I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2017/1001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 June 2017

on the European Union trade mark

(codification)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 118 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Council Regulation (EC) No 207/2009 ([2]) has been substantially amended several times ([3]). In the interests of clarity and rationality, that Regulation should be codified.

(2) Council Regulation (EC) No 40/94 ([4]), which was codified in 2009 as Regulation (EC) No 207/2009, created a system of trade mark protection specific to the Union which provided for the protection of trade marks at the level of the Union, in parallel to the protection of trade marks available at the level of the Member States in accordance with the national trade mark systems, harmonised by Council Directive 89/104/EEC ([5]), which was codified as Directive 2008/95/EC of the European Parliament and of the Council ([6]).

(3) It is desirable to promote throughout the Union a harmonious development of economic activities and a continuous and balanced expansion by completing an internal market which functions properly and offers conditions which are similar to those obtaining in a national market. In order to establish a market of this kind and make it increasingly a single market, not only should barriers to free movement of goods and services be removed and arrangements be instituted which ensure that competition is not distorted, but, in addition, legal conditions should be laid down which enable undertakings to adapt their activities to the scale of the Union, whether in manufacturing and distributing goods or in providing services. For those purposes, trade marks

([1]) Position of the European Parliament of 27 April 2017 (not yet published in the Official Journal) and decision of the Council of 22 May 2017.
([2]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ L 78, 24.3.2009, p. 1).
([3]) See Annex II.
([4]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 14.1.1994, p. 1).
([5]) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11.2.1989, p. 1).
([6]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ L 299, 8.11.2008, p. 25).

enabling the products and services of undertakings to be distinguished by identical means throughout the entire Union, regardless of frontiers, should feature amongst the legal instruments which undertakings have at their disposal.

(4) For the purpose of pursuing the Union's said objectives it would appear necessary to provide for Union arrangements for trade marks whereby undertakings can by means of one procedural system obtain EU trade marks to which uniform protection is given and which produce their effects throughout the entire area of the Union. The principle of the unitary character of the EU trade mark thus stated should apply unless otherwise provided for in this Regulation.

(5) The barrier of territoriality of the rights conferred on proprietors of trade marks by the laws of the Member States cannot be removed by approximation of laws. In order to open up unrestricted economic activity in the whole of the internal market for the benefit of undertakings, it should be possible to register trade marks which are governed by a uniform Union law directly applicable in all Member States.

(6) The experience acquired since the establishment of the Community trade mark system has shown that undertakings from within the Union and from third countries have accepted the system which has become a successful and viable complement and alternative to the protection of trade marks at the level of the Member States.

(7) The Union law relating to trade marks nevertheless does not replace the laws of the Member States on trade marks. It would not in fact appear to be justified to require undertakings to apply for registration of their trade marks as EU trade marks.

(8) National trade marks continue to be necessary for those undertakings which do not want protection of their trade marks at Union level, or which are unable to obtain Union-wide protection while national protection does not face any obstacles. It should be left to each person seeking trade mark protection to decide whether the protection is sought only as a national trade mark in one or more Member States, or only as an EU trade mark, or both.

(9) The rights in an EU trade mark should not be obtained otherwise than by registration, and registration should be refused in particular if the trade mark is not distinctive, if it is unlawful or if it conflicts with earlier rights.

(10) A sign should be permitted to be represented in any appropriate form using generally available technology, and thus not necessarily by graphic means, as long as the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective.

(11) The protection afforded by an EU trade mark, the function of which is in particular to guarantee the trade mark as an indication of origin, should be absolute in the case of identity between the mark and the sign and the goods or services. The protection should apply also in cases of similarity between the mark and the sign and the goods or services. An interpretation should be given for the concept of similarity in relation to the likelihood of confusion. The likelihood of confusion, the appreciation of which depends on numerous elements and, in particular, on the recognition of the trade mark on the market, the association which can be made with the used or registered sign, the degree of similarity between the trade mark and the sign and between the goods or services identified, should constitute the specific condition for such protection.

(12) In order to ensure legal certainty and full consistency with the principle of priority, under which a registered earlier trade mark takes precedence over later registered trade marks, it is necessary to provide that the enforcement of rights conferred by an EU trade mark should be without prejudice to the rights of proprietors acquired prior to the filing or priority date of the EU trade mark. This is in conformity with Article 16(1) of the Agreement on trade-related aspects of intellectual property rights of 15 April 1994.

(13) Confusion as to the commercial source from which the goods or services emanate may occur when a company uses the same or a similar sign as a trade name in such a way that a link is established between the company bearing the name and the goods or services coming from that company. Infringement of an EU trade mark should therefore also comprise the use of the sign as a trade name or similar designation as long as the use is made for the purposes of distinguishing goods or services.

(14) In order to ensure legal certainty and full consistency with specific Union legislation, it is appropriate to provide that the proprietor of an EU trade mark should be entitled to prohibit a third party from using a sign in comparative advertising where such comparative advertising is contrary to Directive 2006/114/EC of the European Parliament and of the Council ([1]).

(15) In order to ensure trade mark protection and combat counterfeiting effectively, and in line with international obligations of the Union under the framework of the World Trade Organisation (WTO), in particular Article V of the General Agreement on Tariffs and Trade (GATT) on freedom of transit and, as regards generic medicines, the 'Declaration on the TRIPS Agreement and public health' adopted by the Doha WTO Ministerial Conference on 14 November 2001, the proprietor of an EU trade mark should be entitled to prevent third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods come from third countries and bear without authorisation a trade mark which is identical or essentially identical with the EU trade mark registered in respect of such goods.

(16) To this effect, it should be permissible for EU trade mark proprietors to prevent the entry of infringing goods and their placement in all customs situations, including transit, transhipment, warehousing, free zones, temporary storage, inward processing or temporary admission, also when such goods are not intended to be placed on the market of the Union. In performing customs controls, the customs authorities should make use of the powers and procedures laid down in Regulation (EU) No 608/2013 of the European Parliament and the Council ([2]), also at the request of the right holders. In particular, the customs authorities should carry out the relevant controls on the basis of risk analysis criteria.

(17) In order to reconcile the need to ensure the effective enforcement of trade mark rights with the necessity to avoid hampering the free flow of trade in legitimate goods, the entitlement of the proprietor of the EU trade mark should lapse where, during the subsequent proceedings initiated before the European Union trade mark court ('EU trade mark court') competent to take a substantive decision on whether the EU trade mark has been infringed, the declarant or the holder of the goods is able to prove that the proprietor of the EU trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

(18) Article 28 of Regulation (EU) No 608/2013 provides that a right holder is to be liable for damages towards the holder of the goods where, inter alia, the goods in question are subsequently found not to infringe an intellectual property right.

(19) Appropriate measures should be taken with a view to ensuring the smooth transit of generic medicines. With respect to international non-proprietary names (INN) as globally recognised generic names for active substances in pharmaceutical preparations, it is vital to take due account of the existing limitations on the effect of EU trade mark rights. Consequently, the proprietor of an EU trade mark should not have the right to prevent a third party from bringing goods into the Union without being released for free circulation there, based upon similarities between the INN for the active ingredient in the medicines and the trade mark.

(20) In order to enable proprietors of EU trade marks to combat counterfeiting effectively, they should be entitled to prohibit the affixing of an infringing mark to goods and preparatory acts carried out prior to the affixing.

(21) The exclusive rights conferred by an EU trade mark should not entitle the proprietor to prohibit the use of signs or indications by third parties which are used fairly and thus in accordance with honest practices in industrial and commercial matters. In order to ensure equal conditions for trade names and EU trade marks in the event of conflicts, given that trade names are regularly granted unrestricted protection against later trade marks, such use should be only considered to include the use of the personal name of the third party. It should further permit the use of descriptive or non-distinctive signs or indications in general. Furthermore, the proprietor should not be entitled to prevent the fair and honest use of the EU trade mark for the purpose of identifying or referring to the goods or services as those of the proprietor. Use of a trade mark by third parties to draw the consumer's attention to the resale of genuine goods that were originally sold by or with the consent of the proprietor of the EU trade mark in the Union should be considered as being fair as long as it is at the same time in accordance

([1]) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21).

([2]) Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15).

with honest practices in industrial and commercial matters. Use of a trade mark by third parties for the purpose of artistic expression should be considered as being fair as long as it is at the same time in accordance with honest practices in industrial and commercial matters. Furthermore, this Regulation should be applied in a way that ensures full respect for fundamental rights and freedoms, and in particular the freedom of expression.

(22) It follows from the principle of free movement of goods that it is essential that the proprietor of an EU trade mark not be entitled to prohibit its use by a third party in relation to goods which have been put into circulation in the European Economic Area, under the trade mark, by him or with his consent, save where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods.

(23) In order to ensure legal certainty and safeguard legitimately acquired trade mark rights, it is appropriate and necessary to lay down, without prejudice to the principle that the later trade mark cannot be enforced against the earlier trade mark, that proprietors of EU trade marks should not be entitled to oppose the use of a later trade mark if the later trade mark was acquired at a time when the earlier trade mark could not be enforced against the later trade mark.

(24) There is no justification for protecting EU trade marks or, as against them, any trade mark which has been registered before them, except where the trade marks are actually used.

(25) For reasons of equity and legal certainty, the use of an EU trade mark in a form that differs in elements which do not alter the distinctive character of that mark in the form in which it is registered should be sufficient to preserve the rights conferred regardless of whether the trade mark in the form as used is also registered.

(26) An EU trade mark is to be regarded as an object of property which exists separately from the undertakings whose goods or services are designated by it. Accordingly, it should be capable of being transferred, of being charged as security in favour of a third party and of being the subject matter of licences.

(27) Administrative measures are necessary at Union level for implementing in relation to every trade mark the trade mark law laid down by this Regulation. It is therefore essential, while retaining the Union's existing institutional structure and balance of powers, to provide for a European Union Intellectual Property Office ('the Office') which is independent in relation to technical matters and has legal, administrative and financial autonomy. To this end it is necessary and appropriate that the Office should be a body of the Union having legal personality and exercising the powers which are conferred on it by this Regulation, and that it should operate within the framework of Union law without detracting from the competences exercised by the Union institutions.

(28) EU trade mark protection is granted in relation to specific goods or services whose nature and number determine the extent of protection afforded to the trade mark proprietor. It is therefore essential to lay down rules for the designation and classification of goods and services in this Regulation and to ensure legal certainty and sound administration by requiring that the goods and services for which trade mark protection is sought are identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on the basis of the application alone, to determine the extent of the protection applied for. The use of general terms should be interpreted as only including all goods and services clearly covered by the literal meaning of the term. Proprietors of EU trade marks, which because of the practice of the Office prior to 22 June 2012 were registered in respect of the entire heading of a class of the system of classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, should be given the possibility to adapt their lists of goods and services in order to ensure that the content of the Register meets the requisite standard of clarity and precision in accordance with the case law of the Court of Justice of the European Union.

(29) In order to avoid unnecessary delays in registering an EU trade mark, it is appropriate to lay down a regime of optional EU and national trade mark searches that should be flexible in terms of user needs and preferences. The optional EU and national trade mark searches should be complemented by the making available of all-encompassing, fast and powerful search engines for the use of the public free of charge within the context of cooperation between the Office and the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property.

(30) It is necessary to ensure that parties who are affected by decisions made by the Office are protected by the law in a manner which is suited to the special character of trade mark law. To that end, provision should be made for an appeal to lie from decisions of the various decision-making instances of the Office. A Board of Appeal of the Office should decide on the appeal. Decisions of the Boards of Appeal should, in turn, be amenable to actions before the General Court, which has jurisdiction to annul or to alter the contested decision.

(31) In order to ensure the protection of EU trade marks the Member States should designate, having regard to their own national system, as limited a number as possible of national courts of first and second instance having jurisdiction in matters of infringement and validity of EU trade marks.

(32) It is essential that decisions regarding the validity and infringement of EU trade marks have effect and cover the entire area of the Union, as this is the only way of preventing inconsistent decisions on the part of the courts and the Office and of ensuring that the unitary character of EU trade marks is not undermined. The provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ([1]) should apply to all actions at law relating to EU trade marks, save where this Regulation derogates from those rules.

(33) Contradictory judgments should be avoided in actions which involve the same acts and the same parties and which are brought on the basis of an EU trade mark and parallel national trade marks. For this purpose, when the actions are brought in the same Member State, the way in which this is to be achieved is a matter for national procedural rules, which are not prejudiced by this Regulation, whilst when the actions are brought in different Member States, provisions modelled on the rules on *lis pendens* and related actions of Regulation (EU) No 1215/2012 appear appropriate.

(34) With the aim of promoting convergence of practices and of developing common tools, it is necessary to establish an appropriate framework for cooperation between the Office and the industrial property offices of the Member States, including the Benelux Office for Intellectual Property, defining key areas of cooperation and enabling the Office to coordinate relevant common projects of interest to the Union and the Member States and to finance, up to a maximum amount, those projects. Those cooperation activities should be beneficial for undertakings using trade mark systems in Europe. For users of the Union regime laid down in this Regulation, the projects, particularly the databases for search and consultation purposes, should provide additional, inclusive, efficient tools that are free of charge to comply with the specific requirements arising from the unitary character of the EU trade mark.

(35) It is desirable to facilitate friendly, expeditious and efficient dispute resolution by entrusting the Office with the establishment of a mediation centre the services of which could be used by any person with the aim of achieving a friendly settlement of disputes relating to EU trade marks and Community designs by mutual agreement.

(36) The setting up of the EU trade mark system has resulted in increased financial burdens for the central industrial property offices and other authorities of the Member States. The additional costs are related to the handling of a higher number of opposition and invalidity proceedings involving EU trade marks or brought by proprietors of such trade marks; to the awareness-raising activities linked to the EU trade mark system; as well as to activities intended to ensure the enforcement of EU trade mark rights. It is, therefore, appropriate to ensure that the Office offset part of the costs incurred by Member States for the role they play in ensuring the smooth functioning of the EU trade mark system. The payment of such offsetting should be subject to the submission, by Member States, of relevant statistical data. The offsetting of costs should not be of such an extent that it would cause a budgetary deficit for the Office.

(37) In order to guarantee the full autonomy and independence of the Office, it is considered necessary to grant it an autonomous budget whose revenue comes principally from fees paid by the users of the system. However, the Union budgetary procedure remains applicable as far as any subsidies chargeable to the general budget of the Union are concerned. Moreover, the auditing of accounts should be undertaken by the Court of Auditors.

([1]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

(38) In the interest of sound financial management, the accumulation by the Office of significant budgetary surpluses should be avoided. This should be without prejudice to the Office maintaining a financial reserve covering one year of its operational expenditure to ensure the continuity of its operations and the performance of its tasks. That reserve should only be used to ensure the continuity of the tasks of the Office as specified in this Regulation.

(39) Given the essential importance of the amounts of fees payable to the Office for the functioning of the EU trade mark system and its complementary relationship as regards national trade mark systems, it is necessary to set those fee amounts directly in this Regulation in the form of an annex. The amounts of the fees should be fixed at a level which ensures that: first, the revenue they produce is in principle sufficient for the budget of the Office to be balanced; second, there is coexistence and complementarity between the EU trade mark and the national trade mark systems, also taking into account the size of the market covered by the EU trade mark and the needs of small and medium-sized enterprises; and third, the rights of proprietors of an EU trade mark are enforced efficiently in the Member States.

(40) In order to ensure an effective, efficient and expeditious examination and registration of EU trade mark applications by the Office using procedures which are transparent, thorough, fair and equitable, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of specifying the details on the procedures for filing and examining an opposition and on the procedures governing the amendment of the application.

(41) In order to ensure that an EU trade mark can be revoked or declared invalid in an effective and efficient way by means of transparent, thorough, fair and equitable procedures, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the procedures for revocation and declaration of invalidity.

(42) In order to allow for an effective, efficient and complete review of decisions of the Office by the Boards of Appeal by means of a transparent, thorough, fair and equitable procedure which takes into account the principles laid down in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the formal content of the notice of appeal, the procedure for the filing and examination of an appeal, the formal content and form of the Board of Appeal's decisions, and the reimbursement of the appeal fees.

(43) In order to ensure a smooth, effective and efficient operation of the EU trade mark system, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the requirements as to the details on oral proceedings and the detailed arrangements for taking of evidence, the detailed arrangements for notification, the means of communication and the forms to be used by the parties to proceedings, the rules governing the calculation and duration of time limits, the procedures for the revocation of a decision or for cancellation of an entry in the Register, the detailed arrangements for the resumption of proceedings, and the details on representation before the Office.

(44) In order to ensure an effective and efficient organisation of the Boards of Appeal, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the details on the organisation of the Boards of Appeal.

(45) In order to ensure the effective and efficient registration of international trade marks in a manner that is fully consistent with the rules of the Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989 ('Madrid Protocol'), the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the details on the procedures concerning the filing and examination of an opposition, including the necessary communications to be made to the World Intellectual Property Organisation (WIPO), and the details of the procedure concerning international registrations based on a basic application or basic registration relating to a collective mark, certification mark or guarantee mark.

(46) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([1]). In particular, to ensure

([1]) OJ L 123, 12.5.2016, p. 1.

equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of specifying the details concerning applications, requests, certificates, claims, regulations, notifications and any other document under the relevant procedural requirements established by this Regulation, as well as in respect of maximum rates for costs essential to the proceedings and actually incurred, details concerning publications in the European Union Trade Marks Bulletin and the Official Journal of the Office, the detailed arrangements for exchange of information between the Office and national authorities, detailed arrangements concerning translations of supporting documents in written proceedings, exact types of decisions to be taken by a single member of the opposition or cancellation divisions, details of the notification obligation pursuant to the Madrid Protocol, and detailed requirements regarding the request for territorial extension subsequent to international registration. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]).

(48) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

EU trade mark

1. A trade mark for goods or services which is registered in accordance with the conditions contained in this Regulation and in the manner herein provided is hereinafter referred to as a 'European Union trade mark ("EU trade mark")'.

2. An EU trade mark shall have a unitary character. It shall have equal effect throughout the Union: it shall not be registered, transferred or surrendered or be the subject of a decision revoking the rights of the proprietor or declaring it invalid, nor shall its use be prohibited, save in respect of the whole Union. This principle shall apply unless otherwise provided for in this Regulation.

Article 2

Office

1. A European Union Intellectual Property Office ('the Office') is established.

2. All references in Union law to the Office for Harmonization in the Internal Market (Trade Marks and Designs) shall be read as references to the Office.

Article 3

Capacity to act

For the purpose of implementing this Regulation, companies or firms and other legal bodies shall be regarded as legal persons if, under the terms of the law governing them, they have the capacity in their own name to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.

([1]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

CHAPTER II

THE LAW RELATING TO TRADE MARKS

SECTION 1

Definition of an EU trade mark and obtaining an EU trade mark

Article 4

Signs of which an EU trade mark may consist

An EU trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

(a) distinguishing the goods or services of one undertaking from those of other undertakings; and

(b) being represented on the Register of European Union trade marks ('the Register'), in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Article 5

Persons who can be proprietors of EU trade marks

Any natural or legal person, including authorities established under public law, may be the proprietor of an EU trade mark.

Article 6

Means whereby an EU trade mark is obtained

An EU trade mark shall be obtained by registration.

Article 7

Absolute grounds for refusal

1. The following shall not be registered:

(a) signs which do not conform to the requirements of Article 4;

(b) trade marks which are devoid of any distinctive character;

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;

(d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;

(e) signs which consist exclusively of:

  (i) the shape, or another characteristic, which results from the nature of the goods themselves;

  (ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result;

  (iii) the shape, or another characteristic, which gives substantial value to the goods;

(f) trade marks which are contrary to public policy or to accepted principles of morality;

(g) trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service;

(h) trade marks which have not been authorised by the competent authorities and are to be refused pursuant to Article 6*ter* of the Paris Convention for the Protection of Industrial Property ('Paris Convention');

(i) trade marks which include badges, emblems or escutcheons other than those covered by Article 6*ter* of the Paris Convention and which are of particular public interest, unless the consent of the competent authority to their registration has been given;

(j) trade marks which are excluded from registration, pursuant to Union legislation or national law or to international agreements to which the Union or the Member State concerned is party, providing for protection of designations of origin and geographical indications;

(k) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine;

(l) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional specialities guaranteed;

(m) trade marks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or national law, or international agreements to which the Union or the Member State concerned is a party, providing for protection of plant variety rights, and which are in respect of plant varieties of the same or closely related species.

2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Union.

3. Paragraph 1(b), (c) and (d) shall not apply if the trade mark has become distinctive in relation to the goods or services for which registration is requested as a consequence of the use which has been made of it.

Article 8

Relative grounds for refusal

1. Upon opposition by the proprietor of an earlier trade mark, the trade mark applied for shall not be registered:

(a) if it is identical with the earlier trade mark and the goods or services for which registration is applied for are identical with the goods or services for which the earlier trade mark is protected;

(b) if, because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected; the likelihood of confusion includes the likelihood of association with the earlier trade mark.

2. For the purposes of paragraph 1, 'earlier trade mark' means:

(a) trade marks of the following kinds with a date of application for registration which is earlier than the date of application for registration of the EU trade mark, taking account, where appropriate, of the priorities claimed in respect of those trade marks:

  (i) EU trade marks;

  (ii) trade marks registered in a Member State, or, in the case of Belgium, the Netherlands or Luxembourg, at the Benelux Office for Intellectual Property;

  (iii) trade marks registered under international arrangements which have effect in a Member State;

  (iv) trade marks registered under international arrangements which have effect in the Union;

(b) applications for the trade marks referred to in point (a), subject to their registration;

(c) trade marks which, on the date of application for registration of the EU trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the EU trade mark, are well known in a Member State, in the sense in which the words 'well known' are used in Article 6*bis* of the Paris Convention.

3. Upon opposition by the proprietor of the trade mark, a trade mark shall not be registered where an agent or representative of the proprietor of the trade mark applies for registration thereof in his own name without the proprietor's consent, unless the agent or representative justifies his action.

4. Upon opposition by the proprietor of a non-registered trade mark or of another sign used in the course of trade of more than mere local significance, the trade mark applied for shall not be registered where and to the extent that, pursuant to Union legislation or the law of the Member State governing that sign:

(a) rights to that sign were acquired prior to the date of application for registration of the EU trade mark, or the date of the priority claimed for the application for registration of the EU trade mark;

(b) that sign confers on its proprietor the right to prohibit the use of a subsequent trade mark.

5. Upon opposition by the proprietor of a registered earlier trade mark within the meaning of paragraph 2, the trade mark applied for shall not be registered where it is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied are identical with, similar to or not similar to those for which the earlier trade mark is registered, where, in the case of an earlier EU trade mark, the trade mark has a reputation in the Union or, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned, and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

6. Upon opposition by any person authorised under the relevant law to exercise the rights arising from a designation of origin or a geographical indication, the trade mark applied for shall not be registered where and to the extent that, pursuant to the Union legislation or national law providing for the protection of designations of origin or geographical indications:

(i) an application for a designation of origin or a geographical indication had already been submitted, in accordance with Union legislation or national law, prior to the date of application for registration of the EU trade mark or the date of the priority claimed for the application, subject to its subsequent registration;

(ii) that designation of origin or geographical indication confers the right to prohibit the use of a subsequent trade mark.

SECTION 2

Effects of an EU trade mark

Article 9

Rights conferred by an EU trade mark

1. The registration of an EU trade mark shall confer on the proprietor exclusive rights therein.

2. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:

(a) the sign is identical with the EU trade mark and is used in relation to goods or services which are identical with those for which the EU trade mark is registered;

(b) the sign is identical with, or similar to, the EU trade mark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the EU trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

(c) the sign is identical with, or similar to, the EU trade mark irrespective of whether it is used in relation to goods or services which are identical with, similar to or not similar to those for which the EU trade mark is registered, where the latter has a reputation in the Union and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the EU trade mark.

3. The following, in particular, may be prohibited under paragraph 2:

(a) affixing the sign to the goods or to the packaging of those goods;

(b) offering the goods, putting them on the market, or stocking them for those purposes under the sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under the sign;

(d) using the sign as a trade or company name or part of a trade or company name;

(e) using the sign on business papers and in advertising;

(f) using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC.

4. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall also be entitled to prevent all third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trade mark which is identical with the EU trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

The entitlement of the proprietor of an EU trade mark pursuant to the first subparagraph shall lapse if, during the proceedings to determine whether the EU trade mark has been infringed, initiated in accordance with Regulation (EU) No 608/2013, evidence is provided by the declarant or the holder of the goods that the proprietor of the EU trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

Article 10

Right to prohibit preparatory acts in relation to the use of packaging or other means

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices or any other means to which the mark is affixed could be used in relation to goods or services and such use would constitute an infringement of the rights of the proprietor of an EU trade mark under Article 9(2) and (3), the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

(a) affixing a sign identical with, or similar to, the EU trade mark on packaging, labels, tags, security or authenticity features or devices or any other means to which the mark may be affixed;

(b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices or any other means to which the mark is affixed.

Article 11

Date from which rights against third parties prevail

1. The rights conferred by an EU trade mark shall prevail against third parties from the date of publication of the registration of the trade mark.

2. Reasonable compensation may be claimed in respect of acts occurring after the date of publication of an EU trade mark application, where those acts would, after publication of the registration of the trade mark, be prohibited by virtue of that publication.

3. A court seised of a case shall not decide upon the merits of that case until the registration has been published.

Article 12

Reproduction of an EU trade mark in a dictionary

If the reproduction of an EU trade mark in a dictionary, encyclopaedia or similar reference work gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher of the work shall, at the request of the proprietor of the EU trade mark, ensure that the reproduction of the trade mark at the latest in the next edition of the publication is accompanied by an indication that it is a registered trade mark.

Article 13

Prohibition of the use of an EU trade mark registered in the name of an agent or representative

Where an EU trade mark is registered in the name of the agent or representative of a person who is the proprietor of that trade mark, without the proprietor's authorisation, the latter shall be entitled to oppose the use of his mark by his agent or representative if he has not authorised such use, unless the agent or representative justifies his action.

Article 14

Limitation of the effects of an EU trade mark

1. An EU trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(a) the name or address of the third party, where that third party is a natural person;

(b) signs or indications which are not distinctive or which concern the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of the goods or services;

(c) the EU trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular, where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

2. Paragraph 1 shall only apply where the use made by the third party is in accordance with honest practices in industrial or commercial matters.

Article 15

Exhaustion of the rights conferred by an EU trade mark

1. An EU trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area under that trade mark by the proprietor or with his consent.

2. Paragraph 1 shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.

Article 16

Intervening right of the proprietor of a later registered trade mark as a defence in infringement proceedings

1. In infringement proceedings, the proprietor of an EU trade mark shall not be entitled to prohibit the use of a later registered EU trade mark where that later trade mark would not be declared invalid pursuant to Article 60(1), (3) or (4), Article 61(1) or (2), or Article 64(2) of this Regulation.

2. In infringement proceedings, the proprietor of an EU trade mark shall not be entitled to prohibit the use of a later registered national trade mark where that later registered national trade mark would not be declared invalid pursuant to Article 8 or Article 9(1) or (2), or Article 46(3) of Directive (EU) 2015/2436 of the European Parliament and of the Council ([1]).

3. Where the proprietor of an EU trade mark is not entitled to prohibit the use of a later registered trade mark pursuant to paragraph 1 or 2, the proprietor of that later registered trade mark shall not be entitled to prohibit the use of that earlier EU trade mark in infringement proceedings.

Article 17

Complementary application of national law relating to infringement

1. The effects of EU trade marks shall be governed solely by the provisions of this Regulation. In other respects, infringement of an EU trade mark shall be governed by the national law relating to infringement of a national trade mark in accordance with the provisions of Chapter X.

2. This Regulation shall not prevent actions concerning an EU trade mark being brought under the law of Member States relating in particular to civil liability and unfair competition.

3. The rules of procedure to be applied shall be determined in accordance with the provisions of Chapter X.

SECTION 3

Use of an EU trade mark

Article 18

Use of an EU trade mark

1. If, within a period of five years following registration, the proprietor has not put the EU trade mark to genuine use in the Union in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the EU trade mark shall be subject to the sanctions provided for in this Regulation, unless there are proper reasons for non-use.

The following shall also constitute use within the meaning of the first subparagraph:

(a) use of the EU trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor;

(b) affixing of the EU trade mark to goods or to the packaging thereof in the Union solely for export purposes.

2. Use of the EU trade mark with the consent of the proprietor shall be deemed to constitute use by the proprietor.

SECTION 4

EU trade marks as objects of property

Article 19

Dealing with EU trade marks as national trade marks

1. Unless Articles 20 to 28 provide otherwise, an EU trade mark as an object of property shall be dealt with in its entirety, and for the whole area of the Union, as a national trade mark registered in the Member State in which, according to the Register:

(a) the proprietor has his seat or his domicile on the relevant date;

(b) where point (a) does not apply, the proprietor has an establishment on the relevant date.

([1]) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L 336, 23.12.2015, p. 1).

2. In cases which are not provided for by paragraph 1, the Member State referred to in that paragraph shall be the Member State in which the seat of the Office is situated.

3. If two or more persons are mentioned in the Register as joint proprietors, paragraph 1 shall apply to the joint proprietor first mentioned; failing this, it shall apply to the subsequent joint proprietors in the order in which they are mentioned. Where paragraph 1 does not apply to any of the joint proprietors, paragraph 2 shall apply.

Article 20

Transfer

1. An EU trade mark may be transferred, separately from any transfer of the undertaking, in respect of some or all of the goods or services for which it is registered.

2. A transfer of the whole of the undertaking shall include the transfer of the EU trade mark except where, in accordance with the law governing the transfer, there is agreement to the contrary or circumstances clearly dictate otherwise. This provision shall apply to the contractual obligation to transfer the undertaking.

3. Without prejudice to paragraph 2, an assignment of the EU trade mark shall be made in writing and shall require the signature of the parties to the contract, except when it is a result of a judgment; otherwise it shall be void.

4. On request of one of the parties a transfer shall be entered in the Register and published.

5. An application for registration of a transfer shall contain information to identify the EU trade mark, the new proprietor, the goods and services to which the transfer relates, as well as documents duly establishing the transfer in accordance with paragraphs 2 and 3. The application may further contain, where applicable, information to identify the representative of the new proprietor.

6. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in the application for registration of a transfer;

(b) the kind of documentation required to establish a transfer, taking account of the agreements given by the registered proprietor and the successor in title;

(c) the details of how to process applications for partial transfers, ensuring that the goods and services in the remaining registration and the new registration do not overlap and that a separate file, including a new registration number, is established for the new registration.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

7. Where the conditions applicable to the registration of a transfer, as laid down in paragraphs 1, 2 and 3, or in the implementing acts referred to in paragraph 6, are not fulfilled, the Office shall notify the applicant of the deficiencies. If the deficiencies are not remedied within a period to be specified by the Office, it shall reject the application for registration of the transfer.

8. A single application for registration of a transfer may be submitted for two or more trade marks, provided that the registered proprietor and the successor in title are the same in each case.

9. Paragraphs 5 to 8 shall also apply to applications for EU trade marks.

10. In the case of a partial transfer, any application made by the original proprietor pending with regard to the original registration shall be deemed to be pending with regard to the remaining registration and the new registration. Where such application is subject to the payment of fees and those fees have been paid by the original proprietor, the new proprietor shall not be liable to pay any additional fees with regard to such application.

11. As long as the transfer has not been entered in the Register, the successor in title may not invoke the rights arising from the registration of the EU trade mark.

12. Where there are time limits to be observed vis-à-vis the Office, the successor in title may make the corresponding statements to the Office once the request for registration of the transfer has been received by the Office.

13. All documents which require notification to the proprietor of the EU trade mark in accordance with Article 98 shall be addressed to the person registered as proprietor.

Article 21

Transfer of a trade mark registered in the name of an agent

1. Where an EU trade mark is registered in the name of the agent or representative of a person who is the proprietor of that trade mark, without the proprietor's authorisation, the latter shall be entitled to demand the assignment of the EU trade mark in his favour, unless such agent or representative justifies his action.

2. The proprietor may submit a request for assignment pursuant to paragraph 1 of this Article to the following:

(a) the Office, pursuant to Article 60(1)(b), instead of an application for a declaration of invalidity;

(b) a European Union trade mark court ('EU trade mark court') as referred to in Article 123, instead of a counterclaim for a declaration of invalidity based on Article 128(1).

Article 22

***Rights* in rem**

1. An EU trade mark may, independently of the undertaking, be given as security or be the subject of rights *in rem*.

2. At the request of one of the parties, the rights referred to in paragraph 1 or the transfer of those rights shall be entered in the Register and published.

3. An entry in the Register effected pursuant to paragraph 2 shall be cancelled or modified at the request of one of the parties.

Article 23

Levy of execution

1. An EU trade mark may be levied in execution.

2. As regards the procedure for levy of execution in respect of an EU trade mark, the courts and authorities of the Member States determined in accordance with Article 19 shall have exclusive jurisdiction.

3. On request of one the parties, the levy of execution shall be entered in the Register and published.

4. An entry in the Register effected pursuant to paragraph 3 shall be cancelled or modified at the request of one of the parties.

Article 24

Insolvency proceedings

1. The only insolvency proceedings in which an EU trade mark may be involved are those opened in the Member State in the territory of which the debtor has his centre of main interests.

However, where the debtor is an insurance undertaking or a credit institution as defined in Directive 2009/138/EC of the European Parliament and of the Council [1] and Directive 2001/24/EC of the European Parliament and of the Council [2], respectively, the only insolvency proceedings in which an EU trade mark may be involved are those opened in the Member State where that undertaking or institution has been authorised.

[1] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

[2] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15).

2. In the case of joint proprietorship of an EU trade mark, paragraph 1 shall apply to the share of the joint proprietor.

3. Where an EU trade mark is involved in insolvency proceedings, on request of the competent national authority an entry to this effect shall be made in the Register and published in the European Union Trade Marks Bulletin referred to in Article 116.

Article 25

Licensing

1. An EU trade mark may be licensed for some or all of the goods or services for which it is registered and for the whole or part of the Union. A licence may be exclusive or non-exclusive.

2. The proprietor of an EU trade mark may invoke the rights conferred by that trade mark against a licensee who contravenes any provision in his licensing contract with regard to:

(a) its duration;

(b) the form covered by the registration in which the trade mark may be used;

(c) the scope of the goods or services for which the licence is granted;

(d) the territory in which the trade mark may be affixed; or

(e) the quality of the goods manufactured or of the services provided by the licensee.

3. Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of an EU trade mark only if its proprietor consents thereto. However, the holder of an exclusive licence may bring such proceedings if the proprietor of the trade mark, after formal notice, does not himself bring infringement proceedings within an appropriate period.

4. A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in infringement proceedings brought by the proprietor of the EU trade mark.

5. On request of one of the parties the grant or transfer of a licence in respect of an EU trade mark shall be entered in the Register and published.

6. An entry in the Register effected pursuant to paragraph 5 shall be cancelled or modified at the request of one of the parties.

Article 26

Procedure for entering licences and other rights in the Register

1. Article 20(5) and (6) and the rules adopted pursuant to it and Article 20(8) shall apply *mutatis mutandis* to the registration of a right *in rem* or transfer of a right *in rem* as referred to in Article 22(2), the levy of execution as referred to in Article 23(3), the involvement in insolvency proceedings as referred to in Article 24(3), as well as to the registration of a licence or transfer of a licence as referred to in Article 25(5), subject to the following:

(a) the requirement relating to the identification of goods and services to which the transfer relates shall not apply in respect of a request for registration of a right *in rem*, of a levy of execution or of insolvency proceedings;

(b) the requirement relating to the documents proving the transfer shall not apply where the request is made by the proprietor of the EU trade mark.

2. The application for registration of the rights referred to in paragraph 1 shall not be deemed to have been filed until the required fee has been paid.

3. The application for registration of a licence may contain a request to record a licence in the Register as one or more of the following:

(a) an exclusive licence;

(b) a sub-licence in the event that the licence is granted by a licensee whose licence is recorded in the Register;

(c) a licence limited to only part of the goods or services for which the mark is registered;

(d) a licence limited to part of the Union;

(e) a temporary licence.

Where a request is made to record the licence as a licence listed in points (c), (d) and (e) of the first subparagraph, the application for registration of a licence shall indicate the goods and services, the part of the Union and the time period for which the licence is granted.

4. Where the conditions applicable to registration, as laid down in Articles 22 to 25, in paragraphs 1 and 3 of this Article and in the other applicable rules adopted pursuant to this Regulation, are not fulfilled, the Office shall notify the applicant of the deficiency. If the deficiency is not corrected within a period specified by the Office, it shall reject the application for registration.

5. Paragraphs 1 and 3 shall apply *mutatis mutandis* to applications for EU trade marks.

Article 27

Effects vis-à-vis third parties

1. Legal acts referred to in Articles 20, 22 and 25 concerning an EU trade mark shall have effects vis-à-vis third parties in all the Member States only after entry in the Register. Nevertheless, such an act, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights in the trade mark after the date of that act but who knew of the act at the date on which the rights were acquired.

2. Paragraph 1 shall not apply in the case of a person who acquires the EU trade mark or a right concerning the EU trade mark by way of transfer of the whole of the undertaking or by any other universal succession.

3. The effects vis-à-vis third parties of the legal acts referred to in Article 23 shall be governed by the law of the Member State determined in accordance with Article 19.

4. Until such time as common rules for the Member States in the field of bankruptcy enter into force, the effects vis-à-vis third parties of bankruptcy or similar proceedings shall be governed by the law of the Member State in which such proceedings are first brought within the meaning of national law or of conventions applicable in this field.

Article 28

The application for an EU trade mark as an object of property

Articles 19 to 27 shall apply to applications for EU trade marks.

Article 29

Procedure for cancelling or modifying the entry in the Register of licences and other rights

1. A registration effected under Article 26(1) shall be cancelled or modified at the request of one of the persons concerned.

2. The application shall contain the registration number of the EU trade mark concerned and the particulars of the right for which registration is requested to be cancelled or modified.

3. The application for cancellation of a licence, a right *in rem* or an enforcement measure shall not be deemed to have been filed until the required fee has been paid.

4. The application shall be accompanied by documents showing that the registered right no longer exists or that the licensee or the holder of another right consents to the cancellation or modification of the registration.

5. Where the requirements for cancellation or modification of the registration are not satisfied, the Office shall notify the applicant of the deficiency. If the deficiency is not corrected within a period to be specified by the Office, it shall reject the application for cancellation or modification of the registration.

6. Paragraphs 1 to 5 of this Article shall apply *mutatis mutandis* to entries made in the files pursuant to Article 26(5).

CHAPTER III

APPLICATION FOR EU TRADE MARKS

SECTION 1

Filing of applications and the conditions which govern them

Article 30

Filing of applications

1. An application for an EU trade mark shall be filed at the Office.

2. The Office shall issue to the applicant, without delay, a receipt which shall include at least the file number, a representation, description or other identification of the mark, the nature and the number of the documents and the date of their receipt. That receipt may be issued by electronic means.

Article 31

Conditions with which applications must comply

1. An application for an EU trade mark shall contain:

(a) a request for the registration of an EU trade mark;

(b) information identifying the applicant;

(c) a list of the goods or services in respect of which the registration is requested;

(d) a representation of the mark, which satisfies the requirements set out in Article 4(b).

2. The application for an EU trade mark shall be subject to the payment of the application fee covering one class of goods or services and, where appropriate, of one or more class fees for each class of goods and services exceeding the first class and, where applicable, the search fee.

3. In addition to the requirements referred to in paragraphs 1 and 2, an application for an EU trade mark shall comply with the formal requirements laid down in this Regulation and in the implementing acts adopted pursuant to it. If those conditions provide for the trade mark to be represented electronically, the Executive Director may determine the formats and maximum size of such an electronic file.

4. The Commission shall adopt implementing acts specifying the details to be contained in the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 32

Date of filing

The date of filing of an EU trade mark application shall be the date on which the documents containing the information specified in Article 31(1) are filed with the Office by the applicant, subject to payment of the application fee within one month of filing those documents.

Article 33

Designation and classification of goods and services

1. Goods and services in respect of which trade mark registration is applied for shall be classified in conformity with the system of classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 ('the Nice Classification').

2. The goods and services for which the protection of the trade mark is sought shall be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that sole basis, to determine the extent of the protection sought.

3. For the purposes of paragraph 2, the general indications included in the class headings of the Nice Classification or other general terms may be used, provided that they comply with the requisite standards of clarity and precision set out in this Article.

4. The Office shall reject an application in respect of indications or terms which are unclear or imprecise, where the applicant does not suggest an acceptable wording within a period set by the Office to that effect.

5. The use of general terms, including the general indications of the class headings of the Nice Classification, shall be interpreted as including all the goods or services clearly covered by the literal meaning of the indication or term. The use of such terms or indications shall not be interpreted as comprising a claim to goods or services which cannot be so understood.

6. Where the applicant requests registration for more than one class, the applicant shall group the goods and services according to the classes of the Nice Classification, each group being preceded by the number of the class to which that group of goods or services belongs, and shall present them in the order of the classes.

7. Goods and services shall not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification. Goods and services shall not be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

8. Proprietors of EU trade marks applied for before 22 June 2012 which are registered in respect of the entire heading of a Nice class may declare that their intention on the date of filing had been to seek protection in respect of goods or services beyond those covered by the literal meaning of the heading of that class, provided that the goods or services so designated are included in the alphabetical list for that class in the edition of the Nice Classification in force at the date of filing.

The declaration shall be filed at the Office by 24 September 2016, and shall indicate, in a clear, precise and specific manner, the goods and services, other than those clearly covered by the literal meaning of the indications of the class heading, originally covered by the proprietor's intention. The Office shall take appropriate measures to amend the Register accordingly. The possibility to make a declaration in accordance with the first subparagraph of this paragraph shall be without prejudice to the application of Article 18, Article 47(2), Article 58(1)(a), and Article 64(2).

EU trade marks for which no declaration is filed within the period referred to in the second subparagraph shall be deemed to extend, as from the expiry of that period, only to goods or services clearly covered by the literal meaning of the indications included in the heading of the relevant class.

9. Where the register is amended, the exclusive rights conferred by the EU trade mark under Article 9 shall not prevent a third party from continuing to use a trade mark in relation to goods or services where and to the extent that the use of the trade mark for those goods or services:

(a) commenced before the register was amended; and

(b) did not infringe the proprietor's rights based on the literal meaning of the record of the goods and services in the register at that time.

In addition, the amendment of the list of goods or services recorded in the register shall not give the proprietor of the EU trade mark the right to oppose or to apply for a declaration of invalidity of a later trade mark where and to the extent that:

(a) the later trade mark was either in use, or an application had been made to register the trade mark, for goods or services before the register was amended; and

(b) the use of the trade mark in relation to those goods or services did not infringe, or would not have infringed, the proprietor's rights based on the literal meaning of the record of the goods and services in the register at that time.

SECTION 2

Priority

Article 34

Right of priority

1. A person who has duly filed an application for a trade mark in or in respect of any State party to the Paris Convention or to the Agreement establishing the World Trade Organisation, or his successors in title, shall enjoy, for the purpose of filing an EU trade mark application for the same trade mark in respect of goods or services which are identical with or contained within those for which the application has been filed, a right of priority during a period of six months from the date of filing of the first application.

2. Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.

3. By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.

4. A subsequent application for a trade mark which was the subject of a previous first application in respect of the same goods or services and which is filed in or in respect of the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing of the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

5. If the first filing has been made in a State which is not a party to the Paris Convention or to the Agreement establishing the World Trade Organisation, paragraphs 1 to 4 shall apply only in so far as that State, according to published findings, grants, on the basis of the first filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect. The Executive Director shall, where necessary, request the Commission to consider enquiring as to whether a State within the meaning of the first sentence accords that reciprocal treatment. If the Commission determines that reciprocal treatment in accordance with the first sentence is accorded, it shall publish a communication to that effect in the *Official Journal of the European Union*.

6. Paragraph 5 shall apply from the date of publication in the *Official Journal of the European Union* of the communication determining that reciprocal treatment is accorded, unless the communication states an earlier date from which it is applicable. It shall cease to apply from the date of publication in the *Official Journal of the European Union* of a communication of the Commission to the effect that reciprocal treatment is no longer accorded, unless the communication states an earlier date from which it is applicable.

7. Communications as referred to in paragraphs 5 and 6 shall also be published in the Official Journal of the Office.

Article 35

Claiming priority

1. Priority claims shall be filed together with the EU trade mark application and shall include the date, number and country of the previous application. The documentation in support of priority claims shall be filed within three months of the filing date.

2. The Commission shall adopt implementing acts specifying the kind of documentation to be filed for claiming the priority of a previous application in accordance with paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

3. The Executive Director may determine that the documentation to be provided by the applicant in support of the priority claim may consist of less than what is required under the specifications adopted in accordance with paragraph 2, provided that the information required is available to the Office from other sources.

Article 36

Effect of priority right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the EU trade mark application for the purposes of establishing which rights take precedence.

Article 37

Equivalence of Union filing with national filing

An EU trade mark application which has been accorded a date of filing shall, in the Member States, be equivalent to a regular national filing, where appropriate with the priority claimed for the EU trade mark application.

SECTION 3

Exhibition priority

Article 38

Exhibition priority

1. If an applicant for an EU trade mark has displayed goods or services under the mark applied for, at an official or officially recognised international exhibition falling within the terms of the Convention relating to international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972, he may, if he files the application within a period of six months of the date of the first display of the goods or services under the mark applied for, claim a right of priority from that date within the meaning of Article 36. The priority claim shall be filed together with the EU trade mark application.

2. An applicant who wishes to claim priority pursuant to paragraph 1 shall file evidence of the display of goods or services under the mark applied for within three months of the filing date.

3. An exhibition priority granted in a Member State or in a third country shall not extend the period of priority laid down in Article 34.

4. The Commission shall adopt implementing acts specifying the type and details of evidence to be filed for claiming an exhibition priority in accordance with paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

SECTION 4

Seniority of a national trade mark

Article 39

Claiming seniority of a national trade mark in an application for an EU trade mark or subsequent to the filing of the application

1. The proprietor of an earlier trade mark registered in a Member State, including a trade mark registered in the Benelux countries, or registered under international arrangements having effect in a Member State, who applies for an identical trade mark for registration as an EU trade mark for goods or services which are identical with or contained within those for which the earlier trade mark has been registered, may claim for the EU trade mark the seniority of the earlier trade mark in respect of the Member State in or for which it is registered.

2. Seniority claims shall either be filed together with the EU trade mark application or within two months of the filing date of the application, and shall include the Member State or Member States in or for which the mark is registered, the number and the filing date of the relevant registration, and the goods and services for which the mark is registered. Where the seniority of one or more registered earlier trade marks is claimed in the application, the documentation in support of the seniority claim shall be filed within three months of the filing date. Where the applicant wishes to claim the seniority subsequent to the filing of the application, the documentation in support of the seniority claim shall be submitted to the Office within three months of receipt of the seniority claim.

3. Seniority shall have the sole effect under this Regulation that, where the proprietor of the EU trade mark surrenders the earlier trade mark or allows it to lapse, he shall be deemed to continue to have the same rights as he would have had if the earlier trade mark had continued to be registered.

4. The seniority claimed for the EU trade mark shall lapse where the earlier trade mark the seniority of which is claimed is declared to be invalid or revoked. Where the earlier trade mark is revoked, the seniority shall lapse provided that the revocation takes effect prior to the filing date or priority date of that EU trade mark.

5. The Office shall inform the Benelux Office for Intellectual Property or the central industrial property office of the Member State concerned of the effective claiming of seniority.

6. The Commission shall adopt implementing acts specifying the kind of documentation to be filed for claiming the seniority of a national trade mark or a trade mark registered under international agreements having effect in a Member State in accordance with paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

7. The Executive Director may determine that the documentation to be provided by the applicant in support of the seniority claim may consist of less than what is required under the specifications adopted in accordance with paragraph 6, provided that the information required is available to the Office from other sources.

Article 40

Claiming seniority of a national trade mark after registration of an EU trade mark

1. The proprietor of an EU trade mark who is the proprietor of an earlier identical trade mark registered in a Member State, including a trade mark registered in the Benelux countries or of an earlier identical trade mark, with an international registration effective in a Member State, for goods or services which are identical to those for which the earlier trade mark has been registered, or contained within them, may claim the seniority of the earlier trade mark in respect of the Member State in or for which it was registered.

2. Seniority claims filed pursuant to paragraph 1 of this Article shall include the registration number of the EU trade mark, the name and address of its proprietor, the Member State or Member States in or for which the earlier mark is registered, the number and the filing date of the relevant registration, the goods and services for which the mark is registered and those in respect of which seniority is claimed, and supporting documentation as provided for in the rules adopted pursuant to Article 39(6).

3. If the requirements governing the claiming of seniority are not fulfilled, the Office shall communicate the deficiency to the proprietor of the EU trade mark. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the claim.

4. Article 39(3), (4), (5) and (7) shall apply.

CHAPTER IV

REGISTRATION PROCEDURE

SECTION 1

Examination of applications

Article 41

Examination of the conditions of filing

1. The Office shall examine whether:

(a) the EU trade mark application satisfies the requirements for the accordance of a date of filing in accordance with Article 32;

(b) the EU trade mark application complies with the conditions and requirements referred to in Article 31(3);

(c) where appropriate, the class fees have been paid within the prescribed period.

2. Where the EU trade mark application does not satisfy the requirements referred to in paragraph 1, the Office shall request the applicant to remedy the deficiencies or the default on payment within two months of the receipt of the notification.

3. If the deficiencies or the default on payment established pursuant to paragraph 1(a) are not remedied within this period, the application shall not be dealt with as an EU trade mark application. If the applicant complies with the Office's request, the Office shall accord as the date of filing of the application the date on which the deficiencies or the default on payment established are remedied.

4. If the deficiencies established pursuant to paragraph 1(b) are not remedied within the prescribed period, the Office shall refuse the application.

5. If the default on payment established pursuant to paragraph 1(c) is not remedied within the prescribed period, the application shall be deemed to be withdrawn unless it is clear which categories of goods or services the amount paid is intended to cover. In the absence of other criteria to determine which classes are intended to be covered, the Office shall take the classes in the order of the classification. The application shall be deemed to have been withdrawn with regard to those classes for which the class fees have not been paid or have not been paid in full.

6. Failure to satisfy the requirements concerning the claim to priority shall result in loss of the right of priority for the application.

7. Failure to satisfy the requirements concerning the claiming of seniority of a national trade mark shall result in loss of that right for the application.

8. Where failure to satisfy the requirements referred to in paragraph 1(b) and (c) concerns only some of the goods or services, the Office shall refuse the application, or the right of priority or the right of seniority shall be lost, only in so far as those goods and services are concerned.

Article 42

Examination as to absolute grounds for refusal

1. Where, under Article 7, a trade mark is ineligible for registration in respect of some or all of the goods or services covered by the EU trade mark application, the application shall be refused as regards those goods or services.

2. The application shall not be refused before the applicant has been allowed the opportunity to withdraw or amend the application or to submit his observations. To this effect, the Office shall notify the applicant of the grounds for refusing registration and shall specify a period within which he may withdraw or amend the application or submit his observations. Where the applicant fails to overcome the grounds for refusing registration, the Office shall refuse registration in whole or in part.

SECTION 2

Search

Article 43

Search report

1. The Office shall, at the request of the applicant for the EU trade mark when filing the application, draw up a European Union search report ('EU search report') citing those earlier EU trade marks or EU trade mark applications discovered which may be invoked under Article 8 against the registration of the EU trade mark applied for.

2. Where, at the time of filing an EU trade mark application, the applicant requests that a search report be prepared by the central industrial property offices of the Member States and where the appropriate search fee has been paid within the time limit for the payment of the filing fee, the Office shall transmit without delay a copy of the EU trade mark application to the central industrial property office of each Member State which has informed the Office of its decision to operate a search in its own register of trade marks in respect of EU trade mark applications.

3. Each of the central industrial property offices of the Member States referred to in paragraph 2 shall communicate a search report which shall either cite any earlier national trade marks, national trade mark applications or trade marks registered under international agreements, having effect in the Member State or Member States concerned, which have been discovered and which may be invoked under Article 8 against the registration of the EU trade mark applied for, or state that the search has revealed no such rights.

4. The Office, after consulting the Management Board provided for in Article 153 ('the Management Board'), shall establish the contents and modalities for the reports.

5. The Office shall pay an amount to each central industrial property office for each search report provided in accordance with paragraph 3. The amount, which shall be the same for each office, shall be fixed by the Budget Committee by means of a decision adopted by a majority of three quarters of the representatives of the Member States.

6. The Office shall transmit to the applicant for the EU trade mark the EU search report requested and any requested national search reports received.

7. Upon publication of the EU trade mark application, the Office shall inform the proprietors of any earlier EU trade marks or EU trade mark applications cited in the EU search report of the publication of the EU trade mark application. The latter shall apply irrespective of whether the applicant has requested to receive the EU search report, unless the proprietor of an earlier registration or application requests not to receive the notification.

SECTION 3

Publication of the application

Article 44

Publication of the application

1. If the conditions which the application for an EU trade mark is required to satisfy have been fulfilled, the application shall be published for the purposes of Article 46 to the extent that it has not been refused pursuant to Article 42. The publication of the application shall be without prejudice to information already made available to the public otherwise in accordance with this Regulation or acts adopted pursuant to this Regulation.

2. Where, after publication, the application is refused pursuant to Article 42, the decision that it has been refused shall be published upon becoming final.

3. Where the publication of the application contains an error attributable to the Office, the Office shall of its own motion or at the request of the applicant correct the error and publish the correction.

The rules adopted pursuant to Article 49(3) shall apply *mutatis mutandis* where a correction is requested by the applicant.

4. Article 46(2) shall also apply where the correction concerns the list of goods or services or the representation of the mark.

5. The Commission shall adopt implementing acts laying down the details to be contained in the publication of the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

SECTION 4

Observations by third parties and opposition

Article 45

Observations by third parties

1. Any natural or legal person and any group or body representing manufacturers, producers, suppliers of services, traders or consumers may submit to the Office written observations, explaining on which grounds, under Articles 5 and 7, the trade mark should not be registered *ex officio*.

Persons and groups or bodies as referred to in the first subparagraph shall not be parties to the proceedings before the Office.

2. Third party observations shall be submitted before the end of the opposition period or, where an opposition against the trade mark has been filed, before the final decision on the opposition is taken.

3. The submission referred to in paragraph 1 shall be without prejudice to the right of the Office to re-open the examination of absolute grounds on its own initiative at any time before registration, where appropriate.

4. The observations referred to in paragraph 1 shall be communicated to the applicant who may comment on them.

Article 46

Opposition

1. Within a period of three months following the publication of an EU trade mark application, notice of opposition to registration of the trade mark may be given on the grounds that it may not be registered under Article 8:

(a) by the proprietors of earlier trade marks referred to in Article 8(2) as well as licensees authorised by the proprietors of those trade marks, in respect of Article 8(1) and (5);

(b) by the proprietors of trade marks referred to in Article 8(3);

(c) by the proprietors of earlier marks or signs referred to in Article 8(4) and by persons authorised under the relevant national law to exercise these rights;

(d) by the persons authorised under the relevant Union legislation or national law to exercise the rights referred to in Article 8(6).

2. Notice of opposition to registration of the trade mark may also be given, subject to the conditions laid down in paragraph 1, in the event of the publication of an amended application in accordance with the second sentence of Article 49(2).

3. Opposition shall be expressed in writing, and shall specify the grounds on which it is made. It shall not be considered as duly entered until the opposition fee has been paid.

4. Within a period to be fixed by the Office, the opponent may submit facts, evidence and arguments in support of his case.

Article 47

Examination of opposition

1. In the examination of the opposition the Office shall invite the parties, as often as necessary, to file observations, within a period set by the Office, on communications from the other parties or issued by itself.

2. If the applicant so requests, the proprietor of an earlier EU trade mark who has given notice of opposition shall furnish proof that, during the five-year period preceding the date of filing or the date of priority of the EU trade mark application, the earlier EU trade mark has been put to genuine use in the Union in connection with the goods or services in respect of which it is registered and which he cites as justification for his opposition, or that there are proper reasons for non-use, provided that the earlier EU trade mark has at that date been registered for not less than five years. In the absence of proof to this effect, the opposition shall be rejected. If the earlier EU trade mark has been used in relation to only part of the goods or services for which it is registered it shall, for the purposes of the examination of the opposition, be deemed to be registered in respect only of that part of the goods or services.

3. Paragraph 2 shall apply to earlier national trade marks referred to in Article 8(2)(a), by substituting use in the Member State in which the earlier national trade mark is protected for use in the Union.

4. The Office may, if it thinks fit, invite the parties to make a friendly settlement.

5. If examination of the opposition reveals that the trade mark may not be registered in respect of some or all of the goods or services for which the EU trade mark application has been made, the application shall be refused in respect of those goods or services. Otherwise the opposition shall be rejected.

6. The decision refusing the application shall be published upon becoming final.

Article 48

Delegation of powers

The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the details of the procedure for filing and examining an opposition set out in Articles 46 and 47.

SECTION 5

Withdrawal, restriction, amendment and division of the application

Article 49

Withdrawal, restriction and amendment of the application

1. The applicant may at any time withdraw his EU trade mark application or restrict the list of goods or services contained therein. Where the application has already been published, the withdrawal or restriction shall also be published.

2. In other respects, an EU trade mark application may be amended, upon request of the applicant, only by correcting the name and address of the applicant, errors of wording or of copying, or obvious mistakes, provided that such correction does not substantially change the trade mark or extend the list of goods or services. Where the amendments affect the representation of the trade mark or the list of goods or services and are made after publication of the application, the trade mark application shall be published as amended.

3. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the details of the procedure governing the amendment of the application.

Article 50

Division of the application

1. The applicant may divide the application by declaring that some of the goods or services included in the original application will be the subject of one or more divisional applications. The goods or services in the divisional application shall not overlap with the goods or services which remain in the original application or those which are included in other divisional applications.

2. The declaration of division shall not be admissible:

(a) if, where an opposition has been entered against the original application, such a divisional application has the effect of introducing a division amongst the goods or services against which the opposition has been directed, until the decision of the Opposition Division has become final or the opposition proceedings are finally terminated otherwise;

(b) before the date of filing referred to in Article 32 has been accorded by the Office and during the opposition period provided for in Article 46(1).

3. The declaration of division shall be subject to a fee. The declaration shall be deemed not to have been made until the fee has been paid.

4. Where the Office finds that the requirements laid down in paragraph 1 and in the rules adopted pursuant to paragraph 9(a) are not fulfilled, it shall invite the applicant to remedy the deficiencies within a period to be specified by the Office. If the deficiencies are not remedied before the time limit expires, the Office shall refuse the declaration of division.

5. The division shall take effect on the date on which it is recorded in the files kept by the Office concerning the original application.

6. All requests and applications submitted and all fees paid with regard to the original application prior to the date on which the Office receives the declaration of division are deemed also to have been submitted or paid with regard to the divisional application or applications. The fees for the original application which have been duly paid prior to the date on which the declaration of division is received shall not be refunded.

7. The divisional application shall preserve the filing date and any priority date and seniority date of the original application.

8. Where the declaration of division relates to an application which has already been published pursuant to Article 44, the division shall be published. The divisional application shall be published. The publication shall not open a new period for the filing of oppositions.

9. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in a declaration of the division of an application made pursuant to paragraph 1;

(b) the details as to how to process a declaration of the division of an application, ensuring that a separate file, including a new application number, is established for the divisional application;

(c) the details to be contained in the publication of the divisional application pursuant to paragraph 8.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

SECTION 6

Registration

Article 51

Registration

1. Where an application meets the requirements set out in this Regulation and where no notice of opposition has been given within the period referred to in Article 46(1) or where any opposition entered has been finally disposed of by withdrawal, rejection or other disposition, the trade mark and the particulars referred to in Article 111(2) shall be recorded in the Register. The registration shall be published.

2. The Office shall issue a certificate of registration. That certificate may be issued by electronic means. The Office shall provide certified or uncertified copies of the certificate subject to the payment of a fee, where those copies are issued other than by electronic means.

3. The Commission shall adopt implementing acts specifying the details to be contained in and the form of the certificate of registration referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

CHAPTER V

DURATION, RENEWAL, ALTERATION AND DIVISION OF EU TRADE MARKS

Article 52

Duration of registration

EU trade marks shall be registered for a period of 10 years from the date of filing of the application. Registration may be renewed in accordance with Article 53 for further periods of 10 years.

Article 53

Renewal

1. Registration of the EU trade mark shall be renewed at the request of the proprietor of the EU trade mark or any person expressly authorised by him, provided that the fees have been paid.

2. The Office shall inform the proprietor of the EU trade mark, and any person having a registered right in respect of the EU trade mark, of the expiry of the registration at least six months before the said expiry. Failure to give such information shall not involve the responsibility of the Office and shall not affect the expiry of the registration.

3. The request for renewal shall be submitted in the six-month period prior to the expiry of the registration. The basic fee for the renewal and, where appropriate, one or more class fees for each class of goods or services exceeding the first one shall also be paid within this period. Failing this, the request may be submitted and the fees paid within a further period of six months following the expiry of registration, provided that an additional fee for late payment of the renewal fee or late submission of the request for renewal is paid within this further period.

4. The request for renewal shall include:

(a) the name of the person requesting renewal;

(b) the registration number of the EU trade mark to be renewed;

(c) if the renewal is requested for only part of the registered goods and services, an indication of those classes or those goods and services for which renewal is requested, or those classes or those goods and services for which renewal is not requested, grouped according to the classes of the Nice classification, each group being preceded by the number of the class of that classification to which that group of goods or services belongs, and presented in the order of classes of that classification.

If the payment referred to in paragraph 3 is made, it shall be deemed to constitute a request for renewal provided that it contains all necessary indications to establish the purpose of the payment.

5. Where the request is submitted or the fees paid in respect of only some of the goods or services for which the EU trade mark is registered, registration shall be renewed for those goods or services only. Where the fees paid are insufficient to cover all the classes of goods and services for which renewal is requested, registration shall be renewed if it is clear which class or classes are to be covered. In the absence of other criteria, the Office shall take the classes into account in the order of classification.

6. Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be registered.

7. Where the request for renewal is filed within the periods provided for in paragraph 3, but the other conditions governing renewal provided for in this Article are not satisfied, the Office shall inform the applicant of the deficiencies found.

8. Where a request for renewal is not submitted or is submitted after the expiry of the period provided for in paragraph 3, or where the fees are not paid or are paid only after the period in question has expired, or where the deficiencies referred to in paragraph 7 are not remedied within that period, the Office shall determine that the registration has expired and shall notify the proprietor of the EU trade mark accordingly. Where the determination has become final, the Office shall cancel the mark from the register. The cancellation shall take effect from the day following the date on which the existing registration expired. Where the renewal fees have been paid but the registration is not renewed, those fees shall be refunded.

9. A single request for renewal may be submitted for two or more marks, upon payment of the required fees for each of the marks, provided that the proprietors or the representatives are the same in each case.

Article 54

Alteration

1. The EU trade mark shall not be altered in the Register during the period of registration or on renewal thereof.

2. Nevertheless, where the EU trade mark includes the name and address of the proprietor, any alteration thereof not substantially affecting the identity of the trade mark as originally registered may be registered at the request of the proprietor.

3. The request for alteration shall include the element of the mark to be altered and that element in its altered version.

The Commission shall adopt implementing acts specifying the details to be contained in the request for alteration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

4. The request shall be deemed not to have been filed until the required fee has been paid. If the fee has not been paid or has not been paid in full, the Office shall inform the applicant accordingly. A single request may be made for the alteration of the same element in two or more registrations of the same proprietor. The required fee shall be paid in respect of each registration to be altered. If the requirements governing the alteration of the registration are not fulfilled, the Office shall communicate the deficiency to the applicant. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the request.

5. The publication of the registration of the alteration shall contain a representation of the EU trade mark as altered. Third parties whose rights may be affected by the alteration may challenge the registration thereof within the period of three months following publication. Articles 46 and 47 and rules adopted pursuant to Article 48 shall apply to the publication of the registration of the alteration.

Article 55

Change of the name or address

1. A change of the name or address of the proprietor of the EU trade mark which is not an alteration of the EU trade mark pursuant to Article 54(2) and which is not the consequence of a whole or partial transfer of the EU trade mark shall, at the request of the proprietor, be recorded in the Register.

The Commission shall adopt implementing acts specifying the details to be contained in a request for the change of name or address pursuant to the first subparagraph of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

2. A single request may be made for the change of the name or address in respect of two or more registrations of the same proprietor.

3. If the requirements governing the recording of a change are not fulfilled, the Office shall communicate the deficiency to the proprietor of the EU trade mark. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the request.

4. Paragraphs 1, 2 and 3 shall also apply to a change of the name or address of the registered representative.

5. Paragraphs 1 to 4 shall apply to applications for EU trade marks. The change shall be recorded in the files kept by the Office on the EU trade mark application.

Article 56

Division of the registration

1. The proprietor of the EU trade mark may divide the registration by declaring that some of the goods or services included in the original registration will be the subject of one or more divisional registrations. The goods or services in the divisional registration shall not overlap with the goods or services which remain in the original registration or those which are included in other divisional registrations.

2. The declaration of division shall not be admissible:

(a) if, where an application for revocation of rights or for a declaration of invalidity has been entered at the Office against the original registration, such a divisional declaration has the effect of introducing a division amongst the goods or services against which the application for revocation of rights or for a declaration of invalidity is directed, until the decision of the Cancellation Division has become final or the proceedings are finally terminated otherwise;

(b) if, where a counterclaim for revocation or for a declaration of invalidity has been entered in a case before an EU trade mark court, such a divisional declaration has the effect of introducing a division amongst the goods or services against which the counterclaim is directed, until the mention of the EU trade mark court's judgment is recorded in the Register pursuant to Article 128(6).

3. If the requirements laid down in paragraph 1 and pursuant to the implementing acts referred to in paragraph 8 are not fulfilled, or the list of goods and services which form the divisional registration overlap with the goods and services which remain in the original registration, the Office shall invite the proprietor of the EU trade mark to remedy the deficiencies within such period as it may specify. If the deficiencies are not remedied before the period expires, the Office shall refuse the declaration of division.

4. The declaration of division shall be subject to a fee. The declaration shall be deemed not to have been made until the fee has been paid.

5. The division shall take effect on the date on which it is entered in the Register.

6. All requests and applications submitted and all fees paid with regard to the original registration prior to the date on which the Office receives the declaration of division shall be deemed also to have been submitted or paid with regard to the divisional registration or registrations. The fees for the original registration which have been duly paid prior to the date on which the declaration of division is received shall not be refunded.

7. The divisional registration shall preserve the filing date and any priority date and seniority date of the original registration.

8. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in a declaration of the division of a registration pursuant to paragraph 1;

(b) the details as how to process a declaration of the division of a registration, ensuring that a separate file, including a new registration number, is established for the divisional registration.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

CHAPTER VI

SURRENDER, REVOCATION AND INVALIDITY

SECTION 1

Surrender

Article 57

Surrender

1. An EU trade mark may be surrendered in respect of some or all of the goods or services for which it is registered.

2. The surrender shall be declared to the Office in writing by the proprietor of the trade mark. It shall not have effect until it has been entered in the Register. The validity of the surrender of an EU trade mark which is declared to the Office subsequent to the submission of an application for revocation of that trade mark pursuant to Article 63(1) shall be conditional upon the final rejection or withdrawal of the application for revocation.

3. Surrender shall be entered only with the agreement of the proprietor of a right relating to the EU trade mark and which is entered in the Register. If a licence has been registered, surrender shall be entered in the Register only if the proprietor of the EU trade mark proves that he has informed the licensee of his intention to surrender. The entry of the surrender shall be made on expiry of the three-month period after the date on which the proprietor satisfies the Office that he has informed the licensee of his intention to surrender, or before the expiry of that period, as soon as he proves that the licensee has given his consent.

4. If the requirements governing surrender are not fulfilled, the Office shall communicate the deficiencies to the declarant. If the deficiencies are not remedied within a period to be specified by the Office, the Office shall reject the entry of surrender in the Register.

5. The Commission shall adopt implementing acts specifying the details to be contained in a declaration of surrender pursuant to paragraph 2 of this Article and the kind of documentation required to establish a third party's agreement pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

SECTION 2

Grounds for revocation

Article 58

Grounds for revocation

1. The rights of the proprietor of the EU trade mark shall be declared to be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings:

(a) if, within a continuous period of five years, the trade mark has not been put to genuine use in the Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; however, no person may claim that the proprietor's rights in an EU trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application or counterclaim, genuine use of the trade mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application or counterclaim which began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application or counterclaim may be filed;

(b) if, in consequence of acts or inactivity of the proprietor, the trade mark has become the common name in the trade for a product or service in respect of which it is registered;

(c) if, in consequence of the use made of the trade mark by the proprietor of the trade mark or with his consent in respect of the goods or services for which it is registered, the trade mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

2. Where the grounds for revocation of rights exist in respect of only some of the goods or services for which the EU trade mark is registered, the rights of the proprietor shall be declared to be revoked in respect of those goods or services only.

SECTION 3

Grounds for invalidity

Article 59

Absolute grounds for invalidity

1. An EU trade mark shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings:

(a) where the EU trade mark has been registered contrary to the provisions of Article 7;

(b) where the applicant was acting in bad faith when he filed the application for the trade mark.

2. Where the EU trade mark has been registered in breach of the provisions of Article 7(1)(b), (c) or (d), it may nevertheless not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

3. Where the ground for invalidity exists in respect of only some of the goods or services for which the EU trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

Article 60

Relative grounds for invalidity

1. An EU trade mark shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings:

(a) where there is an earlier trade mark as referred to in Article 8(2) and the conditions set out in paragraph 1 or 5 of that Article are fulfilled;

(b) where there is a trade mark as referred to in Article 8(3) and the conditions set out in that paragraph are fulfilled;

(c) where there is an earlier right as referred to in Article 8(4) and the conditions set out in that paragraph are fulfilled;

(d) where there is an earlier designation of origin or geographical indication as referred to in Article 8(6) and the conditions set out in that paragraph are fulfilled.

All the conditions referred to in the first subparagraph shall be fulfilled at the filing date or the priority date of the EU trade mark.

2. An EU trade mark shall also be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings where the use of such trade mark may be prohibited pursuant to another earlier right under the Union legislation or national law governing its protection, and in particular:

(a) a right to a name;

(b) a right of personal portrayal;

(c) a copyright;

(d) an industrial property right.

3. An EU trade mark may not be declared invalid where the proprietor of a right referred to in paragraph 1 or 2 consents expressly to the registration of the EU trade mark before submission of the application for a declaration of invalidity or the counterclaim.

4. Where the proprietor of one of the rights referred to in paragraph 1 or 2 has previously applied for a declaration that an EU trade mark is invalid or made a counterclaim in infringement proceedings, he may not submit a new application for a declaration of invalidity or lodge a counterclaim on the basis of another of the said rights which he could have invoked in support of his first application or counterclaim.

5. Article 59(3) shall apply.

Article 61

Limitation in consequence of acquiescence

1. Where the proprietor of an EU trade mark has acquiesced, for a period of five successive years, in the use of a later EU trade mark in the Union while being aware of such use, he shall no longer be entitled on the basis of the earlier trade mark to apply for a declaration that the later trade mark is invalid in respect of the goods or services for which the later trade mark has been used, unless registration of the later EU trade mark was applied for in bad faith.

2. Where the proprietor of an earlier national trade mark as referred to in Article 8(2) or of another earlier sign referred to in Article 8(4) has acquiesced, for a period of five successive years, in the use of a later EU trade mark in the Member State in which the earlier trade mark or the other earlier sign is protected while being aware of such use, he shall no longer be entitled on the basis of the earlier trade mark or of the other earlier sign to apply for a declaration that the later trade mark is invalid in respect of the goods or services for which the later trade mark has been used, unless registration of the later EU trade mark was applied for in bad faith.

3. In the cases referred to in paragraphs 1 and 2, the proprietor of a later EU trade mark shall not be entitled to oppose the use of the earlier right, even though that right may no longer be invoked against the later EU trade mark.

SECTION 4

Consequences of revocation and invalidity

Article 62

Consequences of revocation and invalidity

1. The EU trade mark shall be deemed not to have had, as from the date of the application for revocation or of the counterclaim, the effects specified in this Regulation, to the extent that the rights of the proprietor have been revoked. An earlier date, on which one of the grounds for revocation occurred, may be fixed in the decision at the request of one of the parties.

2. The EU trade mark shall be deemed not to have had, as from the outset, the effects specified in this Regulation, to the extent that the trade mark has been declared invalid.

3. Subject to the national provisions relating either to claims for compensation for damage caused by negligence or lack of good faith on the part of the proprietor of the trade mark, or to unjust enrichment, the retroactive effect of revocation or invalidity of the trade mark shall not affect:

(a) any decision on infringement which has acquired the authority of a final decision and been enforced prior to the revocation or invalidity decision;

(b) any contract concluded prior to the revocation or invalidity decision, in so far as it has been performed before that decision; however, repayment, to an extent justified by the circumstances, of sums paid under the relevant contract may be claimed on grounds of equity.

SECTION 5

Proceedings in the office in relation to revocation or invalidity

Article 63

Application for revocation or for a declaration of invalidity

1. An application for revocation of the rights of the proprietor of an EU trade mark or for a declaration that the trade mark is invalid may be submitted to the Office:

(a) where Articles 58 and 59 apply, by any natural or legal person and any group or body set up for the purpose of representing the interests of manufacturers, producers, suppliers of services, traders or consumers, which, under the terms of the law governing it, has the capacity in its own name to sue and be sued;

(b) where Article 60(1) applies, by the persons referred to in Article 46(1);

(c) where Article 60(2) applies, by the owners of the earlier rights referred to in that provision or by the persons who are entitled under Union legislation or the law of the Member State concerned to exercise the rights in question.

2. The application shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the fee has been paid.

3. An application for revocation or for a declaration of invalidity shall be inadmissible where an application relating to the same subject matter and cause of action, and involving the same parties, has been adjudicated on its merits, either by the Office or by an EU trade mark court as referred to in Article 123, and the decision of the Office or that court on that application has acquired the authority of a final decision.

Article 64

Examination of the application

1. On the examination of the application for revocation of rights or for a declaration of invalidity, the Office shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Office, on communications from the other parties or issued by itself.

2. If the proprietor of the EU trade mark so requests, the proprietor of an earlier EU trade mark, being a party to the invalidity proceedings, shall furnish proof that, during the period of five years preceding the date of the application for a declaration of invalidity, the earlier EU trade mark has been put to genuine use in the Union in connection with the goods or services in respect of which it is registered and which the proprietor of that earlier trade mark cites as justification for his application, or that there are proper reasons for non-use, provided that the earlier EU trade mark has at that date been registered for not less than five years. If, at the date on which the EU trade mark application was filed or at the priority date of the EU trade mark application, the earlier EU trade mark had been registered for not less than five years, the proprietor of the earlier EU trade mark shall furnish proof that, in addition, the conditions set out in Article 47(2) were satisfied at that date. In the absence of proof to this effect, the application for a declaration of

invalidity shall be rejected. If the earlier EU trade mark has been used only in relation to part of the goods or services for which it is registered, it shall, for the purpose of the examination of the application for a declaration of invalidity, be deemed to be registered in respect of that part of the goods or services only.

3. Paragraph 2 shall apply to earlier national trade marks referred to in Article 8(2)(a), by substituting use in the Member State in which the earlier national trade mark is protected for use in the Union.

4. The Office may, if it thinks fit, invite the parties to make a friendly settlement.

5. If the examination of the application for revocation of rights or for a declaration of invalidity reveals that the trade mark should not have been registered in respect of some or all of the goods or services for which it is registered, the rights of the proprietor of the EU trade mark shall be revoked or it shall be declared invalid in respect of those goods or services. Otherwise the application for revocation of rights or for a declaration of invalidity shall be rejected.

6. A record of the Office's decision on the application for revocation of rights or for a declaration of invalidity shall be entered in the Register once it has become final.

Article 65

Delegation of powers

The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the details of the procedures governing the revocation and declaration of invalidity of an EU trade mark as referred to in Articles 63 and 64, as well as the transfer of an EU trade mark registered in the name of an agent as referred to in Article 21.

CHAPTER VII

APPEALS

Article 66

Decisions subject to appeal

1. An appeal shall lie from decisions of any of the decision-making instances of the Office listed in points (a) to (d) of Article 159, and, where appropriate, point (f) of that Article. Those decisions shall take effect only as from the date of expiration of the appeal period referred to in Article 68. The filing of the appeal shall have suspensive effect.

2. A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

Article 67

Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 68

Time limit and form of appeal

1. Notice of appeal shall be filed in writing at the Office within two months of the date of notification of the decision. The notice shall be deemed to have been filed only when the fee for appeal has been paid. It shall be filed in the language of the proceedings in which the decision subject to appeal was taken. Within four months of the date of notification of the decision, a written statement setting out the grounds of appeal shall be filed.

2. In *inter partes* proceedings, the defendant may, in his response, seek a decision annulling or altering the contested decision on a point not raised in the appeal. Such submissions shall cease to have effect should the appellant discontinue the proceedings.

Article 69

Revision of decisions in ex parte cases

1. If the party which has lodged the appeal is the sole party to the procedure, and if the department whose decision is contested considers the appeal to be admissible and well founded, the department shall rectify its decision.

2. If the decision is not rectified within one month of receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

Article 70

Examination of appeals

1. If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable.

2. In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from the other parties or issued by itself.

Article 71

Decisions in respect of appeals

1. Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

2. If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the *ratio decidendi* of the Board of Appeal, in so far as the facts are the same.

3. The decisions of the Board of Appeal shall take effect only as from the date of expiry of the period referred to in Article 72(5) or, if an action has been brought before the General Court within that period, as from the date of dismissal of such action or of any appeal filed with the Court of Justice against the decision of the General Court.

Article 72

Actions before the Court of Justice

1. Actions may be brought before the General Court against decisions of the Boards of Appeal in relation to appeals.

2. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the TFEU, infringement of this Regulation or of any rule of law relating to their application or misuse of power.

3. The General Court shall have jurisdiction to annul or to alter the contested decision.

4. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.

5. The action shall be brought before the General Court within two months of the date of notification of the decision of the Board of Appeal.

6. The Office shall take the necessary measures to comply with the judgment of the General Court or, in the event of an appeal against that judgment, the Court of Justice.

Article 73

Delegation of powers

The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying:

(a) the formal content of the notice of appeal referred to in Article 68 and the procedure for the filing and the examination of an appeal;

(b) the formal content and form of the Board of Appeal's decisions as referred to in Article 71;

(c) the reimbursement of the appeal fee referred to in Article 68.

CHAPTER VIII

SPECIFIC PROVISIONS ON EUROPEAN UNION COLLECTIVE MARKS AND CERTIFICATION MARKS

SECTION 1

EU collective marks

Article 74

EU collective marks

1. A European Union collective mark ('EU collective mark') shall be an EU trade mark which is described as such when the mark is applied for and is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings. Associations of manufacturers, producers, suppliers of services, or traders which, under the terms of the law governing them, have the capacity in their own name to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued, as well as legal persons governed by public law, may apply for EU collective marks.

2. By way of derogation from Article 7(1)(c), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute EU collective marks within the meaning of paragraph 1. An EU collective mark shall not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided that he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark shall not be invoked against a third party who is entitled to use a geographical name.

3. Chapters I to VII and IX to XIV shall apply to EU collective marks to the extent that this section does not provide otherwise.

Article 75

Regulations governing use of an EU collective mark

1. An applicant for an EU collective mark shall submit regulations governing use within two months of the date of filing.

2. The regulations governing use shall specify the persons authorised to use the mark, the conditions of membership of the association and, where they exist, the conditions of use of the mark, including sanctions. The regulations governing use of a mark referred to in Article 74(2) shall authorise any person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark.

3. The Commission shall adopt implementing acts specifying the details to be contained in the regulations referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 76

Refusal of the application

1. In addition to the grounds for refusal of an EU trade mark application provided for in Articles 41 and 42, an application for an EU collective mark shall be refused where the provisions of Articles 74 or 75 are not satisfied, or where the regulations governing use are contrary to public policy or to accepted principles of morality.

2. An application for an EU collective mark shall also be refused if the public is liable to be misled as regards the character or the significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.

3. An application shall not be refused if the applicant, as a result of amendment of the regulations governing use, meets the requirements of paragraphs 1 and 2.

Article 77

Observations by third parties

Where written observations on an EU collective mark are submitted to the Office pursuant to Article 45, those observations may also be based on the particular grounds on which the application for an EU collective mark should be refused pursuant to Article 76.

Article 78

Use of marks

Use of an EU collective mark by any person who has authority to use it shall satisfy the requirements of this Regulation, provided that the other conditions which this Regulation imposes with regard to the use of EU trade marks are fulfilled.

Article 79

Amendment of the regulations governing use of the EU collective mark

1. The proprietor of an EU collective mark shall submit to the Office any amended regulations governing use.

2. The amendment shall not be mentioned in the Register if the amended regulations do not satisfy the requirements of Article 75 or involve one of the grounds for refusal referred to in Article 76.

3. Written observations made in accordance with Article 77 may also be submitted with regard to amended regulations governing use.

4. For the purposes of applying this Regulation, amendments to the regulations governing use shall take effect only from the date of entry of the mention of the amendment in the Register.

Article 80

Persons who are entitled to bring an action for infringement

1. The provisions of Article 25(3) and (4) concerning the rights of licensees shall apply to every person who has authority to use an EU collective mark.

2. The proprietor of an EU collective mark shall be entitled to claim compensation on behalf of persons who have authority to use the mark where they have sustained damage in consequence of unauthorised use of the mark.

Article 81

Grounds for revocation

Apart from the grounds for revocation provided for in Article 58, the rights of the proprietor of an EU collective mark shall be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings, if:

(a) the proprietor does not take reasonable steps to prevent the mark being used in a manner incompatible with the conditions of use, where these exist, laid down in the regulations governing use, amendments to which have, where appropriate, been mentioned in the Register;

(b) the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in Article 76(2);

(c) an amendment to the regulations governing use of the mark has been mentioned in the Register in breach of the provisions of Article 79(2), unless the proprietor of the mark, by further amending the regulations governing use, complies with the requirements of those provisions.

Article 82

Grounds for invalidity

Apart from the grounds for invalidity provided for in Articles 59 and 60, an EU collective mark which is registered in breach of the provisions of Article 76 shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings, unless the proprietor of the mark, by amending the regulations governing use, complies with the requirements of those provisions.

SECTION 2

EU certification marks

Article 83

EU certification marks

1. An EU certification mark shall be an EU trade mark which is described as such when the mark is applied for and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified.

2. Any natural or legal person, including institutions, authorities and bodies governed by public law, may apply for EU certification marks provided that such person does not carry on a business involving the supply of goods or services of the kind certified.

3. Chapters I to VII and IX to XIV shall apply to EU certification marks to the extent that this Section does not provide otherwise.

Article 84

Regulations governing use of an EU certification mark

1. An applicant for an EU certification mark shall submit regulations governing the use of the EU certification mark within two months of the date of filing.

2. The regulations governing use shall specify the persons authorised to use the mark, the characteristics to be certified by the mark, how the certifying body is to test those characteristics and to supervise the use of the mark. Those regulations shall also specify the conditions of use of the mark, including sanctions.

3. The Commission shall adopt implementing acts specifying the details to be contained in the regulations referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 85

Refusal of the application

1. In addition to the grounds for refusal of an EU trade mark application provided for in Articles 41 and 42, an application for an EU certification mark shall be refused where the conditions set out in Articles 83 and 84 are not satisfied, or where the regulations governing use are contrary to public policy or to accepted principles of morality.

2. An application for an EU certification mark shall also be refused if the public is liable to be misled as regards the character or the significance of the mark, in particular if it is likely to be taken to be something other than a certification mark.

3. An application shall not be refused if the applicant, as a result of an amendment of the regulations governing use, meets the requirements of paragraphs 1 and 2.

Article 86

Observations by third parties

Where written observations on an EU certification mark are submitted to the Office pursuant to Article 45, those observations may also be based on the particular grounds on which the application for an EU certification mark should be refused pursuant to Article 85.

Article 87

Use of the EU certification mark

Use of an EU certification mark by any person who has authority to use it pursuant to the regulations governing use referred to in Article 84 shall satisfy the requirements of this Regulation, provided that the other conditions laid down in this Regulation with regard to the use of EU trade marks are fulfilled.

Article 88

Amendment of the regulations governing use of the EU certification mark

1. The proprietor of an EU certification mark shall submit to the Office any amended regulations governing use.

2. Amendments shall not be mentioned in the Register where the regulations as amended do not satisfy the requirements of Article 84 or involve one of the grounds for refusal referred to in Article 85.

3. Written observations in accordance with Article 86 may also be submitted with regard to amended regulations governing use.

4. For the purposes of this Regulation, amendments to the regulations governing use shall take effect only as from the date of entry of the mention of the amendment in the Register.

Article 89

Transfer

By way of derogation from Article 20(1), an EU certification mark may only be transferred to a person who meets the requirements of Article 83(2).

Article 90

Persons who are entitled to bring an action for infringement

1. Only the proprietor of an EU certification mark, or any person specifically authorised by him to that effect, shall be entitled to bring an action for infringement.

2. The proprietor of an EU certification mark shall be entitled to claim compensation on behalf of persons who have authority to use the mark where they have sustained damage as a consequence of unauthorised use of the mark.

Article 91

Grounds for revocation

In addition to the grounds for revocation provided for in Article 58, the rights of the proprietor of an EU certification mark shall be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings, where any of the following conditions is fulfilled:

(a) the proprietor no longer complies with the requirements set out in Article 83(2);

(b) the proprietor does not take reasonable steps to prevent the EU certification mark being used in a manner that is incompatible with the conditions of use laid down in the regulations governing use, amendments to which have, where appropriate, been mentioned in the Register;

(c) the manner in which the EU certification mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in Article 85(2);

(d) an amendment to the regulations governing use of the EU certification mark has been mentioned in the Register in breach of Article 88(2), unless the proprietor of the mark, by further amending the regulations governing use, complies with the requirements of that Article.

Article 92

Grounds for invalidity

In addition to the grounds for invalidity provided for in Articles 59 and 60, an EU certification mark which is registered in breach of Article 85 shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings, unless the proprietor of the EU certification mark, by amending the regulations governing use, complies with the requirements of Article 85.

Article 93

Conversion

Without prejudice to Article 139(2), conversion of an application for an EU certification mark or of a registered EU certification mark shall not take place where the national law of the Member State concerned does not provide for the registration of guarantee or certification marks pursuant to Article 28 of Directive (EU) 2015/2436.

CHAPTER IX

PROCEDURE

SECTION 1

General provisions

Article 94

Decisions and communications of the Office

1. Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments. Where oral proceedings are held before the Office, the decision may be given orally. Subsequently, the decision shall be notified in writing to the parties.

2. Any decision, communication or notice from the Office shall indicate the department or division of the Office as well as the name or the names of the official or officials responsible. They shall be signed by that official or those officials, or, instead of a signature, carry a printed or stamped seal of the Office. The Executive Director may determine that other means of identifying the department or division of the Office and the name of the official or officials responsible, or an identification other than a seal, may be used where decisions, communications or notices from the Office are transmitted by telecopier or any other technical means of communication.

3. Decisions of the Office which are open to appeal shall be accompanied by a written communication indicating that any notice of appeal is to be filed in writing at the Office within two months of the date of notification of the decision in question. The communications shall also draw the attention of the parties to the provisions laid down in Articles 66, 67 and 68. The parties may not plead any failure on the part of the Office to communicate the availability of appeal proceedings.

Article 95

Examination of the facts by the Office of its own motion

1. In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to relative grounds for refusal of registration, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought. In invalidity proceedings pursuant to Article 59, the Office shall limit its examination to the grounds and arguments submitted by the parties.

2. The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 96

Oral proceedings

1. If the Office considers that oral proceedings would be expedient they shall be held either at the instance of the Office or at the request of any party to the proceedings.

2. Oral proceedings before the examiners, the Opposition Division and the Department in charge of the Register shall not be public.

3. Oral proceedings, including delivery of the decision, shall be public before the Cancellation Division and the Boards of Appeal, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

4. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the detailed arrangements for oral proceedings, including the detailed arrangements for the use of languages in accordance with Article 146.

Article 97

Taking of evidence

1. In any proceedings before the Office, the means of giving or obtaining evidence shall include the following:

(a) hearing the parties;

(b) requests for information;

(c) the production of documents and items of evidence;

(d) hearing witnesses;

(e) opinions by experts;

(f) statements in writing sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up.

2. The relevant department may commission one of its members to examine the evidence adduced.

3. If the Office considers it necessary for a party, witness or expert to give evidence orally, it shall issue a summons to the person concerned to appear before it. The period of notice provided in such summons shall be at least one month, unless they agree to a shorter period.

4. The parties shall be informed of the hearing of a witness or expert before the Office. They shall have the right to be present and to put questions to the witness or expert.

5. The Executive Director shall determine the amounts of expenses to be paid, including advances, as regards the costs of taking of evidence as referred to in this Article.

6. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the detailed arrangements for the taking of evidence.

Article 98

Notification

1. The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned are to be notified under other provisions of this Regulation or of acts adopted pursuant to this Regulation, or of which notification has been ordered by the Executive Director.

2. The Executive Director may determine which documents other than decisions subject to a time limit for appeal and summonses shall be notified by registered letter with proof of delivery.

3. Notification may be effected by different means, including by electronic means. The details regarding electronic means shall be determined by the Executive Director.

4. Where notification is to be effected by public notice, the Executive Director shall determine how the public notice is to be given and shall fix the beginning of the one-month period on the expiry of which the document shall be deemed to have been notified.

5. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the detailed arrangements for notification.

Article 99

Notification of loss of rights

Where the Office finds that the loss of any rights results from this Regulation or acts adopted pursuant to this Regulation, without any decision having been taken, it shall communicate this to the person concerned in accordance with Article 98. The latter may apply for a decision on the matter within two months of notification of the communication, if he considers that the finding of the Office is incorrect. The Office shall adopt such a decision only where it disagrees with the person requesting it; otherwise the Office shall amend its finding and inform the person requesting the decision.

Article 100

Communications to the Office

1. Communications addressed to the Office may be effected by electronic means. The Executive Director shall determine to what extent and under which technical conditions those communications may be submitted electronically.

2. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the rules on the means of communication, including the electronic means of communication, to be used by the parties to proceedings before the Office and the forms to be made available by the Office.

Article 101

Time limits

1. Time limits shall be laid down in terms of full years, months, weeks or days. Calculation shall start on the day following the day on which the relevant event occurred. The duration of time limits shall be no less than one month and no more than six months.

2. The Executive Director shall determine, before the commencement of each calendar year, the days on which the Office is not open for receipt of documents or on which ordinary post is not delivered in the locality in which the Office is located.

3. The Executive Director shall determine the duration of the period of interruption in the case of a general interruption in the delivery of post in the Member State where the Office is located or, in the case of an actual interruption of the Office's connection to admitted electronic means of communication.

4. If an exceptional occurrence, such as a natural disaster or strike, interrupts or interferes with proper communication from the parties to the proceedings to the Office or vice-versa, the Executive Director may determine that for parties to the proceedings having their residence or registered office in the Member State concerned or who have appointed a representative with a place of business in the Member State concerned all time limits that otherwise would expire on or after the date of commencement of such occurrence, as determined by him, shall extend until a date to be determined by him. When determining that date, he shall assess when the exceptional occurrence comes to an end. If the occurrence affects the seat of the Office, such determination of the Executive Director shall specify that it applies in respect of all parties to the proceedings.

5. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the details regarding the calculation and duration of time limits.

Article 102

Correction of errors and manifest oversights

1. The Office shall correct any linguistic errors or errors of transcription and manifest oversights in its decisions, or technical errors attributable to it in registering an EU trade mark or in publishing the registration of its own motion or at the request of a party.

2. Where the correction of errors in the registration of an EU trade mark or the publication of the registration is requested by the proprietor, Article 55 shall apply *mutatis mutandis*.

3. Corrections of errors in the registration of an EU trade mark and in the publication of the registration shall be published by the Office.

Article 103

Revocation of decisions

1. Where the Office has made an entry in the Register or taken a decision which contains an obvious error attributable to the Office, it shall ensure that the entry is cancelled or the decision is revoked. Where there is only one party to the proceedings and the entry or the act affects its rights, cancellation or revocation shall be determined even if the error was not evident to the party.

2. Cancellation or revocation as referred to in paragraph 1 shall be determined, *ex officio* or at the request of one of the parties to the proceedings, by the department which made the entry or took the decision. The cancellation of the entry in the Register or the revocation of the decision shall be effected within one year of the date on which the entry was made in the Register or that decision was taken, after consultation with the parties to the proceedings and any proprietor of rights to the EU trade mark in question that are entered in the Register. The Office shall keep records of any such cancellation or revocation.

3. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the procedure for the revocation of a decision or for the cancellation of an entry in the Register.

4. This Article shall be without prejudice to the right of the parties to submit an appeal under Articles 66 and 72, or to the possibility of correcting errors and manifest oversights under Article 102. Where an appeal has been filed against a decision of the Office containing an error, the appeal proceedings shall become devoid of purpose upon revocation by the Office of its decision pursuant to paragraph 1 of this Article. In the latter case, the appeal fee shall be reimbursed to the appellant.

Article 104

Restitutio in integrum

1. The applicant for or proprietor of an EU trade mark or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to comply with a time limit vis-à-vis the Office shall, upon application, have his rights re-established if the obstacle to compliance has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any right or means of redress.

2. The application shall be filed in writing within two months of the removal of the obstacle to compliance with the time limit. The omitted act shall be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-submission of the request for renewal of registration or of non-payment of a renewal fee, the further period of six months provided in the third sentence of Article 53(3) shall be deducted from the period of one year.

3. The application shall state the grounds on which it is based and shall set out the facts on which it relies. It shall not be deemed to be filed until the fee for re-establishment of rights has been paid.

4. The department competent to decide on the omitted act shall decide upon the application.

5. This Article shall not be applicable to the time limits referred to in paragraph 2 of this Article, Article 46(1) and (3) and Article 105.

6. Where the applicant for or proprietor of an EU trade mark has his rights re-established, he may not invoke his rights vis-à-vis a third party who, in good faith, has put goods on the market or supplied services under a sign which is identical with, or similar to, the EU trade mark in the course of the period between the loss of rights in the application or in the EU trade mark and publication of the mention of re-establishment of those rights.

7. A third party who may avail himself of the provisions of paragraph 6 may bring third party proceedings against the decision re-establishing the rights of the applicant for or proprietor of an EU trade mark within a period of two months as from the date of publication of the mention of re-establishment of those rights.

8. Nothing in this Article shall limit the right of a Member State to grant *restitutio in integrum* in respect of time limits provided for in this Regulation and to be observed vis-à-vis the authorities of such State.

Article 105

Continuation of proceedings

1. An applicant for or proprietor of an EU trade mark or any other party to proceedings before the Office who has omitted to observe a time limit vis-à-vis the Office may, upon request, obtain the continuation of proceedings, provided that at the time the request is made the omitted act has been carried out. The request for continuation of proceedings shall be admissible only if it is submitted within two months of the expiry of the unobserved time limit. The request shall not be deemed to have been filed until the fee for continuation of the proceedings has been paid.

2. This Article shall not apply to the time limits laid down in Article 32, Article 34(1), Article 38(1), Article 41(2), Article 46(1) and (3), Article 53(3), Article 68, Article 72(5), Article 104(2) and Article 139, or to the time limits laid down in paragraph 1 of this Article or the time limit for claiming seniority pursuant to Article 39 after the application has been filed.

3. The department competent to decide on the omitted act shall decide upon the application.

4. If the Office accepts the application, the consequences of having failed to observe the time limit shall be deemed not to have occurred. If a decision has been taken between the expiry of that time limit and the request for the continuation of proceedings, the department competent to decide on the omitted act shall review the decision and, where completion of the omitted act itself is sufficient, take a different decision. If, following the review, the Office concludes that the original decision does not require to be altered, it shall confirm that decision in writing.

5. If the Office rejects the application, the fee shall be refunded.

Article 106

Interruption of proceedings

1. Proceedings before the Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for, or proprietor of, an EU trade mark or of the person authorised by national law to act on his behalf. To the extent that that death or incapacity does not affect the authorisation of a representative appointed under Article 120, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for, or proprietor of, an EU trade mark being prevented, for legal reasons resulting from action taken against his property, from continuing the proceedings before the Office;

(c) in the event of the death or legal incapacity of the representative of an applicant for, or proprietor of, an EU trade mark, or of that representative being prevented, for legal reasons resulting from action taken against his property, from continuing the proceedings before the Office.

2. Proceedings before the Office shall be resumed as soon as the identity of the person authorised to continue them has been established.

3. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the detailed arrangements for the resumption of proceedings before the Office.

Article 107

Reference to general principles

In the absence of procedural provisions in this Regulation or in acts adopted pursuant to this Regulation, the Office shall take into account the principles of procedural law generally recognised in the Member States.

Article 108

Termination of financial obligations

1. Rights of the Office to the payment of a fee shall be extinguished after four years from the end of the calendar year in which the fee fell due.

2. Rights against the Office for the refunding of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.

3. The period laid down in paragraphs 1 and 2 shall be interrupted, in the case covered by paragraph 1, by a request for payment of the fee, and in the case covered by paragraph 2, by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgment has acquired the authority of a final decision.

SECTION 2

Costs

Article 109

Costs

1. The losing party in opposition proceedings, proceedings for revocation, proceedings for a declaration of invalidity or appeal proceedings shall bear the fees paid by the other party. Without prejudice to Article 146(7), the losing party shall also bear all costs incurred by the other party that are essential to the proceedings, including travel and subsistence and the remuneration of a representative within the meaning of Article 120(1), within the limits of the scales set for each category of costs in the implementing act to be adopted in accordance with paragraph 2 of this Article. The fees to be borne by the losing party shall be limited to the fees paid by the other party for opposition, for an application for revocation or for a declaration of invalidity of the EU trade mark and for appeal.

2. The Commission shall adopt implementing acts specifying the maximum rates for costs essential to the proceedings and actually incurred by the successful party. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

When specifying such amounts with respect to travel and subsistence costs, the Commission shall take into account the distance between the place of residence or business of the party, representative or witness or expert and the place where the oral proceedings are held, the procedural stage at which the costs have been incurred, and, as far as costs of representation within the meaning of Article 120(1) are concerned, the need to ensure that the obligation to bear the costs may not be misused for tactical reasons by the other party. Subsistence expenses shall be calculated in accordance with the Staff Regulations of Officials of the Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 [1] ('the Staff Regulations' and 'Conditions of Employment' respectively).

The losing party shall bear the costs for one opposing party only and, where applicable, one representative only.

3. However, where each party succeeds on some and fails on other heads, or if reasons of equity so dictate, the Opposition Division, Cancellation Division or Board of Appeal shall decide a different apportionment of costs.

4. The party who terminates the proceedings by withdrawing the EU trade mark application, the opposition, the application for revocation of rights, the application for a declaration of invalidity or the appeal, or by not renewing registration of the EU trade mark or by surrendering the EU trade mark, shall bear the fees and the costs incurred by the other party as stipulated in paragraphs 1 and 3.

5. Where a case does not proceed to judgment the costs shall be at the discretion of the Opposition Division, Cancellation Division or Board of Appeal.

6. Where the parties conclude before the Opposition Division, Cancellation Division or Board of Appeal a settlement of costs differing from that provided for in paragraphs 1 to 5, the department concerned shall take note of that agreement.

7. The Opposition Division or Cancellation Division or Board of Appeal shall fix the amount of the costs to be paid pursuant to paragraphs 1 to 6 of this Article when the costs to be paid are limited to the fees paid to the Office and the representation costs. In all other cases, the registry of the Board of Appeal or a member of the staff of the Opposition Division or Cancellation Division shall fix, on request, the amount of the costs to be reimbursed. The request shall be admissible only for the period of two months following the date on which the decision for which an application was made for the costs to be fixed becomes final and shall be accompanied by a bill and supporting evidence. For the costs of representation pursuant to Article 120(1), an assurance by the representative that the costs have been incurred shall be sufficient. For other costs, it shall be sufficient if their plausibility is established. Where the amount of the costs is fixed pursuant to the first sentence of this paragraph, representation costs shall be awarded at the level laid down in the implementing act adopted pursuant to paragraph 2 of this Article and irrespective of whether they have been actually incurred.

[1] OJ L 56, 4.3.1968, p. 1.

8. The decision on the fixing of costs, stating the reasons on which it is based, may be reviewed by a decision of the Opposition Division or Cancellation Division or Board of Appeal on a request filed within one month of the date of notification of the awarding of costs. It shall not be deemed to be filed until the fee for reviewing the amount of the costs has been paid. The Opposition Division, the Cancellation Division or the Board of Appeal, as the case may be, shall take a decision on the request for a review of the decision on the fixing of costs without oral proceedings.

Article 110

Enforcement of decisions fixing the amount of costs

1. Any final decision of the Office fixing the amount of costs shall be enforceable.

2. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. Each Member State shall designate a single authority responsible for verifying the authenticity of the decision referred to in paragraph 1 and shall communicate its contact details to the Office, the Court of Justice and the Commission. The order for the enforcement of the decision shall be appended to the decision by that authority, with the verification of the authenticity of the decision as the sole formality.

3. When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

4. Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

SECTION 3

Information which may be made available to the public and to the authorities of the Member States

Article 111

Register of EU trade marks

1. The Office shall keep a Register of EU trade marks which it shall keep up to date.

2. The Register shall contain the following entries relating to EU trade mark applications and registrations:

(a) the date of filing the application;

(b) the file number of the application;

(c) the date of the publication of the application;

(d) the name and address of the applicant;

(e) the name and business address of the representative, other than a representative as referred to in the first sentence of Article 119(3);

(f) the representation of the mark, with indications as to its nature; and, where applicable, a description of the mark;

(g) an indication of the goods and services by their names;

(h) particulars of claims of priority pursuant to Article 35;

(i) particulars of claims of exhibition priority pursuant to Article 38;

(j) particulars of claims of seniority of a registered earlier trade mark as referred to in Article 39;

(k) a statement that the mark has become distinctive in consequence of the use which has been made of it, pursuant to Article 7(3);

(l) an indication that the mark is a collective mark;

(m) an indication that the mark is a certification mark;

(n) the language in which the application was filed and the second language which the applicant has indicated in his application, pursuant to Article 146(3);

(o) the date of registration of the mark in the Register and the registration number;

(p) a statement that the application is the result of a transformation of an international registration designating the Union, pursuant to Article 204 of this Regulation, together with the date of the international registration pursuant to Article 3(4) of the Madrid Protocol or the date on which the territorial extension to the Union made subsequent to the international registration pursuant to Article 3ter(2) of the Madrid Protocol was recorded and, where applicable, the date of priority of the international registration.

3. The Register shall also contain the following entries, each accompanied by the date of recording of such entry:

(a) changes in the name, address or nationality of the proprietor of an EU trade mark or a change in the State in which he is domiciled or has his seat or establishment;

(b) changes in the name or business address of the representative, other than a representative as referred to in the first sentence of Article 119(3);

(c) where a new representative is appointed, the name and business address of that representative;

(d) amendments and alterations of the mark, pursuant to Articles 49 and 54, and corrections of errors;

(e) notice of amendments to the regulations governing the use of the collective mark pursuant to Article 79;

(f) particulars of claims of seniority of a registered earlier trade mark as referred to in Article 39, pursuant to Article 40;

(g) total or partial transfers pursuant to Article 20;

(h) creation or transfer of a right *in rem* pursuant to Article 22, and the nature of the right *in rem*;

(i) levy of execution pursuant to Article 23 and insolvency proceedings pursuant to Article 24;

(j) the grant or transfer of a licence pursuant to Article 25 and, where applicable, the type of licence;

(k) renewal of a registration pursuant to Article 53, the date from which it takes effect and any restrictions pursuant to Article 53(4);

(l) a record of a determination of the expiry of a registration pursuant to Article 53;

(m) declarations of withdrawal or surrender by the proprietor of the mark pursuant to Articles 49 and 57 respectively;

(n) the date of submission and the particulars of an opposition pursuant to Article 46, of an application pursuant to Article 63, or a counterclaim pursuant to Article 128(4) for revocation or for a declaration of invalidity, or of an appeal pursuant to Article 68;

(o) the date and content of a decision on an opposition, on an application or counterclaim pursuant to Article 64(6) or the third sentence of Article 128(6), or on an appeal pursuant to Article 71;

(p) a record of the receipt of a request for conversion pursuant to Article 140(2);

(q) the cancellation of the representative recorded pursuant to point (e) of paragraph 2 of this Article;

(r) the cancellation of the seniority of a national mark;

(s) the modification to or cancellation from the Register of the items referred to in points (h), (i) and (j) of this paragraph;

(t) the replacement of the EU trade mark by an international registration pursuant to Article 197;

(u) the date and number of international registrations based on the EU trade mark application which has been registered as an EU trade mark pursuant to Article 185(1);

(v) the date and number of international registrations based on the EU trade mark pursuant to Article 185(2);

(w) the division of an application pursuant to Article 50 and the division of a registration pursuant to Article 56, together with the items referred to in paragraph 2 of this Article in respect of the divisional registration, as well as the list of goods and services of the original registration as amended;

(x) the revocation of a decision or an entry in the Register pursuant to Article 103, where the revocation concerns a decision or entry which has been published;

(y) notice of amendments to the regulations governing the use of the EU certification mark pursuant to Article 88.

4. The Executive Director may determine that items other than those referred to in paragraphs 2 and 3 of this Article are to be entered in the Register, subject to Article 149(4).

5. The Register may be maintained in electronic form. The Office shall collect, organise, make public and store the items referred to in paragraphs 2 and 3, including any personal data, for the purposes laid down in paragraph 8. The Office shall keep the register easily accessible for public inspection.

6. The proprietor of an EU trade mark shall be notified of any change in the Register.

7. The Office shall provide certified or uncertified extracts from the Register on request and on payment of a fee.

8. The processing of the data concerning the entries set out in paragraphs 2 and 3, including any personal data, shall take place for the purposes of:

(a) administering the applications and/or registrations as described in this Regulation and acts adopted pursuant to it;

(b) maintaining a public register for inspection by, and the information of, public authorities and economic operators, in order to enable them to exercise the rights conferred on them by this Regulation and be informed about the existence of prior rights belonging to third parties; and

(c) producing reports and statistics enabling the Office to optimise its operations and improve the functioning of the system.

9. All the data, including personal data, concerning the entries in paragraphs 2 and 3 shall be considered to be of public interest and may be accessed by any third party. For reasons of legal certainty, the entries in the Register shall be kept for an indefinite period of time.

Article 112

Database

1. In addition to the obligation to keep a Register within the meaning of Article 111, the Office shall collect and store in an electronic database all the particulars provided by applicants or any other party to the proceedings pursuant to this Regulation or acts adopted pursuant to it.

2. The electronic database may include personal data, beyond those included in the Register pursuant to Article 111, to the extent that such particulars are required by this Regulation or by acts adopted pursuant to it. The collection, storage and processing of such data shall serve the purposes of:

(a) administering the applications and/or registrations as described in this Regulation and in acts adopted pursuant to it;

(b) accessing the information necessary for conducting the relevant proceedings more easily and efficiently;

(c) communicating with the applicants and other parties to the proceedings;

(d) producing reports and statistics enabling the Office to optimise its operations and improve the functioning of the system.

3. The Executive Director shall determine the conditions of access to the electronic database and the manner in which its contents, other than the personal data referred to in paragraph 2 of this Article but including those listed in Article 111, may be made available in machine-readable form, including the charge for such access.

4. Access to the personal data referred to in paragraph 2 shall be restricted and such data shall not be made publicly available unless the party concerned has given his express consent.

5. All data shall be kept indefinitely. However, the party concerned may request the removal of any personal data from the database after 18 months from the expiry of the EU trade mark or the closure of the relevant *inter partes* procedure. The party concerned shall have the right to obtain the correction of inaccurate or erroneous data at any time.

Article 113

Online access to decisions

1. The decisions of the Office shall be made available online for the information and consultation of the general public in the interest of transparency and predictability. Any party to the proceedings that led to the adoption of the decision may request the removal of any personal data included in the decision.

2. The Office may provide online access to judgments of national and Union courts related to its tasks in order to raise public awareness of intellectual property matters and promote convergence of practices. The Office shall respect the conditions of the initial publication with regard to personal data.

Article 114

Inspection of files

1. The files relating to EU trade mark applications which have not yet been published shall not be made available for inspection without the consent of the applicant.

2. Any person who can prove that the applicant for an EU trade mark has stated that after the trade mark has been registered he will invoke the rights under it against him may obtain inspection of the files prior to the publication of that application and without the consent of the applicant.

3. Subsequent to the publication of the EU trade mark application, the files relating to such application and the resulting trade mark may be inspected on request.

4. Where the files are inspected pursuant to paragraph 2 or 3 of this Article, documents relating to exclusion or objection pursuant to Article 169, draft decisions and opinions, and all other internal documents used for the preparation of decisions and opinions, as well as parts of the file which the party concerned showed a special interest in keeping confidential before the request for inspection of the files was made, unless inspection of such parts of the file is justified by overriding, legitimate interests of the party seeking inspection, may be withheld from inspection.

5. Inspection of the files of EU trade mark applications and of registered EU trade marks shall be of the original document, or of copies thereof, or of technical means of storage if the files are stored in this way. The Executive Director shall determine the means of inspection.

6. Where inspection of files takes place as provided for in paragraph 7, the request for inspection of the files shall not be deemed to have been made until the required fee has been paid. No fee shall be payable if inspection of technical means of storage takes place online.

7. Inspection of the files shall take place at the premises of the Office. On request, inspection of the files shall be effected by means of issuing copies of file documents. The issuing of such copies shall be conditional on the payment of a fee. The Office shall also issue on request certified or uncertified copies of the application for an EU trade mark upon payment of a fee.

8. The files kept by the Office relating to international registrations designating the Union may be inspected on request as from the date of publication referred to in Article 190(1), in accordance with the conditions laid down in paragraphs 1, 3 and 4 of this Article.

9. Subject to the restrictions provided for in paragraph 4, the Office may, on request, communicate information from any file of an EU trade mark applied for or of a registered EU trade mark, subject to payment of a fee. However, the Office may require the exercise of the option to obtain inspection of the file itself should it deem this to be appropriate in view of the quantity of information to be supplied.

Article 115

Keeping of files

1. The Office shall keep the files of any procedure relating to an EU trade mark application or EU trade mark registration. The Executive Director shall determine the form in which those files shall be kept.

2. Where the files are kept in electronic format, the electronic files, or back-up copies thereof, shall be kept indefinitely. The original documents filed by parties to the proceedings, and forming the basis of such electronic files, shall be disposed of after a period following their reception by the Office, which shall be determined by the Executive Director.

3. Where and to the extent that files or parts of the files are kept in any form other than electronically, documents or items of evidence constituting part of such files shall be kept for at least five years from the end of the year in which the application is rejected or withdrawn or is deemed to be withdrawn, the registration of the EU trade mark expires completely pursuant to Article 53, the complete surrender of the EU trade mark is registered pursuant to Article 57, or the EU trade mark is completely removed from the Register pursuant to Article 64(6) or 128(6).

Article 116

Periodical publications

1. The Office shall periodically publish:

(a) a European Union Trade Marks Bulletin containing publications of applications and of entries made in the Register as well as other particulars relating to applications or registrations of EU trade marks the publication of which is required under this Regulation or by acts adopted pursuant to it;

(b) an Official Journal of the Office containing notices and information of a general character issued by the Executive Director, as well as any other information relevant to this Regulation or its implementation.

The publications referred to in points (a) and (b) of the first subparagraph may be effected by electronic means.

2. The European Union Trade Marks Bulletin shall be published in a manner and at a frequency to be determined by the Executive Director.

3. The Official Journal of the Office shall be published in the languages of the Office. However, the Executive Director may determine that certain items shall be published in the Official Journal of the Office in the official languages of the Union.

4. The Commission shall adopt implementing acts specifying:

(a) the date to be taken as the date of publication in the European Union Trade Marks Bulletin;

(b) the manner of publication of entries regarding the registration of a trade mark which do not contain changes as compared to the publication of the application;

(c) the forms in which editions of the Official Journal of the Office may be made available to the public.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 117

Administrative cooperation

1. Unless otherwise provided in this Regulation or in national laws, the Office and the courts or authorities of the Member States shall on request give assistance to each other by communicating information or opening files for inspection. Where the Office lays files open to inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 114.

2. The Office shall not charge fees for the communication of information or the opening of files for inspection.

3. The Commission shall adopt implementing acts specifying the detailed arrangements as to how the Office and the authorities of the Member States are to exchange information between each other and open files for inspection, taking into account the restrictions to which the inspection of files relating to EU trade mark applications or registrations is subject, pursuant to Article 114, when it is opened to third parties. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 118

Exchange of publications

1. The Office and the central industrial property offices of the Member States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.

2. The Office may conclude agreements relating to the exchange or supply of publications.

SECTION 4

Representation

Article 119

General principles of representation

1. Subject to the provisions of paragraph 2, no person shall be compelled to be represented before the Office.

2. Without prejudice to the second sentence of paragraph 3 of this Article, natural or legal persons having neither their domicile nor their principal place of business or a real and effective industrial or commercial establishment in the European Economic Area shall be represented before the Office in accordance with Article 120(1) in all proceedings provided for by this Regulation, other than the filing of an application for an EU trade mark.

3. Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the European Economic Area may be represented before the Office by an employee. An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the European Economic Area. Employees who represent persons, within the meaning of this paragraph, shall, at the request of the Office or, where appropriate, of the party to the proceedings, file with it a signed authorisation for insertion in the files.

4. Where there is more than one applicant or more than one third party acting in common, a common representative shall be appointed.

Article 120

Professional representatives

1. Representation of natural or legal persons before the Office may only be undertaken by:

(a) a legal practitioner qualified in one of the Member States of the European Economic Area and having his place of business within the European Economic Area, to the extent that he is entitled, within the said Member State, to act as a representative in trade mark matters;

(b) professional representatives whose names appear on the list maintained for this purpose by the Office.

Representatives acting before the Office shall, at the request of the Office or, where appropriate, of the other party to the proceedings, file with it a signed authorisation for insertion on the files.

2. Any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) being a national of one of the Member States of the European Economic Area;

(b) having his place of business or employment in the European Economic Area;

(c) being entitled to represent natural or legal persons in trade mark matters before the Benelux Office for Intellectual Property or before the central industrial property office of a Member State of the European Economic Area. Where, in the State concerned, the entitlement is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in trade mark matters before the Benelux Office for Intellectual Property or those central industrial property offices shall have habitually so acted for at least five years. However, persons whose professional qualification to represent natural or legal persons in trade mark matters before the Benelux Office for Intellectual Property or those central industrial property offices is officially recognised in accordance with the regulations laid down by the State concerned shall not be required to have exercised the profession.

3. Entry shall be effected upon request, accompanied by a certificate furnished by the central industrial property office of the Member State concerned, indicating that the conditions laid down in paragraph 2 are fulfilled.

4. The Executive Director may grant an exemption from:

(a) the requirement in the second sentence of paragraph 2(c), if the applicant furnishes proof that he has acquired the requisite qualification in another way;

(b) the requirement set out in paragraph 2(a) in the case of highly qualified professionals, provided that the requirements set out in paragraph 2(b) and (c) are fulfilled.

5. A person may be removed from the list of professional representatives at his request or when no longer in a capacity to represent. The amendments of the list of professional representatives shall be published in the Official Journal of the Office.

Article 121

Delegation of powers

The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying:

(a) the conditions and the procedure for the appointment of a common representative as referred to in Article 119(4);

(b) the conditions under which employees referred to in Article 119(3) and professional representatives referred to in Article 120(1) shall file with the Office a signed authorisation in order to undertake representation, and the content of that authorisation;

(c) the circumstances in which a person may be removed from the list of professional representatives referred to in Article 120(5).

CHAPTER X

JURISDICTION AND PROCEDURE IN LEGAL ACTIONS RELATING TO EU TRADE MARKS

SECTION 1

Application of Union rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Article 122

Application of Union rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

1. Unless otherwise specified in this Regulation, the Union rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters shall apply to proceedings relating to EU trade marks and applications for EU trade marks, as well as to proceedings relating to simultaneous and successive actions on the basis of EU trade marks and national trade marks.

2. In the case of proceedings in respect of the actions and claims referred to in Article 124:

(a) Articles 4 and 6, points 1, 2, 3 and 5 of Article 7 and Article 35 of Regulation (EU) No 1215/2012 shall not apply;

(b) Articles 25 and 26 of Regulation (EU) No 1215/2012 shall apply subject to the limitations in Article 125(4) of this Regulation;

(c) the provisions of Chapter II of Regulation (EU) No 1215/2012 which are applicable to persons domiciled in a Member State shall also be applicable to persons who do not have a domicile in any Member State but have an establishment therein.

3. References in this Regulation to Regulation (EU) No 1215/2012 shall include, where appropriate, the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters done on 19 October 2005.

SECTION 2

Disputes concerning the infringement and validity of EU trade marks

Article 123

EU trade mark courts

1. The Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance, which shall perform the functions assigned to them by this Regulation.

2. Any change made in the number, names or territorial jurisdiction of the courts included in the list of EU trade mark courts communicated by a Member State to the Commission in accordance with Article 95(2) of Regulation (EC) No 207/2009 shall be notified without delay by the Member State concerned to the Commission.

3. The information referred to in paragraph 2 shall be notified by the Commission to the Member States and published in the *Official Journal of the European Union*.

Article 124

Jurisdiction over infringement and validity

The EU trade mark courts shall have exclusive jurisdiction:

(a) for all infringement actions and — if they are permitted under national law — actions in respect of threatened infringement relating to EU trade marks;

(b) for actions for declaration of non-infringement, if they are permitted under national law;

(c) for all actions brought as a result of acts referred to in Article 11(2);

(d) for counterclaims for revocation or for a declaration of invalidity of the EU trade mark pursuant to Article 128.

Article 125

International jurisdiction

1. Subject to the provisions of this Regulation as well as to any provisions of Regulation (EU) No 1215/2012 applicable by virtue of Article 122, proceedings in respect of the actions and claims referred to in Article 124 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.

2. If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.

3. If neither the defendant nor the plaintiff is so domiciled or has such an establishment, such proceedings shall be brought in the courts of the Member State where the Office has its seat.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3:

(a) Article 25 of Regulation (EU) No 1215/2012 shall apply if the parties agree that a different EU trade mark court shall have jurisdiction;

(b) Article 26 of Regulation (EU) No 1215/2012 shall apply if the defendant enters an appearance before a different EU trade mark court.

5. Proceedings in respect of the actions and claims referred to in Article 124, with the exception of actions for a declaration of non-infringement of an EU trade mark, may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened, or in which an act referred to in Article 11(2) has been committed.

Article 126

Extent of jurisdiction

1. An EU trade mark court whose jurisdiction is based on Article 125(1) to (4) shall have jurisdiction in respect of:

(a) acts of infringement committed or threatened within the territory of any of the Member States;

(b) acts referred to in Article 11(2) committed within the territory of any of the Member States.

2. An EU trade mark court whose jurisdiction is based on Article 125(5) shall have jurisdiction only in respect of acts committed or threatened within the territory of the Member State in which that court is situated.

Article 127

Presumption of validity — Defence as to the merits

1. The EU trade mark courts shall treat the EU trade mark as valid unless its validity is put in issue by the defendant with a counterclaim for revocation or for a declaration of invalidity.

2. The validity of an EU trade mark may not be put in issue in an action for a declaration of non-infringement.

3. In the actions referred to in points (a) and (c) of Article 124, a plea relating to revocation of the EU trade mark submitted otherwise than by way of a counterclaim shall be admissible where the defendant claims that the EU trade mark could be revoked for lack of genuine use at the time the infringement action was brought.

Article 128

Counterclaims

1. A counterclaim for revocation or for a declaration of invalidity may only be based on the grounds for revocation or invalidity mentioned in this Regulation.

2. An EU trade mark court shall reject a counterclaim for revocation or for a declaration of invalidity if a decision taken by the Office relating to the same subject matter and cause of action and involving the same parties has already become final.

3. If the counterclaim is brought in a legal action to which the proprietor of the trade mark is not already a party, he shall be informed thereof and may be joined as a party to the action in accordance with the conditions set out in national law.

4. The EU trade mark court with which a counterclaim for revocation or for a declaration of invalidity of the EU trade mark has been filed shall not proceed with the examination of the counterclaim, until either the interested party or the court has informed the Office of the date on which the counterclaim was filed. The Office shall record that information in the Register. If an application for revocation or for a declaration of invalidity of the EU trade mark had already been filed before the Office before the counterclaim was filed, the court shall be informed thereof by the Office and stay the proceedings in accordance with Article 132(1) until the decision on the application is final or the application is withdrawn.

5. Article 64(2) to (5) shall apply.

6. Where an EU trade mark court has given a judgment which has become final on a counterclaim for revocation or for a declaration of invalidity of an EU trade mark, a copy of the judgment shall be sent to the Office without delay, either by the court or by any of the parties to the national proceedings. The Office or any other interested party may request information about such transmission. The Office shall mention the judgment in the Register and shall take the necessary measures to comply with its operative part.

7. The EU trade mark court hearing a counterclaim for revocation or for a declaration of invalidity may stay the proceedings on application by the proprietor of the EU trade mark and after hearing the other parties and may request the defendant to submit an application for revocation or for a declaration of invalidity to the Office within a time limit which it shall determine. If the application is not made within the time limit, the proceedings shall continue; the counterclaim shall be deemed withdrawn. Article 132(3) shall apply.

Article 129

Applicable law

1. The EU trade mark courts shall apply the provisions of this Regulation.

2. On all trade mark matters not covered by this Regulation, the relevant EU trade mark court shall apply the applicable national law.

3. Unless otherwise provided for in this Regulation, an EU trade mark court shall apply the rules of procedure governing the same type of action relating to a national trade mark in the Member State in which the court is located.

Article 130

Sanctions

1. Where an EU trade mark court finds that the defendant has infringed or threatened to infringe an EU trade mark, it shall, unless there are special reasons for not doing so, issue an order prohibiting the defendant from proceeding with the acts which infringed or would infringe the EU trade mark. It shall also take such measures in accordance with its national law as are aimed at ensuring that this prohibition is complied with.

2. The EU trade mark court may also apply measures or orders available under the applicable law which it deems appropriate in the circumstances of the case.

Article 131

Provisional and protective measures

1. Application may be made to the courts of a Member State, including EU trade mark courts, for such provisional, including protective, measures in respect of an EU trade mark or EU trade mark application as may be available under the law of that State in respect of a national trade mark, even if, under this Regulation, an EU trade mark court of another Member State has jurisdiction as to the substance of the matter.

2. An EU trade mark court whose jurisdiction is based on Article 125(1), (2), (3) or (4) shall have jurisdiction to grant provisional and protective measures which, subject to any necessary procedure for recognition and enforcement pursuant to Chapter III of Regulation (EU) No 1215/2012, are applicable in the territory of any Member State. No other court shall have such jurisdiction.

Article 132

Specific rules on related actions

1. An EU trade mark court hearing an action referred to in Article 124 other than an action for a declaration of non-infringement shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the EU trade mark is already in issue before another EU trade mark court on account of a counterclaim or where an application for revocation or for a declaration of invalidity has already been filed at the Office.

2. The Office, when hearing an application for revocation or for a declaration of invalidity shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the EU trade mark is already in issue on account of a counterclaim before an EU trade mark court. However, if one of the parties to the proceedings before the EU trade mark court so requests, the court may, after hearing the other parties to these proceedings, stay the proceedings. The Office shall in this instance continue the proceedings pending before it.

3. Where the EU trade mark court stays the proceedings it may order provisional and protective measures for the duration of the stay.

Article 133

Jurisdiction of EU trade mark courts of second instance — Further appeal

1. An appeal to the EU trade mark courts of second instance shall lie from judgments of the EU trade mark courts of first instance in respect of proceedings arising from the actions and claims referred to in Article 124.

2. The conditions under which an appeal may be lodged with an EU trade mark court of second instance shall be determined by the national law of the Member State in which that court is located.

3. The national rules concerning further appeal shall be applicable in respect of judgments of EU trade mark courts of second instance.

SECTION 3

Other disputes concerning EU trade marks

Article 134

Supplementary provisions on the jurisdiction of national courts other than EU trade mark courts

1. Within the Member State whose courts have jurisdiction under Article 122(1) those courts shall have jurisdiction for actions other than those referred to in Article 124, which would have jurisdiction *ratione loci* and *ratione materiae* in the case of actions relating to a national trade mark registered in that State.

2. Actions relating to an EU trade mark, other than those referred to in Article 124, for which no court has jurisdiction under Article 122(1) and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office has its seat.

Article 135

Obligation of the national court

A national court which is dealing with an action relating to an EU trade mark, other than the action referred to in Article 124, shall treat the EU trade mark as valid.

CHAPTER XI

EFFECTS ON THE LAWS OF THE MEMBER STATES

SECTION 1

Civil actions on the basis of more than one trade mark

Article 136

Simultaneous and successive civil actions on the basis of EU trade marks and national trade marks

1. Where actions for infringement involving the same cause of action and between the same parties are brought in the courts of different Member States, one seised on the basis of an EU trade mark and the other seised on the basis of a national trade mark:

(a) the court other than the court first seised shall of its own motion decline jurisdiction in favour of that court where the trade marks concerned are identical and valid for identical goods or services. The court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested;

(b) the court other than the court first seised may stay its proceedings where the trade marks concerned are identical and valid for similar goods or services and where the trade marks concerned are similar and valid for identical or similar goods or services.

2. The court hearing an action for infringement on the basis of an EU trade mark shall reject the action if a final judgment on the merits has been given on the same cause of action and between the same parties on the basis of an identical national trade mark valid for identical goods or services.

3. The court hearing an action for infringement on the basis of a national trade mark shall reject the action if a final judgment on the merits has been given on the same cause of action and between the same parties on the basis of an identical EU trade mark valid for identical goods or services.

4. Paragraphs 1, 2 and 3 shall not apply in respect of provisional, including protective, measures.

SECTION 2

Application of national laws for the purpose of prohibiting the use of EU trade marks

Article 137

Prohibition of use of EU trade marks

1. This Regulation shall, unless otherwise provided for, not affect the right existing under the laws of the Member States to invoke claims for infringement of earlier rights within the meaning of Article 8 or Article 60(2) in relation to the use of a later EU trade mark. Claims for infringement of earlier rights within the meaning of Article 8(2) and (4) may, however, no longer be invoked if the proprietor of the earlier right may no longer apply for a declaration that the EU trade mark is invalid in accordance with Article 61(2).

2. This Regulation shall, unless otherwise provided for, not affect the right to bring proceedings under the civil, administrative or criminal law of a Member State or under provisions of Union law for the purpose of prohibiting the use of an EU trade mark to the extent that the use of a national trade mark may be prohibited under the law of that Member State or under Union law.

Article 138

Prior rights applicable to particular localities

1. The proprietor of an earlier right which only applies to a particular locality may oppose the use of the EU trade mark in the territory where his right is protected in so far as the law of the Member State concerned so permits.

2. Paragraph 1 shall cease to apply if the proprietor of the earlier right has acquiesced in the use of the EU trade mark in the territory where his right is protected for a period of five successive years, being aware of such use, unless the EU trade mark was applied for in bad faith.

3. The proprietor of the EU trade mark shall not be entitled to oppose use of the right referred to in paragraph 1 even though that right may no longer be invoked against the EU trade mark.

SECTION 3

Conversion into a national trade mark application

Article 139

Request for the application of national procedure

1. The applicant for or proprietor of an EU trade mark may request the conversion of his EU trade mark application or EU trade mark into a national trade mark application:

(a) to the extent that the EU trade mark application is refused, withdrawn, or deemed to be withdrawn;

(b) to the extent that the EU trade mark ceases to have effect.

2. Conversion shall not take place:

(a) where the rights of the proprietor of the EU trade mark have been revoked on the grounds of non-use, unless in the Member State for which conversion is requested the EU trade mark has been put to use which would be considered to be genuine use under the laws of that Member State;

(b) for the purpose of protection in a Member State in which, in accordance with the decision of the Office or of the national court, grounds for refusal of registration or grounds for revocation or invalidity apply to the EU trade mark application or EU trade mark.

3. The national trade mark application resulting from the conversion of an EU trade mark application or an EU trade mark shall enjoy in respect of the Member State concerned the date of filing or the date of priority of that application or trade mark and, where appropriate, the seniority of a trade mark of that State claimed under Articles 39 or 40.

4. In cases where an EU trade mark application is deemed to be withdrawn, the Office shall send to the applicant a communication fixing a period of three months from the date of that communication in which a request for conversion may be filed.

5. Where the EU trade mark application is withdrawn or the EU trade mark ceases to have effect as a result of a surrender being recorded or of failure to renew the registration, the request for conversion shall be filed within three months of the date on which the EU trade mark application has been withdrawn or on which the EU trade mark ceases to have effect.

6. Where the EU trade mark application is refused by decision of the Office or where the EU trade mark ceases to have effect as a result of a decision of the Office or of an EU trade mark court, the request for conversion shall be filed within three months of the date on which that decision acquired the authority of a final decision.

7. The effect referred to in Article 37 shall lapse if the request is not filed in due time.

Article 140

Submission, publication and transmission of the request for conversion

1. A request for conversion shall be filed with the Office within the relevant period pursuant to Article 139(4), (5) or (6), and shall include an indication of the grounds for conversion in accordance with Article 139(1)(a) or (b), the Member States in respect of which conversion is requested, and the goods and services subject to conversion. Where conversion is requested following a failure to renew the registration, the period of three months provided for in Article 139(5) shall begin to run on the day following the last day on which the request for renewal can be presented pursuant to Article 53(3). The request for conversion shall not be deemed to be filed until the conversion fee has been paid.

2. Where the request for conversion relates to an EU trade mark application which has already been published or where the request for conversion relates to an EU trade mark, receipt of any such request shall be recorded in the Register and the request for conversion shall be published.

3. The Office shall check whether the conversion requested fulfils the conditions set out in this Regulation, in particular Article 139(1), (2), (4), (5) and (6), and paragraph 1 of this Article, together with the formal conditions specified in the implementing act adopted pursuant to paragraph 6 of this Article. If the conditions governing the request are not fulfilled, the Office shall notify the applicant of the deficiencies. If the deficiencies are not remedied within a period to be specified by the Office, the Office shall reject the request for conversion. Where Article 139(2) applies, the Office shall reject the request for conversion as inadmissible only with respect to those Member States for which conversion is excluded under that provision. Where the conversion fee has not been paid within the relevant period of three months pursuant to Article 139(4), (5) or (6), the Office shall inform the applicant that the request for conversion is deemed not to have been filed.

4. If the Office or an EU trade mark court has refused the EU trade mark application or has declared the EU trade mark invalid on absolute grounds by reference to the language of a Member State, conversion shall be excluded under Article 139(2) for all the Member States in which that language is one of the official languages. If the Office or an EU trade mark court has refused the EU trade mark application or has declared the EU trade mark invalid on absolute grounds which are found to apply throughout the Union or on account of an earlier EU trade mark or other Union industrial property right, conversion shall be excluded under Article 139(2) for all Member States.

5. Where the request for conversion complies with the requirements referred to in paragraph 3 of this Article, the Office shall transmit the request for conversion and the data referred to in Article 111(2) to the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, for which the request has been found admissible. The Office shall inform the applicant of the date of transmission.

6. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in a request for conversion of an EU trade mark application or a registered EU trade mark into a national trade mark application pursuant to paragraph 1;

(b) the details which are to be contained in the publication of the request for conversion pursuant to paragraph 2.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 141

Formal requirements for conversion

1. Any central industrial property office to which the request for conversion is transmitted may obtain from the Office any additional information concerning the request enabling that office to make a decision regarding the national trade mark resulting from the conversion.

2. An EU trade mark application or an EU trade mark transmitted in accordance with Article 140 shall not be subject to formal requirements of national law which are different from or additional to those provided for in this Regulation or in acts adopted pursuant to this Regulation.

3. Any central industrial property office to which the request is transmitted may require that the applicant shall, within not less than two months:

(a) pay the national application fee;

(b) file a translation in one of the official languages of the State in question of the request and of the documents accompanying it;

(c) indicate an address for service in the State in question;

(d) supply a representation of the trade mark in the number of copies specified by the State in question.

CHAPTER XII

THE OFFICE

SECTION 1

General provisions

Article 142

Legal status

1. The Office shall be an agency of the Union. It shall have legal personality.

2. In each of the Member States the Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

3. The Office shall be represented by its Executive Director.

Article 143

Staff

1. The Staff Regulations, the Conditions of Employment and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and Conditions of Employment shall apply to the staff of the Office, without prejudice to the application of Article 166 of this Regulation to the members of the Boards of Appeal.

2. Without prejudice to paragraph 1, the Office may make use of seconded national experts or other staff not employed by the Office. The Management Board shall adopt a decision laying down rules on the secondment to the Office of national experts.

Article 144

Privileges and immunities

The Protocol on the Privileges and Immunities of the Union shall apply to the Office and its staff.

Article 145

Liability

1. The contractual liability of the Office shall be governed by the law applicable to the contract in question.

2. The Court of Justice shall be competent to give judgment pursuant to any arbitration clause contained in a contract concluded by the Office.

3. In the case of non-contractual liability, the Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5. The personal liability of its servants towards the Office shall be governed by the provisions laid down in the Staff Regulations or in the Conditions of Employment applicable to them.

Article 146

Languages

1. The application for an EU trade mark shall be filed in one of the official languages of the Union.

2. The languages of the Office shall be English, French, German, Italian and Spanish.

3. The applicant shall indicate a second language which shall be a language of the Office the use of which he accepts as a possible language of proceedings for opposition, revocation or invalidity proceedings.

If the application was filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application, as described in Article 31(1), translated into the language indicated by the applicant.

4. Where the applicant for an EU trade mark is the sole party to proceedings before the Office, the language of proceedings shall be the language used for filing the application for an EU trade mark. If the application was made in a language other than the languages of the Office, the Office may send written communications to the applicant in the second language indicated by the applicant in his application.

5. The notice of opposition and an application for revocation or a declaration of invalidity shall be filed in one of the languages of the Office.

6. Without prejudice to paragraph 5:

(a) any application or declaration relating to an EU trade mark application may be filed in the language used for filing the application for that EU trade mark or in the second language indicated by the applicant in his application;

(b) any application or declaration relating to a registered EU trade mark may be filed in one of the languages of the Office.

However, when the application is filed by using any form provided by the Office as referred to in Article 100(2), such forms may be used in any of the official languages of the Union, provided that the form is completed in one of the languages of the Office, as far as textual elements are concerned.

7. If the language chosen, in accordance with paragraph 5, for the notice of opposition or the application for revocation or invalidity is the language of the application for a trade mark or the second language indicated when the application was filed, that language shall be the language of the proceedings.

If the language chosen, in accordance with paragraph 5, for the notice of opposition or the application for revocation or invalidity is neither the language of the application for a trade mark nor the second language indicated when the application was filed, the opposing party or the party seeking revocation or invalidity shall be required to produce, at his own expense, a translation of his application either into the language of the application for a trade mark, provided that it is a language of the Office, or into the second language indicated when the application was filed. The translation shall be produced within one month of the expiry of the opposition period or of the date of filing an application for revocation or a declaration of invalidity. The language into which the application has been translated shall then become the language of the proceedings.

8. Parties to opposition, revocation, invalidity or appeal proceedings may agree that a different official language of the Union is to be the language of the proceedings.

9. Without prejudice to paragraphs 4 and 8, and unless provided otherwise, in written proceedings before the Office any party may use any language of the Office. If the language chosen is not the language of the proceedings, the party shall supply a translation into that language within one month of the date of the submission of the original document. Where the applicant for an EU trade mark is the sole party to proceedings before the Office and the language used for the filing of the application for the EU trade mark is not one of the languages of the Office, the translation may also be filed in the second language indicated by the applicant in his application.

10. The Executive Director shall determine the manner in which translations are to be certified.

11. The Commission shall adopt implementing acts specifying:

(a) the extent to which supporting documents to be used in written proceedings before the Office may be filed in any language of the Union, and the need to supply a translation;

(b) the requisite standards of translations to be filed with the Office.

Those implementing acts shall be adopted in accordance with the examination procedure referred to Article 207(2).

Article 147

Publication and entries in the Register

1. An application for an EU trade mark, as described in Article 31(1), and all other information the publication of which is prescribed by this Regulation or an act adopted pursuant to this Regulation, shall be published in all the official languages of the Union.

2. All entries in the Register shall be made in all the official languages of the Union.

3. In cases of doubt, the text in the language of the Office in which the application for the EU trade mark was filed shall be authentic. If the application was filed in an official language of the Union other than one of the languages of the Office, the text in the second language indicated by the applicant shall be authentic.

Article 148

Translation services

The translation services required for the functioning of the Office shall be provided by the Translation Centre for the Bodies of the European Union.

Article 149

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council ([1]) shall apply to documents held by the Office.

2. The Management Board shall adopt detailed rules for applying Regulation (EC) No 1049/2001.

3. Decisions taken by the Office under Article 8 of Regulation (EC) No 1049/2001 may be challenged through the European Ombudsman or form the subject of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 TFEU respectively.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

4. The processing of personal data by the Office shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council ([1]).

Article 150

Security rules on the protection of classified and sensitive non-classified information

The Office shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in Commission Decisions (EU, Euratom) 2015/443 ([2]) and 2015/444 ([3]). The security principles shall cover, inter alia, provisions for the exchange, processing and storage of such information.

SECTION 2

Tasks of the office and cooperation to promote convergence

Article 151

Tasks of the Office

1. The Office shall have the following tasks:

(a) administration and promotion of the EU trade mark system established in this Regulation;

(b) administration and promotion of the European Union design system established in Council Regulation (EC) No 6/2002 ([4]);

(c) promoting convergence of practices and tools in the fields of trade marks and designs, in cooperation with the central industrial property offices in the Member States, including the Benelux Office for Intellectual Property;

(d) the tasks referred to in Regulation (EU) No 386/2012 of the European Parliament and of the Council ([5]);

(e) the tasks conferred on it under Directive 2012/28/EU of the European Parliament and of the Council ([6]).

2. The Office shall cooperate with institutions, authorities, bodies, industrial property offices, international and non-governmental organisations in relation to the tasks conferred on it in paragraph 1.

3. The Office may provide voluntary mediation services for the purpose of assisting parties in reaching a friendly settlement.

Article 152

Cooperation to promote convergence of practices and tools

1. The Office and the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall cooperate with each other to promote convergence of practices and tools in the field of trade marks and designs.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).
([2]) Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).
([3]) Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).
([4]) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1).
([5]) Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1).
([6]) Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5).

Without prejudice to paragraph 3, this cooperation shall in particular cover the following areas of activity:

(a) the development of common examination standards;

(b) the creation of common or connected databases and portals for Union-wide consultation, search and classification purposes;

(c) the continuous provision and exchange of data and information, including for the purposes of feeding of the databases and portals referred to in point (b);

(d) the establishment of common standards and practices, with a view to ensuring interoperability between procedures and systems throughout the Union and enhancing their consistency, efficiency and effectiveness;

(e) the sharing of information on industrial property rights and procedures, including mutual support to helpdesks and information centres;

(f) the exchange of technical expertise and assistance in relation to the areas referred to in points (a) to (e).

2. On the basis of a proposal by the Executive Director, the Management Board shall define and coordinate projects of interest to the Union and the Member States with regard to the areas referred to in paragraphs 1 and 6, and shall invite the central industrial property offices of the Member States and the Benelux Office for Intellectual Property to participate in those projects.

The project definition shall contain the specific obligations and responsibilities of each participating industrial property office of the Member States, the Benelux Office for Intellectual Property and the Office. The Office shall consult with user representatives in particular in the phases of definition of the projects and evaluation of their results.

3. The central industrial property offices of the Member States and the Benelux Office for Intellectual Property may opt out of, restrict or temporarily suspend their cooperation in the projects referred to in the first subparagraph of paragraph 2.

When making use of the possibilities provided for in the first subparagraph, the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall provide the Office with a written statement explaining the reasons for their decision.

4. Once having committed to participate in certain projects, the central industrial property offices of the Member States and the Benelux Office for Intellectual Property shall, without prejudice to paragraph 3, participate effectively in the projects referred to in paragraph 2 with a view to ensuring that they are developed, function, are interoperable and kept up to date.

5. The Office shall provide financial support to the projects referred to in paragraph 2 to the extent that is necessary in order to ensure, for the purposes of paragraph 4, the effective participation of the central industrial property offices of the Member States and the Benelux Office for Intellectual Property in those projects. That financial support may take the form of grants and in-kind contributions. The total amount of funding shall not exceed 15 % of the yearly revenue of the Office. The beneficiaries of grants shall be the central industrial property offices of the Member States and the Benelux Office for Intellectual Property. Grants may be awarded without calls for proposals in accordance with the financial rules applicable to the Office and with the principles of grant procedures contained in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([1]) and in Commission Delegated Regulation (EU) No 1268/2012 ([2]).

6. The Office and the relevant competent authorities of the Member States shall cooperate with each other on a voluntary basis to promote the raising of awareness concerning the trade mark system and the fight against counterfeiting. Such cooperation shall include projects aiming, in particular, at the implementation of established standards and practices as well as at organising education and training activities. The financial support for those projects shall be part of the total amount of funding referred to in paragraph 5. Paragraphs 2 to 5 shall apply *mutatis mutandis*.

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

([2]) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

SECTION 3

Management Board

Article 153

Functions of the Management Board

1. Without prejudice to the functions attributed to the Budget Committee in Section 6, the Management Board shall have the following functions:

(a) on the basis of a draft submitted by the Executive Director in accordance with Article 157(4)(c), adopting the annual work programme of the Office for the coming year, taking into account the opinion of the Commission, and forwarding the adopted annual work programme to the European Parliament, to the Council and to the Commission;

(b) on the basis of a draft submitted by the Executive Director in accordance with Article 157(4)(e) and taking into account the opinion of the Commission, adopting a multiannual strategic programme for the Office, including the Office's strategy for international cooperation, following an exchange of views between the Executive Director and the relevant committee in the European Parliament, and forwarding the adopted multiannual strategic programme to the European Parliament, to the Council and to the Commission;

(c) on the basis of a draft submitted by the Executive Director in accordance with Article 157(4)(g), adopting the annual report and forwarding the adopted annual report to the European Parliament, to the Council, to the Commission and to the Court of Auditors;

(d) on the basis of a draft submitted by the Executive Director in accordance with Article 157(4)(h), adopting the multiannual staff policy plan;

(e) exercising the powers conferred on it under Article 152(2);

(f) exercising the powers conferred on it under Article 172(5);

(g) adopting rules on the prevention and management of conflicts of interest in the Office;

(h) in accordance with paragraph 2, exercising, with respect to the staff of the Office, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority Empowered to Conclude Contracts of Employment ('the appointing authority powers');

(i) adopting appropriate implementing rules to give effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations;

(j) drawing up the list of candidates provided for in Article 158(2);

(k) ensuring adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations referred to in Article 210, as well as from investigations of the European Anti-fraud Office (OLAF);

(l) being consulted before adoption of the guidelines for examination in the Office and in the other cases provided for in this Regulation;

(m) providing opinions and requests for information to the Executive Director and to the Commission where it considers it necessary.

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations and Article 142 of the Conditions of Employment, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment, delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which that delegation of appointing authority powers can be suspended.

The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter, and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 154

Composition of the Management Board

1. The Management Board shall be composed of one representative of each Member State, two representatives of the Commission and one representative of the European Parliament, and their respective alternates.

2. The members of the Management Board may, subject to its rules of procedure, be assisted by advisers or experts.

Article 155

Chairperson of the Management Board

1. The Management Board shall elect a chairperson and a deputy chairperson from among its members. The deputy chairperson shall *ex officio* replace the chairperson in the event of his being prevented from attending to his duties.

2. The duration of the terms of office of the chairperson and the deputy chairperson shall be four years. The terms of office shall be renewable once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date also.

Article 156

Meetings

1. Meetings of the Management Board shall be convened by its chairperson.

2. The Executive Director shall take part in the deliberations, unless the Management Board decides otherwise.

3. The Management Board shall hold an ordinary meeting at least once a year. In addition, it shall meet on the initiative of its chairperson or at the request of the Commission or of one-third of the Member States.

4. The Management Board shall adopt rules of procedure.

5. The Management Board shall take its decisions by an absolute majority of its members. However, a majority of two-thirds of its members shall be required for the decisions which the Management Board is empowered to take under Article 153(1)(a) and (b), Article 155(1) and Article 158(2) and (4). In both cases each member shall have one vote.

6. The Management Board may invite observers to attend its meetings.

7. The secretariat for the Management Board shall be provided by the Office.

SECTION 4

Executive Director

Article 157

Functions of the Executive Director

1. The Office shall be managed by the Executive Director. The Executive Director shall be accountable to the Management Board.

2. Without prejudice to the powers of the Commission, the Management Board, and the Budget Committee, the Executive Director shall be independent in the performance of his duties and shall neither seek nor take instructions from a government or from any other body.

3. The Executive Director shall be the legal representative of the Office.

4. The Executive Director shall have in particular the following functions, which may be delegated:

(a) taking all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office;

(b) implementing the decisions adopted by the Management Board;

(c) preparing a draft annual work programme indicating estimated human and financial resources for each activity, and submitting it to the Management Board after consultation of the Commission;

(d) submitting to the Management Board proposals pursuant to Article 152(2);

(e) preparing a draft multiannual strategic programme, including the Office's strategy for international cooperation, and submitting it to the Management Board after consultation of the Commission and following an exchange of views with the relevant committee in the European Parliament;

(f) implementing the annual work programme and the multiannual strategic programme and reporting to the Management Board on their implementation;

(g) preparing the annual report on the Office's activities and presenting it to the Management Board for approval;

(h) preparing a draft multiannual staff policy plan and submitting it to the Management Board after consultation of the Commission;

(i) preparing an action plan following-up on the conclusions of the internal or external audit reports and evaluations, as well as following up on the investigations of the OLAF, and reporting on progress twice a year to the Commission and to the Management Board;

(j) protecting the financial interests of the Union by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;

(k) preparing an anti-fraud strategy for the Office and presenting it to the Budget Committee for approval;

(l) in order to ensure uniform application of the Regulation, referring, where appropriate, to the enlarged Board of Appeal ('the Grand Board') questions on a point of law, in particular if the Boards of Appeal have issued diverging decisions on the point;

(m) drawing up estimates of the revenue and expenditure of the Office and implementing the budget;

(n) exercising the powers entrusted to him in respect of staff by the Management Board under Article 153(1)(h);

(o) exercising the powers conferred on him under Articles 31(3), 34(5), 35(3), 94(2), 97(5), Articles 98, 100, 101, Articles 111(4), 112(3), 114(5), Articles 115, 116, Articles 120(4), 146(10), Article 178, Articles 179(1) and 180(2), and Article 181 in accordance with the criteria set out in this Regulation and in the acts adopted pursuant to this Regulation.

5. The Executive Director shall be assisted by one or more Deputy Executive Directors. If the Executive Director is absent or indisposed, the Deputy Executive Director or one of the Deputy Executive Directors shall replace him in accordance with the procedure laid down by the Management Board.

Article 158

Appointment and removal of the Executive Director and extension of term of office

1. The Executive Director shall be engaged as a temporary agent of the Office under Article 2(a) of the Conditions of Employment.

2. The Executive Director shall be appointed by the Council by simple majority, from a list of candidates proposed by the Management Board, following an open and transparent selection procedure. Before being appointed, the candidate selected by the Management Board may be invited to make a statement before any competent European Parliament committee and to answer questions put by its members. For the purpose of concluding the contract with the Executive Director, the Office shall be represented by the chairperson of the Management Board.

The Executive Director may be removed from office only upon a decision of the Council acting on a proposal from the Management Board.

3. The term of office of the Executive Director shall be five years. By the end of that period, the Management Board shall undertake an assessment which takes into account an evaluation of the performance of the Executive Director and the Office's future tasks and challenges.

4. The Council, taking into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once and for no more than five years.

5. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of his overall term of office.

6. The Deputy Executive Director or Deputy Executive Directors shall be appointed or removed from office as provided for in paragraph 2, after consultation of the Executive Director and, where applicable, the Executive Director-elect. The term of office of the Deputy Executive Director shall be five years. It may be extended once and for no more than five years by the Council, after consultation of the Executive Director.

SECTION 5

Implementation of procedures

Article 159

Competence

For taking decisions in connection with the procedures laid down in this Regulation, the following shall be competent:

(a) examiners;

(b) Opposition Divisions;

(c) a department in charge of the Register;

(d) Cancellation Divisions;

(e) Boards of Appeal;

(f) any other unit or person appointed by the Executive Director to that effect.

Article 160

Examiners

An examiner shall be responsible for taking decisions on behalf of the Office in relation to an application for registration of an EU trade mark, including the matters referred to in Articles 41, 42, 76 and 85, except in so far as an Opposition Division is responsible.

Article 161

Opposition Divisions

1. An Opposition Division shall be responsible for taking decisions on an opposition to an application to register an EU trade mark.

2. The decisions of the Opposition Divisions shall be taken by three-member groups. At least one member shall be legally qualified. Decisions relating to costs or to procedures shall be taken by a single member.

The Commission shall adopt implementing acts specifying the exact types of decisions that are to be taken by a single member. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 162

Department in charge of the Register

1. The Department in charge of the Register shall be responsible for taking decisions in respect of entries in the Register.

2. It shall also be responsible for keeping the list of professional representatives referred to in Article 120(2).

3. The decisions of the Department shall be taken by a single member.

Article 163

Cancellation Divisions

1. A Cancellation Division shall be responsible for taking decisions in relation to:

(a) applications for the revocation or a declaration of invalidity of an EU trade mark;

(b) requests for the assignment of an EU trade mark as provided for in Article 21.

2. The decisions of the Cancellation Divisions shall be taken by three-member groups. At least one member shall be legally qualified. Decisions relating to costs or to procedures as specified in the acts adopted pursuant to Article 161(2) shall be taken by a single member.

Article 164

General Competence

Decisions required under this Regulation which do not fall within the competence of an examiner, an Opposition Division, a Cancellation Division or the Department in charge of the Register, shall be taken by any official or unit appointed by the Executive Director for that purpose.

Article 165

Boards of Appeal

1. The Boards of Appeal shall be responsible for deciding on appeals from decisions taken pursuant to Articles 160 to 164.

2. The decisions of the Boards of Appeal shall be taken by three members, at least two of whom are legally qualified. In certain specific cases, decisions shall be taken by the Grand Board chaired by the President of the Boards of Appeal or by a single member, who shall be legally qualified.

3. In order to determine the special cases which fall under the jurisdiction of the Grand Board, account should be taken of the legal difficulty or the importance of the case or of special circumstances which justify it. Such cases may be referred to the Grand Board:

(a) by the authority of the Boards of Appeal referred to in Article 166(4)(a); or

(b) by the Board handling the case.

4. The Grand Board shall also be responsible for giving reasoned opinions on questions of law referred to it by the Executive Director pursuant to Article 157(4)(l).

5. To determine which specific cases fall under the authority of a single member, account should be taken of the lack of difficulty of the legal or factual matters raised, the limited importance of the individual case or the absence of other specific circumstances. The decision to confer a case on one member in the cases referred to shall be adopted by the Board handling the case.

Article 166

Independence of the members of the Boards of Appeal

1. The President of the Boards of Appeal and the chairpersons of the Boards shall be appointed, in accordance with the procedure laid down in Article 158 for the appointment of the Executive Director, for a term of five years. They shall not be removed from office during this term, unless there are serious grounds for such removal and the Court of Justice, on application by the institution which appointed them, takes a decision to this effect.

2. The term of office of the President of the Boards of Appeal may be extended once for one additional five-year period, or until retirement age if this age is reached during the new term of office, after a prior positive evaluation of his performance by the Management Board.

3. The term of office of the chairpersons of the Boards may be extended for additional five-year periods, or until retirement age if this age is reached during the new term of office, after a prior positive evaluation of their performance by the Management Board, and after consulting the President of the Boards of Appeal.

4. The President of the Boards of Appeal shall have the following managerial and organisational functions:

(a) chairing the Presidium of the Boards of Appeal ('the Presidium'), responsible for laying down the rules and organising the work of the Boards;

(b) ensuring the implementation of the decisions of the Presidium;

(c) allocating cases to a Board on the basis of objective criteria determined by the Presidium;

(d) forwarding to the Executive Director the Boards' expenditure requirements, with a view to drawing up the expenditure estimates.

The President of the Boards of Appeal shall chair the Grand Board.

5. The members of the Boards of Appeal shall be appointed by the Management Board for a term of five years. Their term of office may be extended for additional five-year periods, or until retirement age if that age is reached during the new term of office after a prior positive evaluation of their performance by the Management Board, and after consulting the President of the Boards of Appeal.

6. The members of the Boards of Appeal shall not be removed from office unless there are serious grounds for such removal and the Court of Justice, after the case has been referred to it by the Management Board on the recommendation of the President of the Boards of Appeal, and after consulting the chairperson of the Board to which the member concerned belongs, takes a decision to this effect.

7. The President of the Boards of Appeal and the chairpersons and members of the Boards of Appeal shall be independent. In their decisions, they shall not be bound by any instructions.

8. Decisions taken by the Grand Board on appeals or opinions on questions of law referred to it by the Executive Director pursuant to Article 165 shall be binding on the decision-making instances of the Office listed in Article 159.

9. The President of the Boards of Appeal and the chairpersons and members of the Boards of Appeal shall not be examiners or members of the Opposition Divisions, the Department in charge of the Register or Cancellation Divisions.

Article 167

Presidium of the Boards of Appeal and Grand Board

1. The Presidium shall comprise the President of the Boards of Appeal, who shall chair it, the chairmen of the Boards and Board members elected for each calendar year by and from among all the members of the Boards other than the President of the Boards of Appeal and the chairmen of the Boards. The number of Board members so elected shall constitute a quarter of the number of Board members, other than the President of the Boards of Appeal and the chairmen of the Boards, and that number shall be rounded up if necessary.

2. The Grand Board referred to in Article 165(2) shall comprise nine members, including the President of the Boards of Appeal, the chairmen of the Boards, the rapporteur designated prior to referral to the Grand Board, if applicable, and members drawn in rotation from a list comprising the names of all members of the Boards of Appeal other than the President of the Boards of Appeal and the chairmen of the Boards.

Article 168

Delegation of powers

The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the details concerning the organisation of the Boards of Appeal, including the setting up and the role of the Presidium, the composition of the Grand Board and the rules on referrals to it, and the conditions under which decisions are to be taken by a single member in accordance with Article 165(2) and (5).

Article 169

Exclusion and objection

1. Examiners and members of the Divisions set up within the Office or of the Boards of Appeal may not take part in any proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties. Two of the three members of an Opposition Division shall not have taken part in examining the application. Members of the Cancellation Divisions may not take part in any proceedings if they have participated in the final decision on the case in the proceedings for registration or opposition proceedings. Members of the Boards of Appeal may not take part in appeal proceedings if they participated in the decision under appeal.

2. If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Division or of a Board of Appeal considers that he should not take part in any proceedings, he shall inform the Division or Board accordingly.

3. Examiners and members of the Divisions or of a Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may be based upon the nationality of examiners or members.

4. The Divisions and the Boards of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision the member who withdraws or has been objected to shall be replaced in the Division or Board of Appeal by his alternate.

Article 170

Mediation centre

1. For the purposes of Article 151(3), the Office may establish a Mediation Centre ('the Centre').

2. Any natural or legal person may use the Centre's services on a voluntary basis with the aim of reaching a friendly settlement of disputes, based on this Regulation or Regulation (EC) No 6/2002, by mutual agreement.

3. The parties shall have recourse to mediation by means of a joint request. The request shall not be deemed to have been filed until the corresponding charge has been paid. The Executive Director shall fix the amount to be charged in accordance with Article 178(1).

4. In the case of disputes subject to the proceedings pending before the Opposition Divisions, Cancellation Divisions or before the Boards of Appeal of the Office a joint request for mediation may be presented at any time after the lodging of a notice of opposition, an application for revocation or an application for a declaration of invalidity or a notice of appeal against decisions of the Opposition or Cancellation Divisions.

5. The proceedings in question shall be suspended and the time periods, other than the time periods for the payment of the applicable fee, shall be interrupted as from the date of the filing of a joint request for mediation. The time periods shall continue as from the day on which the proceedings are resumed.

6. The parties shall be invited to jointly appoint, from the list referred to in paragraph 12, a mediator who has declared that he has a command of the language of the mediation in question. Where the parties do not appoint a mediator within 20 days of the invitation to do so, the mediation shall be deemed to have failed.

7. The parties shall agree together with the mediator on the detailed arrangements for the mediation in a mediation agreement.

8. The mediator shall conclude the mediation proceedings as soon as the parties reach a settlement agreement, or one of the parties declares that it wishes to end the mediation or the mediator establishes that the parties have failed to reach such an agreement.

9. The mediator shall inform the parties as well as the relevant instance of the Office as soon as the mediation proceedings have been concluded.

10. The discussions and negotiations conducted within the framework of mediation shall be confidential for all persons involved in the mediation, in particular for the mediator, the parties and their representatives. All documents and information submitted during the mediation shall be kept separately from, and shall not be part of, the file of any other proceedings before the Office.

11. The mediation shall be conducted in one of the official languages of the Union to be agreed upon by the parties. Where the mediation relates to disputes pending before the Office, the mediation shall be conducted in the language of the Office proceedings, unless otherwise agreed by the parties.

12. The Office shall establish a list of mediators who shall support parties in resolving disputes. The mediators shall be independent and possess relevant skills and experience. The list may include mediators who are employed by the Office, and mediators who are not so employed.

13. Mediators shall be impartial in the exercise of their duties and shall declare any real or perceived conflict of interest upon their designation. Members of the decision-making instances of the Office listed in Article 159 shall not take part in mediation concerning a case in which they have:

(a) had any prior involvement in the proceedings referred to mediation;

(b) any personal interest in those proceedings; or

(c) been previously involved as a representative of one of the parties.

14. Mediators shall not take part as members of the decision-making instances of the Office listed in Article 159 in proceedings resumed as a consequence of a mediation failure.

15. The Office may cooperate with other recognised national or international bodies dealing with mediation.

SECTION 6

Budget and financial control

Article 171

Budget Committee

1. The Budget Committee shall have the functions assigned to it in this Section.

2. Articles 154 and 155, Article 156(1) to (4), and (5), in so far as it relates to the election of the chairperson and deputy chairperson, and Article 156(6) and (7) shall apply to the Budget Committee, *mutatis mutandis*.

3. The Budget Committee shall take its decisions by an absolute majority of its members. However, a majority of two-thirds of its members shall be required for the decisions which the Budget Committee is empowered to take under Article 173(3) and Article 177. In both cases each member shall have one vote.

Article 172

Budget

1. Estimates of all the Office's revenue and expenditure shall be prepared for each financial year and shall be shown in the Office's budget. Each financial year shall correspond to the calendar year.

2. The revenue and expenditure shown in the budget shall be in balance.

3. Revenue shall comprise, without prejudice to other types of income, total fees payable under Annex I to this Regulation, total fees as provided for in Regulation (EC) No 6/2002, total fees payable, under the Madrid Protocol, for an international registration designating the Union, and other payments made to Contracting Parties to the Madrid Protocol, total fees payable, under the Geneva Act referred to in Article 106c of Regulation (EC) No 6/2002, for an international registration designating the Union and other payments made to Contracting Parties to the Geneva Act, and, to the extent necessary, a subsidy entered against a specific heading of the Commission section of the general budget of the Union.

4. Every year the Office shall offset the costs incurred by the central industrial property offices of the Member States, by the Benelux Office for Intellectual Property and by any other relevant authority to be nominated by a Member State, as the result of the specific tasks which they carry out as functional parts of the EU trade mark system in the context of the following services and procedures:

(a) opposition and invalidity proceedings before the central industrial property offices of the Member States and the Benelux Office for Intellectual Property involving EU trade marks;

(b) provision of information on the functioning of the EU trade mark system through helpdesks and information centres;

(c) enforcement of EU trade marks, including action taken pursuant to Article 9(4).

5. The overall offsetting of the costs identified in paragraph 4 shall correspond to 5 % of the yearly revenue of the Office. Without prejudice to the third subparagraph of this paragraph, on a proposal by the Office and after having consulted the Budget Committee, the Management Board shall determine the distribution key on the basis of the following fair, equitable and relevant indicators:

(a) the annual number of EU trade mark applications originating from applicants in each Member State;

(b) the annual number of national trade mark applications in each Member State;

(c) the annual number of oppositions and applications for a declaration of invalidity submitted by proprietors of EU trade marks in each Member State;

(d) the annual number of cases brought before the EU trade mark courts designated by each Member State in accordance with Article 123.

For the purpose of substantiating the costs referred to in paragraph 4, Member States shall submit to the Office by 31 March of each year, statistical data demonstrating the figures referred to in points (a) to (d) of the first subparagraph of this paragraph for the preceding year, which shall be included in the proposal to be made to the Management Board.

On grounds of equity, the costs incurred by the bodies referred to in paragraph 4 in each Member State shall be deemed to correspond to at least 2 % of the total offsetting provided for under this paragraph.

6. The obligation by the Office to offset the costs referred to in paragraph 4 and incurred in a given year shall only apply to the extent that no budgetary deficit occurs in that year.

7. In the event of a budgetary surplus, and without prejudice to paragraph 10, on a proposal by the Office and after having consulted the Budget Committee, the Management Board may increase the percentage laid down in paragraph 5 to a maximum of 10 % of the yearly revenue of the Office.

8. Without prejudice to paragraphs 4 to 7 and paragraph 10 of this Article and to Articles 151 and 152, where a substantive surplus is generated over five consecutive years, the Budget Committee, upon a proposal from the Office and in accordance with the annual work programme and multiannual strategic programme referred to in Article 153(1)(a) and (b), shall decide by a two-thirds majority on the transfer to the budget of the Union of a surplus generated from 23 March 2016.

9. The Office shall prepare on a biannual basis a report for the European Parliament, the Council and the Commission on its financial situation, including on the financial operations performed under Article 152(5) and (6), and paragraphs 5 and 7 of this Article. On the basis of that report, the Commission shall review the financial situation of the Office.

10. The Office shall provide for a reserve fund covering one year of its operational expenditure to ensure the continuity of its operations and the execution of its tasks.

Article 173

Preparation of the budget

1. The Executive Director shall draw up each year an estimate of the Office's revenue and expenditure for the following year and shall send it to the Budget Committee not later than 31 March in each year, together with a list of posts.

2. Should the budget estimates provide for a Union subsidy, the Budget Committee shall immediately forward the estimate to the Commission, which shall forward it to the budget authority of the Union. The Commission may attach an opinion on the estimate along with an alternative estimate.

3. The Budget Committee shall adopt the budget, which shall include the Office's list of posts. Should the budget estimates contain a subsidy from the general budget of the Union, the Office's budget shall, if necessary, be adjusted.

Article 174

Audit and control

1. An internal audit function shall be set up within the Office, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the Executive Director, shall be responsible to him for verifying the proper operation of budget implementation systems and procedures of the Office.

2. The internal auditor shall advise the Executive Director on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

3. The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.

Article 175

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council [1], the Office shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by OLAF, and adopt the appropriate provisions applicable to all the employees of the Office using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Office.

3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 [2] with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Office.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Office shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

5. The Budget Committee shall adopt an anti-fraud strategy which is proportionate to the fraud risks having regard to the cost-benefit of the measures to be implemented.

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[1] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

[2] Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

Article 176

Auditing of accounts

1. Not later than 31 March in each year the Executive Director shall transmit to the Commission, the European Parliament, the Budget Committee and the Court of Auditors accounts of the Office's total revenue and expenditure for the preceding financial year. The Court of Auditors shall examine them in accordance with Article 287 TFEU.

2. The Budget Committee shall give a discharge to the Executive Director in respect of the implementation of the budget.

Article 177

Financial provisions

The Budget Committee shall, after consulting the Court of Auditors and the Commission, adopt internal financial provisions specifying, in particular, the procedure for establishing and implementing the Office's budget. As far as is compatible with the particular nature of the Office, the financial provisions shall be based on the financial regulations adopted for other bodies set up by the Union.

Article 178

Fees and charges and due date

1. The Executive Director shall lay down the amount to be charged for any services rendered by the Office other than those set out in Annex I, as well as the amount to be charged for the European Union Trade Marks Bulletin, the Official Journal of the Office and any other publications issued by the Office. The amounts of charges shall be set in euros and shall be published in the Official Journal of the Office. The amount of each charge shall not exceed what is necessary to cover the costs of the specific service rendered by the Office.

2. Fees and charges in respect of which the due date is not specified in this Regulation shall be due on the date of receipt of the request for the service for which the fee or the charge is incurred.

With the consent of the Budget Committee, the Executive Director may determine which of the services mentioned in the first subparagraph are not to be dependent upon the advance payment of the corresponding fees or charges.

Article 179

Payment of fees and charges

1. Fees and charges due to the Office shall be paid by payment or transfer to a bank account held by the Office.

With the consent of the Budget Committee, the Executive Director may establish which specific methods of payment other than those set out in the first subparagraph, in particular by means of deposits in current accounts held with the Office, may be used.

Determinations made pursuant to the second subparagraph shall be published in the Official Journal of the Office.

All payments, including by any other method of payment established pursuant to the second subparagraph, shall be made in euros.

2. Every payment shall indicate the name of the person making the payment and shall contain the necessary information to enable the Office to establish immediately the purpose of the payment. In particular, the following information shall be provided:

(a) when the application fee is paid, the purpose of the payment, namely 'application fee';

(b) when the opposition fee is paid, the file number of the application and the name of the applicant for the EU trade mark against which opposition is entered, and the purpose of the payment, namely 'opposition fee';

(c) when the revocation fee and the invalidity fee are paid, the registration number and the name of the proprietor of the EU trade mark against which the application is directed, and the purpose of the payment, namely 'revocation fee' or 'invalidity fee'.

3. If the purpose of the payment referred to in paragraph 2 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 the person does not comply with this request in due time, the payment shall be considered not to have been made. The amount which has been paid shall be refunded.

Article 180

Deemed date of payment

1. In the cases referred to in the first subparagraph of Article 179(1), the date on which the payment shall be considered to have been made to the Office shall be the date on which the amount of the payment or of the transfer is actually entered in a bank account held by the Office.

2. Where the methods of payment referred to in the second subparagraph of Article 179(1) may be used, the Executive Director shall establish the date on which such payments are to 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 was due, it shall be considered that this period has been observed if evidence is provided to the Office that the persons who made the payment in a Member State, within the period within which the payment should have been made, duly gave an order to a banking establishment to transfer the amount of the payment, and paid a surcharge of 10 % of the relevant fee or fees, but not exceeding EUR 200. No surcharge shall be payable if the relevant order to the banking establishment has been given not later than 10 days before the expiry of the period for payment.

4. The Office may request the person who made the payment to produce evidence as to the date on which the order to the banking establishment as referred to in paragraph 3 was given and, where required, to pay the relevant surcharge within a period to be specified by it. If the person fails to comply with that request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.

Article 181

Insufficient payments and refund of insignificant amounts

1. A time limit 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.

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

3. With the consent of the Budget Committee, the Executive Director may waive action for the enforced recovery of any sum due where the sum to be recovered is minimal or where such recovery is too uncertain.

4. Where an excessive sum is paid to cover a fee or a charge, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund.

With the consent of the Budget Committee the Executive Director may determine the amount below which an excessive sum paid to cover a fee or a charge shall not be refunded.

Determinations pursuant to the second subparagraph shall be published in the Official Journal of the Office.

CHAPTER XIII

INTERNATIONAL REGISTRATION OF MARKS

SECTION 1

General provisions

Article 182

Application of provisions

Unless otherwise specified in this chapter, this Regulation and the acts adopted pursuant to this Regulation shall apply to applications for international registrations under the Madrid Protocol ('international applications'), based on an application for an EU trade mark or on an EU trade mark and to registrations of marks in the international register maintained by the International Bureau of the World Intellectual Property Organisation ('international registrations' and 'the International Bureau', respectively) designating the Union.

SECTION 2

International registration on the basis of applications for an EU trade mark and of EU trade marks

Article 183

Filing of an international application

1. International applications pursuant to Article 3 of the Madrid Protocol based on an application for an EU trade mark or on an EU trade mark shall be filed at the Office.

2. Where an international application is filed before the mark on which the international registration is to be based has been registered as an EU trade mark, the applicant for the international registration shall indicate whether the international registration is to be based on an EU trade mark application or registration. Where the international registration is to be based on an EU trade mark once it is registered, the international application shall be deemed to have been received at the Office on the date of registration of the EU trade mark.

Article 184

Form and contents of the international application

1. The international application shall be filed in one of the official languages of the Union, using a form provided by the Office. The Office shall inform the applicant filing the international application of the date on which the documents making up the international application are received by the Office. Unless otherwise specified by the applicant on form when he files the international application, the Office shall correspond with the applicant in the language of filing in a standard form.

2. If the international application is filed in a language which is not one of the languages allowed under the Madrid Protocol, the applicant shall indicate a second language from among those languages. This shall be the language in which the Office submits the international application to the International Bureau.

3. Where the international application is filed in a language other than one of the languages allowed under the Madrid Protocol for the filing of international applications, the applicant may provide a translation of the list of goods or services and of any other textual elements forming part of the international application in the language in which the international application is to be submitted to the International Bureau pursuant to paragraph 2. If the application is not accompanied by such translation, the applicant shall authorise the Office to include that translation in the international application. Where the translation has not yet been established in the course of the registration procedure for the EU trade mark application on which the international application is based, the Office shall, without delay, arrange for the translation.

4. The filing of an international application shall be subject to the payment of a fee to the Office. Where the international registration is to be based on an EU trade mark once it is registered, the fee shall be due on the date of registration of the EU trade mark. The application shall be deemed not to have been filed until the required fee has been paid. Where the fee has not been paid, the Office shall inform the applicant accordingly. In the event of electronic filing, the Office may authorise the International Bureau to collect the fee on its behalf.

5. Where the examination of the international application reveals any of the following deficiencies, the Office shall invite the applicant to remedy those deficiencies within such period as it may specify:

(a) the international application has not been filed using the form referred to in paragraph 1, and does not contain all the indications and information required by that form;

(b) the list of goods and services contained in the international application is not covered by the list of goods and services appearing in the basic EU trade mark application or basic EU trade mark;

(c) the mark which is subject to the international application is not identical with the mark as it appears in the basic EU trade mark application or basic EU trade mark;

(d) an indication in the international application as to the trade mark, other than a disclaimer or a colour claim, does not also appear in the basic EU trade mark application or basic EU trade mark;

(e) where colour is claimed in the international application as a distinctive feature of the mark, the basic EU trade mark application or basic EU trade mark is not in the same colour or colours; or

(f) according to the indications made in the international form, the applicant is not eligible to file an international application through the Office in accordance with Article 2(1)(ii) of the Madrid Protocol.

6. Where the applicant has failed to authorise the Office to include a translation as provided for in paragraph 3, or where it is otherwise unclear on which list of goods and services the international application is to be based, the Office shall invite the applicant to make the required indications within such period as it may specify.

7. If the deficiencies referred to in paragraph 5 are not remedied or the required indications referred to in paragraph 6 are not given within the period fixed by the Office, the Office shall refuse to forward the international application to the International Bureau.

8. The Office shall forward the international application to the International Bureau along with the certification provided for under Article 3(1) of the Madrid Protocol as soon as the international application meets the requirements laid down in this Article, the implementing act adopted pursuant to paragraph 9 of this Article, and in Article 183 of this Regulation.

9. The Commission shall adopt implementing acts specifying the exact form, including the elements thereof, to be used for the filing of an international application pursuant to paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 185

Recordal in the files and in the Register

1. The date and number of an international registration based on an EU trade mark application shall be recorded in the files of that application. When the application results in an EU trade mark, the date and number of the international registration shall be entered in the Register.

2. The date and number of an international registration based on an EU trade mark shall be entered in the Register.

Article 186

Notification of the invalidity of the basic application or registration

1. Within a period of five years of the date of the international registration, the Office shall notify the International Bureau of any facts and decisions affecting the validity of the EU trade mark application or the EU trade mark registration on which the international registration was based.

2. The Commission shall adopt implementing acts specifying the individual facts and decisions subject to the notification obligation in accordance with Article 6(3) of the Madrid Protocol as well as the relevant point in time of such notifications. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2) of this Regulation.

Article 187

Request for territorial extension subsequent to international registration

1. A request for territorial extension made subsequent to an international registration pursuant to Article 3*ter*(2) of the Madrid Protocol may be filed through the intermediary of the Office. The request shall be filed in the language in which the international application was filed pursuant to Article 184 of this Regulation. It shall include indications to substantiate the entitlement to make a designation in accordance with Article 2(1)(ii) and Article 3*ter*(2) of the Madrid Protocol. The Office shall inform the applicant requesting the territorial extension of the date on which the request for territorial extension was received.

2. The Commission shall adopt implementing acts specifying the detailed requirements regarding the request for territorial extension pursuant to paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

3. Where the request for territorial extension made subsequent to the international registration does not comply with the requirements set out in paragraph 1 and in the implementing act adopted pursuant to paragraph 2, the Office shall invite the applicant to remedy the deficiencies found within such time limit as it may specify. If the deficiencies are not remedied within the time limit fixed by the Office, the Office shall refuse to forward the request to the International Bureau. The Office shall not refuse to forward the request to the International Bureau before the applicant has had the opportunity to correct any deficiency detected in the request.

4. The Office shall forward the request for territorial extension made subsequent to the international registration to the International Bureau as soon as the requirements referred to in paragraph 3 are complied with.

Article 188

International fees

Any fees payable to the International Bureau under the Madrid Protocol shall be paid direct to the International Bureau.

SECTION 3

International registrations designating the Union

Article 189

Effects of international registrations designating the Union

1. An international registration designating the Union shall, from the date of its registration pursuant to Article 3(4) of the Madrid Protocol or from the date of the subsequent designation of the Union pursuant to Article 3*ter*(2) of the Madrid Protocol, have the same effect as an application for an EU trade mark.

2. If no refusal has been notified in accordance with Article 5(1) and (2) of the Madrid Protocol or if any such refusal has been withdrawn, the international registration of a mark designating the Union shall, from the date referred to in paragraph 1, have the same effect as the registration of a mark as an EU trade mark.

3. For the purposes of applying Article 11 of this Regulation, publication of the particulars of the international registration designating the Union pursuant to Article 190(1) shall take the place of publication of an EU trade mark application, and publication pursuant to Article 190(2) shall take the place of publication of the registration of an EU trade mark.

Article 190

Publication

1. The Office shall publish the date of registration of a mark designating the Union pursuant to Article 3(4) of the Madrid Protocol or the date of the subsequent designation of the Union pursuant to Article 3*ter*(2) of the Madrid Protocol, the language of filing of the international application and the second language indicated by the applicant, the number of the international registration and the date of publication of such registration in the Gazette published by the International Bureau, a reproduction of the mark and the numbers of the classes of the goods or services in respect of which protection is claimed.

2. If no refusal of protection of an international registration designating the Union has been notified in accordance with Article 5(1) and (2) of the Madrid Protocol or if any such refusal has been withdrawn, the Office shall publish this fact, together with the number of the international registration and, where applicable, the date of publication of such registration in the Gazette published by the International Bureau.

Article 191

Seniority claimed in an international application

1. The applicant for an international registration designating the Union may claim, in the international application, the seniority of an earlier trade mark registered in a Member State, including a trade mark registered in the Benelux countries, or registered under international arrangements having effect in a Member State, as provided for in Article 39.

2. The documentation, as specified in the implementing act adopted pursuant to Article 39(6), in support of the seniority claim shall be submitted within three months of the date on which the International Bureau notifies the international registration to the Office. In this regard, Article 39(7) shall apply.

3. Where the holder of the international registration is obliged to be represented before the Office pursuant to Article 119(2), the communication as referred to in paragraph 2 of this Article shall contain the appointment of a representative within the meaning of Article 120(1).

4. Where the Office finds that the seniority claim under paragraph 1 of this Article does not comply with Article 39, or does not comply with the other requirements laid down in this Article, it shall invite the applicant to remedy the deficiencies. If the requirements referred to in the first sentence are not satisfied within the time limit specified by the Office, the right of seniority in respect of that international registration shall be lost. If the deficiencies concern only some of the goods and services, the right of seniority shall be lost only in so far as those goods and services are concerned.

5. The Office shall inform the International Bureau of any declaration of a loss of the right of seniority pursuant to paragraph 4. It shall also inform the International Bureau of any withdrawal or restriction of the seniority claim.

6. Article 39(5) shall apply, unless the right of seniority is declared lost pursuant to paragraph 4 of this Article.

Article 192

Seniority claimed before the Office

1. The holder of an international registration designating the Union may, as from the date of publication of the effects of such registration pursuant to Article 190(2), claim at the Office the seniority of an earlier trade mark registered in a Member State, including a trade mark registered in the Benelux countries, or registered under international arrangements having effect in a Member State, as provided for in Article 40.

2. When the seniority is claimed before the date referred to in paragraph 1, the seniority claim shall be deemed to have been received by the Office on that date.

3. A seniority claim under paragraph 1 of this Article shall fulfil the requirements referred to in Article 40 and shall contain information to enable its examination against those requirements.

4. If the requirements governing the claiming of seniority referred to in paragraph 3 and specified in the implementing act adopted pursuant to paragraph 6 are not fulfilled, the Office shall invite the holder of the international registration to remedy the deficiencies. If the deficiencies are not remedied within a period to be specified by the Office, the Office shall reject the claim.

5. Where the Office has accepted the seniority claim, or where a seniority claim has been withdrawn or cancelled by the Office, the Office shall inform the International Bureau accordingly.

6. The Commission shall adopt implementing acts specifying the details to be contained in a seniority claim under paragraph 1 of this Article and the details of the information to be notified pursuant to paragraph 5 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 193

Designation of goods and services and examination as to absolute grounds for refusal

1. International registrations designating the Union shall be subject to examination as to their conformity with Article 33(2), (3) and (4) and to absolute grounds for refusal in the same way as applications for EU trade marks.

2. Where an international registration designating the Union is found to be ineligible for protection pursuant to Article 33(4) or Article 42(1) of this Regulation for all or any part of the goods and services for which it has been registered by the International Bureau, the Office shall issue an *ex officio* provisional notification of refusal to the International Bureau, in accordance with Article 5(1) and (2) of the Madrid Protocol.

3. Where the holder of an international registration is obliged to be represented before the Office pursuant to Article 119(2), the notification referred to in paragraph 2 of this Article shall contain an invitation to appoint a representative within the meaning of Article 120(1).

4. The notification of provisional refusal shall state the reasons on which it is based, and shall specify a time period by which the holder of the international registration may submit his observations and, if appropriate, shall appoint a representative. The time period shall start on the day on which the Office issues the provisional refusal.

5. Where the Office finds that the international application designating the Union does not contain the indication of a second language pursuant to Article 206 of this Regulation, the Office shall issue an *ex officio* provisional notification of refusal to the International Bureau pursuant to Article 5(1) and (2) of the Madrid Protocol.

6. Where the holder of an international registration fails to overcome the ground for refusing protection within the time limit or, if appropriate, to appoint a representative or to indicate a second language, the Office shall refuse the protection in whole or for part of the goods and services for which the international registration is registered. The refusal of protection shall take the place of a refusal of an EU trade mark application. The decision shall be subject to appeal in accordance with Articles 66 to 72.

7. Where, as of the start of the opposition period referred to in Article 196(2), the Office has not issued an *ex officio* provisional notification of refusal pursuant to paragraph 2 of this Article, it shall send a statement to the International Bureau, indicating that the examination of absolute grounds of refusal pursuant to Article 42 has been completed but that the international registration is still subject to oppositions or observations of third parties. This interim statement shall be without prejudice to the right of the Office to re-open the examination of absolute grounds on its own initiative any time before the final statement of grant of protection has been issued.

8. The Commission shall adopt implementing acts specifying the details to be contained in the notification of *ex officio* provisional refusal of protection to be sent to the International Bureau and in the final communications to be sent to the International Bureau on the final grant or refusal of protection. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 194

Collective and certification marks

1. Where an international registration is based on a basic application or basic registration relating to a collective mark, certification mark or guarantee mark, the international registration designating the Union shall be dealt with as an EU collective mark or as an EU certification mark, whichever is applicable.

2. The holder of the international registration shall submit the regulations governing the use of the mark, as provided for in Articles 75 and 84, directly to the Office within two months of the date on which the International Bureau notifies the international registration to the Office.

3. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the details of the procedure concerning international registrations based on a basic application or basic registration relating to a collective mark, certification mark or guarantee mark.

Article 195

Search

1. Once the Office has received a notification of an international registration designating the Union, it shall draw up a Union search report as provided for in Article 43(1) provided that a request for a search report, pursuant to Article 43(1), is made to the Office within one month of the date of notification.

2. As soon as the Office has received a notification of an international registration designating the Union, the Office shall transmit a copy thereof to the central industrial property office of each Member State which has informed the Office of its decision to operate a search in its own register of trade marks as provided for in Article 43(2) provided that a request for a search report, pursuant to Article 43(2), is made to the Office within one month of the date of notification and the search fee is paid within the same period.

3. Article 43(3) to (6) shall apply *mutatis mutandis*.

4. The Office shall inform the proprietors of any earlier EU trade marks or EU trade mark applications cited in the Union search report of the publication of the international registration designating the Union as provided for in Article 190(1). This shall apply whether or not the holder of the international registration has requested to receive the EU search report, unless the proprietor of an earlier registration or application requests not to receive the notification.

Article 196

Opposition

1. International registration designating the Union shall be subject to opposition in the same way as published EU trade mark applications.

2. Notice of opposition shall be filed within a period of three months which shall begin one month following the date of the publication pursuant to Article 190(1). The opposition shall not be considered as duly entered until the opposition fee has been paid.

3. Refusal of protection shall take the place of refusal of an EU trade mark application.

4. The Commission is empowered to adopt delegated acts in accordance with Article 208 specifying the procedure for the filing and examination of an opposition, including the necessary communications to be made to the International Bureau.

Article 197

Replacement of an EU trade mark by an international registration

The Office shall, upon request, enter a notice in the Register that an EU trade mark is deemed to have been replaced by an international registration in accordance with Article 4*bis* of the Madrid Protocol.

Article 198

Invalidation of the effects of an international registration

1. The effects of an international registration designating the Union may be declared invalid.

2. The application for invalidation of the effects of an international registration designating the Union shall take the place of an application for a declaration of revocation as provided for in Article 58 or for a declaration of invalidity as provided for in Article 59 or Article 60.

3. Where pursuant to Article 64 or Article 128 of this Regulation and this Article, the effects of an international registration designating the Union have been declared invalid by means of a final decision, the Office shall notify the International Bureau in accordance with Article 5(6) of the Madrid Protocol.

4. The Commission shall adopt implementing acts specifying the details to be contained in the notification to be made to the International Bureau pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 199

Legal effect of registration of transfers

The recordal of a change in the ownership of an international registration on the International Register shall have the same effect as the entry of a transfer in the Register pursuant to Article 20.

Article 200

Legal effect of registration of licences and other rights

The recordal of a licence or a restriction of the holder's right of disposal in respect of an international registration in the International Register shall have the same effect as the registration of a right *in rem*, a levy of execution, insolvency proceedings or a licence in the Register pursuant to Articles 22, 23, 24 and 25 respectively.

Article 201

Examination of requests for registration of transfers, licences or restrictions of a holder's right of disposal

The Office shall transmit requests to register a change in ownership, a licence or a restriction of the holder's right of disposal, the amendment or cancellation of a licence or the removal of a restriction of the holder's right of disposal which have been filed with it to the International Bureau, if accompanied by appropriate proof of the transfer, licence, or the restriction of the right of disposal, or by proof that the licence no longer exists or that it has been amended, or that the restriction of the right of disposal has been removed.

Article 202

Conversion of a designation of the Union through an international registration into a national trade mark application or into a designation of Member States

1. Where a designation of the Union through an international registration has been refused or ceases to have effect, the holder of the international registration may request the conversion of the designation of the Union:

(a) into a national trade mark application pursuant to Articles 139, 140 and 141;

(b) into a designation of a Member State party to the Madrid Protocol, provided that on the date when conversion was requested it was possible to have designated that Member State directly under the Madrid Protocol. Articles 139, 140 and 141 of this Regulation shall apply.

2. The national trade mark application or the designation of a Member State party to the Madrid Protocol resulting from the conversion of the designation of the Union through an international registration shall enjoy, in respect of the Member State concerned, the date of the international registration pursuant to Article 3(4) of the Madrid Protocol or the date of the extension to the Union pursuant to Article 3*ter*(2) of the Madrid Protocol, if the latter was made subsequent to the international registration, or the date of priority of that registration and, where appropriate, the seniority of a trade mark of that State claimed under Article 191 of this Regulation.

3. The request for conversion shall be published.

4. The request for conversion of an international registration designating the Union into a national trade mark application shall include the information and indications referred to in Article 140(1).

5. Where conversion is requested pursuant to this Article and Article 139(5) of this Regulation following a failure to renew the international registration, the request referred to in paragraph 4 of this Article shall contain an indication to that effect and the date on which the protection expired. The period of three months provided for in Article 139(5) of this Regulation shall begin to run on the day following the last day on which the renewal may still be effected pursuant to Article 7(4) of the Madrid Protocol.

6. Article 140(3) and (5) shall apply to the request for conversion referred to in paragraph 4 of this Article *mutatis mutandis*.

7. The request for conversion of an international registration designating the Union into a designation of a Member State party to the Madrid Protocol shall include the indications and elements referred to in paragraphs 4 and 5.

8. Article 140(3) shall apply to the request for conversion referred to in paragraph 7 of this Article *mutatis mutandis*. The Office shall also reject the request for conversion where the conditions to designate the Member State which is a party to the Madrid Protocol or to the Madrid Agreement were fulfilled neither on the date of the designation of the Union nor on the date on which the application for conversion was received or, pursuant to the last sentence of Article 140(1), is deemed to have been received by the Office.

9. Where the request for conversion referred to in paragraph 7 complies with the requirements of this Regulation and rules adopted pursuant to it, the Office shall transmit the request without delay to the International Bureau. The Office shall inform the holder of the international registration of the date of transmission.

10. The Commission shall adopt implementing acts specifying:

(a) the details to be contained in the requests for conversion referred to in paragraphs 4 and 7;

(b) the details to be contained in the publication of the requests for conversion pursuant to paragraph 3.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 203

Use of a mark subject of an international registration

For the purposes of applying Article 18(1), Article 47(2), Article 58(1)(a) and Article 64(2), the date of publication pursuant to Article 190(2) shall take the place of the date of registration for the purpose of establishing the date as from which the mark which is the subject of an international registration designating the Union shall be put to genuine use in the Union.

Article 204

Transformation

1. Subject to paragraph 2, the provisions applicable to EU trade mark applications shall apply *mutatis mutandis* to applications for transformation of an international registration into an EU trade mark application pursuant to Article 9*quinquies* of the Madrid Protocol.

2. When the application for transformation relates to an international registration designating the Union the particulars of which have been published pursuant to Article 190(2), Articles 42 to 47 shall not apply.

3. In order to be considered a transformation of an international registration which has been cancelled at the request of the office of origin by the International Bureau pursuant to Article 9*quinquies* of the Madrid Protocol, an EU trade mark application shall contain an indication to that effect. That indication shall be made when filing the application.

4. Where, in the course of the examination in accordance with Article 41(1)(b), the Office finds that the application was not filed within three months of the date on which the international registration was cancelled by the International Bureau, or the goods and services for which the EU trade mark is to be registered are not contained in the list of goods and services for which the international registration was registered in respect of the Union, the Office shall invite the applicant to remedy the deficiencies.

5. If the deficiencies referred to in paragraph 4 are not remedied within the time period specified by the Office, the right to the date of the international registration or the territorial extension and, if any, of the priority of the international registration shall be lost.

6. The Commission shall adopt implementing acts specifying the details to be contained in an application for transformation pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 207(2).

Article 205

Communication with the International Bureau

Communication with the International Bureau shall be in a manner and format agreed on between the International Bureau and the Office, and preferably be by electronic means. Any reference to forms shall be construed as including forms made available in electronic format.

Article 206

Use of languages

For the purpose of applying this Regulation, and rules adopted pursuant to it, to international registrations designating the Union, the language of filing of the international application shall be the language of the proceedings within the meaning of Article 146(4), and the second language indicated in the international application shall be the second language within the meaning of Article 146(3).

CHAPTER XIV

FINAL PROVISIONS

Article 207

Committee Procedure

1. The Commission shall be assisted by a Committee on Implementation Rules. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 208

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 48, Article 49(3), Articles 65 and 73, Articles 96(4), 97(6), 98(5), 100(2), 101(5), 103(3), and 106(3), Articles 121 and 168, and Articles 194(3) and 196(4) shall be conferred on the Commission for an indeterminate period of time from 23 March 2016.

3. The delegation of power referred to in Article 48, Article 49(3), Articles 65 and 73, Articles 96(4), 97(6), 98(5), 100(2), 101(5), 103(3), and 106(3), Articles 121 and 168, and Articles 194(3) and 196(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall carry out consultations with experts, including experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 48, Article 49(3), Articles 65 and 73, Articles 96(4), 97(6), 98(5), 100(2), 101(5), 103(3), and 106(3), Articles 121 and 168, and Articles 194(3) and 196(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 209

Provisions relating to the enlargement of the Union

1. As of the date of accession of Bulgaria, the Czech Republic, Estonia, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia ('new Member State(s)'), an EU trade mark registered or applied for pursuant to this Regulation before their respective date of accession shall be extended to the territory of those Member States in order to have equal effect throughout the Union.

2. The registration of an EU trade mark which was under application at the date of accession may not be refused on the basis of any of the absolute grounds for refusal listed in Article 7(1), if these grounds became applicable merely because of the accession of a new Member State.

3. Where an application for the registration of an EU trade mark has been filed during the six months prior to the date of accession, notice of opposition may be given pursuant to Article 46 where an earlier trade mark or another earlier right within the meaning of Article 8 was acquired in a new Member State prior to accession, provided that it was acquired in good faith and that the filing date or, where applicable, the priority date or the date of acquisition in the new Member State of the earlier trade mark or other earlier right precedes the filing date or, where applicable, the priority date of the EU trade mark applied for.

4. An EU trade mark as referred to in paragraph 1 may not be declared invalid:

(a) pursuant to Article 59 if the grounds for invalidity became applicable merely because of the accession of a new Member State;

(b) pursuant to Article 60(1) and (2) if the earlier national right was registered, applied for or acquired in a new Member State prior to the date of accession.

5. The use of an EU trade mark as referred to in paragraph 1 may be prohibited pursuant to Articles 137 and 138, if the earlier trade mark or other earlier right was registered, applied for or acquired in good faith in the new Member State prior to the date of accession of that State; or, where applicable, has a priority date prior to the date of accession of that State.

Article 210

Evaluation and review

1. By 24 March 2021, and every five years thereafter, the Commission shall evaluate the implementation of this Regulation.

2. The evaluation shall review the legal framework for cooperation between the Office and the central industrial property offices of the Member States and the Benelux Office for Intellectual Property, paying particular attention to the financing mechanism laid down in Article 152. The evaluation shall further assess the impact, effectiveness and efficiency of the Office and its working practices. The evaluation shall, in particular, address the possible need to modify the mandate of the Office, and the financial implications of any such modification.

3. The Commission shall forward the evaluation report together with its conclusions drawn on the basis of that report to the European Parliament, the Council and the Management Board. The findings of the evaluation shall be made public.

4. On the occasion of every second evaluation, there shall be an assessment of the results achieved by the Office having regard to its objectives, mandate and tasks.

Article 211

Repeal

Regulation (EC) No 207/2009 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 212

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 October 2017.

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

Done at Strasbourg, 14 June 2017.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	H. DALLI

ANNEX I

AMOUNT OF FEES

A. The fees to be paid to the Office under this Regulation shall be as follows (in EUR):

1. Basic fee for the application for an individual EU trade mark (Article 31(2)):

   EUR 1 000

2. Basic fee for the application for an individual EU trade mark by electronic means (Article 31(2)):

   EUR 850

3. Fee for the second class of goods and services for an individual EU trade mark (Article 31(2)):

   EUR 50

4. Fee for each class of goods and services exceeding two for an individual EU trade mark (Article 31(2)):

   EUR 150

5. Basic fee for the application for an EU collective mark or an EU certification mark (Article 31(2) and Article 74(3) or Article 83(3)):

   EUR 1 800

6. Basic fee for the application for an EU collective mark or an EU certification mark by electronic means (Article 31(2) and Article 74(3) or Article 83(3)):

   EUR 1 500

7. Fee for the second class of goods and services for an EU collective mark or an EU certification mark: (Article 31(2) and Article 74(3) or Article 83(3)):

   EUR 50

8. Fee for each class of goods and services exceeding two for an EU collective mark or an EU certification mark (Article 31(2) and 74(3) or Article 83(3)):

   EUR 150

9. Search fee for an EU trade mark application (Article 43(2)) or for an international registration designating the Union (Article 43(2) and Article 195(2)):

   EUR 12 multiplied by the number of central industrial property offices referred to in Article 43(2); that amount, and the subsequent changes, shall be published by the Office in the Official Journal of the Office.

10. Opposition fee (Article 46(3)):

    EUR 320

11. Basic fee for the renewal of an individual EU trade mark (Article 53(3)):

    EUR 1 000

12. Basic fee for the renewal of an individual EU trade mark by electronic means (Article 53(3)):

    EUR 850

13. Fee for the renewal of the second class of goods and services for an individual EU trade mark (Article 53(3)):

    EUR 50

14. Fee for the renewal of each class of goods and services exceeding two for an individual EU trade mark (Article 53(3)):

    EUR 150

15. Basic fee for the renewal of an EU collective mark or an EU certification mark (Article 53(3) and Article 74(3) or Article 83(3)):

    EUR 1 800

16. Basic fee for the renewal of an EU collective mark or an EU certification mark by electronic means (Article 53(3) and Article 74(3) or Article 83(3)):

    EUR 1 500

17. Fee for the renewal of the second class of goods and services for an EU collective mark or an EU certification mark (Article 53(3) and Article 74(3) or Article 83(3)):

    EUR 50

18. Fee for the renewal of each class of goods and services exceeding two for an EU collective mark or an EU certification mark (Article 53(3) and Article 74(3) or Article 83(3)):

    EUR 150

19. Additional fee for the late payment of the renewal fee or the late submission of the request for renewal (Article 53(3)):

    25 % of the belated renewal fee, subject to a maximum of EUR 1 500

20. Fee for the application for revocation or for a declaration of invalidity (Article 63(2)):

    EUR 630

21. Appeal fee (Article 68(1)):

    EUR 720

22. Fee for the application of *restitutio in integrum* (Article 104(3)):

    EUR 200

23. Fee for the application for the conversion of an EU trade mark application or an EU trade mark (Article 140(1), also in conjunction with Article 202(1)):

    (a) into a national trade mark application;

    (b) into a designation of Member States under the Madrid Protocol:

    EUR 200

24. Fee for continuation of proceedings (Article 105(1)):

    EUR 400

25. Fee for the declaration of division of a registered EU trade mark (Article 56(4) or an application for an EU trade mark (Article 50(3)):

    EUR 250

26. Fee for the application for the registration of a licence or another right in respect of a registered EU trade mark (Article 26(2)) or an application for an EU trade mark (Article 26(2)):

    (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) levy of execution:

    EUR 200 per registration, but where multiple requests are submitted in the same application or at the same time, not to exceed a total of EUR 1 000

27. Fee for the cancellation of the registration of a licence or other right (Article 29(3)):

    EUR 200 per cancellation, but where multiple requests are submitted in the same application or at the same time, not to exceed a total of EUR 1 000

28. Fee for the alteration of a registered EU trade mark (Article 54(4)):

    EUR 200

29. Fee for the issue of a copy of the application for an EU trade mark (Article 114(7)), a copy of the certificate of registration (Article 51(2)), or an extract from the register (Article 111(7)):

    (a) uncertified copy or extract:

        EUR 10

    (b) certified copy or extract:

        EUR 30

30. Fee for the inspection of the files (Article 114(6)):

    EUR 30

31. Fee for the issue of copies of file documents (Article 114(7)):

    (a) uncertified copy:

        EUR 10

    (b) certified copy:

        EUR 30

    plus per page, exceeding 10

    EUR 1

32. Fee for the communication of information in a file (Article 114(9)):

    EUR 10

33. Fee for the review of the determination of the procedural costs to be refunded (Article 109(8)):

    EUR 100

34. Fee for the filing of an international application at the Office (Article 184(4)):

    EUR 300

B. Fees to be paid to the International Bureau

I. Individual fee for an international registration designating the Union

1. The applicant for an international registration designating the Union shall be required to pay to the International Bureau an individual fee for the designation of the Union in accordance with Article 8(7) of the Madrid Protocol.

2. The holder of an international registration who files a request for territorial extension designating the Union made subsequent to the international registration shall be required to pay to the International Bureau an individual fee for the designation of the Union in accordance with Article 8(7) of the Madrid Protocol.

3. The amount of the fee under points B.I.1 or B.I.2 shall be the equivalent in Swiss Francs, as established by the Director-General of the WIPO pursuant to Rule 35(2) of the Common Regulations under the Madrid Agreement and Protocol, of the following amounts:

    (a) for an individual trade mark: EUR 820 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods and services contained in the international registration exceeding two;

    (b) for a collective mark or a certification mark: EUR 1 400 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods or services exceeding two.

II. Individual fee for a renewal of an international registration designating the Union

1. The holder of an international registration designating the Union shall be required to pay to the International Bureau, as a part of the fees for a renewal of the international registration, an individual fee for the designation of the Union in accordance with Article 8(7) of the Madrid Protocol.

2. The amount of the fee referred to in point B.II.1 shall be the equivalent in Swiss Francs, as established by the Director-General of the WIPO pursuant to Rule 35(2) of the Common Regulations under the Madrid Agreement and Protocol, of the following amounts:

   (a) for an individual trade mark: EUR 820 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods and services contained in the international registration exceeding two;

   (b) for a collective mark or a certification mark: EUR 1 400 plus, where applicable, EUR 50 for the second class of goods and services and EUR 150 for each class of goods and services contained in the international registration exceeding two.

ANNEX II

Repealed Regulation with list of its successive amendments

Council Regulation (EC) No 207/2009 (OJ L 78, 24.3.2009, p. 1)	
Act of Accession of 2012, Annex III, point 2(I)	
Regulation (EU) 2015/2424 of the European Parliament and of the Council (OJ L 341, 24.12.2015, p. 21)	Only Article 1

ANNEX III

Correlation table

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