

COMMISSION OF THE EUROPEAN COMMUNITIES

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REVISED VERSION

Proposal for a
COUNCIL REGULATION

on fees payable to the Community trade mark office

(presented by the Commission)

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EXPLANATORY MEMORANDUM

I. Introduction

1. This proposal for a Council Regulation would give effect to Article 124 of the basic proposal for a regulation on the Community trade mark.

2. The Article 124 referred to states that regulations on fees are to be adopted by the Council by qualified majority, on a proposal from the Commission and after obtaining the opinion of the European Parliament, and lays down some guidelines for the content of such regulations and the level at which the fees payable to the Office are to be set. Paragraph 1 states that the fees regulations are to determine in particular the amounts of the fees and the way in which they are to be paid, and paragraph 2 states that the amounts of the fees are to be fixed in such manner that the Office's revenue covers its expenditure after a transitional period in which a subvention recorded in the budget of the European Communities would be paid to the Office in accordance with Article 120 of the Regulation.

3. The Commission does not feel that it is in a position at present to make proper proposals regarding fee rates. There will have to be an evaluation of the Office's expenditure before any decision can be taken regarding the rates of the fees and the amount of the subvention. Such an evaluation can itself be carried out with sufficient precision only once the Council has taken a decision on the proposals for a basic Regulation and its implementing Regulation which the Commission has laid before it, and has thus clearly established the rules governing the Office's activities, and in particular the responsibilities of its departments.

This proposal is thus confined to laying down the ways in which fees payable to the Office are to be set and collected. Article 2 of the proposal also sets out a list of the fees which are provided for in the proposals for a basic Regulation and an implementing Regulation.

4. Certain provisions of this proposal for a Regulation, particularly those governing methods of collecting fees are closely modelled on the corresponding rules laid down pursuant to the European Patent Convention. Specifically these are the "Rules relating to Fees" adopted by the Administrative Council of the European Patent Organization on 20 October 1977, with later amendments.

II. Outline

1. Powers given to the President

In order to allow sufficiently flexible management of the system of fees, it is proposed that the President of the Office should be empowered to lay down certain fees and to determine certain forms of payment.

(a) Certain fees

The President is empowered himself to require certain fees which are not referred to in the basic Regulation or the Implementing Regulation, and to determine their amount. This power is conferred by Articles 1 and 3. The practical effect of this power is rather limited. The fees and costs which the President may require will have to represent remuneration for services rendered by the Office. Examples of fees set by the President might be a fee for extracts from the register, a fee for the sending of a further copy of the act granting the Community trade mark, a photocopying fee, a fee for preparing acknowledgements of receipt by telex, etc. The President will also have to set the prices of the Office's publications.

(b) Certain forms of payment

Article 5(1) lists the methods by which the fees, costs and prices payable to the Office are to be paid. Article 7 determines for each form of payment authorized, the date on which payment is considered to have been made. In order to be able to respond properly to practical needs and to developments in forms of payment, it appears advisable to empower the President to authorize forms of payment which are not provided for in this proposal and to set the date on which they are considered to have been paid. Payment to

current accounts opened with the Office is mentioned in this connection. This form of payment is widely used by certain categories of firms in dealings with the European Patent Office. If the need arises, the Trade Mark Office should be able to introduce this form of payment. Apart from the principle, the President would also have to determine the precise conditions relating in particular to the opening of the current account, the funds held in it, money drawn on it and its closure.

2. Currency units used for the fixing of the amounts of fees and for payment

(a) Currency unit used for fixing the amounts of fees, costs and prices
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It is proposed that the fee rates should be set in ECU. This applies to the fees the rates of which would be set by the Council, on a proposal from the Commission, in Article 2 of this Regulation, and to the fees, costs and prices laid down by the President under Article 3.

This proposal is based, in particular on the desire to avoid favouring a single EEC currency and to ensure a certain neutrality in the choice of the currency unit used for fixing the fees. Likewise, it seems useful to express the revenues of the Office in the same currency unit as is used for the General Budget of the Communities to which it will be annexed.

(b) Currencies used for payment
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In order to promote the development of the use of the ECU by businessmen, it is also proposed that firms should be allowed to pay the fees, costs and prices due to the Office in ECUS. However, given the wide range of businesses both within and without the Community which might find themselves paying fees to the Office as applicants for or holders of a Community trade mark or in order to oppose the registration of a Community trade mark, for example, it is advisable that payment should be authorized in one of the national currencies of the Member States.

To this end, it is therefore necessary to establish the equivalents in national currencies of the amounts fixed in ECU. To ensure sufficient public awareness of the fees set for marks and more particularly their national currency equivalents, it is desirable that these equivalents be set for a suitably long period. The Commission proposes to fix the equivalents in national currencies on the basis of the conversion rates of the first day of the month preceding the entry into force of the regulation. Later, the equivalents in national currencies will be modified following each monetary realignment within the European Monetary System. It will be for the President to determine the equivalents in national currencies and to ensure that they are announced publicised, by publishing them in the Bulletin of the Office.

Moreover, in order to maintain an adequate comparability between the equivalents in national currencies, it is proposed that the President should be instructed to change the amounts of the national currency equivalents if there are important monetary fluctuations with regard to one or more national currencies even without any monetary realignment within the European Monetary System. In practice, this provision will be applied only with regard to national currencies which are not included in the exchange system of the European Monetary System.

PROPOSAL FOR A COUNCIL REGULATION
ON FEES PAYABLE TO THE COMMUNITY
TRADE MARKS OFFICE

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No of on the
Community trade mark¹, and in particular Article 124 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas Article 124 of Regulation (EEC) No of on the Community trade
mark requires the Council to adopt Regulations on the fees payable to the
Community Trade Marks Office;

Whereas the same Regulation provides for the payment, in circumstances and with
consequences amplified in the implementing Council Regulation (EEC) No², of
fees for the performance of various acts which it lists exhaustively, such
as the filing of applications for registration of a Community trade mark
or of a Community guarantee or collective mark, the registration of trade
marks, renewal of registration, opposition to registration and
applications for revocation or for a declaration of invalidity;

Whereas to ensure the necessary flexibility in the management of the fees payable
to the Office, the President of the Office, hereinafter referred to as the
"President", should be empowered subject to certain conditions to lay down
the fees which may be payable to the Office in respect of services it may
render, and to set prices for the sale of its publications;

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Whereas, for the same reason, the President should be empowered to authorize methods of paying fees which are not referred to in this Regulation;

Whereas it is desirable that the fees, costs and prices payable to the Office should be fixed in the same currency unit as is used for the budget of the Office, which is to be annexed to the General Budget of the Communities; whereas, moreover, the fixing of these amounts in ECU would tend to guarantee a degree of neutrality with regard to national currencies;

Whereas it should also be possible for persons making payments to the Office to do so in ECU, in order to promote the use of the ECU in the Community; whereas it should also be possible to pay in a national currency of a Member State where the person making the payment so desires; whereas in order to maintain a sufficient comparability between the fees, costs and prices in national currencies, the equivalents should be modified following each monetary re-alignment within the European Monetary System; whereas, to the same end, it is necessary to instruct the President to change these equivalents if there are appreciable monetary fluctuations on the exchange market;

Whereas the amounts of fees, which form the Office's main source of revenue, should be fixed in such a manner that the Office's budget is in balance; whereas, in the Office's start-up phase, however, balance can be achieved only if there is an additional subsidy from the General Budget of the Communities, in accordance with Article 120 of Regulation (EEC) No. ...

HAS ADOPTED THIS REGULATION:

Article 1

General

1. The following shall be levied in accordance with this Regulation:
 - (a) fees to be paid to the Office as provided for in Regulation (EEC) No and its implementing Regulation (EEC) No
 - (b) fees, costs and prices laid down by the President pursuant to Article 3(1) and (2).
2. The amount of the fees, costs and prices referred to in paragraph 1 shall be laid down in ECU. The equivalent in national currencies shall be determined by the President in accordance with Article 10.

Article 2

Fees provided for in Regulation (EEC) No
and implementing Regulation (EEC) No

The fees to be paid to the Office under Article 1(1)(a) shall be as follows:

ECU

1. Application fees

(Article 24(2) of Regulation (EEC) No,
Article 5(1) of implementing
Regulation (EEC) No

(a) application fee

- for a Community trade mark
- for a Community guarantee mark or Community
collective mark

(b) fee for classes of goods and services

- for a Community trade mark, per class
- for a Community guarantee mark or Community
collective mark, per class

2. Fee for opposition to a Community trade mark
on relative grounds for refusal

(Article 34(2) of Regulation (EEC) No,
Article 26(5) of implementing Regulation (EEC) No

3. Fee for opposition to a Community guarantee mark
on absolute grounds for refusal

(Article 91(2) and Article 94(3) of Regulation (EEC) No

4. Registration fees

(Article 36 of Regulation (EEC) No,
Article 17(1) of implementing Regulation (EEC) No

(a) Registration fee

- for a Community trade mark
- for a Community guarantee mark or
Community collective mark

(b) Fee for classes of goods and services (more than three)

- for a Community trade mark, per class
- for a Community guarantee mark or Community
collective mark, per class

5. Renewal fees

(Article 37(1) and (3) of Regulation (EEC) No,
Article 20 of implementing Regulation (EEC) No

(a) Renewal fee

- for a Community trade mark
- for a Community guarantee mark or
Community collective mark

(b) Class fee for classes of goods and services

- for a Community trade mark, per class
- for a Community guarantee mark or
Community collective mark, per class

(c) Additional fee for late payment of renewal fee
or late submission of application for renewal

6. Fee for an application for revocation or
for a declaration of invalidity

(Article 46(2) of Regulation (EEC) No

7. Fee for appeal

(Article 50 of Regulation (EEC) No)

8. Fee for restitutio in integrum

(Article 61(3) of Regulation (EEC) No)

9. Fee for conversion into a national trade mark application

(Article 84(2) of Regulation (EEC) No)

10. Fee for registration of the transfer of a
Community trade mark

(Article 21(4) of implementing Regulation (EEC) No)

11. Fees for registration of licences and other rights

(Article 22(1) of implementing Regulation (EEC) No)

- (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) enforcement measures

12. Fee for recording of licences and other rights in
files concerning an application for a Community
trade mark

(Article 22(3) of implementing Regulation (EEC) No)

13. Fee for cancellation of the registration
of licences and other rights

(Article 23(2) of implementing Regulation (EEC) No)

14. Fee for alteration of the trade mark

(Article 26(3) of implementing Regulation (EEC) No)

15. Fee for provision of an extract from the Register

(Article 66(5) of implementing Regulation (EEC) No)

16. Fee for the inspection of files

(Article 70(2) and (3) of implementing Regulation (EEC) No)

(a) issue of uncertified copies

(b) issue of certified copies

17. Fee for communication of information contained in
the files

(Article 71(1) of implementing Regulation (EEC) No)

18. Fee for fixing of reimbursable costs

(Article 76(4) of implementing Regulation (EEC) No)

Article 3

Fees, costs and prices laid down by the President

1. The President shall lay down the amount of fees and costs for any services rendered by the Office other than those specified in Article 2.
2. The President shall also lay down the prices of the Community Trade Marks Bulletin and the Bulletin of the Community Trade Marks Office.
3. The President shall publish in the Bulletin of the Community Trade Marks Office the amounts of fees and costs laid down in accordance with paragraph 1, and prices laid down in accordance with paragraph 2, expressed in ECU and in the national currencies of the Member States.

Article 4

Due date for fees

1. Fees in respect of which the due date is not specified in Regulation (EEC) No ... or implementing Regulation (EEC) No ... shall be due on the date of receipt of the request for the service for which the fee is incurred.
2. The President may decide not to make services mentioned in paragraph 1 dependent upon the advance payment of the corresponding fee.

Article 5

Payment of fees, costs and prices

1. Fees, costs and prices due to the Office shall be paid:
 - (a) by payment or transfer to a bank account held by the Office,
 - (b) by payment or transfer to a postal cheque account held by the Office,
 - (c) by money order,
 - (d) by delivery or remittance of cheques which are made payable to the Office or,
 - (e) by cash payment.
2. The President may allow other methods of paying fees than those set out in paragraph 1, in particular by means of current accounts held with the Office.

Article 6

Currencies

1. Without prejudice to the following paragraphs, the payments referred to in Article 5 shall be made in ECU or in a currency of a Community Member State.
2. Payments or transfers to the bank account or postal cheque account referred to in Article 5(1)(a) and (b) shall be made in ECU or in the currency of the Member State in which that account is held.
3. The payments referred to in Article 5(1)(c) shall be made in ECU or in the currency of the Member State in which the money order is handed in.

4. The payments referred to in Article 5(1)(d) shall be made in ECU or in the currency of the Member State where the banking establishment on which the cheque is drawn has its seat.
5. The payments referred to in Article 5(1)(e) shall be made in the currency of the Member State in which the Office has its seat.

Article 7

Date to be considered as the date on which payment is made

1. The date on which any payment shall be considered to have been made to the Office shall be as follows:
 - a) in the cases referred to in Article 5(1)(a) and (b): the date on which the amount of the payment or of the transfer is entered in a bank account or a postal cheque account held by the Office;
 - b) in the cases referred to in Article 5(1)(c) and (e): the date of receipt of the amount of the money order or of the cash payment or the date on which the amount of the money order is entered in a postal cheque account held by the Office;
 - c) in the case referred to in Article 5(1)(d): the date of receipt of the cheque at the Office, provided that the cheque is honoured.
2. Where the President allows, in accordance with the provisions of Article 5(2), other methods of paying fees than those set out in Article 5(1), he shall also lay down the date on which such payments shall 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 should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment fulfilled one of the following conditions in a Member State not later than ten days before the expiry of such period:

- a) he effected the payment through a banking establishment or a post office;
- b) he duly gave an order to a banking establishment or a post office to transfer the amount;
- c) he dispatched at a post office a letter bearing the address of the seat of the Office and containing a cheque within the meaning of Article 5(1)(d), provided that the cheque is honoured.

The Office may request the person who made the payment to produce such evidence within such period as it may specify. If he fails to comply with this request or if the evidence is insufficient, the period for payment shall be considered not to have been observed.

Article 8

Particulars concerning payment

1. Every payment must indicate the name of the person making the payment and must contain the necessary particulars to enable the Office to establish immediately the purpose of the payment.
2. If the purpose of the payment 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 he does not comply with this request in due time the payment shall be considered not to have been made.

Article 9

Insufficiency of the amount paid

A timelimit 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. The Office may, however, in so far as this 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. It may also, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

Article 10

Determination and announcement by the President
of equivalents in national currencies of
fees, cost and prices

1. The equivalents in national currencies of the fees, costs and prices referred to in Article 1(1)(a) shall be determined by application of the conversion rates of the first working day of the month preceding the entry into force of the Regulation. These equivalents shall be published in the Bulletin of the Community Trade Marks Office.
2. The equivalents in national currencies of the fees, costs and prices referred to in Article 1 (1)(b) shall be determined by application of the conversion rates of the first working day preceding the day of the decision of the President which fixes them.
3. The equivalents in national currencies of the fees, costs and prices referred to in Article 1(1) shall be changed after each monetary realignment within the European Monetary System. New equivalents shall be determined by application of the conversion rates of the first working day after the monetary realignment within the European Monetary System where all of these rates are available for all national currencies.

4. Where the average of exchange rates of a national currency during one month diverges by more than 5% from the applicable conversion rate, the President shall determine a new equivalent by application of the conversion rate of the first working day following.

5. The equivalents referred to in paragraphs 2, 3 and 4 shall take effect one month after their publication in the Bulletin of the Community Trade Marks Office.

Article 11

Entry into force

This Regulation shall enter into force twelve months after its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at on

For the Council

President