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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Regulation of the European Parliament and of the Council 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) (first reading)

- Adoption
- a) of the Council's position
- b) of the statement of the Council's reasons

= Statements

Statement by the Commission

The Commission takes note of the agreement reached between the European Parliament and the Council on the reform of the EU trade mark system. In view of the added value of this reform for the users of the EU trade mark system, the Commission has decided to support it, as in balance, the overall agreement significantly improves the existing situation in particular in terms of substantive trade mark law. This is despite its concerns on certain budgetary aspects of the agreement.

The Commission regrets in particular that the co-legislators have been unable to agree on one of the key elements of its proposal concerning the budget of the OHIM: the automatic review of the level of the fees in case of significant recurrent surplus and the automatic transfer of such surplus to the EU budget. Indeed, while the level of the fees will be fixed in the EU trade mark regulation, the transfer of "substantive" surplus will remain submitted to the discretion of the Budget Committee of the OHIM (vote at 2/3 majority). The Commission recalls that such transfer would have taken place only after all types of use of the resources available as provided by the basic act have been satisfied, including the offsetting of central industrial property offices and other concerned authorities of Member States for the costs that they incur in ensuring the smooth functioning of the European Union Trade Mark System.

The Commission will continue to review the level of the fees charged by the OHIM in view of proposing to adjust them as closely as possible to the costs of the services provided to the industry and of preventing the accumulation of significant surpluses within the OHIM, in line with the rules applicable to all other agencies which have been agreed with the European Parliament and the Council.

The Commission stresses that fully self-financed agencies, such as the OHIM, as well as Institutions and bodies with budgetary autonomy financed outside the EU budget, should support the full cost of their staff, including the costs for the schooling of the children of their staff in the European schools. In line with the principle of administrative autonomy, the Commission will pursue all appropriate means to ensure that these agencies, Institutions and bodies effectively bear such costs or that they refund the EU budget of these costs.

The Commission stresses that, as regards the procedure of pre-selection and appointment of the Executive Director, any upcoming reform of OHIM should fully align with the principles of the Common Approach.

Statement by the Netherlands delegation

Although the Netherlands welcomes many elements of the proposed trademark reform package, which will make the new system more accessible, efficient and less costly, it wishes to express – again - our grave concerns regarding the proposed provisions on goods in transit (Article 10 paragraph 5 of the Directive and Article 9 paragraph 5 of the Regulation as well as their corresponding recitals).

These provisions will introduce the possibility to detain goods on account of possible infringement of a national or EU-trademark, where those goods are merely in transit through EU-territory.

The Netherlands believes that the proposed measure will put a disproportionate and unnecessary burden on holders of goods and an impediment to legitimate international trade, including for legitimate generic medicines. The Netherlands has had a negative experience in 2008 with detaining medicines in transit and does not want that to happen again.

Although the Netherlands supports the battle against counterfeiting as this undermines trade, IP-rights etc., the proposed measure for detaining goods in transit is unacceptable for The Netherlands. Against this background the Netherlands will abstain from voting on the trademark reform package.

Statement by the United Kingdom

The UK has always provided strong support for the package of EU trade mark reforms, which will deliver real benefits for trade mark users. However, we cannot support the Regulation since it includes a provision that enables the transfer of future surpluses accumulated from trade mark and design fees to the general EU budget. Research has suggested that IP rich industries contribute 39% of the EU's GDP, with trade marks a significant part of this. We must nurture and protect this contribution to retain our competitiveness: therefore we should not divert money which came from IP to other uses. It should stay in the system, for example supporting innovation or enforcement.