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## DECLASSIFICATION

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dated: 4 January 2001

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Subject: Appointment by the Council of two additional members of the Boards of Appeal of the Office for Harmonisation in the Internal Market (trade marks and designs)

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 4 January 2001**

**5054/01**

**RESTREINT**

**PI 2**

**NOTE**

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from : General Secretariat of the Council  
to : Permanent Representatives Committee (Part 1)

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No. prev. doc. : 5039/01 PI 1 RESTREINT + ADD 1

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Subject : Appointment by the Council of two additional members of the Boards of Appeal of the Office for Harmonisation in the Internal Market (trade marks and designs)

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**A. INTRODUCTION**

1. Article 131(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark <sup>1</sup> provides that "the members, including the chairmen, of the Boards of Appeal shall be appointed, in accordance with the procedure laid down in Article 120, for the appointment of the President of the Office, for a term of five years". Article 120(1) provides that "the President of the Office shall be appointed by the Council from a list of at most three candidates, which shall be prepared by the Administrative Board".
2. On 23 October 1995 the Council appointed the chairmen and members of three Boards of Appeal in accordance with the procedure described above <sup>2</sup>.

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<sup>1</sup> OJ L 11, 14.1.1994.

<sup>2</sup> OJ C 314, 25.11.1995, pp. 3, 4 and 5.

After a member of one Board of Appeal resigned, the Council appointed another member on 11 May 1999 in accordance with the same procedure <sup>3</sup>.

On 18 September 2000 the Council appointed the chairman and one member of the First Board of Appeal and the chairman and members of the Fourth Board of Appeal in accordance with the same procedure <sup>4</sup>.

3. Under cover of a letter dated 19 December 2000 <sup>5</sup>, the Chairman of the Administrative Board of the Office for Harmonisation in the Internal Market (trade marks and designs) sent the Council the lists of candidates drawn up by the Board for the appointment of two additional members of the Boards of Appeal.

The lists of candidates appear in Annex II to 5039/01 PI 1 RESTREINT and the candidates' curricula vitae appear in 5039/01 PI 1 RESTREINT ADD 1.

## **B. PROCEDURE**

4. Under Article 205(1) of the Treaty <sup>6</sup>, a **simple majority** is required for these appointments and any related procedural decisions.
5. Since, for the **first post** of additional member of the Boards of Appeal, the Administrative Board has proposed only one candidate and since the Council's choice is confined to the candidate(s) presented by the Administrative Board, the Permanent Representatives Committee could recommend that the Council appoint this candidate.

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<sup>3</sup> OJ C 146, 27.5.1995, p. 1.

<sup>4</sup> OJ C 277, 29.9.2000, pp. 1 and 2.

<sup>5</sup> 5039/01 PI 1 RESTREINT + ADD 1.

<sup>6</sup> "Save as otherwise provided in this Treaty, the Council shall act by a majority of its members."

6. For the **second post** of additional member of the Boards of Appeal the Administrative Board has proposed three candidates. As for previous appointments to posts at the Office for which the Administrative Board proposed more than one candidate, it is suggested that the procedure be as follows:

- the members of the Committee will be given an opportunity to express their views on the various candidates;
- the Committee will vote by secret ballot, Member States' delegations each having one vote and each Member State having the option of abstaining;
- candidates' names will appear in alphabetical order on each ballot paper;
- if at the first count there is a consensus or a simple majority (at least eight votes) in favour of one candidate, the Committee will recommend that the Council appoint him or her;
- if at the first count there is not a consensus or a simple majority (at least eight votes) in favour of one candidate, the candidate who has obtained the lowest number of votes will not be taken into account for the following rounds; however, if the two candidates who have not received the highest number of votes both receive the same number of votes, all three candidates will participate in the next round; this procedure will continue until one candidate receives eight votes or more.

#### **C. START OF TERM OF OFFICE**

7. It is suggested that the Council leave it to the Administrative Board to set the date on which the term of office of each of the two additional members will start, as was done at the time of previous appointments to the Office's Boards of Appeal.

#### **D. PUBLICATION OF THE COUNCIL DECISIONS**

8. It is suggested that the Council Decisions appointing the two additional members of the Boards of Appeal be published in the Official Journal of the European Communities, as in the case of previous appointments.

#### **E. CONCLUSIONS**

9. The Permanent Representatives Committee is invited to:
- approve the arrangements described in points 5 and 6 above;
  - in accordance with point 5, decide on the candidate whom it will recommend that the Council appoint to the first post of additional member of the Boards of Appeal;
  - in accordance with point 6, decide on the candidate whom it will recommend that the Council appoint to the second post of additional member of the Boards of Appeal;
  - agree that the starting date of the term of office of each of the two additional members of the Boards of Appeal will be set by the Administrative Board of the Office;
  - recommend that, at a forthcoming meeting, the Council decide:
    - = to appoint the candidates thus decided upon (a draft Decision for the purpose appears in the Annex hereto);
    - = to have the appointing Decisions published in the Official Journal of the European Communities.

Draft  
Council Decision  
of .....

appointing two additional members  
of the Boards of Appeal  
of the Office for Harmonisation in the Internal Market  
(trade marks and designs)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark <sup>7</sup>, and in particular Articles 120 and 131 thereof,

Having regard to the candidatures presented by the Administrative Board of the Office for Harmonisation in the Internal Market (trade marks and designs) on 19 December 2000,

HAS DECIDED AS FOLLOWS:

Article 1

....., born in ..... on ....., and ....., born in ..... on ....., are hereby appointed additional members of the Boards of Appeal of the Office for Harmonisation in the Internal Market (trade marks and designs) for a period of five years.

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<sup>7</sup> OJ L 11, 14.1.1994, p. 1.

Article 2

The date on which the five-year period referred to in Article 1 will commence shall be determined by the Administrative Board of the Office for Harmonisation in the Internal Market (trade marks and designs).

Done at .....,

For the Council

The President

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