



Council of the
European Union

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CODIF 4

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations

Subject: Outcome of proceedings of the Working Party on Codification of Legislation
- Proposal for a Regulation of the European Parliament and of the Council
on the European Union trade mark (codification)
COM(2016) 702 final, 2016/0345 (COD)

1. The Commission Proposal for a codification of the Regulation of the European Parliament and of the Council on the European Union Trade mark (COM(2016) 702 final - 2016/0345 (COD)) was circulated to delegations on 8 November 2016 by document ST 14137/16 + ADD1 CODIF 40 CODEC 1596 MI 686 PI 126. The horizontal comments submitted by delegations and the position of the Commission and/or of the Chair of the Working Party on Codification of Legislation on those comments were summarized in document WK 615/2017 INIT, circulated for written consultation to delegations on 20 January 2016. A draft outcome of proceedings reflecting the result of the written consultation was circulated to delegations on 15 February 2017 by document WK 1708/2017 INIT. This outcome of proceedings lists the horizontal changes to be made to the master-copy of the codification proposal, as they were finally agreed by delegations and supported by the Commission.
2. Horizontal changes to be made to the master-copy (EN):
 - 2.1. Article 111(5), second sentence : replace "... for the purposes laid down in paragraph 9" by "for the purposes laid down in paragraph 8".

2.2. Article 138, paragraph 3:

instead of:

" The proprietor of the →₁ EU trade mark ← shall not be entitled to oppose use of the right referred to in paragraph 1 even though that right may no longer be invoked against the →₁ EU trade mark ←shall."

read as follows:

"The proprietor of the →₁ EU trade mark ← shall not be entitled to oppose use of the right referred to in paragraph 1 even though that right may no longer be invoked against the →₁ EU trade mark ←."

2.3. Article 176, paragraph 1:

instead of:

" Not later than 31 March in each year the →₁ Executive Director ← shall transmit to the Commission, the European Parliament, the Budget Committee and the Court of Auditors accounts of the Office's total revenue and expenditure for the preceding financial year. The Court of Auditors shall examine them in accordance with Article 248 ☒ TFEU ☒."

read as follows:

" Not later than 31 March in each year the →₁ Executive Director ← shall transmit to the Commission, the European Parliament, the Budget Committee and the Court of Auditors accounts of the Office's total revenue and expenditure for the preceding financial year. The Court of Auditors shall examine them in accordance with Article 287 ☒ TFEU ☒."

2.4. The order of paragraphs 4a and 5 of Article 8 of Regulation (EC) No 207/2009 should be inverted, so that the current paragraph 4a becomes paragraph 6 and current paragraph 5 is not renumbered. This change was requested and justified by the *European Union Intellectual Property Office*.

3. The Austrian and German delegations identified a discrepancy in Article 50(3) of Regulation 207/2009, as amended by Regulation 2015/2424, between the German text, on one hand, and at least the English and French texts, on the other hand. The discrepancy is to be found in the first and second sentences of Article 50(3) and consists in using two different terms in English ("prove" and "satisfy [the Office]") and French ("prouver" and "confirmer [à l'Office]") for what is translated by one term in German ("glaubhaft machen"). It is necessary to establish where the mistake lies and possibly proceed with corrigenda of the language versions concerned. However, given the time constraints imposed by the forthcoming adoption of Commission delegated act in the field of Union trade mark, which for the sake of legal certainty would need to refer to the codified version of the trade mark Regulation, the completion of the procedure for corrigenda, which is separate from the codification procedure, will not be possible before the adoption of the codification. Therefore, the

codification process will be first completed, and only then any corrigenda to the new codified act which may be necessary will be published. Therefore, the discrepancy between the EN master-copy of the codification and the German version (and possibly other texts following German) will have to be kept in the new codified act for the time being.

4. The following delegations submitted language-related comments (in some cases, initial and further comments) which all will be dealt with by the lawyer-linguists at the stage of the legal-linguistic revision: **DE, AT, FI, CS, SK** and **PL**.

5. The opinion of the Consultative Working Party of Legal Services was circulated to delegations on 10 January 2017 as doc. ST 5012/17. The analysis of the three Legal Services confirms that the proposal is a straightforward codification of existing texts, without any change in the substance.
