

**GUIDELINES FOR EXAMINATION OF  
EUROPEAN UNION TRADE MARKS**

**EUROPEAN UNION  
INTELLECTUAL PROPERTY OFFICE  
(EUIPO)**

**PART B**

**EXAMINATION**

**SECTION 4**

**ABSOLUTE GROUNDS FOR REFUSAL**

**CHAPTER 9**

**Trade marks in conflict with flags and other  
symbols**

**(ARTICLE 7(1)(h) and (i) EUTMR)**

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~~2.9 — Protection of flags and other symbols — Article 7(1)(h) and (i) EUTMR~~

## 1 Introduction

Article 7(1)(h) EUTMR incorporates Article 6ter of the Paris Convention for the Protection of Industrial Property (PC) into the European Union trade mark system. It therefore protects armorial bearings, flags and other state emblems of states that are party to the PC, as well as official signs and hallmarks indicating control and warranty adopted by them. This protection was extended to armorial bearings, flags, other emblems, abbreviations and names of intergovernmental organisations (IGOs) in 1958. Article 7(1)(h) EUTMR applies only if the sign applied for is identical to a protected 'emblem' or is a heraldic imitation of such an 'emblem'.

Article 7(1)(i) EUTMR protects badges, emblems and escutcheons that are not protected under Article 6ter PC but are of public interest.

## 2 Article 7(1)(h) EUTMR

### 2.1 Objective of Article 7(1)(h) EUTMR

The objective of Article 6ter ~~Paris Convention (PC)~~PC is to exclude the registration and use of trade marks that are identical or in some way notably similar to state emblems, official signs and hallmarks indicating control and warranty adopted by the states or the emblems, abbreviations and names of ~~international intergovernmental organisations~~.

~~'The reasons for this are that such IGOs. Such registration or use would violate adversely affect the right of the State authority concerned to control the use of the symbols of its sovereignty and furthermore might, moreover, mislead the public with respect to the origin of the goods to and services for which such marks would be applied.'~~ (G.H.C. Bodenhausen, *Guide to the application of the Paris Convention for the Protection of Industrial Property as revised in Stockholm in 1967*, page 96.) ~~Origin in this regard must be understood as coming from or endorsed by the relevant administration, not as being produced in the territory of that state or, in the case of the EU, in the EU these marks are used.~~

~~Article 7(1)(h) EUTMR therefore refers to the following symbols:~~

- ~~• Armorial bearings, flags, other emblems, official signs and hallmarks that belong to states and have been communicated to WIPO, although, in the case of flags, such communication is not mandatory.~~
- ~~• Armorial bearings, flags, other emblems, abbreviations and names of international intergovernmental organisations that have been communicated to WIPO, with the exception of those already the subject of international agreements for ensuring their protection (see, for example, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces of 12/08/1949, Article 44 of which protects the emblems of the Red Cross on a white ground, the words 'Red Cross' or 'Geneva Cross', and analogous emblems).~~

~~The Court of Justice has made clear that these provisions can be applied regardless of whether the application concerns goods or services, and that the scopes of application of Article 7(1)(h) and 7(1)(i) EUTMR are analogous. Both articles should therefore be assumed to grant at least an equivalent level of protection, since they pursue the same objective, that is, to prohibit the use of specific emblems of public interest without the~~

~~consent of the competent authorities (judgment of 16/07/2009 in Joined Cases Registration of these emblems and signs C-202/08 P and C-208/08 P, ‘RW feuille d’érable’, paras 78, 79 and 80).~~

~~2.9.1 Protection of armorial bearings, flags, other state emblems, official signs and hallmarks indicating control and warranty under Article 7(1)(h) EUTMR — Article 6ter(1)(a) and (2) PC~~

~~In accordance with Article 6ter(1)(a) PC, the registration, either as a trade mark or as an element thereof, of armorial bearings, flags, and other state emblems of the countries of the Union (i.e. the countries to which the PC applies), or of official signs and hallmarks adopted by states as an indication of control and warranty, as well as any imitation from a heraldic point of view will be, either as a trade mark or as an element thereof, must be refused if no authorisation has been granted by the competent authority.~~

~~The members~~Members of the World Trade Organization (WTO) enjoy the same protection pursuant to Article 2(1) ~~TRIPs~~TRIPS, according to which members of the WTO must comply with Articles 1 to 12 and 19 PC.

~~Therefore, to fall foul of Article 7(1)(h) EUTMR, a trade mark:~~

- ~~• must consist solely of an identical reproduction or a ‘heraldic imitation’ of the abovementioned symbols;~~
- ~~• must contain an identical reproduction or a ‘heraldic imitation’ of the abovementioned symbols.~~

~~Furthermore, the competent authority must not have given its authorisation~~

## 2.2 Relevant emblems and signs protected

### State flags

A state flag is defined by the constitution of a state or by a specific law of that state. Normally, a state will have only one state flag.

For instance, the Spanish flag is defined in Article 4 of the Spanish Constitution; the French flag is defined in Article 2 of the French Constitution; and the German flag is defined in Article 22 of the German Constitution.

State flags enjoy protection per se without the need of any registration at WIPO pursuant to Article 6ter(3)(a) PC. There is no need to establish any link between the goods and services applied for and the country; state flags enjoy absolute protection.

Armorial bearings, flags, and other state emblems

Armorial bearings normally consist of a design or image depicted on a shield. See the following an example.



Bulgarian of an armorial bearing — 6 for database No BG2 is the coat of arms of Spain.



Protected under ES5.

Apart from the state flag (protected per se), a member state of the PC may also request protection for other flags, namely those of its first political division in a federal state. For instance, Germany has requested protection for the flags of each Bundesland ('federal state').



Protected under DE34  
(flag of the federal  
state of Berlin).

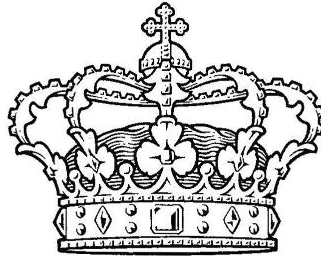
In State flags usually consist of a distinctive rectangular design that is used as the symbol of a nation. See the following example.



Croatian flag

contrast, Spain has not requested protection for the flag of the Comunidades Autónomas (Autonomous Communities), only for the state flag and the state flag with the coat of arms. France and the United Kingdom, for instance, have not requested protection for any flag.

The expression 'other ~~Statestate~~ emblems' ~~is rather vague. It usually~~ indicates any emblems constituting the symbol of the sovereignty of a state, ~~including the escutcheons of reigning houses as well as emblems of states included in a federal state that is party to the Paris Convention. See the following example. This might be a representation of the national crown,~~



Danish



Protected under NL48.

or the official seal of a member state emblem — ~~6ter database No DK3of the PC.~~



Protected under US1.

Like state flags, armorial bearings, flags, and other state emblems enjoy absolute protection, irrespective of the goods and services applied for.

### Official signs and hallmarks indicating control and warranty

The purpose of official signs and hallmarks indicating control and warranty is to certify that a state or an organisation duly appointed by a state for that purpose has checked that certain goods meet specific standards or are of a given level of quality. There are official signs and hallmarks indicating control and warranty in several states for precious metals or products, such as butter, cheese, meat, electrical equipment, etc. Official signs and hallmarks may also apply to services, for instance, those relating to education, tourism, etc. ~~See the following examples.~~

These symbols are normally registered for specific products such as:



Protected under BR6 for tourism; national and international promotion and advertising; marketing studies; business management; business administration; and office functions.



Protected under JP1 for agricultural, forestry and fishery products and foodstuffs.

More typical examples are signs of warranty for metals such as:



Protected under CZ35 for platinum



Protected under IT13 for gold



Protected under HU10 for silver

Official signs and hallmarks indicating control and warranty enjoy protection only for goods of the same or a similar kind pursuant to Article 6ter(2) PC (no absolute protection).

Armorial bearings, names, abbreviations and other emblems of intergovernmental organisations

Intergovernmental organisations of which more than one member state of the PC is a member enjoy protection for their armorial bearings, names, abbreviations and other emblems.

For instance, the following signs enjoy protection under the Paris Convention:



Protected under QO60.



Protected under QO1.




Protected under QO1248.

**AU**

Protected under QO884 for the AFRICAN UNION.



The European Union has requested, for instance, protection for the following signs, abbreviations and names:

	<u>EUIPO</u>	<u>European Union Intellectual Property Office</u>
<u>Published under QO1717</u>	<u>Published under QO1742 (QO1743 to QO46 in other languages)</u>	<u>Published under QO1718 (QO1719 to QO1741 in other languages)</u>

Pursuant to Article 6ter(1)(c) PC, armorial bearings, names, abbreviations and other emblems of IGOs enjoy protection only for goods and services applied for that would suggest to the public that a connection exists between the organisation concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if the trade mark misleads the public about the existence of a connection between the user and the organisation.

Even though the European Union is not a state in terms of international law, but rather an international intergovernmental organisation, its area of activity is equated with that of a state (decision of 12/05/2011, R 1590/2010-1 – European Driveshaft Services EDS, § 54; judgment of 15/01/2013, T-413/11, European Driveshaft Services, EU:T:2013:12, § 70). Consequently, the emblems of the European Union enjoy protection against all goods and services and there is no need to establish any specific link.

Pursuant to the last sentence of Article 6ter(1)(b) PC, Article 6ter PC is not applicable to any armorial bearings, flags, other emblems, abbreviations, and names that are already the subject of international agreements in force intended to ensure their protection (e.g. under the Geneva Convention).

#### Search for emblems

Relevant information about emblems protected under the Paris Convention is found in the WIPO Article 6ter database (<http://www.wipo.int/ipdl/en/6ter/>). The database can be searched by 'state' (i.e. country), by 'category' (i.e. the type of 'emblem'), as well as by 'Vienna Classification'.

The Google image search (<https://images.google.com/>) might give some basic hints to identify an emblem before the Article 6ter database is checked.

Since state flags enjoy protection per se without the need of any registration at WIPO they are normally not found in the WIPO Article 6ter database PC (unless the flag is, at the same time, protected as another state emblem). Tools for finding flags such as <http://www.flagid.org> or <http://www.flag-finder.com> can be consulted.

### 2.3. Applicability of Article 7(1)(h) EUTMR

To fall foul of Article 7(1)(h) EUTMR, a trade mark:

- must **consist** solely of an identical reproduction or a ‘heraldic imitation’ of the abovementioned symbols; or
- must **contain** an identical reproduction or a ‘heraldic imitation’ of the abovementioned symbols.

Furthermore, the competent authority must not have given its **authorisation** (see paragraph 2.8.4 below).

In



Official Spanish sign for export promotion No ES1



UK hallmark for platinum articles No GB-40

~~It must be noted that Article 6ter PC does not protect the abovementioned symbols against all imitations, only ‘heraldic imitations’. The notion of ‘heraldic imitation’ must be construed in the sense that ‘...principle, the prohibition of the imitation of an emblem applies only to **imitations of it from a heraldic perspective**, that is to say, those **which that** contain heraldic connotations **which that** distinguish the emblem from other signs. **Thus/Therefore**, the protection against any imitation from a heraldic point of view refers not to the image **as such itself**, but to its heraldic expression. ~~Therefore, it is therefore necessary, in order to consider the **heraldic description of the emblem at issue** to determine whether the trade mark contains an imitation from a heraldic point of view, to consider the heraldic description of the emblem at issue’ (see CJEU judgment(judgments of 16/07/2009 in Joined Cases, C-202/08 P and C-208/08 P, para-RW feuille d’érable, EU:C:2009:477, § 48; 5/05/2011, T-41/10, ESF École du ski français, EU:T:2011:200, § 25).~~~~

~~Consequently, when making a comparison ‘from a heraldic point of view’ within the meaning of Article 6ter PC, account must be taken of the heraldic description of the emblem concerned and not any geometric description of the same emblem, which is by nature much more detailed. Indeed, if the geometric description of the emblem were taken into account, this ‘... would lead to the emblem being refused protection under~~

~~Article 6ter(1)(a) of the Paris Convention in the event of any slight discrepancy between the two descriptions. Secondly, the case of graphic conformity with the emblem used by the trade mark is already covered by the first part of that provision, so that the expression “any imitation from a heraldic point of view” must be different in its scope’ (see *ibidem*, para. 49).~~

~~It follows from the above that in the course of trade mark examination, as a first step, both the protected ‘emblem’ and the sign applied for must be considered from a heraldic perspective.~~

~~Nonetheless, the Court ruled that as far as ‘imitation from a heraldic point of view’~~

~~For example, an examiner should take into account the heraldic description of the~~



~~European emblem — ‘on an azure field a circle of twelve golden mullets, their points not touching’ — and not its geometrical description: ‘the emblem is in the form of a blue rectangular flag of which the fly is one and a half times the length of the hoist. Twelve gold stars situated at equal intervals form an invisible circle whose centre is the point of intersection of the diagonals of the rectangle. The radius of the circle is equal to one third of the height of the hoist. Each of the stars has five points which are situated on the circumference of an invisible circle whose radius is equal to one eighteenth of the height of the hoist. All the stars are upright — that is to say, with the one point vertical and two points in a straight line at right angles to the mast. The circle is arranged so that the stars appear in the position of the hours on the face of a clock. Their number is invariable.’~~

~~Furthermore, armorial bearings and other heraldic emblems are drawn on the basis of a relatively simple description of the layout and background colour that also lists the different elements (such as a lion, an eagle, a flower, etc.) constituting the emblem and gives information on their colour and position within the emblem. However, a heraldic description does not give details of the design of the emblem and the specific elements that constitute it, with the result that a number of artistic interpretations of one and the same emblem on the basis of the same heraldic description are possible. Although there may be differences in detail between each of those interpretations, the fact remains that they will all be imitations ‘from a heraldic point of view’ of the emblem concerned (T-215/06, 28/02/2008, paras 71-72).~~

~~It follows that a trade mark that does not exactly reproduce a state emblem can nevertheless be covered by Article 6ter(1)(a) PC where it is perceived by the relevant public as imitating such an emblem. So far as the expression ‘imitation from a heraldic point of view’ in that provision is concerned, a difference detected by a specialist in heraldic art between the trade mark applied for and the Statestate emblem will not necessarily be perceived by the average consumer whoand therefore, in spite of differences at the level of certain heraldic details, can see in the contested trade mark may be an imitation of the emblem in question (see CJEU judgment within the meaning of Article 6ter PC (judgments of 16/07/2009 in Joined Cases, C-202/08 P and C-208/08 P, parasRW feuille d’érable, EU:C:2009:477, § 50-54 et seq.; 25/05/2011, T-397/09, Suscipere et finire, EU:T:2011:246, § 24-25).~~

~~Furthermore, for Article 6ter(1)(a) PC to apply, it is not necessary to examine the overall impression produced by the mark by taking into account also its other elements (words, devices, etc.).~~

~~Indeed, Article 6ter(1)(a) PC applies not only to trade marks but also to elements of marks that include or imitate state emblems. It is sufficient, therefore, for a single element of the trade mark applied for to represent such an emblem or an imitation thereof for that mark to be refused registration as an European Union trade mark (see also judgment of 21/04/2004, T-127/02, 'EGA', paras 40-41).~~

#### ~~2.9.1.1 Examination of marks consisting of or containing a state flag~~

~~There are three steps to examining marks that consist of or contain a state flag:~~

- ~~1 — Find an official reproduction of the protected flag.~~
- ~~2 — Compare the flag with the mark applied for. Does the mark applied for consist solely of or contain an identical reproduction of the flag (b)? Or does the mark consist solely of or contain a heraldic imitation of that flag (b)?~~
- ~~3 — Check whether there is any evidence on file to show that registration of the flag has been authorised by the competent authority.~~

#### ~~1 — Find the protected flag~~

~~As seen above, states are not obliged to include flags in the list of emblems to be communicated to WIPO. This is because flags are supposed to be well known. Nevertheless, some flags have been included in the list, which is accessible via the 'Article 6ter Structured Search' tool made available by WIPO. Otherwise, examiners should refer to the official websites of the relevant governments, and to encyclopaedias and/or dictionaries for an accurate reproduction of the state flag.~~

#### ~~2 — Compare the flag with the mark applied for~~

- ~~(a) — Does the mark applied for consist solely of or contain an identical reproduction of a flag? If so, proceed to the next step.~~
- ~~(b) — Does the mark consist solely of or contain a heraldic imitation of a flag?~~

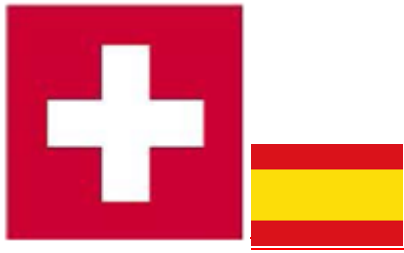

~~In the case of flags, the mark must be compared with the heraldic description of the flag at issue. For example, in Case T-41/10 of 05/05/2011 (ESF Ecole du ski français), the French flag was described as a rectangular or square flag made up of three equal vertical bands of the colours blue, white and red.~~

~~The examiner will use the heraldic description, which gives details of the layout and background colour, lists the different elements (such as a lion, an eagle, a flower, etc.) that constitute the flag and specifies the colour, position and proportions of the latter to reach a conclusion on heraldic imitation.~~

~~As a rule, the flag and the mark (or the part of the mark in which the flag is reproduced) must be quite similar in order for a heraldic imitation to be found.~~

~~See the following example where a 'heraldic imitation' of a flag was found:~~

<del>Spanish Flag</del>	<del>Refused EUTM application EU Flag</del>
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<p>SwissSpanish state flag.</p>	<p>EUTM-application 8-426-876Protected under QO0927.</p>
<p>Three horizontal stripes — red, yellow and red, each red stripe being half the width of the central yellow stripe.</p>	<p>On an azure field a circle of twelve golden mullets, their points not touching.</p>



To apply Article 7(1)(h) EUTMR, it can therefore be sufficient that the average consumer, despite some differences in heraldic details, can see in the mark an imitation of the ‘emblem’. This imitation may exist when the ‘emblem’ protected under Article 6ter PC for instance, displays the main element of the ‘emblem’ or shows part of it. That element need not necessarily be identical to the emblem in question. The fact that the emblem in question is stylised or that only part of the emblem is used does not necessarily mean that there is no imitation from a heraldic point of view (judgment of 21/04/2004, T-127/02, ECA, EU:T:2004:110, § 41).

The EUTM applied for contains a protected ‘emblem’

As a first step, it is important that the examiner identifies the various elements of the EUTM applied for and establishes the part that is considered to be the reproduction or the heraldic imitation of an ‘emblem’ protected under Article 6ter PC. The size of the protected emblem as contained in the EUTM is irrelevant, as long as it is legible and perceivable.

The

The use of a flag in black and white may still be considered a heraldic imitation when the flag consists of or contains unique heraldic features. For example, the black-and-white representation of the Canadian flag in the following example is considered to be a heraldic imitation.

Flag	Refused EUTM application
	
<p>Canadian flag</p>	<p>EUTM application 2-793-495</p>

On the other hand, for flags consisting only of stripes of three colours (whether vertical or horizontal) a black-and-white reproduction will not be considered a heraldic imitation because flags of that kind are quite common.




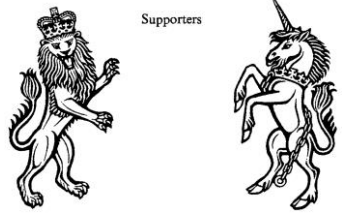

~~As seen above, the presence of other elements in the marks is irrelevant; this is confirmed by the Board of Appeal's refusal of EUTM application 10 502 714.~~  
fact that the EUTM applied for **also contains word elements** does not in itself preclude application of Article 6ter PC (judgment of 21/04/2004, T-127/02, ECA, EU:T:2004:110, § 41). On the contrary, such a word element may even strengthen the link between the EUTM application and an emblem (judgment of 13/03/2014, T-430/12, European Network Rapid Manufacturing, EU:T:2014:120, § 66 et seq.; decision of 28/10/2014, R 1577/2014-4 – Swiss Concept, § 33).

Examples:

- Heraldic imitation found

Flag	Sign <u>applied for</u>
<p>The flags of, <del>for example, Belgium, the Norway, France, Austria, Germany, Sweden, France, Czech Republic, France, Belgium, Denmark, Ireland, Italy, Latvia, Austria, and Finland and Sweden.</del>(from the top in a clockwise circle).</p>	 <p>EUTM application 10 502 714, R 1291/2012-2</p>
<p>EUTM application 10 502 714, R 1291/2012-2</p>	
<p>The colours are recognisable and follow the structure of the flags.</p>	
	
<p>Flag of the United Kingdom</p>	<p>EUTM application: 13 169 313</p>
<p>The trademark contains a faithful representation of the UK flag in terms of colour/configuration. The slight degree of stylisation does not take it outside the scope of heraldic imitation.</p>	
	
<p>French flag</p>	<p>R 1731/2013-1</p>
<p>The French flag is incorporated into the trade mark. Although it is small, it is immediately recognisable.</p>	



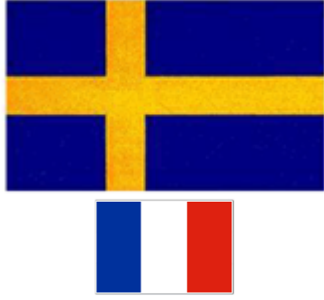









	
<p><u>Emblem (Bavaria) protected under DE 26</u></p>	<p><u>EUTM: 12 031 531, R 1166/2014-1</u></p>
<p><u>The escutcheon with the white and blue diamonds contained in the sign applied for reproduces the heraldic symbol of the lesser Bavarian state coat of arms.</u></p>	
 	
<p><u>Protected under GB 3</u> <u>Protected under GB 0565</u></p>	<p><u>EUTM 5 627 245, R 1361/2008-1</u></p>
<p><u>‘... the flags ... are all represented in the mark and will be immediately recognized as such by the public coming from those parts of the EU, as well as many others across the relevant territory. ... they do not merge into each other in a way which dissipates their individual characteristics. It must also be noted that the flags appearing at the bottom of the mark ... are not upside-down, but are presented exactly as they would be normally.</u></p> <p><u>As noted by the Court in the judgment of 16 July 2009, C-202/08 P and C-208/08 P, ‘RW feuille d’érable’ at para. 59, Article 6(1)(a) of the Paris Convention applies not only to trade marks but also to elements of marks which include or imitate State emblems. It is sufficient, therefore, for a single element of the trade mark applied for to represent such an emblem or an imitation thereof for that mark to be refused registration as a Community trade mark ... Therefore the applicant’s arguments that although the mark contains various national flags, this is only a small part of the mark which is overwhelmed by the presence of the additional elements and that these elements are more dominant and distinctive, fail.’ (paras 18-19) The Board of Appeal took into account the heraldic description of the protected emblems in order to consider whether there was an heraldic imitation (para. 24 and 27).</u></p> <p><u>As regards the emblem protected under GB 3, it concluded that since central elements such as the quartered shield and the supporters are largely identical, this is in this respect an imitation in the heraldic sense. The differences are not sufficient to give the CTM A new meaning form a heraldic point of view. As regards the emblem protected under GB 0565, it concluded that the only difference between the supporters was the representation of the crowns, which would go unnoticed by the general public.</u></p>	

If an element is a different shape from a flag (e.g. circular), it is not considered to be a heraldic imitation. Other different shapes that are not heraldic imitations are shown in the following examples:

Flag	Accepted EUTM application
	 EUTM application 5 851 724  EUTM application 5 514 062
	 EUTM application 6 015 473
	 EUTM application 7 087 284



• Heraldic imitation not found

Flag	Accepted EUTM application Sign applied for
	
<p>Swedish flag</p>	<p>EUTM application 8 600 132</p>
	
<p>Danish flag</p>	<p>EUTM application 8 600 173</p>
	
<p>French flag</p>	<p>GTMEUTM 4 624 987, T-41/10</p>
<p>Although the colours are recognisable, the sign does not have the structure of the French flag.</p>	
	
<p>Peruvian flag</p>	<p>EUTM: 14 913 438</p>
<p>The mark is acceptable under Article 7(1)(h) EUTMR. The dimensions of the stripes and also the overall shape of the figurative element are different from that of the Peruvian flag.</p>	
	
<p>Flag of the United Kingdom</p>	<p>EUTM: 15 008 253</p>
<p>The trademark is not a faithful representation of the UK flag in terms of colour/configuration. The high degree of stylisation takes it outside the scope of heraldic imitation.</p>	

~~The distinction between the cases examined in EUTM application No 8 426 876 (objected to) and EUTM application No 6 015 473 (not objected to) should be noted. In the latter, it was decided not to object because of the number of changes: a change in the shape (from a square to a circle), a change in proportions (the white lines of the cross in EUTM application No 6 015 473 are longer and thinner than in the flag) and a change of colour, since the cross in EUTM application No 6 015 473 has a shadow.~~

### ~~3 — Check whether registration has been authorised~~

~~Once the examiner has found that the mark consists of or contains a flag or a heraldic imitation thereof, he/she must check whether there is any evidence on file to show that the registration has been authorised by the competent authority.~~

~~Where there is no such evidence, the examiner will object to the registration of the mark applied for. The objection will reproduce the official flag in colour and indicate the source of the reproduction.~~

~~Such an objection can only be waived if the applicant produces evidence that the competent authority of the state concerned has authorised registration of the mark.~~

~~**Extent of the refusal:** In the case of state flags, trade marks that fall foul of Article 7(1)(h) EUTMR must be refused for all goods and services applied for.~~

#### ~~2.9.1.2 Examination of marks consisting of or containing armorial bearings and other state emblems~~

~~The same steps mentioned in relation to state flags are followed also when examining marks that consist of or contain armorial bearings or other state emblems.~~

~~Nevertheless, to be protected, armorial bearings and other state symbols must be contained in ‘the list of armorial bearings and state emblems’. This list is accessible via the ‘Article 6ter Structured Search’ tool made available by WIPO at:~~

~~The WIPO Article 6ter database gives details of written elements and contains references to the categories of the Vienna Classification code. Therefore, the best way to search is by using that code.~~

~~In these cases, the protected symbol, which very often consists of or contains recurring devices such as crowns, unicorns, eagles, lions, etc., and the mark (or the part of the mark in which the symbol is reproduced) must be closely similar.~~

~~For background on this and heraldic descriptions, please see the explanation in paragraph 2.8.1.1 ‘Examination of marks consisting of or containing a state flag’ above.~~



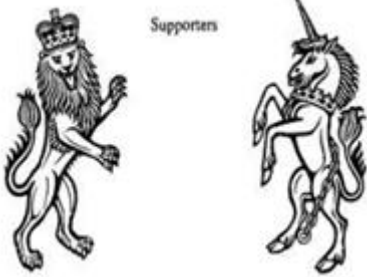



~~Here are two examples where a ‘heraldic imitation’ of a state symbol was found:~~





~~The fact that the EUTM applied for **contains only part of the protected ‘emblem’** does not mean that there may not be an imitation from a heraldic point of view (judgment of 21/04/2004, T-127/02, ECA, EU:T:2004:110, § 41). As regards the flag of the European Union, its essential element is the circle of twelve golden mullets (stars) (decision of 14/07/2011, R 1903/2010-1 – A, § 17). However, to qualify as a heraldic~~

imitation, it is not necessary for all the stars to be present in the EUTM applied for (judgment of 13/03/2014, T-430/12, European Network Rapid Manufacturing, EU:T:2014:120). The exact direction of the stars is irrelevant (judgment of 15/01/2013, T-413/11, European Driveshaft Services, EU:T:2013:12). The same is true with respect to their colour (judgments of 15/01/2013, T-413/11, European Driveshaft Services, EU:T:2013:12, § 43 for silver; 13/03/2014, T-430/12, European Network Rapid Manufacturing, EU:T:2014:120, § 48 for red; decision of 14/07/2011, R 1903/2010-1 – A, § 17 for blue).

Earlier case-law of the Boards of Appeal, such as R 1991/2010-4, EASI, and R 0005/2011-4 –TEN, which did not follow the approach taken above, was overruled by the General Court, T-430/12, European Network Rapid Manufacturing, EU:T:2014:120.

- Main characteristics/part of the emblem **incorporated** in the trade mark







<u>Protected 'emblem'</u>	<u>Sign applied for</u>
	
<p>Protected <del>emblem</del> under <a href="#">QO0927</a></p>	<p><del>Refused</del> EUTM application, <a href="#">R 1211/2011-1, T-430/12</a></p>
 <p>The EUTM applied for consists of a circle of 12 stars, of which three are covered. It contains the most important element of the European flag. The adjective 'European' reinforces the link already established by the circle of stars.</p>	
	
<p>Protected under <a href="#">QO0927</a></p>	<p><a href="#">EUTM 6 373 849, R 1903/2010-1</a></p>
<p><del>British emblem: 6</del> <del>for Number: GB4</del></p>	<p><del>EUTM application 5 627 245, T-397/09</del> Since the EUTM contains an element that amounts to a heraldic imitation of the European emblem and the EUTM owner could not justify any authorisation, the registration must be declared invalid (para. 27).</p>

	
<p><u>Protected under QO0927</u></p>	<p><u>EUTM application 2 785 368 (GJEU C-202/08)</u></p>
<p><u>Canadian emblem: 6ter Number: CA2One element of the contested European Union trade mark contains an imitation of all the heraldic elements of the European emblem (para. 48).</u></p>	<p><u>EUTM application 2 785 368 (GJEU C-202/08)</u></p>
	
<p><u>Emblem (Bavaria) protected under DE 24</u></p>	<p><u>EUTM: 12 031 531, R 1166/2014-1</u></p>
<p><u>The escutcheon with the white and blue diamonds contained in the sign applied for reproduces the heart shield in the greater Bavarian state coat of arms.</u></p>	

~~The General Court noted that the supporters contained in EUTM application No 5 627 245 were almost identical to those in the emblem protected under sign GB4. The only difference lay in the crowns in both signs. However, the GC ruled that any difference between the mark and the state emblem detected by an expert in heraldry would not necessarily be perceived by the average consumer who, despite some differences in heraldic details, can see in the mark an imitation of the emblem. Therefore, the GC concluded that the Board was right to find that the mark applied for contained an imitation from a heraldic perspective of emblem GB4, protected under Article 6ter of the Paris Convention (Case T-397/09, paras 24-25).~~

~~In the example reproduced below a 'heraldic imitation' of state emblems was found by the examiner. However, the decision was annulled by the Board which considered that the sign applied for is not identical to the national emblem of Ireland. It does not contain an imitation of the national emblems of Ireland either and it does not reproduce characteristic heraldic features of these emblems (R-0139/2014-5, para. 16):~~

- ~~• Main characteristics/part of the protected emblem **not incorporated** in the trade mark~~

Protected 'emblem'	Sign applied for
	
<p><del>State emblem</del> Protected under IE11</p>	<p>EUTM application <u>11 945 797, R 0139/2014-5</u></p>
 <p>It must also be taken into consideration that the graphic element of the sign applied for has a colour configuration that is clearly different from the Irish national symbols. These elements are so strong that the mere fact that the sign applied for also contains a clover leaf does not mean that the sign is similar to one of the national emblems of Ireland (paras. 18-19).</p>	
	
<p><del>Irish state emblems: 6</del> Numbers: IE 11 — IE 14 Protected under SE20</p>	<p>EUTM application <u>44 945 797/13 580 981</u></p>
<p>The mark is not a heraldic imitation of the Swedish armorial bearing; it contains only one of the three crowns that are the main characteristic of the Swedish armorial bearing.</p>	

~~It should also be noted that black-Black and- white reproductions of armorial bearingsrepresentations of the protected emblem~~









~~Flags are often reproduced in black and other state emblemswhite; therefore, a black and white depiction of a protected emblem (or vice versa) may still be considered heraldic imitations when the protected symbol consists of or contains unique heraldic features (see the example of the Canadian emblem a heraldic imitation (judgments of 21/04/2004, T-127/02, ECA, EU:T:2004:110, § 45 and 28/02/2008, T-215/06, RW feuille d'érable, EU:T:2008:55, § 68).~~

~~Furthermore, the presence of other elements in the rejected marks is irrelevant.~~

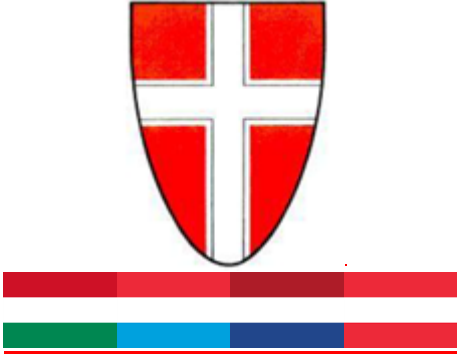

There is even a heraldic imitation when the protected symbol is only partially reproduced as long as what is partially reproduced represents the significant element(s) of the protected symbol and (a) unique heraldic feature(s).

The following is an example of a partial heraldic imitation because the significant element of the protected symbol, the eagle with the arrows over the emblem, is a unique heraldic device and its heraldic characteristics are imitated in the EUTM application:

Examples:

<u>Flag</u>	<u>Sign applied for</u>
	
<u>Protected under QO0927</u>	<u>T-127/02</u>
	
Protected <del>emblem</del> <u>under CA1</u>	<b>Refused</b> EUTM <del>applications</del> <u>application 2 793 495</u>
	
<u>Protected under CA2</u>	<u>C-202/08 P and C-208/08 P</u>
	
<u>Emblem of the Justice Department of the USA; 6 ter Number: US40</u> <u>Flag of the United Kingdom</u>	<u>EUTM application 4 820 213</u> <u>Invented example</u>

However, if the following example black and white depiction does not allow recognition of a specific flag, there is no heraldic imitation of a state emblem:

Protected emblem <u>Flag</u>	Accepted EUTM application <u>Sign applied for</u>
	
6for number: AT10 Various state flags	EUTM application 8-298-077 Invented example
It is not possible to recognise a specific flag, as the sign could be a black and white reproduction of any of the four flags reproduced above.	

~~EUTM application No 8 298 077 is not a heraldic imitation of the Austrian symbol because its shape is different and the lines inside the white cross in the Austrian symbol are not present in the EUTM application.~~

~~Once the examiner has found that a mark reproduces a symbol (or is a heraldic imitation thereof), they must check whether there is any evidence on file to show that registration has been authorised by the competent authority.~~

~~Where there is no such evidence, the examiner will object to the registration of the mark applied for. The objection will reproduce the protected symbol, quoting its 6for number.~~

~~Such an objection can only be waived if the applicant produces evidence that the competent authority of the state concerned has authorised registration of the mark.~~

~~**Extent of the refusal:** In the case of state symbols, trade marks that fall foul of Article 7(1)(h) EUTMR must be refused for all~~  
Changes in colour

~~The use of silver v gold is important in heraldry. However, average consumers will not necessarily recognise this difference in colour; indeed, they will not even give it any importance (judgment of 15/01/2013, T-413/11, European Driveshaft Services, EU:T:2013:12, § 43). Slight differences in the actual colour are irrelevant (light blue v dark blue). Heraldry does not normally distinguish between different tones of the same colour (judgment of 15/01/2013, T-413/11, European Driveshaft Services, EU:T:2013:12, § 42). Furthermore, gold is often reproduced as yellow (decision of 20/05/2009, R 1041/2008-1, Kultur in Deutschland + Europa (fig.), § 33); consequently, this difference has no impact on the assessment.~~

~~goods and services applied for.~~

~~2.9.1.3 Examination of marks consisting of or containing official signs and hallmarks indicating control and warranty~~

~~The steps to be followed by the examiner are the same as for the state flags, protected armorial bearings and other state emblems mentioned above.~~



~~However, the extent of the refusal is limited. Trade marks that consist of or contain an identical reproduction/heraldic imitation of official signs and hallmarks indicating control and warranty will be refused only for goods that are identical or similar to those to which said symbols apply (Article 6ter(2) PC).~~

### ~~2.9.2 Protection of armorial bearings, flags, other emblems, abbreviations and names of international intergovernmental organisations under Article 7(1)(h) EUTMR — Article 6ter(1)(b) and (c) PC~~

~~In accordance with Article 6ter(1)(b) and (c) PC, the registration, either as a trade mark or as an element thereof, of armorial bearings, flags, other emblems, abbreviations and names of international intergovernmental organisations (of which one or more countries of the Paris Union is/are member(s)) or any imitation from a heraldic point of view will be refused if no authorisation has been granted by the competent authority.~~

~~The members of the WTO enjoy the same protection pursuant to Article 2(1) TRIPs, according to which members of the WTO must comply with Articles 1 to 12 and 19 of the Paris Convention.~~

~~Furthermore, the trade mark should be of such a nature as to suggest to the public that there is a connection between the organisation concerned and the armorial bearings, flags, emblems, abbreviations or names, or to mislead the public as to the existence of a connection between the owner and the organisation.~~

~~International intergovernmental organisations (IGOs) include bodies such as the United Nations, the Universal Postal Union, the World Tourism Organization, WIPO, etc.~~

~~In this respect, the European Union must be considered neither as an international organisation in the usual sense nor as an association of states, but rather as a 'supranational organisation', i.e. an autonomous entity with its own sovereign rights and a legal order independent of the Member States, to which both the Member States themselves and their nationals are subject within the EU's areas of competence.~~

~~On the one hand, the Treaties have led to the creation of an independent Union to which the Member States have ceded some of their sovereign powers. The tasks allotted to the EU are very different from those of other international organisations. While the latter mainly have clearly defined tasks of a technical nature, the EU has areas of responsibility that together constitute essential attributes of statehood.~~





~~On the other hand, the EU institutions too only have powers in certain areas to pursue the objectives specified in the Treaties. They are not free to choose their objectives in the same way as a sovereign state. Moreover, the EU has neither the comprehensive jurisdiction enjoyed by sovereign states nor the powers to establish new areas of responsibility ('jurisdiction over jurisdiction').~~

~~Notwithstanding the particular legal nature of the EU, and for the sole purpose of the application of Article 7(1)(h) EUTMR, the European Union is likened to an international organisation. In practice, account will be taken of the fact that the EU's field of activity is so broad (judgment of 15/01/2013, T-413/11, 'EUROPEAN DRIVESHIFT~~






~~SERVICES', para. 69) that the examiner is very likely to find a link between the goods and services in question and the EU's activities.~~

~~The most relevant EU flags and symbols, protected by the Council of Europe, are shown here:~~



 <p><u>Protected Emblem</u></p>	 <p><u>Sign applied for</u></p>
<p><del>6ter number: QO188</del></p> 	<p><del>6ter number: QO189</del></p> 
<p><u>Protected under QO0927</u></p>	<p><u>EUTM 2 180 800, T-413/11</u></p>

~~The Court maintained that even as regards professionals the possibility of making a connection between the sign represented above and the Organization is not excluded (para. 66).~~

~~The following have been protected for the Commission:~~

		
<p><del>6ter number: QO245</del></p>	<p><del>6ter number: QO246</del></p>	<p><del>6ter number: QO247</del></p>

~~The following have been protected for the European Central Bank:~~

	
<p><del>6ter number: QO852</del></p>	<p><del>6ter number: QO867</del></p>

~~There are four steps to examining marks that contain the armorial bearing, flag or other symbols of an international intergovernmental organisation.~~

- ~~1 Find an official reproduction of the protected symbol (which may be an abbreviation or name).~~
- ~~2 Compare the symbol with the mark applied for.~~

3 Check whether the mark applied for suggests to the relevant public that there is a connection between the owner and the international organisation or misleads the public as to the existence of such a connection.

4 Check whether there is any evidence on file to show that registration has been authorised by the competent authority.

1 Find the protected symbol (or abbreviation or name)

To be protected, the symbols of international intergovernmental organisations must be incorporated in the relevant list. Unlike the situation with state flags, this requirement also applies to international organisations' flags.

The relevant database is accessible via the 'Article 6ter Structured Search' tool provided by WIPO. In this case too, the best way to search is by using the Vienna Classification code.

2 Compare the symbol with the mark applied for

Does the mark applied for consist solely of or contain an identical reproduction of the protected symbol of an international intergovernmental organisation Or does the mark applied for consist of or contain a heraldic imitation thereof?

(a) Does the mark applied for consist solely of or contain an identical reproduction of the protected symbol? If so, proceed to the next step.





(b) Does the mark applied for consist solely of or contain a heraldic imitation thereof?

The test is the same as that for state flags and symbols, that is, the protected symbol and the mark (or the part of the mark in which the protected symbol is reproduced) must be closely similar. The same applies to abbreviations and names of international intergovernmental organisations (see decision R 1414/2007-1 — 'ESA').

The following marks were rejected because they were considered to contain 'heraldic imitations' of the European Union flag 7(1)(i) EUTMR — emblems not protected under QO188:



EUTM application 2-305-399	EUTM application 448-266	EUTM application 6-449-524

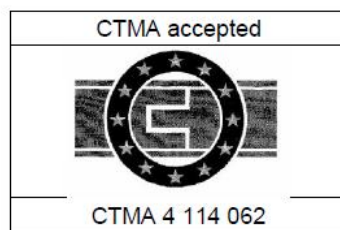
		
<p>EUTM application 7 117 658</p>	<p>EUTM application 1 106 442 (T-127/02)</p>	<p>EUTM 4 081 014 (1640 C)</p>
		
	<p>EUTM application 2 180 800 (T-413/11)</p>	

For heraldic imitations of the European Union flag (QO188 above), it is considered relevant that (a) there are 12 five-pointed stars, (b) the stars are in a circle and are not touching each other, and (c) the stars contrast with a darker background.

In particular, it must be taken into account that the 'device in the form of twelve stars arranged in a circle is the most important element of the European Union emblem ('the emblem') because it conveys strong messages: (a) the circle of gold stars symbolises solidarity and harmony between the peoples of Europe and (b) the number twelve evokes perfection, completeness and unity. The other element of the emblem is a background suitably coloured to highlight the device' (see BoA decision in case R-1401/2011-1, para. 21).

It follows from the above that the representation of the EU flag in black and white may still be considered a heraldic imitation when the stars contrast with a dark background in such a way as to give the impression of being a black-and-white reproduction of the EU flag (see EUTM application 1 106 442 above).

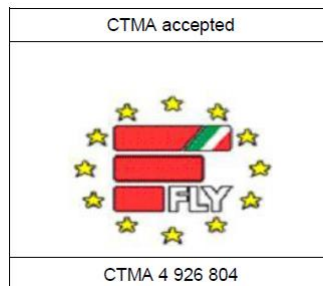
In contrast, the following example illustrates a case where the black-and-white reproduction of a circle of stars does not give the impression of being a black-and-white reproduction of the EU flag:



The following three cases are not considered to be heraldic imitations of the European Union flag because they do not reproduce twelve stars in a circle (i.e. both marks were accepted):



The following is not a heraldic imitation because, although the stars are yellow, there is no blue (or dark-coloured) background:



3 — Check whether the mark applied for suggests to the relevant public that there is a connection between the owner and the international organisation or misleads the public as to the existence of such a connection.

A connection is suggested not only where the public would believe that the goods or services originate with the organisation in question, but also where the public could believe that the goods or services have the approval or warranty of, or are otherwise linked to, that organisation (see judgment of 15/01/2013, T-413/11, 'EUROPEAN DRIVESHAFT SERVICES', para. 61).

In order to assess the circumstances properly, the examiner must take into account the following:

- the goods and/or services covered by the EUTM application;
- the relevant public;
- the overall impression conveyed by the mark.



With regard to the European Union flag, the examiner must evaluate whether there is any overlap between the claimed goods and/or services and the European Union's activities, bearing in mind that the European Union is active in numerous sectors and regulates goods and services in all fields of industry and commerce, as is clear from the wide variety of Directives that it has adopted. Likewise, the examiner must take into account that even average consumers could be aware of such activities, which means, in practice, that the examiner is very likely to find a link in most cases.

**Finally, in contrast to Article 6ter(1)(a) PC, for which it is sufficient for the sign to consist of or contain the emblem or a heraldic imitation thereof, Article 6ter(1)(c) PC requires an overall assessment.**

It follows that, unlike for state emblems and flags, the examiner must take into account also the other elements of which the mark is composed. For it cannot be ruled out that all the other elements of the sign could lead to the conclusion that the public would not connect the sign with an international intergovernmental organisation (judgment of 15/01/2013, T-413/11, ‘EUROPEAN DRIVESHAFT SERVICES’, para. 59).

Still with regard to the EU flag, it must be noted that, as a rule, word elements such as ‘EURO’/‘EUROPEAN’ in an EUTM application are likely to suggest a connection even more, since they could be perceived as implying an official EU agency’s approval, quality control or warranty services for the claimed goods and services.

Here are two examples of where a connection with the EU was found:

<p>_____</p>	
<p>_____ G&amp;S</p>	<p><i>Class 16: Periodical and other publications</i> <i>Class 42: Preparation of reports or studies relating to cars, motorcycles and bicycles</i></p>
<p>_____ Reasoning</p>	<p>The mark was refused for all the goods and services for the following reasons: (26) Consumers in this market are aware of how important it is for companies that provide surveys and reports on expensive and potentially dangerous goods like vehicles to be credible. Consumers may also be aware that the European Union itself is involved in such activities through its association with Euro NCAP, which provides motoring consumers with independent assessments of the safety and performance of cars sold on the European market. Given these facts, and the fact that the proprietor’s mark contains a recognisable heraldic element of the European emblem, it is likely that the public would assume that the inclusion of the twelve gold stars of the EU emblem in the EUTM pointed to a connection between the proprietor and the EU.</p>
<p>_____</p>	

<p><del>G&amp;S</del></p>	<p><del>Class 9: Computer hardware, computer software, recorded data carriers. Class 41: Arranging and conducting of colloquiums, seminars, symposiums, congresses and conferences; providing of tuition, instruction, training; consultancy on training and further training. Class 42: Creating, updating and maintenance of computer programs; computer program design; consultancy in the field of computers; rental of computer hardware and computer software; leasing access time to a computer database.</del></p>
<p><del>Reasoning</del></p>	<p><del>The mark was refused for all the goods and services for the following reasons: The Board of Appeal found that, contrary to what the applicant claimed, there was some overlap between the goods and services offered by the applicant and the activities of the Council of Europe and the European Union. The Board of Appeal referred, inter alia, to the Official Journal of the European Union, which is available on CD-ROM (i.e. compact disc with a read-only memory), to seminars, training programmes and conferences offered by the Council of Europe and the European Union in a variety of areas, and to a large number of databases made available to the public by those institutions, in particular EUR-Lex. Given the wide variety of services and goods that may be offered by the Council of Europe and the European Union, it cannot be ruled out, for the kind of goods and services for which registration was sought, that the relevant public might believe that there is a connection between the applicant and those institutions. Accordingly, the Board of Appeal was right to find that registration of the mark sought was likely to give the public the impression that there was a connection between the mark sought and the institutions in question.</del></p>

~~4 Check whether registration has been authorised~~

~~Where there is no evidence that registration of the mark applied for has been authorised, the examiner will object to its registration. The objection must reproduce the protected symbol, quoting its 6ter number.~~

~~The examiner must also indicate the refused goods and services clearly and give reasons why the mark suggests to the public a connection with the organisation concerned.~~

~~Such an objection can only be waived if the applicant provides evidence that the competent authority has authorised registration of the mark.~~

~~**Extent of the refusal:** In the case of flags and symbols of international intergovernmental organisations, the refusal must specify the goods and/or services affected, that is, those for which the public would, according to the examiner, see a connection between the mark and an organisation.~~

~~**2.9.3 Protection of badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention under 3.1 Objective of Article 7(1)(i) EUTMR**~~

~~In accordance with Article 7(1)(i) EUTMR, trade marks will not be registered if they include badges, emblems or escutcheons other than those that are covered by Article 6ter of the Paris Convention and **are of particular public interest, unless the competent authority has consented to their registration.**~~

~~As seen above,~~ Article 7(1)(i) EUTMR ~~refers~~applies to all other badges, emblems or escutcheons that

- i) have not been communicated in accordance with Article 6~~ter~~(3)(a) PC regardless of whether they are the emblems of a state or international intergovernmental organisation within the meaning of Article 6~~ter~~(1)(a) or (b) PC, or of public bodies or administrations other than those covered by Article 6~~ter~~ PC, such as provinces or municipalities.

~~Furthermore, according to the case-law, Article 7(1)(i) and Article 7(1)(h) EUTMR both have a similar scope of application and grant at least equivalent levels of protection.~~

~~This means that Article 7(1)(i) EUTMR applies not only where the abovementioned symbols are reproduced identically as a trade mark or a part thereof, but also where the mark consists of or contains a heraldic imitation of those symbols. Any other interpretation of this provision would result in less protection being provided by Article 7(1)(i) EUTMR than by Article 7(1)(h) EUTMR. Following the same line of reasoning, Article 7(1)(i) EUTMR applies where the mark is liable to ~~mislead the public as to the existence of a connection between the owner of the trade mark and the body to which the abovementioned symbols refer. In other words, the protection afforded by Article 7(1)(i) EUTMR is conditional on a link between the mark and the symbol~~ and~~

ii) are of particular public interest.

unless the competent authority has consented to their registration.

~~. Otherwise, trade marks to which Article 7(1)(i) EUTMR applies, would obtain broader protection than under Article 7(1)(h) EUTMR (judgment of 10/07/2013, Case T-3/12 'MEMBER OF EURO EXPERTS').~~

~~Article 7(1)(i) EUTMR~~ Article 7(1)(i) does not define symbols of 'particular public interest'. ~~However, it is reasonable to assume that the~~The nature of these symbols could vary and could include, for example, ~~religious symbols, political symbols or symbols of public bodies or administrations other than those covered by Article 6~~ter~~ PC,~~ such as provinces or municipalities. In any case, the 'particular public interest' involved must be reflected in a public document, for example a national or international legal instrument, regulation or other normative act.

The General Court stated that a '**particular public interest**' existed when the emblem had a particular link with one of the activities carried out by an international intergovernmental organisation (judgment of 10/07/2013, T-3/12, ~~'MEMBER OF EURO EXPERTS', para.44.~~Member of €e euro experts, EU:T:2013:364, § 44). In particular, the Court specified that Article 7(1)(i) EUTMR ~~also~~ applied ~~also~~ when the emblem merely evokedrelated to one of the fieldsareas of activity of the European Union, ~~and~~ even if that activity concerned only ~~some of the EU states (see ibidem, paras~~certain EU Member States (judgment of 10/07/2013, T-3/12, Member of €e euro experts, EU:T:2013:364, § 45-46).

This confirms that the protection afforded by Article 7(1)(i) EUTMR also applies ~~also~~ to symbols that are of particular public interest in only a single Member State or part thereof (Article 7(2) EUTMR).

According to the case-law, Article 7(1)(i) and (h) EUTMR both have a similar scope of application and grant equivalent levels of protection. Therefore, Article 7(1)(i) EUTMR



covers identical reproduction (full or partial) in a trade mark of the abovementioned symbols, as well as their heraldic imitation.

Following the same line of reasoning, Article 7(1)(i) EUTMR applies where the mark is liable to mislead the public as to the existence of a connection between the owner of the trade mark and the body to which the abovementioned symbols refer. In other words, the protection afforded by Article 7(1)(i) EUTMR is conditional on a link between the mark and the symbol (no absolute protection). Otherwise, trade marks to which Article 7(1)(i) EUTMR applies would obtain broader protection than under Article 7(1)(h) EUTMR (judgment of 10/07/2013, T-3/12, Member of €e euro experts, EU:T:2013:364).

### 3.2 Protected symbols

The following signs (not being covered by Article 6ter PC) enjoy special protection under Article 7(1)(i) EUTMR:

- the euro sign (€, as defined by the European Commission, [http://ec.europa.eu/economy\\_finance/euro/cash/symbol/index\\_en.htm](http://ec.europa.eu/economy_finance/euro/cash/symbol/index_en.htm));



- the symbols protected under the Geneva Conventions and their additional protocols, that is to say, the red cross, the red crescent and the red crystal emblems and their names (<https://www.icrc.org/en/war-and-law/emblem>);



However There are four steps to examining marks that contain badges, emblems and escutcheons of particular public interest:

- 1— Find the symbol of particular public interest.
- 2— Compare the symbol with the mark applied for.
- 3— Check whether the mark applied for suggests to the relevant public that there is a connection between the owner and the authority to which the symbol refers or misleads the public as to the existence of such a connection.
- 4— Check whether there is any evidence on file to show that registration has been authorised by the appropriate authority.

- 1— Find the symbol of particular public interest.

At present, there is no list or database allowing examiners to identify which symbols are of particular public interest, especially in a Member State or part thereof. Therefore, third party observations are likely to remain the source of many objections to such symbols.



~~One example of a symbol of particular public interest is the Red Cross, which is protected by the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, signed in Geneva (and).~~

~~The following symbols are protected under the Geneva Convention:~~



~~Apart from the symbols, their names are also protected (from left to right) as follows:~~

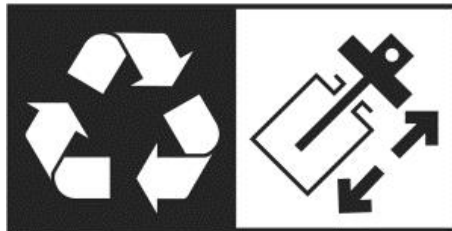
~~'Red Cross', 'Red Crescent' and 'Red Crystal'.~~

~~Another example of a symbol of particular public interest is the Olympic symbol as defined in the Nairobi Treaty on the Protection of the Olympic Symbol. According to the definition in the Nairobi Treaty, 'the Olympic symbol consists of five interlaced rings: blue, yellow, black, green and red, arranged in that order from left to right. It consists of the Olympic rings alone, whether delineated in a single colour or in different colours.'~~



~~The following symbol was considered not to be a symbol of particular public interest:~~

RESPONSIBLE RECYCLING PACKAGING



SEPARATE GLASS FROM PLASTIC

~~The recycling symbol (on the left) was not considered to be protected under this provision because it is a commercial symbol.~~




2 — Compare the symbol with the mark applied for.

Does the mark applied for consist solely of or contain an identical reproduction of the symbol of particular public interest? Or does the mark applied for consist of or contain a heraldic imitation thereof?

- (a) — Does the mark applied for consist solely of or contain an identical reproduction of the symbol? If so, proceed to the next step.
- (b) — Does the mark applied for consist solely of or contain a heraldic imitation of the symbol?





The test is the same as the one for flags and symbols of international intergovernmental organisations, that is, the symbol and the mark (or the part of the mark in which the symbol is reproduced) must be quite similar.

The following are examples of marks that were rejected because they contained the Red Cross symbol or a heraldic imitation thereof.

Refused EUTM application-s		
		
WO-964-979	EUTM application 2-966-265	EUTM application 5-988-985

On the other hand, a number of well-known red crosses have traditionally been used and are still in use, the incorporation of which in a mark would not be considered a reproduction/heraldic imitation of the 'Red Cross'. ~~Examples of these famous crosses include the following:~~

Examples of these crosses include the following:

			
Templar cross	St George's cross		
		<u>'Maltese cross'</u>	

~~the Olympic Symbol protected under the Nairobi Treaty on the Protection of the Olympic Symbol ([http://www.wipo.int/treaties/en/text.jsp?file\\_id=287432](http://www.wipo.int/treaties/en/text.jsp?file_id=287432)) The following EUTM was accepted because it contained two reproductions of the Templar cross.~~



~~A mark which contains a cross in black and white (or shades of grey) is not objectionable. Nor is a cross in a colour other than red objectionable under Article 7(1)(i) EUTMR.~~

~~• )~~

<p><del>Accepted EUTM application s</del>The five interlaced rings in blue, yellow, black, green and red, arranged in that order from left to right. The symbol consists of the Olympic rings alone, whether in a single colour or in different colours, as set out in the Nairobi Treaty on the Protection of the Olympic Symbol (</p>		
<p><del>EUTM application 8-986-069</del></p>	<p><del>EUTM application 9-019-647</del></p>	<p><del>EUTM application 9-025-768</del></p>

~~3 — Check whether~~The same rules as set out above concerning the mark applied for suggests to the relevant public that there is a connection between the owner heraldic imitation and the authority to which the symbol refers or misleads the public as to the existence of such a connection.

~~A connection is suggested not only where the public would believe that the goods or services originate with the authority in question, but~~authorisations also where the public could believe that the goods or services have the approval or warranty of, or are otherwise linked to, that authority (see GC judgment of 10/07/2013, T-3/12, 'MEMBER OF EURO EXPERTS', para. 78).

~~In order to assess the circumstances properly, the examiner must, as above, take into account the following:~~

- ~~• the goods and/or services covered by the EUTM application;~~
- ~~• the relevant public;~~
- ~~• the overall impression conveyed by the mark.~~

~~The examiner must evaluate whether there is any overlap between the claimed goods and/or services and the activities of the authority at issue and whether the relevant public could be aware of it.~~

~~In particular, with regard to the European Union, the examiner must take into account that the latter is active in numerous fields, as is clear from the wide variety of Directives that it has adopted.~~

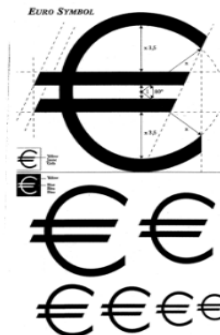
~~Furthermore, the examiner must also take into account the other elements of which the mark is composed. For it cannot be ruled out that all the other elements of the sign could lead to the conclusion that the public would not connect the sign with the authority concerned (see judgment of 10/07/2013, T-3/12, 'MEMBER OF EURO EXPERTS', para. 107).~~

~~Still with regard to the EU, it must be noted that, as a rule, word elements such as 'EURO'/'EUROPEAN' in an EUTM application are likely to suggest a connection even more, since they could be perceived as implying EU approval (see judgment of 10/07/2013, T-3/12, 'MEMBER OF EURO EXPERTS', para. 113).~~

~~For example, the General Court (in Case T-3/12) confirmed that the following mark (C EUTM application TMA No 6 110 423, covering Classes 9, 16, 35, 36, 39, 41, 42, 44 and 45)~~

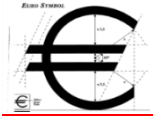







~~fell foul of apply with respect to Article 7(1)(i) EUTMR since it contained a (heraldic) imitation of the 'Euro' symbol.~~



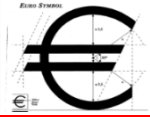



Examples

• Reproduction/heraldic imitation found

<u>Symbol</u>	<u>Sign applied for</u>
	
	<u>EUTM application No 6 110 423, T-3/12</u>
<u>The EUTM contains an imitation of the euro symbol in a central position. A link will be established with the European Union. The other elements reinforce the link between the EUTM and the euro sign. (para. 109 et seq.).</u>	
	
	<u>EUTM application 2 966 265, applied for goods and services in Classes 9, 38, 42 and 44.</u>
<u>Trade mark cancelled. See decision of 23/07/2007, 2 192 C. The EUTM clearly contains the emblem of the Red Cross on a white background, as defined by and protected by the Geneva Convention, as a discernible, individual portion of the mark (para. 23).</u>	
	
	<u>EUTM application 5 988 985, applied for goods and services in Classes 28 and 30.</u>
<u>The trade mark contains the representation of the Red Cross, protected by the Geneva Convention.</u>	

• Reproduction/heraldic imitation not found

<u>Symbol</u>	<u>Sign applied for</u>
	
	<u>R 0315/2006-1, applied for goods and services in Classes 8, 11 and 12.</u>
<u>20. In the present case, the Red Cross cannot be said to be included in the contested EUTM because of the difference in colour. The Red Cross, as its denomination indicates, is red and the colour constitutes a very essential element of its protection. The cancellation applicant's argument that the colour orange may be very similar to some shades of red cannot be accepted.</u>	
<u>21. Additionally, the cross of the contested EUTM contains the wording 'REPAIR' which, coupled with the goods concerned (tools, car spare parts and accessories in Classes 8, 11 and 12), is likely to be associated with car and motorcycle repairs. This association makes the orange cross of the contested EUTM even more distinct from the Red Cross emblem protected by the Geneva Convention.</u>	
	
	<u>EUTM application 10 868 985, applied for goods and services in Classes 12, 35, 38, 39 and 42 (car rental related).</u>

A link with the European Union will not be established, it rather refers to the 'good price' of the goods and services concerned.



EUTM application 11 076 866, applied for goods and services in Classes 9, 35, 36, 37 and 42 (e.g. electricity measuring devices, services related to building and construction).

A link with the European Union will not be established, it will be perceived as a stylised letter 'E'.

#### 4 Check whether Exceptions

The EUTM applied for can be registered despite Article 7(1)(h) and (i) EUTMR if the applicant provides the Office with the authorisation to include the protected emblem or parts of it in its trade mark. The authorisation must cover the registration has been authorised as a trade mark or as a part of it. The authorisation to use the protected emblem is not sufficient.

Is there any evidence on file that the appropriate authority has authorised registration?

Where there is no such evidence, the examiner will object to the registration of the mark applied for. The objection will reproduce the symbol and provide the applicant with all necessary details and, in particular, information on why the symbol is of 'particular public interest' (for example, if protected by an international instrument, a reference to that instrument; in the case of the Red Cross this is the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, signed in Geneva (and)).

Such an objection can only be waived if the applicant submits evidence that the appropriate authority has consented to registration of the mark.

**Extent of the refusal:** In the case of symbols of particular public interest, the refusal must specify the goods and/or services affected, that is, those for which the public would, according to the examiner, see a connection between the mark and the authority.

It is up to the applicant to submit the authorisation. The Office cannot enquire as to whether an authorisation exists, either on an individual or general level.

Even in cases where **general** announcements or authorisations are rendered by competent authorities under national law to use a protected emblem in trade and are provided by the applicant, it should be carefully examined on a case by case basis whether such authorisations **specifically** authorise the use of an emblem in a trade mark (decision of 26/02/2015, R 1166/2014-1 – Alpenbauer Bayerische Bonbonlutschkultur, § 23-29).

It is also important to mention that the provisions of Article 7(1)(h) and (i) EUTMR are not applicable to trade marks that were registered either before the receipt of the notification from WIPO or less than 2 months after receipt of the said notification.

State flags that are not submitted to WIPO enjoy protection only against trade marks that were registered after 6/11/1925.

If an EUTM applied for contains or consists of the heraldic imitation of emblems of two or more states, which are similar, it is sufficient to present authorisation from one of them (Article 6ter(8) PC).

