

COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL DECISION
ON THE REVISION OF THE PARIS CONVENTION
FOR THE PROTECTION OF INDUSTRIAL PROPERTY

(presented by the Commission to the Council)

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Proposal for a Council Decision
on the Revision of the Paris Convention
for the Protection of Industrial Property

1. In the framework of the World Intellectual Property Organisation (WIPO) and of the Paris Union, to which all Member States of the Community, but not the Community as such, belong, governments of countries of the Paris Union are at present negotiating a Revision of the Paris Convention for the Protection of Industrial Property. The following matters are of particular importance to the Community:
 - the improvement of international protection of geographical indications such as appellations of origin,
 - the possibility of granting compulsory exclusive licences for patents in certain cases,
 - the assimilation of inventors' certificates of the socialist type with patents, and
 - the acceptance of Preferential Treatment without reciprocity for Developing countries in respect of fees for industrial property and the term of priority.
2. Each of these matters is of particular interest to the Common Market

An effective international protection of appellations of origin and indications of source for agricultural and industrial products is of particular interest to the Common Market, given the large volume of trade in the products protected by these designations.

Exclusive compulsory licences, granted by developing countries, can impair the value of patents filed there by firms based in the common market and lead to the reluctance of these firms to file new patents in these countries. This could be expected to have a discouraging effect on trade between the Community and these countries. An extension to all countries of the Paris Union of the right to grant exclusive compulsory licences could also have consequences for internal Community trade.

The full recognition of inventors' certificates (Russian or Mexican types), which do not afford to the inventor the full rights to his invention, and their assimilation to patents, as existing in the industrialised countries, would further prejudice the opportunity for firms based in the common market to enjoy full patent protection in the countries concerned, which maintain inventors' certificates.

The special interest of the Common Market in the question of acceptance of a preferential treatment for developing countries lies principally in the negative consequences which a divergence on the question between the Member States of the Community could have on trade with developing countries. Different rules in individual Member States could lead to distortions of trade.

3. The preparation of the Diplomatic Conference, which is to take place in Geneva on 4th February to 4th March, 1980, has involved numerous meetings of representatives of industrialized countries (Group B) including representatives of the Commission; as well as many meetings of representatives of Member States and the Commission in Brussels, Geneva and other places. In fact, the Member States of the Community have taken a common view on all important points; and in general a common view has been shared by the whole of Group B. The principal point, on which Group B is divided, concerns the scope of a possible protection of geographical indications; but on this point the Community is united and carries by far the greater part of Group B with it.
4. The Commission takes the view that, for the time being, it is out of the question for the Community as such to accede to the Paris Union. It is, however, essential to establish in the course of the Diplomatic Conference an effective procedure by which Member States continue to work on the basis of common action, bearing in mind especially the fact that further proposals or counter-proposals may be expected to be made at the Diplomatic Conference itself.
5. This is precisely the situation provided for in Article 116 of the Treaty establishing the European Communities. The Paris Union for the protection of industrial property is an international organisation of an economic character, since the reasons for protecting industrial property are themselves economic. Thus, in the case of patent protection, the main economic principle is that, since a country's economic development may largely depend on its capacity for technical innovation, it needs to encourage and reward inventors adequately, and to protect the products of their intellectual activity. Geographical indications, which have a commercial value, are protected because they represent an opportunity to promote trade, and especially exports from the Community.

The proposal of the Commission for common action on the basis of Art. 116 does not prejudice the Community's own competences and their exercise by the Community in future negotiations. This applies especially to the protection of appellations of origin and indications of source in the wine sector, for which the Council in its declaration of 26th March 1979 has expressly recognized the necessity of negotiations by the Community with third states in accordance with Article 113.

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6. Adoption of a common action by Member States during the Diplomatic Conference is influenced by the procedural arrangements of the World Intellectual Property Organisation. There is close co-ordination within Group B. The common action should therefore be based on the agreement already reached in Group B. This means in particular that Member States of the Community are opposed to the inclusion in the Paris Convention of provisions governing the granting of exclusive compulsory licences. On the other hand, Member States would be ready to examine whether the opportunity could be extended to developing countries to grant sole licences under proper conditions, such that the patentees' rights were not thereby disturbed. In addition the Member States oppose in principle the assimilation in the Paris Convention of inventors' certificates and patents, unless the principle of equal choice is accepted.

To the extent that agreement cannot be reached within Group B, common action by Member States should be based on decisions reached in meetings already held by representatives of Member States and the Commission. As regards geographical indications, Member States intervene on behalf of the proposal, which has already been submitted by the Community, on the improvement of their protection.

Where new proposals are made in the course of the Diplomatic Conference, or new situations arise, Member States shall negotiate on the basis of decisions to be taken within Group B, provided:

that no Member State shall be party to such a decision if in the opinion of a Member State or the Commission, it runs counter to the law or interests of the Community; and

that, if such a decision shall be reached or if Group B fails to reach a decision, or reaches a decision which runs counter to Community law or interest common action by Member States shall be based on decision to be reached at Community meetings between representatives of Member States and the Commission. In cases, where common action cannot be agreed, the points of disagreement shall be reported to the Committee of Permanent Representatives or, if necessary, the Council.

7. The Commission therefore proposes that the Council should adopt the following proposal for a decision.

Proposal for a Council Declaration on common action by
Member States for negotiation of the Revision of the Paris
Convention during the Diplomatic Conference in February, 1980

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community,
particularly Article 116 thereof,

Having regard to the proposal by the Commission,

Having regard to the Council Decision of 26th March, 1979,

Considering that the World Intellectual Property Organisation is preparing
a Diplomatic Conference in February, 1980, on the Revision of the Paris
Convention for the Protection of Industrial Property,

Considering that the proposals for Revision of the Paris Convention include
matters of particular interest to the common market especially as regards
the effects of the proposals on Community trade with both developing and
industrialised countries,

Considering that it would have damaging consequences for the common market
and for the Community if Member States adopted different views in the
Diplomatic Conference,

Considering that it is necessary for Member States to proceed by common
action within the framework of the World Intellectual Property Organisation
and of the Paris Union at the Diplomatic Conference,

Considering that common action of Member States does not prejudice the
Community's own competences and their exercise by the Community in future
negotiations,

Decides:

Sole Article

At the Diplomatic Conference for the Revision of the Paris Convention
for the protection of industrial property, Member States shall proceed
by way of common action in respect of all matters which are of special
interest to the common market, according to the directive contained in
the Annex. To this end, representatives of the Member States and of the
Commission shall consult each other at meetings during the Diplomatic
Conference.

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Member States shall negotiate on the basis of policies which have already been defined and which result from Community meetings. They shall not be party to decisions which, in the opinion of a Member State or of the Commission, would run counter to the law or interests of the Community. If such a decision should be reached, Member States shall proceed by common action on the basis of decisions to be taken in the course of meetings of representatives of Member States and of the Commission.

In cases, where common action cannot be agreed, the points of disagreement shall be reported to the Committee of Permanent Representatives or, if necessary, the Council.

Community meetings shall be held during the Diplomatic Conference in Geneva on the request of a Member State or of the Commission.