3. Decisions taken by the Office under Article 8 of Regulation (EC) No 1049/2001 may be challenged through the European Ombudsman or form the subject of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty on the Functioning of the European Union respectively.

4. The processing of personal data by the Office shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council (**).

(*) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

(**) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).'.

(106) The following article is inserted:

'Article 123a

Security rules on the protection of classified and sensitive non-classified information

The Office shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in Commission Decisions (EU, Euratom) 2015/443 (*) and 2015/444 (**). The security principles shall cover, inter alia, provisions for the exchange, processing and storage of such information.

(*) Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

(**) Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).'.

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(107) In Title XII, the following section is inserted:

'SECTION 1a

Tasks of the Office and cooperation to promote convergence

Article 123b

Tasks of the Office

1. The Office shall have the following tasks:

(a) administration and promotion of the EU trade mark system established in this Regulation;

(b) administration and promotion of the European Union design system established in Council Regulation (EC) No 6/2002 (*);

(c) promoting convergence of practices and tools in the fields of trade marks and designs, in cooperation with the central industrial property offices in the Member States, including the Benelux Office for Intellectual Property;

(d) the tasks referred to in Regulation (EU) No 386/2012 of the European Parliament and of the Council (**);

(e) the tasks conferred on it under Directive 2012/28/EU of the European Parliament and of the Council (***).

2. The Office shall cooperate with institutions, authorities, bodies, industrial property offices, international and non-governmental organisations in relation to the tasks conferred on it in paragraph 1.

3. The Office may provide voluntary mediation services for the purpose of assisting parties in reaching a friendly settlement.

Article 123c

Cooperation to promote convergence of practices and tools

1. The Office and the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall cooperate with each other to promote convergence of practices and tools in the field of trade marks and designs.

Without prejudice to paragraph 3, this cooperation shall in particular cover the following areas of activity:

(a) the development of common examination standards;

(b) the creation of common or connected databases and portals for Union-wide consultation, search and classification purposes;

(c) the continuous provision and exchange of data and information, including for the purposes of feeding of the databases and portals referred to in point (b);

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(d) the establishment of common standards and practices, with a view to ensuring interoperability between procedures and systems throughout the Union and enhancing their consistency, efficiency and effectiveness;

(e) the sharing of information on industrial property rights and procedures, including mutual support to helpdesks and information centres;

(f) the exchange of technical expertise and assistance in relation to the areas referred to in points (a) to (e).

2. On the basis of a proposal by the Executive Director, the Management Board shall define and coordinate projects of interest to the Union and the Member States with regard to the areas referred to in paragraphs 1 and 6, and shall invite the central industrial property offices of the Member States and the Benelux Office for Intellectual Property to participate in those projects.

The project definition shall contain the specific obligations and responsibilities of each participating industrial property office of the Member States, the Benelux Office for Intellectual Property and the Office. The Office shall consult with user representatives in particular in the phases of definition of the projects and evaluation of their results.

3. The central industrial property offices of the Member States and the Benelux Office for Intellectual Property may opt out of, restrict or temporarily suspend their cooperation in the projects referred to in the first subparagraph of paragraph 2.

When making use of the possibilities provided for in the first subparagraph, the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall provide the Office with a written statement explaining the reasons for their decision.

4. Once having committed to participate in certain projects, the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall, without prejudice to paragraph 3, participate effectively in the projects referred to in paragraph 2 with a view to ensuring that they are developed, function, are interoperable and kept up to date.

5. The Office shall provide financial support to the projects referred to in paragraph 2 to the extent that is necessary in order to ensure, for the purposes of paragraph 4, the effective participation of the central industrial property offices of the Member States and the Benelux Office for Intellectual Property in those projects. That financial support may take the form of grants and in-kind contributions. The total amount of funding shall not exceed 15 % of the yearly revenue of the Office. The beneficiaries of grants shall be the central industrial property offices of the Member States and the Benelux Office for Intellectual Property. Grants may be awarded without calls for proposals in accordance with the financial rules applicable to the Office and with the principles of grant procedures contained in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (****) and in Commission Delegated Regulation (EU) No 1268/2012 (*****).

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6. The Office and the relevant competent authorities of the Member States shall cooperate with each other on a voluntary basis to promote the raising of awareness concerning the trade mark system and the fight against counterfeiting. Such cooperation shall include projects aiming, in particular, at the implementation of established standards and practices as well as at organising education and training activities. The financial support for those projects shall be part of the total amount of funding referred to in paragraph 5. Paragraphs 2 to 5 shall apply *mutatis mutandis*.

(*) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1).

(**) Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1).

(***) Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5).

(****) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

(*****) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).'.

(108) In Title XII, Sections 2 and 3 are replaced by the following:

'SECTION 2

Management Board

Article 124

Functions of the Management Board

1. Without prejudice to the functions attributed to the Budget Committee in Section 5, the Management Board shall have the following functions:

(a) on the basis of a draft submitted by the Executive Director in accordance with Article 128(4)(c), adopting the annual work programme of the Office for the coming year, taking into account the opinion of the Commission, and forwarding the adopted annual work programme to the European Parliament, to the Council and to the Commission;

(b) on the basis of a draft submitted by the Executive Director in accordance with Article 128(4)(e) and taking into account the opinion of the Commission, adopting a multiannual strategic programme for the Office, including the Office's strategy for international cooperation, following an exchange of views

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between the Executive Director and the relevant committee in the European Parliament, and forwarding the adopted multi-annual strategic programme to the European Parliament, to the Council and to the Commission;

(c) on the basis of a draft submitted by the Executive Director in accordance with Article 128(4)(g), adopting the annual report and forwarding the adopted annual report to the European Parliament, to the Council, to the Commission and to the Court of Auditors;

(d) on the basis of a draft submitted by the Executive Director in accordance with Article 128(4)(h), adopting the multiannual staff policy plan;

(e) exercising the powers conferred on it under Article 123c(2);

(f) exercising the powers conferred on it under Article 139(5);

(g) adopting rules on the prevention and management of conflicts of interest in the Office;

(h) in accordance with paragraph 2, exercising, with respect to the staff of the Office, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contracts of Employment ("the appointing authority powers");

(i) adopting appropriate implementing rules to give effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;

(j) drawing up the list of candidates provided for in Article 129(2);

(k) ensuring adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations referred to in Article 165a, as well as from investigations of the European Anti-fraud Office (OLAF);

(l) being consulted before adoption of the guidelines for examination in the Office and in the other cases provided for in this Regulation;

(m) providing opinions and requests for information to the Executive Director and to the Commission where it considers it necessary.

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations and Article 142 of the Conditions of Employment of Other Servants, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which that delegation of appointing authority powers can be suspended.

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The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter, and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 125

Composition of the Management Board

1. The Management Board shall be composed of one representative of each Member State, two representatives of the Commission and one representative of the European Parliament, and their respective alternates.

2. The members of the Management Board may, subject to its rules of procedure, be assisted by advisers or experts.

Article 126

Chairperson of the Management Board

1. The Management Board shall elect a chairperson and a deputy chairperson from among its members. The deputy chairperson shall *ex officio* replace the chairperson in the event of his being prevented from attending to his duties.

2. The duration of the terms of office of the chairperson and the deputy chairperson shall be four years. The terms of office shall be renewable once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date also.

Article 127

Meetings

1. Meetings of the Management Board shall be convened by its chairperson.

2. The Executive Director shall take part in the deliberations, unless the Management Board decides otherwise.

3. The Management Board shall hold an ordinary meeting at least once a year. In addition, it shall meet on the initiative of its chairperson or at the request of the Commission or of one-third of the Member States.

4. The Management Board shall adopt rules of procedure.

5. The Management Board shall take its decisions by an absolute majority of its members. However, a majority of two-thirds of its members shall be required for the decisions which the Management Board is empowered to take under Article 124(1)(a) and (b), Article 126(1) and Article 129(2) and (4). In both cases each member shall have one vote.

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6. The Management Board may invite observers to attend its meetings.

7. The secretariat for the Management Board shall be provided by the Office.

SECTION 3

Executive Director

Article 128

Functions of the Executive Director

1. The Office shall be managed by the Executive Director. The Executive Director shall be accountable to the Management Board.

2. Without prejudice to the powers of the Commission, the Management Board, and the Budget Committee, the Executive Director shall be independent in the performance of his duties and shall neither seek nor take instructions from a government or from any other body.

3. The Executive Director shall be the legal representative of the Office.

4. The Executive Director shall have in particular the following functions, which may be delegated:

(a) taking all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office;

(b) implementing the decisions adopted by the Management Board;

(c) preparing a draft annual work programme indicating estimated human and financial resources for each activity, and submitting it to the Management Board after consultation of the Commission;

(d) submitting to the Management Board proposals pursuant to Article 123c(2);

(e) preparing a draft multiannual strategic programme, including the Office's strategy for international cooperation, and submitting it to the Management Board after consultation of the Commission and following an exchange of views with the relevant committee in the European Parliament;

(f) implementing the annual work programme and the multi-annual strategic programme and reporting to the Management Board on their implementation;

(g) preparing the annual report on the Office's activities and presenting it to the Management Board for approval;

(h) preparing a draft multiannual staff policy plan and submitting it to the Management Board after consultation of the Commission;

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(i) preparing an action plan following-up on the conclusions of the internal or external audit reports and evaluations, as well as following up on the investigations of the OLAF, and reporting on progress twice a year to the Commission and to the Management Board;

(j) protecting the financial interests of the Union by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;

(k) preparing an anti-fraud strategy for the Office and presenting it to the Budget Committee for approval;

(l) in order to ensure uniform application of the Regulation, referring, where appropriate, to the enlarged Board of Appeal ("the Grand Board") questions on a point of law, in particular if the Boards of Appeal have issued diverging decisions on the point;

(m) drawing up estimates of the revenue and expenditure of the Office and implementing the budget;

(n) exercising the powers entrusted to him in respect of staff by the Management Board under Article 124(1)(h);

(o) exercising the powers conferred on him under Articles 26(3), 29(5), 30(3), 75(2), 78(5), Articles 79, 79b, 79c, Articles 87(4), 87a(3), 88(5), Articles 88a, 89, Articles 93(4), 119(9), Article 144, Articles 144a(1) and 144b(2), and Article 144c in accordance with the criteria set out in this Regulation and in the acts adopted pursuant to this Regulation.

5. The Executive Director shall be assisted by one or more Deputy Executive Directors. If the Executive Director is absent or indisposed, the Deputy Executive Director or one of the Deputy Executive Directors shall replace him in accordance with the procedure laid down by the Management Board.

Article 129

Appointment and removal of the Executive Director and extension of term of office

1. The Executive Director shall be engaged as a temporary agent of the Office under Article 2(a) of the Conditions of Employment of Other Servants.

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2. The Executive Director shall be appointed by the Council by simple majority, from a list of candidates proposed by the Management Board, following an open and transparent selection procedure. Before being appointed, the candidate selected by the Management Board may be invited to make a statement before any competent European Parliament committee and to answer questions put by its members. For the purpose of concluding the contract with the Executive Director, the Office shall be represented by the chairperson of the Management Board.

The Executive Director may be removed from office only upon a decision of the Council acting on a proposal from the Management Board.

3. The term of office of the Executive Director shall be five years. By the end of that period, the Management Board shall undertake an assessment which takes into account an evaluation of the performance of the Executive Director and the Office's future tasks and challenges.

4. The Council, taking into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once and for no more than five years.

5. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of his overall term of office.

6. The Deputy Executive Director or Deputy Executive Directors shall be appointed or removed from office as provided for in paragraph 2, after consultation of the Executive Director and, where applicable, the Executive Director-elect. The term of office of the Deputy Executive Director shall be five years. It may be extended once and for no more than five years by the Council, after consultation of the Executive Director.'.

(109) Article 130 is amended as follows:

(a) point (c) is replaced by the following:

'(c) a department in charge of the Register;';

(b) the following point is added:

'(f) any other unit or person appointed by the Executive Director to that effect.'.

(110) In Article 131, the reference to 'Articles 36, 37 and 68' is replaced by 'Articles 36, 37, 68 and 74c'.

(111) In Article 132, paragraph 2 is amended as follows:

(a) the third sentence is replaced by the following:

'Decisions relating to costs or to procedures shall be taken by a single member.';

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(b) the following subparagraph is added:

‘The Commission shall adopt implementing acts specifying the exact types of decisions that are to be taken by a single member. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).’.

(112) Article 133 is replaced by the following:

‘Article 133

Department in charge of the Register

1. The Department in charge of the Register shall be responsible for taking decisions in respect of entries in the Register.

2. It shall also be responsible for keeping the list of professional representatives referred to in Article 93(2).

3. The decisions of the Department shall be taken by a single member.’.

(113) Article 134 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A Cancellation Division shall be responsible for taking decisions in relation to:

(a) applications for the revocation or a declaration of invalidity of an EU trade mark;

(b) requests for the assignment of an EU trade mark as provided for in Article 18.’;

(b) in paragraph 2, the third sentence is replaced by the following:

‘Decisions relating to costs or to procedures as specified in the acts adopted pursuant to Article 132(2) shall be taken by a single member.’.

(114) The following article is inserted:

‘Article 134a

General Competence

Decisions required under this Regulation which do not fall within the competence of an examiner, an Opposition Division, a Cancellation Division or the Department in charge of the Register, shall be taken by any official or unit appointed by the Executive Director for that purpose.’.

(115) Article 135 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The Boards of Appeal shall be responsible for deciding on appeals from decisions taken pursuant to Articles 131 to 134a.’;

(b) in paragraph 2, the words ‘by an enlarged Board’ are replaced by the words ‘by the Grand Board’;

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(c) paragraph 3 is replaced by the following:

‘3. In order to determine the special cases which fall under the jurisdiction of the Grand Board, account should be taken of the legal difficulty or the importance of the case or of special circumstances which justify it. Such cases may be referred to the Grand Board:

(a) by the authority of the Boards of Appeal referred to in Article 136(4)(a); or

(b) by the Board handling the case.’;

(d) paragraph 4 is replaced by the following:

‘4. The Grand Board shall also be responsible for giving reasoned opinions on questions of law referred to it by the Executive Director pursuant to Article 128(4)(l).’;

(e) in paragraph 5, the last sentence is deleted.

(116) Article 136 is replaced by the following:

‘Article 136

Independence of the members of the Boards of Appeal

1. The President of the Boards of Appeal and the chairpersons of the Boards shall be appointed, in accordance with the procedure laid down in Article 129 for the appointment of the Executive Director, for a term of five years. They shall not be removed from office during this term, unless there are serious grounds for such removal and the Court of Justice, on application by the institution which appointed them, takes a decision to this effect.

2. The term of office of the President of the Boards of Appeal may be extended once for one additional five-year period, or until retirement age if this age is reached during the new term of office, after a prior positive evaluation of his performance by the Management Board.

3. The term of office of the chairpersons of the Boards may be extended for additional five-year periods, or until retirement age if this age is reached during the new term of office, after a prior positive evaluation of their performance by the Management Board, and after consulting the President of the Boards of Appeal.

4. The President of the Boards of Appeal shall have the following managerial and organisational functions:

(a) chairing the Presidium of the Boards of Appeal (“the Presidium”), responsible for laying down the rules and organising the work of the Boards;

(b) ensuring the implementation of the decisions of the Presidium;

(c) allocating cases to a Board on the basis of objective criteria determined by the Presidium;

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(d) forwarding to the Executive Director the Boards' expenditure requirements, with a view to drawing up the expenditure estimates.

The President of the Boards of Appeal shall chair the Grand Board.

5. The members of the Boards of Appeal shall be appointed by the Management Board for a term of five years. Their term of office may be extended for additional five-year periods, or until retirement age if that age is reached during the new term of office after a prior positive evaluation of their performance by the Management Board, and after consulting the President of the Boards of Appeal.

6. The members of the Boards of Appeal shall not be removed from office unless there are serious grounds for such removal and the Court of Justice, after the case has been referred to it by the Management Board on the recommendation of the President of the Boards of Appeal, and after consulting the chairperson of the Board to which the member concerned belongs, takes a decision to this effect.

7. The President of the Boards of Appeal and the chairpersons and members of the Boards of Appeal shall be independent. In their decisions, they shall not be bound by any instructions.

8. Decisions taken by the Grand Board on appeals or opinions on questions of law referred to it by the Executive Director pursuant to Article 135 shall be binding on the decision-making instances of the Office referred to in Article 130.

9. The President of the Boards of Appeal and the chairpersons and members of the Boards of Appeal shall not be examiners or members of the Opposition Divisions, the Department in charge of the Register or Cancellation Divisions.'.

(117) The following article is inserted:

'Article 136a

Presidium of the Boards of Appeal and Grand Board

1. The Presidium shall comprise the President of the Boards of Appeal, who shall chair it, the chairmen of the Boards and Board members elected for each calendar year by and from among all the members of the Boards other than the President of the Boards of Appeal and the chairmen of the Boards. The number of Board members so elected shall constitute a quarter of the number of Board members, other than the President of the Boards of Appeal and the chairmen of the Boards, and that number shall be rounded up if necessary.

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2. The Grand Board referred to in Article 135(2) shall comprise nine members, including the President of the Boards of Appeal, the chairmen of the Boards, the rapporteur designated prior to referral to the Grand Board, if applicable, and members drawn in rotation from a list comprising the names of all members of the Boards of Appeal other than the President of the Boards of Appeal and the chairmen of the Boards.'.

(118) The following article is inserted:

'Article 136b

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the details concerning the organisation of the Boards of Appeal, including the setting up and the role of the Presidium, the composition of the Grand Board and the rules on referrals to it, and the conditions under which decisions are to be taken by a single member in accordance with Article 135(2) and (5).'.

(119) The following article is inserted:

'Article 137a

Mediation centre

1. For the purposes of Article 123b(3), the Office may establish a Mediation Centre ("the Centre").

2. Any natural or legal person may use the Centre's services on a voluntary basis with the aim of reaching a friendly settlement of disputes, based on this Regulation or Regulation (EC) No 6/2002, by mutual agreement.

3. The parties shall have recourse to mediation by means of a joint request. The request shall not be deemed to have been filed until the corresponding charge has been paid. The Executive Director shall fix the amount to be charged in accordance with Article 144(1).

4. In the case of disputes subject to the proceedings pending before the Opposition Divisions, Cancellation Divisions or before the Boards of Appeal of the Office a joint request for mediation may be presented at any time after the lodging of a notice of opposition, an application for revocation or an application for a declaration of invalidity or a notice of appeal against decisions of the Opposition or Cancellation Divisions.

5. The proceedings in question shall be suspended and the time periods, other than the time periods for the payment of the applicable fee, shall be interrupted as from the date of the filing of a joint request for mediation. The time periods shall continue as from the day on which the proceedings are resumed.

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6. The parties shall be invited to jointly appoint, from the list referred to in paragraph 12, a mediator who has declared that he has a command of the language of the mediation in question. Where the parties do not appoint a mediator within 20 days of the invitation to do so, the mediation shall be deemed to have failed.

7. The parties shall agree together with the mediator on the detailed arrangements for the mediation in a mediation agreement.

8. The mediator shall conclude the mediation proceedings as soon as the parties reach a settlement agreement, or one of the parties declares that it wishes to end the mediation or the mediator establishes that the parties have failed to reach such an agreement.

9. The mediator shall inform the parties as well as the relevant instance of the Office as soon as the mediation proceedings have been concluded.

10. The discussions and negotiations conducted within the framework of mediation shall be confidential for all persons involved in the mediation, in particular for the mediator, the parties and their representatives. All documents and information submitted during the mediation shall be kept separately from, and shall not be part of, the file of any other proceedings before the Office.

11. The mediation shall be conducted in one of the official languages of the Union to be agreed upon by the parties. Where the mediation relates to disputes pending before the Office, the mediation shall be conducted in the language of the Office proceedings, unless otherwise agreed by the parties.

12. The Office shall establish a list of mediators who shall support parties in resolving disputes. The mediators shall be independent and possess relevant skills and experience. The list may include mediators who are employed by the Office, and mediators who are not so employed.

13. Mediators shall be impartial in the exercise of their duties and shall declare any real or perceived conflict of interest upon their designation. Members of the decision-making instances of the Office listed in Article 130 shall not take part in mediation concerning a case in which they have:

(a) had any prior involvement in the proceedings referred to mediation;

(b) any personal interest in those proceedings; or

(c) been previously involved as a representative of one of the parties.

14. Mediators shall not take part as members of the decision-making instances of the Office listed in Article 130 in proceedings resumed as a consequence of a mediation failure.

▼B

15. The Office may cooperate with other recognised national or international bodies dealing with mediation.'.

(120) Article 138 is replaced by the following:

'Article 138

Budget Committee

1. The Budget Committee shall have the functions assigned to it in this Section.

2. Articles 125 and 126, Article 127(1) to (4), and (5), in so far as it relates to the election of the chairperson and deputy chairperson, (6) and (7) shall apply to the Budget Committee, *mutatis mutandis*.

3. The Budget Committee shall take its decisions by an absolute majority of its members. However, a majority of two-thirds of its members shall be required for the decisions which the Budget Committee is empowered to take under Article 140(3) and Article 143. In both cases each member shall have one vote.'.

(121) Article 139 is replaced by the following:

'Article 139

Budget

1. Estimates of all the Office's revenue and expenditure shall be prepared for each financial year and shall be shown in the Office's budget. Each financial year shall correspond to the calendar year.

2. The revenue and expenditure shown in the budget shall be in balance.

3. Revenue shall comprise, without prejudice to other types of income, total fees payable under Annex -I to this Regulation, total fees as provided for in Regulation (EC) No 6/2002, total fees payable, under the Madrid Protocol referred to in Article 145 of this Regulation, for an international registration designating the Union and other payments made to Contracting Parties to the Madrid Protocol, total fees payable, under the Geneva Act referred to in Article 106c of Regulation (EC) No 6/2002, for an international registration designating the Union and other payments made to Contracting Parties to the Geneva Act, and, to the extent necessary, a subsidy entered against a specific heading of the Commission section of the general budget of the Union.

4. Every year the Office shall offset the costs incurred by the central industrial property offices of the Member States, by the Benelux Office for Intellectual Property and by any other relevant authority to be nominated by a Member State, as the result of the specific tasks which they carry out as functional parts of the EU trade mark system in the context of the following services and procedures:

▼B

(a) opposition and invalidity proceedings before the central industrial property offices of the Member States and the Benelux Office for Intellectual Property involving EU trade marks;

(b) provision of information on the functioning of the EU trade mark system through helpdesks and information centres;

(c) enforcement of EU trade marks, including action taken pursuant to Article 9(4).

5. The overall offsetting of the costs identified in paragraph 4 shall correspond to 5 % of the yearly revenue of the Office. Without prejudice to the third subparagraph of this paragraph, on a proposal by the Office and after having consulted the Budget Committee, the Management Board shall determine the distribution key on the basis of the following fair, equitable and relevant indicators:

(a) the annual number of EU trade mark applications originating from applicants in each Member State;

(b) the annual number of national trade mark applications in each Member State;

(c) the annual number of oppositions and applications for a declaration of invalidity submitted by proprietors of EU trade marks in each Member State;

(d) the annual number of cases brought before the EU trade mark courts designated by each Member State in accordance with Article 95.

For the purpose of substantiating the costs referred to in paragraph 4, Member States shall submit to the Office by 31 March of each year, statistical data demonstrating the figures referred to in points (a) to (d) of the first subparagraph of this paragraph for the preceding year, which shall be included in the proposal to be made to the Management Board.

On grounds of equity, the costs incurred by the bodies referred to in paragraph 4 in each Member State shall be deemed to correspond to at least 2 % of the total offsetting provided for under this paragraph.

6. The obligation by the Office to offset the costs referred to in paragraph 4 and incurred in a given year shall only apply to the extent that no budgetary deficit occurs in that year.

7. In the event of a budgetary surplus, and without prejudice to paragraph 10, on a proposal by the Office and after having consulted the Budget Committee, the Management Board may increase the percentage laid down in paragraph 5 to a maximum of 10 % of the yearly revenue of the Office.

▼B

8. Without prejudice to paragraphs 4 to 7 and paragraph 10 of this Article and to Articles 123b and 123c, where a substantive surplus is generated over five consecutive years, the Budget Committee, upon a proposal from the Office and in accordance with the annual work programme and multiannual strategic programme referred to in Article 124(1)(a) and (b), shall decide by a two-thirds majority on the transfer to the budget of the Union of a surplus generated from 23 March 2016.

9. The Office shall prepare on a biannual basis a report for the European Parliament, the Council and the Commission on its financial situation, including on the financial operations performed under Article 123c(5) and (6), and Article 139(5) and (7). On the basis of that report, the Commission shall review the financial situation of the Office.

10. The Office shall provide for a reserve fund covering one year of its operational expenditure to ensure the continuity of its operations and the execution of its tasks.'.

(122) The following article is inserted:

'Article 141a

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council (*), the Office shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF), and adopt the appropriate provisions applicable to all the employees of the Office using the template set out in the Annex to that Agreement.

2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Office.

3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 (**) with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Office.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Office shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

▼B

5. The Budget Committee shall adopt an anti-fraud strategy which is proportionate to the fraud risks having regard to the cost-benefit of the measures to be implemented.

(*) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

(**) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).'.

(123) Article 144 is replaced by the following:

'Article 144

Fees and charges and due date

1. The Executive Director shall lay down the amount to be charged for any services rendered by the Office other than those set out in Annex -I, as well as the amount to be charged for the European Union Trade Marks Bulletin, the Official Journal of the Office and any other publications issued by the Office. The amounts of charges shall be set in euros and shall be published in the Official Journal of the Office. The amount of each charge shall not exceed what is necessary to cover the costs of the specific service rendered by the Office.

2. Fees and charges in respect of which the due date is not specified in this Regulation shall be due on the date of receipt of the request for the service for which the fee or the charge is incurred.

With the consent of the Budget Committee, the Executive Director may determine which of the services mentioned in the first subparagraph are not to be dependent upon the advance payment of the corresponding fees or charges.'.

(124) The following articles are inserted:

'Article 144a

Payment of fees and charges

1. Fees and charges due to the Office shall be paid by payment or transfer to a bank account held by the Office.

With the consent of the Budget Committee, the Executive Director may establish which specific methods of payment other than those set out in the first subparagraph, in particular by means of deposits in current accounts held with the Office, may be used.

Determinations made pursuant to the second subparagraph shall be published in the Official Journal of the Office.

▼B

All payments, including by any other method of payment established pursuant to the second subparagraph, shall be made in euros.

2. Every payment shall indicate the name of the person making the payment and shall contain the necessary information to enable the Office to establish immediately the purpose of the payment. In particular, the following information shall be provided:

(a) when the application fee is paid, the purpose of the payment, namely "application fee";

(b) when the opposition fee is paid, the file number of the application and the name of the applicant for the EU trade mark against which opposition is entered, and the purpose of the payment, namely "opposition fee";

(c) when the revocation fee and the invalidity fee are paid, the registration number and the name of the proprietor of the EU trade mark against which the application is directed, and the purpose of the payment, namely "revocation fee" or "invalidity fee".

3. If the purpose of the payment referred to in paragraph 2 cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If the person does not comply with this request in due time, the payment shall be considered not to have been made. The amount which has been paid shall be refunded.

Article 144b

Deemed date of payment

1. In the cases referred to in the first subparagraph of Article 144a(1), the date on which the payment shall be considered to have been made to the Office shall be the date on which the amount of the payment or of the transfer is actually entered in a bank account held by the Office.

2. Where the methods of payment referred to in the second subparagraph of Article 144a(1) may be used, the Executive Director shall establish the date on which such payments are to be considered to have been made.

3. Where, under paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it was due, it shall be considered that this period has been observed if evidence is provided to the Office that the persons who made the payment in a Member State, within the period within which the payment should have been made, duly gave an order to a banking establishment to transfer the amount of the payment, and paid a surcharge of 10 % of the relevant fee or fees, but not exceeding EUR 200. No surcharge shall be payable if the relevant order to the banking establishment has been given not later than 10 days before the expiry of the period for payment.

▼B

4. The Office may request the person who made the payment to produce evidence as to the date on which the order to the banking establishment as referred to in paragraph 3 was given and, where required, to pay the relevant surcharge within a period to be specified by it. If the person fails to comply with that request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.

Article 144c

Insufficient payments and refund of insignificant amounts

1. A time limit for payment shall, in principle, be considered to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired.

2. The Office may, however, in so far as is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking or, where this is considered justified, overlook any small amounts lacking, without prejudice to the rights of the person making the payment.

3. With the consent of the Budget Committee, the Executive Director may waive action for the enforced recovery of any sum due where the sum to be recovered is minimal or where such recovery is too uncertain.

4. Where an excessive sum is paid to cover a fee or a charge, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund.

With the consent of the Budget Committee the Executive Director may determine the amount below which an excessive sum paid to cover a fee or a charge shall not be refunded.

Determinations pursuant to the second subparagraph shall be published in the Official Journal of the Office.'.

(125) In Article 145, the words 'its Implementing Regulations' are replaced by 'the acts adopted pursuant to this Regulation'.

(126) Article 147 is amended as follows:

(a) in paragraph 1, the following sentence is inserted after the first sentence:

'The Office shall inform the applicant filing the international application of the date on which the documents making up the international application are received by the Office.';

▼B

(b) paragraphs 3 to 6 are replaced by the following:

‘3. Where the international application is filed in a language other than one of the languages allowed under the Madrid Protocol for the filing of international applications, the applicant may provide a translation of the list of goods or services and of any other textual elements forming part of the international application in the language in which the international application is to be submitted to the International Bureau pursuant to paragraph 2. If the application is not accompanied by such translation, the applicant shall authorise the Office to include that translation in the international application. Where the translation has not yet been established in the course of the registration procedure for the EU trade mark application on which the international application is based, the Office shall, without delay, arrange for the translation.

4. The filing of an international application shall be subject to the payment of a fee to the Office. Where the international registration is to be based on an EU trade mark once it is registered, the fee shall be due on the date of registration of the EU trade mark. The application shall be deemed not to have been filed until the required fee has been paid. Where the fee has not been paid, the Office shall inform the applicant accordingly. In the event of electronic filing, the Office may authorise the International Bureau to collect the fee on its behalf.

5. Where the examination of the international application reveals any of the following deficiencies, the Office shall invite the applicant to remedy those deficiencies within such period as it may specify:

(a) the international application has not been filed using the form referred to in paragraph 1, and does not contain all the indications and information required by that form;

(b) the list of goods and services contained in the international application is not covered by the list of goods and services appearing in the basic EU trade mark application or basic EU trade mark;

(c) the mark which is subject to the international application is not identical with the mark as it appears in the basic EU trade mark application or basic EU trade mark;

(d) an indication in the international application as to the trade mark, other than a disclaimer or a colour claim, does not also appear in the basic EU trade mark application or basic EU trade mark;

(e) where colour is claimed in the international application as a distinctive feature of the mark, the basic EU trade mark application or basic EU trade mark is not in the same colour or colours; or

(f) according to the indications made in the international form, the applicant is not eligible to file an international application through the Office in accordance with Article 2(1)(ii) of the Madrid Protocol.

▼B

6. Where the applicant has failed to authorise the Office to include a translation as provided for in paragraph 3, or where it is otherwise unclear on which list of goods and services the international application is to be based, the Office shall invite the applicant to make the required indications within such period as it may specify.';

(c) the following paragraphs are added:

'7. If the deficiencies referred to in paragraph 5 are not remedied or the required indications referred to in paragraph 6 are not given within the period fixed by the Office, the Office shall refuse to forward the international application to the International Bureau.

8. The Office shall forward the international application to the International Bureau along with the certification provided for under Article 3(1) of the Madrid Protocol as soon as the international application meets the requirements laid down in this Article, the implementing act adopted pursuant to paragraph 9 of this Article, and in Article 146 of this Regulation.

9. The Commission shall adopt implementing acts specifying the exact form, including the elements thereof, to be used for the filing of an international application pursuant to paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(127) The following article is inserted:

'Article 148a

Notification of the invalidity of the basic application or registration

1. Within a period of five years of the date of the international registration, the Office shall notify the International Bureau of any facts and decisions affecting the validity of the EU trade mark application or the EU trade mark registration on which the international registration was based.

2. The Commission shall adopt implementing acts specifying the individual facts and decisions subject to the notification obligation in accordance with Article 6(3) of the Madrid Protocol as well as the relevant point in time of such notifications. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2) of this Regulation.'.

(128) Article 149 is replaced by the following:

'Article 149

Request for territorial extension subsequent to international registration

1. A request for territorial extension made subsequent to an international registration pursuant to Article 3*ter*(2) of the Madrid Protocol may be filed through the intermediary of the Office. The request shall be filed in the language in which the international application was filed pursuant to Article 147 of this Regulation. It shall include indications to substantiate the entitlement to make a designation in accordance with Article 2(1)(ii) and Article 3*ter*(2) of the Madrid Protocol. The Office shall inform the applicant requesting the territorial extension of the date on which the request for territorial extension was received.

▼B

2. The Commission shall adopt implementing acts specifying the detailed requirements regarding the request for territorial extension pursuant to paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).

3. Where the request for territorial extension made subsequent to the international registration does not comply with the requirements set out in paragraph 1 and in the implementing act adopted pursuant to paragraph 2, the Office shall invite the applicant to remedy the deficiencies found within such time limit as it may specify. If the deficiencies are not remedied within the time limit fixed by the Office, the Office shall refuse to forward the request to the International Bureau. The Office shall not refuse to forward the request to the International Bureau before the applicant has had the opportunity to correct any deficiency detected in the request.

4. The Office shall forward the request for territorial extension made subsequent to the international registration to the International Bureau as soon as the requirements referred to in paragraph 3 are complied with.'.

(129) Article 153 is replaced by the following:

'Article 153

Seniority claimed in an international application

1. The applicant for an international registration designating the Union may claim, in the international application, the seniority of an earlier trade mark registered in a Member State, including a trade mark registered in the Benelux countries, or registered under international arrangements having effect in a Member State, as provided for in Article 34.

2. The documentation, as specified in the implementing act adopted pursuant to Article 34(5), in support of the seniority claim shall be submitted within three months of the date on which the International Bureau notifies the international registration to the Office. In this regard, Article 34(6) shall apply.

3. Where the holder of the international registration is obliged to be represented before the Office pursuant to Article 92(2), the communication as referred to in paragraph 2 of this Article shall contain the appointment of a representative within the meaning of Article 93(1).

4. Where the Office finds that the seniority claim under paragraph 1 of this Article does not comply with Article 34, or does not comply with the other requirements laid down in this Article, it shall invite the applicant to remedy the deficiencies. If the requirements referred to in the first sentence are not satisfied within the time limit specified by the Office, the right of seniority in respect of that international registration shall be lost. If the deficiencies concern only some of the goods and services, the right of seniority shall be lost only in so far as those goods and services are concerned.

5. The Office shall inform the International Bureau of any declaration of a loss of the right of seniority pursuant to paragraph 4. It shall also inform the International Bureau of any withdrawal or restriction of the seniority claim.

▼B

6. Article 34(4) shall apply, unless the right of seniority is declared lost pursuant to paragraph 4 of this Article.'.

(130) The following article is inserted:

'Article 153a

Seniority claimed before the Office

1. The holder of an international registration designating the Union may, as from the date of publication of the effects of such registration pursuant to Article 152(2), claim at the Office the seniority of an earlier trade mark registered in a Member State, including a trade mark registered in the Benelux countries, or registered under international arrangements having effect in a Member State, as provided for in Article 35.

2. When the seniority is claimed before the date referred to in paragraph 1, the seniority claim shall be deemed to have been received by the Office on that date.

3. A seniority claim under paragraph 1 of this Article shall fulfil the requirements referred to in Article 35 and shall contain information to enable its examination against those requirements.

4. If the requirements governing the claiming of seniority referred to in paragraph 3 and specified in the implementing act adopted pursuant to paragraph 6 are not fulfilled, the Office shall invite the holder of the international registration to remedy the deficiencies. If the deficiencies are not remedied within a period to be specified by the Office, the Office shall reject the claim.

5. Where the Office has accepted the seniority claim, or where a seniority claim has been withdrawn or cancelled by the Office, the Office shall inform the International Bureau accordingly.

6. The Commission shall adopt implementing acts specifying the details to be contained in a seniority claim under paragraph 1 of this Article and the details of the information to be notified pursuant to paragraph 5 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(131) Article 154 is replaced by the following:

'Article 154

Designation of goods and services and examination as to absolute grounds for refusal

1. International registrations designating the Union shall be subject to examination as to their conformity with Article 28(2) to (4) and to absolute grounds for refusal in the same way as applications for EU trade marks.

▼B

2. Where an international registration designating the Union is found to be ineligible for protection pursuant to Article 28(4) or Article 37(1) of this Regulation for all or any part of the goods and services for which it has been registered by the International Bureau, the Office shall issue an *ex officio* provisional notification of refusal to the International Bureau, in accordance with Article 5(1) and (2) of the Madrid Protocol.

3. Where the holder of an international registration is obliged to be represented before the Office pursuant to Article 92(2), the notification referred to in paragraph 2 of this Article shall contain an invitation to appoint a representative within the meaning of Article 93(1).

4. The notification of provisional refusal shall state the reasons on which it is based, and shall specify a time period by which the holder of the international registration may submit his observations and, if appropriate, shall appoint a representative. The time period shall start on the day on which the Office issues the provisional refusal.

5. Where the Office finds that the international application designating the Union does not contain the indication of a second language pursuant to Article 161b of this Regulation, the Office shall issue an *ex officio* provisional notification of refusal to the International Bureau pursuant to Article 5(1) and (2) of the Madrid Protocol.

6. Where the holder of an international registration fails to overcome the ground for refusing protection within the time limit or, if appropriate, to appoint a representative or to indicate a second language, the Office shall refuse the protection in whole or for part of the goods and services for which the international registration is registered. The refusal of protection shall take the place of a refusal of an EU trade mark application. The decision shall be subject to appeal in accordance with Articles 58 to 65.

7. Where, as of the start of the opposition period referred to in Article 156(2), the Office has not issued an *ex officio* provisional notification of refusal pursuant to paragraph 2 of this Article, it shall send a statement to the International Bureau, indicating that the examination of absolute grounds of refusal pursuant to Article 37 has been completed but that the international registration is still subject to oppositions or observations of third parties. This interim statement shall be without prejudice to the right of the Office to re-open the examination of absolute grounds on its own initiative any time before the final statement of grant of protection has been issued.

8. The Commission shall adopt implementing acts specifying the details to be contained in the notification of *ex officio* provisional refusal of protection to be sent to the International Bureau and in the final communications to be sent to the International Bureau on the final grant or refusal of protection. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

▼B

(132) The following article is inserted:

'Article 154a

Collective and certification marks

1. Where an international registration is based on a basic application or basic registration relating to a collective mark, certification mark or guarantee mark, the international registration designating the Union shall be dealt with as an EU collective mark or as an EU certification mark, whichever is applicable.

2. The holder of the international registration shall submit the regulations governing the use of the mark, as provided for in Articles 67 and 74b, directly to the Office within two months of the date on which the International Bureau notifies the international registration to the Office.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the details of the procedure concerning international registrations based on a basic application or basic registration relating to a collective mark, certification mark or guarantee mark.'.

(133) Article 155 is amended as follows:

(a) in paragraph 1, the following clause is added:

'provided that a request for a search report, pursuant to Article 38(1), is made to the Office within one month of the date of notification.';

(b) in paragraph 2, the following clause is added:

'provided that a request for a search report, pursuant to Article 38(2), is made to the Office within one month of the date of notification and the search fee is paid within the same period.';

(c) in paragraph 4, the following sentence is added:

'This shall apply whether or not the holder of the international registration has requested to receive the EU search report, unless the proprietor of an earlier registration or application requests not to receive the notification.'.

(134) Article 156 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Notice of opposition shall be filed within a period of three months which shall begin one month following the date of the publication pursuant to Article 152(1). The opposition shall not be considered as duly entered until the opposition fee has been paid.';

(b) paragraph 4 is replaced by the following:

'4. The Commission shall be empowered to adopt delegated acts in accordance with Article 163a specifying the procedure for the filing and examination of an opposition, including the necessary communications to be made to the International Bureau.'.

▼B

(135) In Article 158, the following paragraphs are added:

‘3. Where pursuant to Article 57 or Article 100 of this Regulation and this Article, the effects of an international registration designating the Union have been declared invalid by means of a final decision, the Office shall notify the International Bureau in accordance with Article 5(6) of the Madrid Protocol.

4. The Commission shall adopt implementing acts specifying the details to be contained in the notification to be made to the International Bureau pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).’.

(136) The following articles are inserted:

‘Article 158a

Legal effect of registration of transfers

The recordal of a change in the ownership of an international registration on the International Register shall have the same effect as the entry of a transfer in the Register pursuant to Article 17.

Article 158b

Legal effect of registration of licences and other rights

The recordal of a licence or a restriction of the holder's right of disposal in respect of an international registration in the International Register shall have the same effect as the registration of a right *in rem*, a levy of execution, insolvency proceedings or a licence in the Register pursuant to Articles 19, 20, 21 and 22 respectively.

Article 158c

Examination of requests for registration of transfers, licences or restrictions of a holder's right of disposal

The Office shall transmit requests to register a change in ownership, a licence or a restriction of the holder's right of disposal, the amendment or cancellation of a licence or the removal of a restriction of the holder's right of disposal which have been filed with it to the International Bureau, if accompanied by appropriate proof of the transfer, licence, or the restriction of the right of disposal, or by proof that the licence no longer exists or that it has been amended, or that the restriction of the right of disposal has been removed.’.

(137) Article 159 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) into a designation of a Member State party to the Madrid Protocol, provided that on the date when conversion was requested it was possible to have designated that Member State directly under the Madrid Protocol. Articles 112, 113 and 114 of this Regulation shall apply.’;

▼B

(b) paragraph 2 is replaced by the following:

‘2. The national trade mark application or the designation of a Member State party to the Madrid Protocol resulting from the conversion of the designation of the Union through an international registration shall enjoy, in respect of the Member State concerned, the date of the international registration pursuant to Article 3(4) of the Madrid Protocol or the date of the extension to the Union pursuant to Article 3*ter*(2) of the Madrid Protocol, if the latter was made subsequent to the international registration, or the date of priority of that registration and, where appropriate, the seniority of a trade mark of that State claimed under Article 153 of this Regulation.’;

(c) the following paragraphs are added:

‘4. The request for conversion of an international registration designating the Union into a national trade mark application shall include the information and indications referred to in Article 113(1).

5. Where conversion is requested pursuant to this Article and Article 112(5) of this Regulation following a failure to renew the international registration, the request referred to in paragraph 4 of this Article shall contain an indication to that effect and the date on which the protection expired. The period of three months provided for in Article 112(5) of this Regulation shall begin to run on the day following the last day on which the renewal may still be effected pursuant to Article 7(4) of the Madrid Protocol.

6. Article 113(3) and (5) shall apply to the request for conversion referred to in paragraph 4 of this Article *mutatis mutandis*.

7. The request for conversion of an international registration designating the Union into a designation of a Member State party to the Madrid Protocol shall include the indications and elements referred to in paragraphs 4 and 5.

8. Article 113(3) shall apply to the request for conversion referred to in paragraph 7 of this Article *mutatis mutandis*. The Office shall also reject the request for conversion where the conditions to designate the Member State which is a party to the Madrid Protocol or to the Madrid Agreement were fulfilled neither on the date of the designation of the Union nor on the date on which the application for conversion was received or, pursuant to the last sentence of Article 113(1), is deemed to have been received by the Office.

9. Where the request for conversion referred to in paragraph 7 complies with the requirements of this Regulation and rules adopted pursuant to it, the Office shall transmit the request without delay to the International Bureau. The Office shall inform the holder of the international registration of the date of transmission.

▼B

10. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in the requests for conversion referred to in paragraphs 4 and 7;

(b) the details to be contained in the publication of the requests for conversion pursuant to paragraph 3.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(138) In Article 161, the following paragraphs are added:

'3. In order to be considered a transformation of an international registration which has been cancelled at the request of the office of origin by the International Bureau pursuant to Article 9*quinquies* of the Madrid Protocol, an EU trade mark application shall contain an indication to that effect. That indication shall be made when filing the application.

4. Where, in the course of the examination in accordance with Article 36(1)(b), the Office finds that the application was not filed within three months of the date on which the international registration was cancelled by the International Bureau; or the goods and services for which the EU trade mark is to be registered are not contained in the list of goods and services for which the international registration was registered in respect of the Union, the Office shall invite the applicant to remedy the deficiencies.

5. If the deficiencies referred to in paragraph 4 are not remedied within the time period specified by the Office, the right to the date of the international registration or the territorial extension and, if any, of the priority of the international registration shall be lost.

6. The Commission shall adopt implementing acts specifying the details to be contained in an application for transformation pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 163(2).'.

(139) The following articles are inserted:

'Article 161a

Communication with the International Bureau

Communication with the International Bureau shall be in a manner and format agreed on between the International Bureau and the Office, and preferably be by electronic means. Any reference to forms shall be construed as including forms made available in electronic format.

Article 161b

Use of languages

For the purpose of applying this Regulation, and rules adopted pursuant to it, to international registrations designating the Union, the language of filing of the international application shall be the language of the proceedings within the meaning of Article 119(4), and the second language indicated in the international application shall be the second language within the meaning of Article 119(3).'.

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(140) Article 162 is deleted.

(141) Article 163 is replaced by the following:

'Article 163

Committee Procedure

1. The Commission shall be assisted by a Committee on Implementation Rules. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).'.

(142) The following article is inserted:

'Article 163a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 42a, Article 43(3), Articles 57a and 65a, Article 77(4), 78(6), 79(5), 79b(2), 79c(5), 80(3), and 82a(3), Articles 93a and 136b, and Articles 154a(3) and 156(4) shall be conferred on the Commission for an indeterminate period of time from 23 March 2016. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.

3. The delegation of power referred to in paragraph 2 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 42a, Article 43(3), Articles 57a and 65a, Articles 77(4), 78(6), 79(5), 79b(2), 79c(5), 80(3), and 82a(3), Articles 93a and 136b, and Articles 154a(3) and 156(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of

▼B

that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.'.

(143) Article 164 is deleted.

(144) The following article is inserted:

'Article 165a

Evaluation and review

1. By 24 March 2021, and every five years thereafter, the Commission shall evaluate the implementation of this Regulation.

2. The evaluation shall review the legal framework for cooperation between the Office and the central industrial property offices of the Member States and the Benelux Office for Intellectual Property, paying particular attention to the financing mechanism laid down in Article 123c. The evaluation shall further assess the impact, effectiveness and efficiency of the Office and its working practices. The evaluation shall, in particular, address the possible need to modify the mandate of the Office, and the financial implications of any such modification.

3. The Commission shall forward the evaluation report together with its conclusions drawn on the basis of that report to the European Parliament, the Council and the Management Board. The findings of the evaluation shall be made public.

4. On the occasion of every second evaluation, there shall be an assessment of the results achieved by the Office having regard to its objectives, mandate and tasks.';

(145) The Annex set out in Annex I to this Regulation is inserted.

Article 2

Regulation (EC) No 2868/95 is amended as follows:

(1) Rule 1(3) is deleted;

(2) Rule 2 is deleted;

(3) Rule 4 is deleted;

(4) Rule 5 is deleted;

(5) Rule 5a is deleted;

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(6) Rule 9(3) is amended as follows:

(a) in point (a), the words ‘Rules 1, 2 and 3’ are replaced by the words ‘Rules 1 and 3 and Article 28 of the Regulation’;

(b) in point (b), the reference to ‘Rule 4(b)’ is replaced by a reference to ‘Article 26(2) of the Regulation’;

▼C2

(6a) In paragraph 1 of Rule 10, the reference to ‘Rule 4(c)’ is replaced by a reference to ‘Article 38(2) of the Regulation’;

▼B

(7) Rule 11(2) is deleted;

(8) Rule 12(k) is deleted;

▼C2

(8a) Rule 23 is deleted;

(8b) In paragraph 1 of Rule 24, the reference to ‘Rule 84(2)’ is replaced by a reference to ‘Article 87(2) of the Regulation’;

▼B

(9) Title IV is deleted;

▼C2

(9a) In Rule 47, the reference to ‘Rule 84(2)’ is replaced by a reference to ‘Article 87(2) of the Regulation’;

▼B

(10) In paragraph 2 of Rule 62, the words ‘in the Community’ are replaced by ‘in the European Economic Area’;

(11) In paragraph 1 of Rule 71, the words ‘within the Community’ are replaced by ‘within the European Economic Area’;

(12) Rule 76(2) is deleted;

(13) Rule 78 is amended as follows:

(a) in point (c) of paragraph 2, the words ‘in the Community’ are replaced by ‘in the European Economic Area’;

(b) in paragraphs (2)(b), (3) and (5), the words ‘Member State’ and ‘Member States’ are replaced by ‘Member State of the European Economic Area’ and ‘Member States of the European Economic Area’ respectively;

(14) Rule 84 is deleted;

(15) Rule 87 is deleted;

(16) In Title XI, Part K is deleted;

▼C2

(16a) In paragraph 1 of Rule 93, the phrase ‘, otherwise Rule 89 shall not apply’ is deleted;

(16b) In paragraph 3 of Rule 93, the words ‘and Rule 88’ are deleted;

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(17) Rule 112(2) is deleted;

▼C2

(17a) In paragraph 6 of Rule 115, the reference to paragraph 2 of Rule 112 is deleted;

(17b) In paragraph 3, second subparagraph, of Rule 121, the reference to paragraph 2 of Rule 112 is deleted.

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Article 3

Regulation (EC) No 2869/95 is repealed.

References to the repealed Regulation shall be construed as references to Regulation (EC) No 207/2009 and shall be read in accordance with the correlation table set out in Annex II.

Article 4

This Regulation shall enter into force on 23 March 2016.

▼C3

The following points of Article 1 of this Regulation shall apply from 1 October 2017:

points (8); (18) with the exception of paragraph 5b of Article 17 of Regulation (EC) No 207/2009; (19); (20); (21); (22); (23); (24); (26) in so far as it relates to paragraph 1, point (d), and paragraph 3 of Article 26 of Regulation (EC) No 207/2009; (29); (30) in so far it relates to paragraphs 1 and 3 of Article 30 of Regulation (EC) No 207/2009; (31) in so far as it relates to paragraphs 1 and 2 of Article 33 of Regulation (EC) No 207/2009; (32) in so far as it relates to paragraphs 1a, 4 and 6 of Article 34 of Regulation (EC) No 207/2009; (33); (34); (35) in so far as it relates to paragraph 3 of Article 37 of Regulation (EC) No 207/2009; (37) in so far as it relates to paragraph 1, second sentence, and paragraphs 3 and 4 of Article 39 of Regulation (EC) No 207/2009; (43) in so far as it relates to paragraphs 2, 3, 4a and 8 of Article 44 of Regulation (EC) No 207/2009; (46) in so far as it relates to paragraph 5, third sentence of Article 48 of Regulation (EC) No 207/2009; (47) in so far as it relates to paragraph 1, first subparagraph, and paragraphs 2 to 5 of Article 48a of Regulation (EC) No 207/2009; (48) in so far as it relates to paragraph 3 of Article 49 of Regulation (EC) No 207/2009; (49) in so far as it relates to paragraphs 2, 3 and 4 of Article 50 of Regulation (EC) No 207/2009; (61); (62); (63); (64) in so far as it relates to paragraph 1 of Article 67 of Regulation (EC) No 207/2009; (67) with the exception of paragraph 3 of Article 74b of Regulation (EC) No 207/2009; (68); (71) in so far as it relates to paragraphs 3 and 5 of Article 78 of Regulation (EC) No 207/2009; (72) in so far as it relates to paragraphs 1 to 4 of Article 79 of Regulation (EC) No 207/2009; (73) with the exception of paragraph 2 of Article 79b of Regulation (EC) No 207/2009, and paragraph 5 of Article 79c of

▼C3

Regulation (EC) No 207/2009; (74) in so far as it relates to paragraphs 1, 2 and 4 of Article 80 of Regulation (EC) No 207/2009; (75) in so far as it relates to paragraph 2 of Article 82 of Regulation (EC) No 207/2009; (76) in so far as it relates to paragraphs 1 and 2 of Article 82a of Regulation (EC) No 207/2009; (77), (78) in so far as it relates to paragraphs 1, 6 and 7 of Article 85 of Regulation (EC) No 207/2009; (80) in so far as it relates to point (m) of paragraph 2 and point (y) of paragraph 3 of Article 87 of Regulation (EC) No 207/2009; (84) in so far as it relates to paragraphs 1, 2 and 3 of Article 89 of Regulation (EC) No 207/2009; (97) with the exception of paragraph 6 of Article 113 of Regulation (EC) No 207/2009; (98); (102) in so far as it relates to paragraphs 5, 5a, 6, 8 and 9 of Article 119 of Regulation (EC) No 207/2009; (103); (108) in so far as it relates to Article 128(4)(o) of Regulation (EC) No 207/2009; (111) in so far as it relates to the third sentence in paragraph 2 of Article 132 of Regulation (EC) No 207/2009; (113); (125); (126) in so far as it relates to paragraphs 1 and 3 to 8 of Article 147 of Regulation (EC) No 207/2009; (127) in so far as it relates to paragraph 1 of Article 148a of Regulation (EC) No 207/2009; (128) in so far as it relates to paragraphs 1, 3 and 4 of Article 149 of Regulation (EC) No 207/2009; (129) in so far as it relates to Article 153 of Regulation (EC) No 207/2009; (130) in so far as it relates to paragraphs 1 to 5 of Article 153a of Regulation (EC) No 207/2009; (132) with the exception of paragraph 3 of Article 154a of Regulation (EC) No 207/2009; (135) in so far as it relates to paragraph 3 of Article 158 of Regulation (EC) No 207/2009; (136); (137) in so far as it relates to paragraphs 4 to 9 of Article 159 of Regulation (EC) No 207/2009; (138) in so far as it relates to paragraphs 3 to 5 of Article 161 of Regulation (EC) No 207/2009; and (139).

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Point (108) of Article 1 of this Regulation, ►C1 in so far as it relates to Articles 124(1)(h) and 128(4)(n) of Regulation (EC) No 207/2009, shall apply from the date on which the decision provided for in Article 124(2) of Regulation (EC) No 207/2009 enters into force, or ►C3 12 months following the date specified in the first paragraph of this Article, ◄ whichever is earlier. Until that date, the powers referred to in Article 124(1)(h) ◄ of Regulation (EC) No 207/2009 shall be exercised by the Executive Director.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

▼B

ANNEX I

The following annex is inserted:

'ANNEX -I

AMOUNT OF FEES

A. The fees to be paid to the Office under this Regulation shall be as follows (in EUR):

1. Basic fee for the application for an individual EU trade mark (Article 26(2)):

   EUR 1 000

2. Basic fee for the application for an individual EU trade mark by electronic means (Article 26(2)):

   EUR 850

3. Fee for the second class of goods and services for an individual EU trade mark (Article 26(2)):

   EUR 50

4. Fee for each class of goods and services exceeding two for an individual EU trade mark (Article 26(2)):

   EUR 150

5. Basic fee for the application for an EU collective mark or an EU certification mark (Article 26(2) and Article 66(3) or Article 74a(3)):

   EUR 1 800

6. Basic fee for the application for an EU collective mark or an EU certification mark by electronic means (Article 26(2) and Article 66(3) or Article 74a(3)):

   EUR 1 500

7. Fee for the second class of goods and services for an EU collective mark or an EU certification mark: (Article 26(2) and Article 66(3) or Article 74a(3)):

   EUR 50

8. Fee for each class of goods and services exceeding two for an EU collective mark or an EU certification mark (Article 26(2) and 66(3) or Article 74a(3)):

   EUR 150

9. Search fee for an EU trade mark application (Article 38(2)) or for an international registration designating the Union (Article 38(2) and Article 155(2)): EUR 12 multiplied by the number of central industrial property offices referred to in Article 38(2); that amount, and the subsequent changes, shall be published by the Office in the Official Journal of the Office.

10. Opposition fee (Article 41(3)):

    EUR 320

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11. Basic fee for the renewal of an individual EU trade mark (Article 47(3)):

    EUR 1 000

12. Basic fee for the renewal of an individual EU trade mark by electronic means (Article 47(3)):

    EUR 850

13. Fee for the renewal of the second class of goods and services for an individual EU trade mark (Article 47(3)):

    EUR 50

14. Fee for the renewal of each class of goods and services exceeding two for an individual EU trade mark (Article 47(3)):

    EUR 150

15. Basic fee for the renewal of an EU collective mark or an EU certification mark (Article 47(3) and Article 66(3) or Article 74a(3):

    EUR 1 800

16. Basic fee for the renewal of an EU collective mark or an EU certification mark by electronic means (Article 47(3) and Article 66(3) or Article 74a(3)):

    EUR 1 500

17. Fee for the renewal of the second class of goods and services for an EU collective mark or an EU certification mark (Article 47(3) and Article 66(3) or Article 74a(3)):

    EUR 50

18. Fee for the renewal of each class of goods and services exceeding two for an EU collective mark or an EU certification mark (Article 47(3) and Article 66(3) or Article 74a(3)):

    EUR 150

19. Additional fee for the late payment of the renewal fee or the late submission of the request for renewal (Article 47(3)): 25 % of the belated renewal fee, subject to a maximum of EUR 1 500

20. Fee for the application for revocation or for a declaration of invalidity (Article 56(2)):

    EUR 630

21. Appeal fee (Article 60(1)):

    EUR 720

22. Fee for the application of *restitutio in integrum* (Article 81(3)):

    EUR 200

23. Fee for the application for the conversion of an EU trade mark application or an EU trade mark (Article 113(1), also in conjunction with Article 159(1)):

    (a) into a national trade mark application;

    (b) into a designation of Member States under the Madrid Protocol:

        EUR 200

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24. Fee for continuation of proceedings (Article 82(1)):

    EUR 400

25. Fee for the declaration of division of a registered EU trade mark (Article 49(4) or an application for an EU trade mark (Article 44(4)):

    EUR 250

26. Fee for the application for the registration of a licence or another right in respect of a registered EU trade mark (before 1 October 2017, Rule 33(2) of Regulation (EC) No 2868/95; and from that date, Article 22a(2)) or an application for an EU trade mark (before 1 October 2017, Rule 33(2) of Regulation (EC) No 2868/95; and from that date, Article 22a(2)):

    (a) grant of a licence;

    (b) transfer of a licence;

    (c) creation of a right *in rem*;

    (d) transfer of a right *in rem*;

    (e) levy of execution:

        EUR 200 per registration, but where multiple requests are submitted in the same application or at the same time, not to exceed a total of EUR 1 000

27. Fee for the cancellation of the registration of a licence or other right (before 1 October 2017, Rule 35(3) of Regulation (EC) No 2868/95; and from that date, Article 24a(3)): EUR 200 per cancellation, but where multiple requests are submitted in the same application or at the same time, not to exceed a total of EUR 1 000

28. Fee for the alteration of a registered EU trade mark (Article 48(4)):

    EUR 200

29. Fee for the issue of a copy of the application for an EU trade mark (Article 88(7)), a copy of the certificate of registration (Article (45(2)), or an extract from the register (Article 87(7)):

    (a) uncertified copy or extract:

        EUR 10

    (b) certified copy or extract:

        EUR 30

30. Fee for the inspection of the files (Article 88(6)):

    EUR 30

31. Fee for the issue of copies of file documents (Article 88(7)):

    (a) uncertified copy:

        EUR 10

    (b) certified copy:

        EUR 30

▼B

plus per page, exceeding 10

EUR 1

32. Fee for the communication of information in a file (Article 88(9)):

EUR 10

33. Fee for the review of the determination of the procedural costs to be refunded (before 1 October 2017, Rule 94(4) of Regulation (EC) No 2868/95; and from that date, Article 85(7)):

EUR 100

34. Fee for the filing of an international application at the Office (before 1 October 2017, Article 147(5); and from that date, Article 147(4)):

EUR 300

B. Fees to be paid to the International Bureau

I. Individual fee for an international registration designating the Union

1. The applicant for an international registration designating the Union shall be required to pay to the International Bureau an individual fee for the designation of the Union in accordance with Article 8(7) of the Madrid Protocol.

2. The holder of an international registration who files a request for territorial extension designating the Union made subsequent to the international registration shall be required to pay to the International Bureau an individual fee for the designation of the Union in accordance with Article 8(7) of the Madrid Protocol.

3. The amount of the fee under B.I.1 or B.I.2 shall be the equivalent in Swiss Francs, as established by the Director-General of the WIPO pursuant to Rule 35(2) of the Common Regulations under the Madrid Agreement and Protocol, of the following amounts:

(a) for an individual trade mark: EUR 820 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods and services contained in the international registration exceeding two;

(b) for a collective mark or a certification mark: EUR 1 400 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods or services exceeding two.

II. Individual fee for a renewal of an international registration designating the Union

1. The holder of an international registration designating the Union shall be required to pay to the International Bureau, as a part of the fees for a renewal of the international registration, an individual fee for the designation of the Union in accordance with Article 8(7) of the Madrid Protocol.

2. The amount of the fee referred to in B.II.1 shall be the equivalent in Swiss Francs, as established by the Director-General of the WIPO pursuant to Rule 35(2) of the Common Regulations under the Madrid Agreement and Protocol, of the following amounts:

(a) for an individual trade mark: EUR 820 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods and services contained in the international registration exceeding two;

(b) for a collective mark or a certification mark: EUR 1 400 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods and services contained in the international registration exceeding two.’

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ANNEX II

CORRELATION TABLE

Regulation (EC) No 2869/95	Regulation (EC) No 207/2009
Article 1	—
Article 2	Annex -I, Part A, points 1 to 34
Article 3	Article 144(1)
Article 4	Article 144(2)
Article 5(1)	Article 144a(1), first subparagraph
Article 5(2)	Article 144a(1), second subparagraph
Article 5(3)	Article 144a(1), third subparagraph
Article 6	Article 144a(1), fourth subparagraph
Article 7(1)	Article 144a(2)
Article 7(2)	Article 144a(3)
Article 8	Article 144b
Article 9	Article 144c(1) and (2)
Article 10	Article 144c(4)
Article 11	Annex -I, Part B(I), points 1 to 3
Article 12	Annex -I, Part B(II), points 1 and 2
Article 13	—
Article 14	—
Article 15	—