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NOTE

From: Presidency

To: Permanent Representatives Committee

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8065/13 PI 51 CODEC 710 + ADD1 + ADD2

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 207/2009 on the Community trade mark
and
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL to approximate the laws of the Member States relating to trade marks (Recast)
- Preparation for the next informal trilogue

I. INTRODUCTION

1. Based on the negotiating mandate received by the Permanent Representatives' Committee in July 2014, the Presidency participated on 12 November 2014 in the first informal trilogue on the trade marks package, aimed at exploring the possibility of an early second reading agreement¹.

¹ The Permanent Representatives' Committee was debriefed by the Presidency on 14 November.

2. During that meeting, it became clear that in order to be able to pursue meaningful negotiations with the European Parliament on an number of issues (analysed below) the Presidency would need additional leeway and flexibility from the Permanent Representatives' Committee.

II. KEY OUTSTANDING ISSUES

A. Delegated acts

1. The Commission proposal for the Regulation contains a large number of provisions delegating powers to the Commission through delegated acts.
2. The Council has replaced all of these provisions by inserting substantive provisions in the Regulation itself and by having recourse to implementing acts where deemed necessary.
3. Following a case-by-case scrutiny, the European Parliament has maintained a part of the delegated acts in the text. It has made clear during our discussions that, while it can accept the Council's approach where this appears justified, it will resist the systematic removal of all delegated acts on the grounds that such an approach would have the effect of depriving the relevant Treaty provisions of their effect. It has called therefore for a pragmatic approach, whereby the co-legislators would be called upon to decide on a case-by-case basis on what would better be regulated through delegated acts.
4. The Presidency proposes to take this matter forward exploring the pragmatic, case-by-case approach suggested by the European Parliament.

B. Financial aspects, in particular compensation scheme

1. The Council's position provides for a minimum of 5% of OHIM's revenue to be paid by OHIM to Member States as compensation for the costs incurred by their authorities for the promotion and enforcement of the EU trade mark system.
2. The European Parliament opposes such a scheme, which it perceives as creating a dangerous precedent of having to compensate Member States for their contribution in the application and enforcement of EU law. The European Parliament also holds the view that such a scheme is not covered by the legal basis used for the Regulation, i.e. Art. 118, first paragraph TFEU. Finally, the European Parliament rejects the proposed provision earmarking amounts of national budgets for national industrial property offices.
3. Furthermore, the Council has proposed the creation of a legal basis in the Regulation to cover the reimbursement of EU and/or national contributions to the European School of Alicante out of OHIM's capital.
4. The European Parliament rejects this proposal on both political and legal grounds.
5. The Presidency therefore draws delegations' attention to the need to explore possible ways of addressing the European Parliament's concerns mentioned above.

C. OHIM governance

1. The Commission proposes quite an extensive application of the Common approach on decentralised agencies to OHIM. This would not only imply the change of OHIM's name (as well as the names of OHIM's internal bodies) but also the adaptation of procedures for the selection, appointment and removal of the President (and Vice-presidents) of OHIM.
2. The Council has expressed a clear preference for preserving overall the existing arrangements in OHIM's governance.
3. The European Parliament follows closely the Commission's approach and refuses to accept the argument that OHIM constitutes a specific case when it comes to the application of the principles enshrined in the above mentioned Common approach.
4. The Presidency invites delegations to indicate whether there is scope for addressing some of the European Parliament's concerns, while preserving the essential elements of the position agreed within the Council on this issue.

III. CONCLUSION

The Permanent Representatives' Committee is invited to consider the above mentioned issues and to provide the Presidency with guidance in view of the forthcoming second informal trilogue.
