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EN

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2017/1430

of 18 May 2017

**supplementing Council Regulation (EC) No 207/2009 on the European Union trade mark and
repealing Commission Regulations (EC) No 2868/95 and (EC) No 216/96**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark ⁽¹⁾, and in particular Article 42a, Article 43(3), Article 57a, Article 65a, Article 77(4), Article 78(6), Article 79(5), Article 79b(2), Article 79c(5), Article 80(3), Article 82a(3), Article 93a, Article 136b, Article 154a(3) and Article 156(4) thereof,

Whereas:

- (1) Council Regulation (EC) No 40/94 ⁽²⁾, which was codified as Regulation (EC) No 207/2009, created a system specific to the Union for the protection of trade marks to be obtained at the level of the Union on the basis of an application to the European Union Intellectual Property Office ('the Office').
- (2) Regulation (EU) 2015/2424 of the European Parliament and of the Council ⁽³⁾ amending Regulation (EC) No 207/2009 aligns the powers conferred therein upon the Commission to Articles 290 and 291 of the Treaty on the Functioning of the European Union. In order to conform with the new legal framework resulting from that alignment, certain rules should be adopted by means of implementing and delegated acts. The new rules should be applied instead of the existing rules which are laid down in Commission Regulations (EC) No 2868/95 ⁽⁴⁾ and (EC) No 216/96 ⁽⁵⁾ and aim at implementing Regulation (EC) No 207/2009. Regulations (EC) No 2868/95 and (EC) No 216/96 should therefore be repealed.
- (3) The procedural rules on opposition should ensure an effective, efficient and expeditious examination and registration of EU trade mark applications by the Office using a procedure which is transparent, thorough, fair and equitable. In order to enhance legal certainty and clarity, those opposition rules should take account of the extended relative grounds for refusal laid down in Regulation (EC) No 207/2009, in particular as regards the requirements for admissibility and substantiation of opposition proceedings, and be adjusted to better reflect the case law of the Court of Justice of the European Union and to codify the practice of the Office.

⁽¹⁾ OJ L 78, 24.3.2009, p. 1.

⁽²⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 14.1.1994, p. 1).

⁽³⁾ Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ L 341, 24.12.2015, p. 21).

⁽⁴⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 303, 15.12.1995, p. 1).

⁽⁵⁾ Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ L 28, 6.2.1996, p. 11).

- (4) In order to allow for a more flexible, consistent and modern trade mark system in the Union, while ensuring legal certainty, it is appropriate to reduce the administrative burden for the parties in *inter-partes* proceedings by relaxing the requirements for the substantiation of earlier rights in cases where the content of the relevant evidence is accessible online from a source recognised by the Office, as well as the requirement of submitting evidence in the language of the proceedings.
- (5) In the interest of clarity and legal certainty, it is important to specify the requirements for amending an application for an EU trade mark in a clear and exhaustive manner.
- (6) The procedural rules governing the revocation and declaration of invalidity of an EU trade mark should 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. For the sake of greater clarity, consistency as well as efficiency and legal certainty, the procedural rules governing the revocation and declaration of invalidity of an EU trade mark should be aligned with those applicable to opposition proceedings, retaining only those differences which are required due to the specific nature of revocation and declaration of invalidity proceedings. Furthermore, requests for assignment of an EU trade mark registered in the name of an unauthorised agent should follow the same procedural path as invalidity proceedings, serving in practice as an alternative to invalidating the mark.
- (7) According to settled case-law of the Court of Justice ⁽¹⁾, unless otherwise provided, the Office enjoys discretionary powers when examining belated evidence, submitted for the purpose of either substantiating an opposition or proving genuine use of the earlier mark in the context of opposition or invalidity proceedings. In order to ensure legal certainty the relevant boundaries of such discretion should be accurately reflected in the rules governing opposition proceedings or proceedings for the declaration of invalidity of EU trade marks.
- (8) In order to allow for an effective, efficient and, within the scope of the appeal defined by the parties, complete review of decisions taken by the Office in the first instance by means of a transparent, thorough, fair and impartial appeal procedure suited to the specific nature of intellectual property law and taking into account the principles laid down in Regulation (EC) No 207/2009, it is appropriate to reinforce legal certainty and predictability by clarifying and specifying the procedural rules and the parties' procedural guarantees, in particular where a defendant makes use of the right to file a cross appeal.
- (9) In order to ensure an effective and efficient organisation of the Boards of Appeal, the President, the chairpersons and the members of the Boards of Appeal should, in the exercise of their respective functions conferred upon them by Regulation (EC) No 207/2009 and by this Regulation, be required to ensure a high quality and consistency of the decisions taken independently by the Boards on appeal as well as the efficiency of the appeal proceedings.
- (10) In order to ensure the independence of the President, the chairpersons and the members of the Boards of Appeal as provided in Article 136 of Regulation (EC) No 207/2009, the Management Board should take the latter Article into account when adopting appropriate implementing rules to give effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.
- (11) In order to enhance the transparency and predictability of the appeal proceedings, the rules of procedure of the Boards of Appeal currently laid down in Regulations (EC) No 2868/95 and (EC) No 216/96, should be set out in a single text and properly interlinked with the procedural rules applicable to the instances of the Office whose decisions are subject to appeals.
- (12) For the sake of clarity and legal certainty, it is required to codify and clarify certain procedural rules governing oral proceedings, in particular relating to the language of such proceedings. It is further appropriate to provide greater efficiency and flexibility by introducing the possibility of taking part in oral proceedings by technical means and of substituting the minutes of oral proceedings by their recording.

⁽¹⁾ Judgment of 13 March 2007, Case C-29/05P, *OHIM/Kaul GmbH*, (ARCOL/CAPOL), ECR I-2213, ECLI:EU:C:2007:162, paragraphs 42-44; judgment of 18 July 2013, Case C-621/11P, *New Yorker SHK Jeans GmbH & Co. KG/OHIM*, (FISHBONE/FISHBONE BEACHWEAR), ECLI:EU:C:2013:484, paragraphs 28-30; judgment of 26 September 2013, Case C-610/11P, *Centrotherm Systemtechnik GmbH/OHIM*, (CENTROTHERM), ECLI:EU:C:2013:593, paragraphs 85-90 and 110-113; judgment of 3 October 2013, Case C-120/12P, *Bernhard Rintisch/OHIM*, (PROTI SNACK/PROTI), ECLI:EU:C:2013:638, paragraphs 32 and 38-39; judgment of 3 October 2013, Case C-121/12P, *Bernhard Rintisch/OHIM*, (PROTIVITAL/PROTI), ECLI:EU:C:2013:639, paragraphs 33 and 39-40; judgment of 3 October 2013, Case C-122/12P, *Bernhard Rintisch/OHIM*, (PROTIACTIVE/PROTI), ECLI:EU:C:2013:628, paragraphs 33 and 39-40; judgment of 21 July 2016, Case C-597/14P, *EUIPO/Xavier Grau Ferrer*, paragraphs 26-27.

- (13) In order to further streamline proceedings and render them more consistent, it is appropriate to set out the basic structure and format of evidence to be submitted to the Office in all proceedings, as well as the consequences of not submitting evidence in accordance with that structure and format.
- (14) In order to modernise the trade mark system in the Union by adapting it to the internet era, it is further appropriate to provide for a definition of 'electronic means' in the context of notifications and for forms of notification that are not obsolete.
- (15) In the interest of efficiency, transparency and user-friendliness, the Office should make available standard forms in all the official languages of the Office for communication in proceedings before the Office, which may be completed online.
- (16) For the purposes of greater clarity, consistency and efficiency, a provision on the suspension of opposition, revocation, invalidity and appeal proceedings should be introduced, laying down also the maximum duration of a suspension requested by both parties.
- (17) 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 need to ensure a smooth, effective and efficient operation of the EU trade mark system.
- (18) It is necessary 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.
- (19) The rules laid down in this Regulation supplement provisions of Regulation (EC) No 207/2009 that have been amended by Regulation (EU) 2015/2424 with effect from 1 October 2017. It is therefore necessary to defer the applicability of those rules until the same date.
- (20) Notwithstanding the repeal of Regulations (EC) No 2868/95 and (EC) No 216/96, it is necessary to continue to apply specific provisions of those Regulations to certain proceedings that had been initiated before the abovementioned date until the conclusion of those proceedings,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules specifying:

- (a) the details of the procedure for filing and examining an opposition to the registration of an EU trade mark at the European Union Intellectual Property Office ('the Office');
- (b) the details of the procedure governing the amendment of an application for an EU trade mark;
- (c) the details governing the revocation and declaration of invalidity of an EU trade mark, as well as the transfer of an EU trade mark registered in the name of an unauthorised agent;
- (d) the formal content of a notice of appeal and the procedure for the filing and the examination of an appeal, the formal content and form of the Boards of Appeal's decisions and the reimbursement of the appeal fee, the details concerning the organisation of the Boards of Appeal, and the conditions under which decisions on appeals are to be taken by a single member;
- (e) the detailed arrangements for oral proceedings and for the taking of evidence;
- (f) the detailed arrangements for notification by the Office and the rules on the means of communication with the Office;

- (g) the details regarding the calculation and duration of time limits;
- (h) the procedure for the revocation of a decision or for the cancellation of an entry in the Register of EU trade marks;
- (i) the detailed arrangements for the resumption of proceedings before the Office;
- (j) the conditions and the procedure for the appointment of a common representative, the conditions under which employees and professional representatives shall file an authorisation, and the content of that authorisation, and the circumstances in which a person may be removed from the list of admitted professional representatives;
- (k) 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, and the procedure for the filing and examination of an opposition to an international registration.

TITLE II

PROCEDURE FOR OPPOSITION AND PROOF OF USE

Article 2

Notice of opposition

1. A notice of opposition may be entered on the basis of one or more earlier marks or other rights within the meaning of Article 8 of Regulation (EC) No 207/2009, provided that the proprietors or authorised persons entering the notice pursuant to Article 41 of Regulation (EC) No 207/2009 are entitled to do so for all the earlier marks or rights. Where an earlier mark has more than one proprietor (co-ownership) or where an earlier right may be exercised by more than one person, an opposition pursuant to Article 41 of Regulation (EC) No 207/2009 may be filed by any or all of the proprietors or authorised persons.
2. The notice of opposition shall contain:
 - (a) the file number of the application against which opposition is entered and the name of the applicant for the EU trade mark;
 - (b) a clear identification of the earlier mark or right on which the opposition is based, namely:
 - (i) where the opposition is based on an earlier mark within the meaning of Article 8(2)(a) or (b) of Regulation (EC) No 207/2009, the file number or registration number of the earlier mark, an indication of whether the earlier mark is registered or an application for registration of that mark, as well as an indication of the Member States including, where applicable, the Benelux, in or for which the earlier mark is protected, or, if applicable, the indication that it is an EU trade mark;
 - (ii) where the opposition is based on a well-known mark within the meaning of Article 8(2)(c) of Regulation (EC) No 207/2009, the indication of the Member State(s) where the mark is well-known and a representation of the mark;
 - (iii) where the opposition is based on the absence of the proprietor's consent as referred to in Article 8(3) of Regulation (EC) No 207/2009, an indication of the territory in which the earlier trade mark is protected, the representation of the mark and, if applicable, an indication whether the earlier mark is an application or a registration, in which case the filing or registration number shall be provided;
 - (iv) where the opposition is based on an earlier mark or another sign within the meaning of Article 8(4) of Regulation (EC) No 207/2009, an indication of its kind or nature, a representation of the earlier mark or sign, and an indication of whether the right to the earlier mark or sign exists in the whole Union or in one or more Member States, and if so, an indication of those Member States;
 - (v) where the opposition is based on an earlier designation of origin or geographical indication within the meaning of Article 8(4a) of Regulation (EC) No 207/2009, an indication of its nature, a representation of the earlier designation of origin or geographical indication, and an indication of whether it is protected in the whole Union or in one or more Member States, and if so, an indication of those Member States;

- (c) the grounds on which the opposition is based by means of a statement to the effect that the requirements under Article 8(1), (3), (4), (4a) or (5) of Regulation (EC) No 207/2009 in respect of each of the earlier marks or rights invoked by the opposing party are fulfilled;
 - (d) in the case of an earlier trade mark application or registration, the filing date and, where available, the registration date and the priority date of the earlier mark;
 - (e) in the case of earlier rights pursuant to Article 8(4a) of Regulation (EC) No 207/2009, the date of application for registration or, if that date is not available, the date from which protection is granted;
 - (f) in the case of an earlier trade mark application or registration, a representation of the earlier mark as registered or applied for; if the earlier mark is in colour, the representation shall be in colour;
 - (g) an indication of the goods or services on which each of the grounds of the opposition is based;
 - (h) as concerns the opposing party:
 - (i) the identification of the opposing party in accordance with Article 2(1)(b) of Commission Implementing Regulation (EU) 2017/1431 ⁽¹⁾;
 - (ii) where the opposing party has appointed a representative, or where representation is mandatory pursuant to Article 92(2) of Regulation (EC) No 207/2009, the name and business address of the representative in accordance with Article 2(1)(e) of Implementing Regulation (EU) 2017/1431;
 - (iii) where the opposition is entered by a licensee or by a person who is entitled under the relevant Union legislation or national law to exercise an earlier right, a statement to that effect and indications concerning the authorisation or the entitlement to file the opposition;
 - (i) an indication of the goods or services against which the opposition is directed; in the absence of such an indication, the opposition shall be considered to be directed against all of the goods or services of the opposed EU trade mark application.
3. Where the opposition is based on more than one earlier mark or earlier right, paragraph 2 shall apply for each of those marks, signs, designations of origin or geographical indications.
4. The notice of opposition may also contain a reasoned statement on the grounds, the facts and arguments on which the opposition relies, and evidence to support the opposition.

Article 3

Use of languages in opposition proceedings

The opposing party or the applicant may, before the date on which the adversarial part of the opposition proceedings are deemed to commence pursuant to Article 6(1), inform the Office that the applicant and the opposing party have agreed on a different language for the opposition proceedings pursuant to Article 119(7) of Regulation (EC) No 207/2009. Where the notice of opposition has not been filed in that language, the applicant may request that the opposing party file a translation in that language. Such a request must be received by the Office not later than the date on which the adversarial part of the opposition proceedings are deemed to commence. The Office shall specify a time limit for the opposing party to file a translation. Where that translation is not filed or filed late, the language of the proceedings as determined in accordance with Article 119 of Regulation (EC) No 207/2009 ('language of proceedings') shall remain unchanged.

Article 4

Information to the parties to opposition proceedings

The notice of opposition and any document submitted by the opposing party, as well as any communication addressed to one of the parties by the Office prior to the finding on admissibility shall be sent by the Office to the other party for purposes of informing of the introduction of an opposition.

⁽¹⁾ Commission Implementing Regulation (EU) 2017/1431 of 18 May 2017 laying down detailed rules for implementing certain provisions of Council Regulation (EC) No 207/2009 on the European Union trade mark (see page 39 of this Official Journal).

*Article 5***Admissibility of the opposition**

1. Where the opposition fee has not been paid within the opposition period laid down in Article 41(1) of Regulation (EC) No 207/2009, the opposition shall be deemed not to have been entered. Where the opposition fee has been paid after the expiry of the opposition period, it shall be refunded to the opposing party.
2. Where the notice of opposition has been filed after the expiry of the opposition period, the Office shall reject the opposition as inadmissible.
3. Where the notice of opposition has been filed in a language which is not one of the languages of the Office as required under Article 119(5) of Regulation (EC) No 207/2009, or where it does not comply with Article 2(2)(a), (b) or (c) of this Regulation, and where those deficiencies have not been remedied before the expiry of the opposition period, the Office shall reject the opposition as inadmissible.
4. Where the opposing party does not submit a translation as required under Article 119(6) of Regulation (EC) No 207/2009, the opposition shall be rejected as inadmissible. Where the opposing party submits an incomplete translation, the part of the notice of opposition that has not been translated shall not be taken into account in the examination of admissibility.
5. Where the notice of opposition does not comply with the provisions of Article 2(2)(d) to (h), the Office shall inform the opposing party accordingly and shall invite it to remedy the deficiencies noted within a period of two months. If the deficiencies are not remedied before the time limit expires, the Office shall reject the opposition as inadmissible.
6. The Office shall notify the applicant of any finding pursuant to paragraph 1 that the notice of opposition is deemed not to have been entered and of any decision to reject the opposition on the grounds of inadmissibility under paragraphs 2, 3, 4 or 5. Where an opposition is rejected in its entirety as inadmissible pursuant to paragraphs 2, 3, 4 or 5, prior to the notification of Article 6(1), no decision on costs shall be taken.

*Article 6***Commencement of the adversarial part of the opposition proceedings and prior closure of the proceedings**

1. Where the opposition is found admissible pursuant to Article 5, the Office shall send a communication to the parties informing them that the adversarial part of the opposition proceedings shall be deemed to commence two months after receipt of the communication. That period may be extended to a total of 24 months if both parties request an extension before the two-month period expires.
2. Where, within the period referred to in paragraph 1, the application is withdrawn or restricted to goods or services against which the opposition is not directed, or the Office is informed about a settlement between the parties, or the application is rejected in parallel proceedings, the opposition proceedings shall be closed.
3. Where, within the period referred to in paragraph 1, the applicant restricts the application by deleting some of the goods or services against which the opposition is directed, the Office shall invite the opposing party to state, within such a period as it may specify, whether it maintains the opposition, and if so, against which of the remaining goods or services. Where the opposing party withdraws the opposition in light of the restriction, the opposition proceedings shall be closed.
4. Where, before the expiry of the period referred to in paragraph 1, the opposition proceedings are closed pursuant to paragraphs 2 or 3, no decision on costs shall be taken.
5. Where, before the expiry of the period referred to in paragraph 1, the opposition proceedings are closed following a withdrawal or restriction of the application pursuant to paragraph 2 or following a withdrawal of the opposition pursuant to paragraph 3, the opposition fee shall be refunded.

*Article 7***Substantiation of the opposition**

1. The Office shall give the opposing party the opportunity to submit the facts, evidence and arguments in support of the opposition or to complete any facts, evidence or arguments that have already been submitted pursuant to Article 2(4). For that purpose, the Office shall specify a time limit which shall be at least two months, starting on the date on which the adversarial part of the opposition proceedings are deemed to commence in accordance with Article 6(1).

2. Within the period referred to in paragraph 1, the opposing party shall also file evidence of the existence, validity and scope of protection of its earlier mark or right, as well as evidence proving its entitlement to file the opposition. In particular, the opposing party shall provide the following evidence:

- (a) where the opposition is based on an earlier trade mark within the meaning of Article 8(2)(a) and (b) of Regulation (EC) No 207/2009, which is not an EU trade mark, evidence of its filing or registration, by submitting:
 - (i) a copy of the relevant filing certificate or an equivalent document from the administration with which the trade mark application was filed, if the trade mark is not yet registered; or
 - (ii) where the earlier trade mark is registered, a copy of the relevant registration certificate and, if applicable, of the latest renewal certificate, showing that the term of protection of the trade mark extends beyond the time limit referred to in paragraph 1 or any extension thereof, or equivalent documents from the administration by which the trade mark was registered;
- (b) where the opposition is based on a well-known mark within the meaning of Article 8(2)(c) of Regulation (EC) No 207/2009, evidence showing that that mark is well known in the relevant territory for the goods or services indicated in accordance with Article 2(2)(g) of this Regulation;
- (c) where the opposition is based on the absence of the proprietor's consent as referred to in Article 8(3) of Regulation (EC) No 207/2009, evidence of the opposing party's proprietorship of the prior trade mark and of its relationship with the agent or representative;
- (d) where the opposition is based on an earlier right within the meaning of Article 8(4) of Regulation (EC) No 207/2009, evidence showing use of that right in the course of trade of more than mere local significance, as well as evidence of its acquisition, continued existence and scope of protection including, where the earlier right is invoked pursuant to the law of a Member State, a clear identification of the contents of the national law relied upon by adducing publications of the relevant provisions or jurisprudence;
- (e) where the opposition is based on an earlier designation of origin or geographical indication within the meaning of Article 8(4a) of Regulation (EC) No 207/2009, evidence of its acquisition, continued existence and scope of protection including, where the earlier designation of origin or geographical indication is invoked pursuant to the law of a Member State, a clear identification of the content of the national law relied upon by adducing publications of the relevant provisions or jurisprudence;
- (f) if the opposition is based on a mark with a reputation within the meaning of Article 8(5) of Regulation (EC) No 207/2009, in addition to the evidence referred to in point (a) of this paragraph, evidence showing that the mark has a reputation in the Union or in the Member State concerned for the goods or services indicated in accordance with Article 2(2)(g) of this Regulation, as well as evidence or arguments showing that 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.

3. Where the evidence concerning the filing or registration of the earlier rights referred to in paragraph 2(a) or, where applicable, paragraph 2(d) or (e), or the evidence concerning the contents of the relevant national law, is accessible online from a source recognised by the Office, the opposing party may provide such evidence by making reference to that source.

4. Any filing, registration or renewal certificates or equivalent documents referred to in paragraph 2(a), (d) or (e), as well as any provisions of the applicable national law governing the acquisition of rights and their scope of protection as referred to in paragraph 2(d) and (e), including evidence accessible online as referred to in paragraph 3, shall be in the

language of the proceedings or shall be accompanied by a translation into that language. The translation shall be submitted by the opposing party on its own motion within the time limit specified for submitting the original document. Any other evidence submitted by the opposing party to substantiate the opposition shall be subject to Article 24 of Implementing Regulation (EU) 2017/1431. Translations submitted after the expiry of the relevant time limits shall not be taken into account.

5. The Office shall not take into account written submissions, or parts thereof, that have not been submitted in or not been translated into the language of the proceedings within the time limit set by the Office in accordance with paragraph 1.

Article 8

Examination of the opposition

1. Where, until the expiry of the period referred to in Article 7(1), the opposing party has not provided any evidence, or where the evidence provided is manifestly irrelevant or manifestly insufficient to meet the requirements laid down in Article 7(2) for any of the earlier rights, the opposition shall be rejected as unfounded.

2. Where the opposition is not rejected pursuant to paragraph 1, the Office shall communicate the submission of the opposing party to the applicant and shall invite it to file its observations within a period specified by the Office.

3. Where the applicant submits no observations, the Office shall base its ruling on the opposition on the evidence before it.

4. The observations submitted by the applicant shall be communicated to the opposing party who shall be invited, if the Office considers it necessary, to reply within a period specified by the Office.

5. Where, after the expiry of the period referred to in Article 7(1), the opposing party submits facts or evidence that supplement relevant facts or evidence provided within that period and that relate to the same requirement laid down in Article 7(2), the Office shall exercise its discretion under Article 76(2) of Regulation (EC) No 207/2009 in deciding whether to accept these supplementing facts or evidence. For that purpose, the Office shall take into account, in particular, the stage of proceedings and whether the facts or evidence are, *prima facie*, likely to be relevant for the outcome of the case and whether there are valid reasons for the late submission of the facts or evidence.

6. The Office shall invite the applicant to submit further observations in response if it deems it appropriate under the circumstances.

7. Where the opposition has not been rejected pursuant to paragraph 1 and the evidence submitted by the opposing party is not sufficient to substantiate the opposition in accordance with Article 7 for any of the earlier rights, the opposition shall be rejected as unfounded.

8. Article 6(2) and (3) shall apply *mutatis mutandis* after the date on which the adversarial part of the opposition proceedings is deemed to commence. Where the applicant wishes to withdraw or restrict the contested application, it shall do so by way of a separate document.

9. In appropriate cases, the Office may invite the parties to limit their observations to particular issues, in which case it shall allow them to raise the other issues at a later stage of the proceedings. The Office shall not be required to inform a party of the possibility to produce certain relevant facts or evidence which that party previously failed to produce.

Article 9

Multiple oppositions

1. Where a number of oppositions have been entered in respect of the same application for the registration of an EU trade mark, the Office may examine them in one set of proceedings. The Office may subsequently decide to examine those oppositions separately.

2. Where a preliminary examination of one or more oppositions reveals that the EU trade mark for which an application for registration has been filed may be ineligible for registration in respect of some or all of the goods or services for which registration is sought, the Office may suspend the other opposition proceedings relating to that application. The Office shall inform the opposing parties affected by the suspension of any relevant decisions taken in the context of those proceedings which are ongoing.

3. Once a decision rejecting an application as referred to in paragraph 1 has become final, the oppositions for which proceedings have been suspended in accordance with paragraph 2 shall be deemed to have been disposed of and the opposing parties concerned shall be informed accordingly. Such a disposition shall be considered to constitute a case which has not proceeded to judgment within the meaning of Article 85(4) of Regulation (EC) No 207/2009.

4. The Office shall refund 50 % of the opposition fee paid by each opposing party whose opposition is deemed to have been disposed of in accordance with paragraph 3, provided that the suspension of the proceedings relating to that opposition took place before the commencement of the adversarial part of the proceedings.

Article 10

Proof of use

1. A request for proof of use of an earlier mark pursuant to Article 42(2) or (3) of Regulation (EC) No 207/2009 shall be admissible if it is submitted as an unconditional request in a separate document within the period specified by the Office pursuant to Article 8(2) of this Regulation.

2. Where the applicant has made a request for proof of use of an earlier mark which complies with the requirements of Article 42(2) or (3) of Regulation (EC) No 207/2009, the Office shall invite the opposing party to provide the proof required within a time limit specified by the Office. Where the opposing party does not provide any evidence or reasons for non-use before the time limit expires or where the evidence or reasons provided are manifestly insufficient or irrelevant, the Office shall reject the opposition in so far as it is based on that earlier mark.

3. The indications and evidence of use shall establish the place, time, extent and nature of use of the opposing trade mark for the goods or services in respect of which it is registered and on which the opposition is based.

4. The evidence referred to in paragraph 3 shall be filed in accordance with Article 55(2) and Articles 63 and 64 and shall be limited to the submission of supporting documents and items such as packages, labels, price lists, catalogues, invoices, photographs, newspaper advertisements, and statements in writing as referred to in Article 78(1)(f) of Regulation (EC) No 207/2009.

5. A request for proof of use may be filed at the same time as observations on the grounds on which the opposition is based. Such observations may also be filed together with the observations in reply to the proof of use.

6. Where the evidence supplied by the opposing party is not in the language of the opposition proceedings, the Office may require the opposing party to submit a translation of that evidence in that language pursuant to Article 24 of Implementing Regulation (EU) 2017/1431.

7. Where after the expiry of the time limit referred to in paragraph 2, the opposing party submits indications or evidence that supplement relevant indications or evidence already submitted before expiry of that time limit and relate to the same requirement laid down in paragraph 3, the Office shall exercise its discretion under Article 76(2) of Regulation (EC) No 207/2009 in deciding whether to accept those supplementing indications or evidence. For that purpose, the Office shall take into account, in particular, the stage of proceedings and whether the indications or evidence are, *prima facie*, likely to be relevant for the outcome of the case and whether there are valid reasons for the late submission of the indications or evidence.

TITLE III

AMENDMENT OF THE APPLICATION*Article 11***Amendment of the application**

1. A request for amendment of an application pursuant to Article 43(2) of Regulation (EC) No 207/2009 shall contain:
 - (a) the file number of the application;
 - (b) the name and address of the applicant in accordance with Article 2(1)(b) of Implementing Regulation (EU) 2017/1431;
 - (c) an indication of the element of the application to be amended, and that element in its amended version;
 - (d) where the amendment relates to the representation of the mark, a representation of the mark as amended, in accordance with Article 3 of Implementing Regulation (EU) 2017/1431.
2. Where the requirements for the amendment of the application are not fulfilled, the Office shall communicate the deficiency to the applicant and shall specify a time limit for remedying the deficiency. Where the applicant does not remedy the deficiency within the specified time limit, the Office shall reject the request for amendment.
3. Where the amended trade mark application is published pursuant to Article 43(2) of Regulation (EC) No 207/2009, Articles 2 to 10 of this Regulation shall apply *mutatis mutandis*.
4. A single request for amendment may be made for the amendment of the same element in two or more applications by the same applicant.
5. Paragraphs 1, 2 and 4 shall apply *mutatis mutandis* for applications to correct the name or the business address of a representative appointed by the applicant.

TITLE IV

REVOCATION AND INVALIDITY OR ASSIGNMENT*Article 12***Application for revocation or for a declaration of invalidity**

1. An application to the Office for revocation or for a declaration of invalidity pursuant to Article 56 of Regulation (EC) No 207/2009 shall contain:
 - (a) the registration number of the EU trade mark in respect of which revocation or a declaration of invalidity is sought and the name of its proprietor;
 - (b) the grounds on which the application is based by means of a statement that the respective requirements laid down in Articles 51, 52, 53, 73, 74, 74i or 74j of Regulation (EC) No 207/2009 are fulfilled;
 - (c) as concerns the applicant:
 - (i) the identification of the applicant in accordance with Article 2(1)(b) of Implementing Regulation (EU) 2017/1431;
 - (ii) where the applicant has appointed a representative or where representation is mandatory within the meaning of Article 92(2) of Regulation (EC) No 207/2009, the name and business address of the representative, in accordance with Article 2(1)(e) of Implementing Regulation (EU) 2017/1431;
 - (d) an indication of the goods or services in respect of which revocation or a declaration of invalidity is sought, in the absence of which the application shall be deemed to be directed against all the goods or services covered by the contested EU trade mark.

2. In addition to the requirements laid down in paragraph 1, an application for a declaration of invalidity based on relative grounds shall contain the following:
- (a) in the case of an application pursuant to Article 53(1) of Regulation (EC) No 207/2009, an identification of the earlier right on which the application is based, in accordance with Article 2(2)(b) of this Regulation, which shall apply *mutatis mutandis* to such an application;
 - (b) in the case of an application pursuant to Article 53(2) of Regulation (EC) No 207/2009, an indication of the nature of the earlier right on which the application is based, its representation and an indication of whether this earlier right exists in the whole of the Union or in one or more Member States, and if so, an indication of those Member States;
 - (c) particulars pursuant to Article 2(2)(d) to (g), which apply *mutatis mutandis* to such an application;
 - (d) where the application is entered by a licensee or by a person who is entitled under the relevant Union legislation or national law to exercise an earlier right, an indication concerning the authorisation or entitlement to file the application.
3. Where the application for a declaration of invalidity pursuant to Article 53 of Regulation (EC) No 207/2009 is based on more than one earlier mark or earlier right, paragraphs 1(b) and 2 of this Article shall apply for each of those marks or rights.
4. The application may contain a reasoned statement on the grounds setting out the facts and arguments on which it is based and supporting evidence.

Article 13

Languages used in revocation or invalidity proceedings

The applicant for revocation or for a declaration of invalidity or the proprietor of the EU trade mark may inform the Office before the expiry of a period of two months from receipt by the EU trade mark proprietor of the communication referred to in Article 17(1), that a different language of proceedings has been agreed pursuant to Article 119(7) of Regulation (EC) No 207/2009. Where the application has not been filed in that language, the proprietor may request that the applicant file a translation in that language. Such a request shall be received by the Office before the expiry of the period of two months from receipt by the EU trade mark proprietor of the communication referred to in Article 17(1). The Office shall specify a time limit for the applicant to file such a translation. Where that translation is not filed or filed late, the language of the proceedings shall remain unchanged.

Article 14

Information to the parties concerning an application for revocation or for a declaration of invalidity

An application for revocation or for a declaration of invalidity and any document submitted by the applicant, as well as any communication addressed to one of the parties by the Office prior to the finding on admissibility shall be sent by the Office to the other party for the purposes of informing of the introduction of an application for revocation or for a declaration of invalidity.

Article 15

Admissibility of an application for revocation or for a declaration of invalidity

1. Where the fee required under Article 56(2) of Regulation (EC) No 207/2009 has not been paid, the Office shall invite the applicant to pay the fee within a period specified by it. Where the required fee is not paid within the specified period, the Office shall inform the applicant that the application for revocation or for declaration of invalidity is deemed not to have been entered. Where the fee has been paid after the expiry of the specified period, it shall be refunded to the applicant.

2. Where the application has been filed in a language which is not one of the languages of the Office as required under Article 119(5) of Regulation (EC) No 207/2009, or it does not comply with Article 12(1)(a) or (b) or, where applicable, Article 12(2)(a) or (b) of this Regulation, the Office shall reject the application as inadmissible.
3. Where the translation required under the second subparagraph of Article 119(6) Regulation (EC) No 207/2009 is not filed within a period of one month of the date of filing an application for revocation or a declaration of invalidity, the Office shall reject the application for revocation or for declaration of invalidity as inadmissible.
4. Where the application does not comply with the provisions laid down in Article 12(1)(c), Article 12(2)(c) or (d), the Office shall inform the applicant accordingly and shall invite the applicant to remedy the deficiencies noted within a period of two months. If the deficiencies are not remedied before the time limit expires, the Office shall reject the application as inadmissible.
5. The Office shall notify the applicant and the proprietor of the EU trade mark of any finding pursuant to paragraph 1 that the application for revocation or declaration of invalidity is deemed not to have been entered and of any decision to reject the application for revocation or declaration of invalidity on the grounds of inadmissibility under paragraphs 2, 3 or 4. Where an application for revocation or declaration of invalidity is rejected in its entirety as inadmissible pursuant to paragraphs 2, 3 or 4, prior to the notification of Article 17(1), no decision on costs shall be taken.

Article 16

Substantiation of an application for revocation or for a declaration of invalidity

1. The applicant shall present the facts, evidence and arguments in support of the application up to the closure of the adversarial part of revocation or invalidity proceedings. In particular, the applicant shall provide the following:
 - (a) in the case of an application pursuant to Article 51(1)(b) or (c) or Article 52 of Regulation (EC) No 207/2009, facts, arguments and evidence to support the grounds on which the application for revocation or declaration of invalidity is based;
 - (b) in the case of an application pursuant to Article 53(1) of Regulation (EC) No 207/2009, the evidence required by Article 7(2) of this Regulation and the provisions of Article 7(3) shall apply *mutatis mutandis*;
 - (c) in the case of an application pursuant to Article 53(2) of Regulation (EC) No 207/2009, evidence of acquisition, continued existence and scope of protection of the relevant earlier right as well as evidence proving that the applicant is entitled to file the application, including, where the earlier right is invoked pursuant to national law, a clear identification of the contents of that national law by adducing publications of the relevant provisions or jurisprudence. Where the evidence concerning the filing or registration of an earlier right under Article 53(2)(d) of Regulation (EC) No 207/2009 or the evidence concerning the contents of the relevant national law is accessible online from a source recognised by the Office, the applicant may provide such evidence by making reference to that source.
2. Evidence concerning the filing, registration or renewal of earlier rights or, where applicable, the contents of the relevant national law, including evidence accessible online, as referred to in paragraph 1(b) and (c), shall be filed in the language of the proceedings or a translation into that language shall be filed. The translation shall be submitted by the applicant on the applicant's own motion within one month from the filing of such evidence. Any other evidence submitted by the applicant to substantiate the application or, in case of an application for revocation under Article 51(1)(a) of Regulation (EC) No 207/2009, by the proprietor of the contested EU trade mark, shall be subject to Article 24 of Implementing Regulation (EU) 2017/1431. Translations submitted after the expiry of the relevant time limits shall not be taken into account.

Article 17

Examination on the merits of an application for revocation or for a declaration of invalidity

1. Where the application is found admissible pursuant to Article 15, the Office shall send a communication to the parties informing them that the adversarial part of the revocation or invalidity proceedings has commenced and inviting the proprietor of the EU trade mark to file observations within a specified period.

2. Where the Office has invited a party in accordance with Article 57(1) of Regulation (EC) No 207/2009 to file observations within a specified period and that party does not submit any observations within that period, the Office shall close the adversarial part of the proceedings and base its ruling on the revocation or invalidity on the basis of the evidence before it.
3. Where the applicant has not submitted the facts, arguments or evidence required to substantiate the application, the application shall be rejected as unfounded.
4. Without prejudice to Article 62, all observations filed by the parties shall be sent to the other party concerned.
5. Where the proprietor surrenders the EU trade mark subject to an application as referred to in Article 12 to cover only goods or services against which the application is not directed, or the EU trade mark is cancelled in parallel proceedings, or expires, the proceedings shall be closed except where Article 50(2) of Regulation (EC) No 207/2009 shall apply or the applicant shows a legitimate interest in obtaining a decision on the merits.
6. Where the proprietor partially surrenders the EU trade mark by deleting some of the goods or services against which the application is directed, the Office shall invite the applicant to state, within such a period as it may specify, whether it maintains the application and if so, against which of the remaining goods or services. Where the applicant withdraws the application in light of the surrender, or the Office is informed about a settlement between the parties, the proceedings shall be closed.
7. Where the proprietor wishes to surrender the contested EU trade mark, it shall do so by way of a separate document.
8. Article 8(9) shall apply *mutatis mutandis*.

Article 18

Multiple applications for revocation or for a declaration of invalidity

1. Where a number of applications for revocation or for a declaration of invalidity have been filed relating to the same EU trade mark, the Office may examine them in one set of proceedings. The Office may subsequently decide to examine those applications separately.
2. Article 9(2), (3) and (4) shall apply *mutatis mutandis*.

Article 19

Proof of use in relation to an application for revocation or for a declaration of invalidity

1. In the case of an application for revocation based on Article 51(1)(a) of Regulation (EC) No 207/2009, the Office shall invite the proprietor of the EU trade mark to provide proof of genuine use of that mark or of proper reasons for non-use, within such period as it shall specify. Where the proprietor does not provide such proof or reasons for non-use before the time limit expires or the evidence or reasons provided are manifestly insufficient or irrelevant, the EU trade mark shall be revoked. Article 10(3), (4), (6) and (7) of this Regulation shall apply *mutatis mutandis*.
2. A request for proof of use pursuant to Article 57(2) or (3) of Regulation (EC) No 207/2009 shall be admissible if the proprietor of the EU trade mark submits it as an unconditional request in a separate document within the period specified by the Office pursuant to Article 17(1) of this Regulation. Where the proprietor of the EU trade mark has made a request for proof of use of an earlier mark or of proper reasons for non-use which complies with the requirements of Article 57(2) or (3) of Regulation (EC) No 207/2009, the Office shall invite the applicant for a declaration of invalidity to provide the proof required within a time limit specified by the Office. Where the applicant for a declaration of invalidity does not provide such proof or reasons for non-use before the time limit expires or the evidence or reasons provided are manifestly insufficient or irrelevant, the Office shall reject the application for a declaration of invalidity in so far as it is based on that earlier mark. Article 10(3) to (7) of this Regulation shall apply *mutatis mutandis*.

Article 20

Request for assignment

1. Where the proprietor of a trade mark requests, in accordance with Article 18(1) and (2)(a) of Regulation (EC) No 207/2009, an assignment instead of a declaration of invalidity, the provisions of Articles 12 to 19 of this Regulation shall apply *mutatis mutandis*.
2. Where a request for assignment pursuant to Article 18(2) of Regulation (EC) No 207/2009 is partially or totally granted by the Office or by an EU trade mark court and the decision or judgment has become final, the Office shall ensure that the resulting partial or total transfer of the EU trade mark is entered in the Register and published.

TITLE V

APPEALS

Article 21

Notice of Appeal

1. A notice of appeal filed in accordance with Article 60(1) of Regulation (EC) No 207/2009 shall contain the following:
 - (a) the name and address of the appellant in accordance with Article 2(1)(b) of Implementing Regulation (EU) 2017/1431;
 - (b) where the appellant has appointed a representative, the name and the business address of the representative in accordance with Article 2(1)(e) of Implementing Regulation (EU) 2017/1431;
 - (c) where representation of the appellant is mandatory pursuant to Article 92(2) of Regulation (EC) No 207/2009, the name and the business address of the representative in accordance with Article 2(1)(e) of Implementing Regulation (EU) 2017/1431;
 - (d) a clear and unambiguous identification of the decision subject to appeal indicating the date on which it has been issued and the file number of the proceedings to which the decision subject to appeal relates;
 - (e) where the decision subject to appeal is only contested in part, a clear and unambiguous identification of the goods or services in respect of which the decision subject to appeal is contested.
2. Where the notice of appeal is filed in another official language of the Union than the language of proceedings, the appellant shall provide a translation thereof within four months of the date of notification of the decision subject to appeal.
3. Where in *ex parte* proceedings the decision subject to appeal has been taken in an official language other than the language of proceedings, the appellant may file the notice of appeal either in the language of the proceedings or in the language in which the decision subject to appeal was taken; in either case, the language used for the notice of appeal shall become the language of the appeal proceedings and paragraph 2 shall not apply.
4. As soon as the notice of appeal has been filed in *inter partes* proceedings, it shall be notified to the defendant.

Article 22

Statement of Grounds

1. A statement setting out the grounds of appeal filed pursuant to the fourth sentence of Article 60(1) of Regulation (EC) No 207/2009 shall contain a clear and unambiguous identification of the following:
 - (a) the appeal proceedings to which it refers by indicating either the corresponding appeal number or the decision subject to appeal in accordance with the requirements laid down in Article 21(1)(d) of this Regulation;

- (b) the grounds of appeal on which the annulment of the contested decision is requested within the extent identified in accordance with Article 21(1)(e) of this Regulation;
- (c) the facts, evidence and arguments in support of the grounds invoked, submitted in accordance with the requirements set out in Article 55(2).

2. The statement of grounds shall be filed in the language of the appeal proceedings as determined in accordance with Article 21(2) and (3). Where the statement of grounds is filed in another official language of the Union, the appellant has to provide a translation thereof within one month of the date of the submission of the original statement.

Article 23

Admissibility of an appeal

1. The Board of Appeal shall reject an appeal as inadmissible in any of the following events:
 - (a) where the notice of appeal has not been filed within two months of the date of notification of the decision subject to appeal;
 - (b) where the appeal does not comply with Articles 58 and 59 of Regulation (EC) No 207/2009, or with those laid down in Article 21(1)(d) and Article 21(2) and (3) of this Regulation, unless those deficiencies are remedied within four months of the date of notification of the decision subject to appeal;
 - (c) where the notice of appeal does not comply with the requirements laid down in Article 21(1)(a), (b), (c) and (e), and the appellant has, despite having been informed thereof by the Board of Appeal, not remedied those deficiencies within the time limit specified by the Board of Appeal to that effect;
 - (d) where the statement of grounds has not been filed within four months of the date of notification of the decision subject to appeal;
 - (e) where the statement of grounds does not comply with the requirements laid down in Article 22(1)(a) and (b), and the appellant has, despite having been informed thereof by the Board of Appeal, not remedied those deficiencies within the time-limit specified by the Board of Appeal to that effect or has not submitted the translation of the statement of grounds within one month of the date of the submission of the original statement in accordance with Article 22(2).
2. Where the appeal appears to be inadmissible, the chairperson of the Board of Appeal to which the case has been allocated pursuant to Article 35(1) may request the Board of Appeal to decide without delay on the admissibility of the appeal prior to the notification to the defendant of the notice or of the statement of grounds, as the case may be.
3. The Board of Appeal shall declare an appeal as deemed not to have been filed where the appeal fee has been paid after the expiry of the time limit set out in the first sentence of Article 60(1) of Regulation (EC) No 207/2009. In such a case, paragraph 2 of this Article shall apply.

Article 24

Response

1. In *inter partes* proceedings, the defendant may file a response within two months of the date of notification of the appellant's statement of grounds. In exceptional circumstances, that time-limit may be extended upon reasoned request by the defendant.
2. The response shall contain the name and address of the defendant in accordance with Article 2(1)(b) of Implementing Regulation (EU) 2017/1431 and shall comply, *mutatis mutandis*, with the conditions laid down in Article 21(1)(b), (c) and (d), Article 22(1)(a) and (c) and Article 22(2) of this Regulation.

*Article 25***Cross appeal**

1. Where the defendant seeks a decision annulling or altering the contested decision on a point not raised in the appeal, pursuant to Article 60(2) of Regulation (EC) No 207/2009, that cross appeal shall be filed within the time limit for filing a response in accordance with Article 24(1) of this Regulation.
2. A cross appeal shall be submitted by a document separate from the response.
3. The cross appeal shall contain the name and address of the defendant in accordance with Article 2(1)(b) of Implementing Regulation (EU) 2017/1431 and shall comply *mutatis mutandis* with the conditions laid down in Article 21(1)(b) to (e) and Article 22 of this Regulation.
4. A cross appeal shall be rejected as inadmissible in any of the following events:
 - (a) where it has not been filed within the time-limit laid down in paragraph 1;
 - (b) where it has not been filed in observance of the requirements laid down either in paragraph 2 or Article 21(1)(d);
 - (c) where it does not comply with the requirements referred to in paragraph 3, and the defendant has, despite having been informed thereof by the Board of Appeal, not remedied these deficiencies within the time-limit specified by the Board of Appeal to that effect or has not submitted the translation of the cross appeal and the corresponding statement of grounds within one month of the date of submission of the original.
5. The appellant shall be invited to submit observations on the defendant's cross appeal within two months of the date of notification to the appellant. In exceptional circumstances, that time-limit may be extended by the Board of Appeal upon the reasoned request of the appellant. Article 26 shall apply *mutatis mutandis*.

*Article 26***Reply and rejoinder in inter partes proceedings**

1. Upon the appellant's reasoned request filed within two weeks following the notification of the response, the Board of Appeal may, pursuant to Article 63(2) of Regulation (EC) No 207/2009, authorise the appellant to supplement the statement of grounds by a reply within a period specified by the Board of Appeal.
2. In such a case, the Board of Appeal shall also authorise the defendant to supplement the response by a rejoinder within a period specified by the Board of Appeal.

*Article 27***Examination of the appeal**

1. In *ex parte* proceedings, and with respect to those goods or services which form part of the subject matter of the appeal, the Board of Appeal, in compliance with Article 40(3) of Regulation (EC) No 207/2009, shall proceed in accordance with Article 37 of Regulation (EC) No 207/2009 where it raises a ground for refusal of the trade mark application which had not already been invoked in the decision subject to appeal in application of that provision.
2. In *inter partes* proceedings, the examination of the appeal and, as the case may be, the cross appeal, shall be restricted to the grounds invoked in the statement of grounds and, as the case may be, in the cross appeal. Matters of law not raised by the parties shall be examined by the Board of Appeal only where they concern essential procedural requirements or where it is necessary to resolve them in order to ensure a correct application of Regulation (EC) No 207/2009 having regard to the facts, evidence and arguments presented by the parties.

3. The examination of the appeal shall include the following claims or requests provided that they have been raised in the statement of grounds of the appeal or, as the case may be, in the cross appeal and provided that they were raised in due time in the proceedings before the instance of the Office which adopted the decision subject to appeal:

- (a) distinctiveness acquired through use as referred to in Article 7(3) and Article 52(2) of Regulation (EC) No 207/2009;
- (b) recognition of the earlier trade mark on the market acquired through use for the purposes of Article 8(1)(b) of Regulation (EC) No 207/2009;
- (c) proof of use pursuant to Article 42(2) and (3) of Regulation (EC) No 207/2009 or Article 57(2) and (3) of Regulation (EC) No 207/2009.

4. In accordance with Article 76(2) of Regulation (EC) No 207/2009, the Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence meet the following requirements:

- (a) they are, on the face of it, likely to be relevant for the outcome of the case; and
- (b) they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.

5. The Board of Appeal shall, at the latest in its decision on the appeal and, as the case may be, the cross appeal, decide on requests for restriction, division or partial surrender of the contested mark declared during the appeal proceedings by the applicant or the proprietor in accordance with Articles 43, 44 or 50 of Regulation (EC) No 207/2009. Where the Board of Appeal accepts the restriction, division or partial surrender, it shall without delay inform the department in charge of the register and the departments dealing with parallel proceedings involving the same mark accordingly.

Article 28

Communications by the Board of Appeal

1. Communications by the Board of Appeal in the course of the examination of the appeal or with a view to facilitating an amicable settlement of proceedings shall be prepared by the rapporteur and shall be signed by the rapporteur on behalf of the Board of Appeal, in agreement with the chairperson of the Board of Appeal.

2. Where a Board of Appeal communicates with the parties regarding its provisional opinion on matters of fact or law, it shall state that it is not bound by such a communication.

Article 29

Comments on questions of general interest

The Board of Appeal may, on its own initiative or upon the written, reasoned request of the Executive Director of the Office, invite the Executive Director to comment on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the Executive Director's comments.

Article 30

Reopening of the examination of absolute grounds

1. Where, in *ex parte* proceedings, the Board of Appeal considers that an absolute ground for refusal may be applicable to goods or services listed in the trade mark application which do not form part of the subject matter of the appeal, it shall inform the examiner competent for examining that application who may decide to re-open the examination pursuant to Article 40(3) of Regulation (EC) No 207/2009 with respect to those goods or services.

2. Where a decision of the Opposition Division is subject to an appeal, the Board of Appeal may, by means of a reasoned interim decision and without prejudice to Article 58(1) of Regulation (EC) No 207/2009, suspend the appeal proceedings and remit the contested application to the examiner competent for examining that application with a recommendation to re-open the examination pursuant to Article 40(3) of Regulation (EC) No 207/2009, where it considers that an absolute ground for refusal shall apply to some or all of the goods or services listed in the trade mark application.

3. Where the contested application has been remitted in application of paragraph 2, the examiner shall inform the Board of Appeal without delay whether or not the examination of the contested application has been re-opened. Where the examination has been re-opened, the appeal proceedings shall remain suspended until the examiner's decision has been taken and, where the contested application is rejected in whole or in part, until the examiner's decision to this effect has become final.

Article 31

Examination of an appeal as a matter of priority

1. Upon reasoned request of the appellant or of the defendant and after hearing the other party, the Board of Appeal may decide, having regard to the particular urgency and the circumstances of the case, to examine the appeal as a matter of priority, without prejudice to the provisions in Articles 23 and 26, including the provisions on time-limits.

2. The request for the examination of the appeal as a matter of priority may be filed at any time in the course of the appeal proceedings. It shall be filed in a separate document and shall be supported by evidence as to the urgency and the particular circumstances of the case.

Article 32

Formal content of the Board of Appeal's decision

The Board of Appeal's decision shall contain:

- (a) a statement that it is delivered by the Boards of Appeal;
- (b) the date when the decision was taken;
- (c) the names of the parties and of their representatives;
- (d) the number of the appeal to which it refers and an identification of the decision subject to appeal in accordance with the requirements laid down in Article 21(1)(d);
- (e) an indication as to the formation of the Board of Appeal;
- (f) the name and, without prejudice to Article 39(5), the signature of the chairperson and members which took part in the decision, including an indication who acted as rapporteur in the case, or, where the decision is delivered by a single member, the name and signature of the member who took the decision;
- (g) the name and the signature of the Registrar or, as the case may be, of the member of the Registry signing on the Registrar's behalf;
- (h) a summary of the facts and of the arguments submitted by the parties;
- (i) a statement of the reasons for which the decision has been taken;
- (j) the order of the Board of Appeal, including, where necessary, a decision on costs.

*Article 33***Reimbursement of the appeal fee**

The appeal fee shall be reimbursed by order of the Board of Appeal in either of the following events:

- (a) where the appeal is not deemed to have been filed in accordance with the second sentence of Article 60(1) of Regulation (EC) No 207/2009;
- (b) where the decision-making instance of the Office which adopted the contested decision grants revision pursuant to Article 61(1) of Regulation (EC) No 207/2009 or revokes the contested decision in application of Article 80 of Regulation (EC) No 207/2009;
- (c) where, following re-opening of the examination proceedings within the meaning of Article 40(3) of Regulation (EC) No 207/2009 upon the Board of Appeal's recommendation pursuant to Article 30(2) of this Regulation, the contested application has been rejected by final decision of the examiner and the appeal has become devoid of purpose as a consequence thereof;
- (d) where the Board of Appeal considers such reimbursement equitable by reason of a substantial procedural violation.

*Article 34***Revision and revocation of the decision subject to appeal**

1. Where, in *ex parte* proceedings, the appeal is not rejected pursuant to Article 23(1), the Board of Appeal shall submit the notice of appeal and the statement of grounds of appeal to the instance of the Office which adopted the contested decision for the purposes of Article 61 of Regulation (EC) No 207/2009.
2. Where the instance of the Office which adopted the decision subject to appeal decides to grant revision pursuant to Article 61(1) of Regulation (EC) No 207/2009, it shall inform the Board of Appeal thereof without delay.
3. Where the instance of the Office which adopted the decision subject to appeal has initiated the procedure for revoking the decision subject to appeal pursuant to Article 80(2) of Regulation (EC) No 207/2009, it shall inform the Board of Appeal thereof without delay for the purposes of Article 71 of this Regulation. It shall also inform the Board of Appeal without delay about the final outcome of that procedure.

*Article 35***Allocation of an appeal to a Board and designation of a rapporteur**

1. As soon as the notice of appeal has been filed, the President of the Boards shall allocate the case to a Board of Appeal according to the objective criteria determined by the Presidium of the Boards of Appeal referred to in Article 136(4)(c) of Regulation (EC) No 207/2009.
2. For each case allocated to a Board of Appeal pursuant to paragraph 1, its chairperson shall designate a member of that Board of Appeal, or the chairperson, as rapporteur.
3. Where a case falls under the authority of a single member pursuant to Article 36(1), the Board of Appeal handling a case shall designate the rapporteur as single member pursuant to Article 135(5) of Regulation (EC) No 207/2009.
4. Where a decision of a Board of Appeal on a case has been annulled or altered by a final ruling of the General Court or, as the case may be, of the Court of Justice, the President of the Boards of Appeal shall, with a view to complying with that ruling in accordance with Article 65(6) of Regulation (EC) No 207/2009, re-allocate the case pursuant to paragraph 1 of this Article to a Board of Appeal, which shall not comprise those members which had adopted the annulled decision, except where the case is referred to the enlarged Board of Appeal ('Grand Board') or where the annulled decision had been taken by the Grand Board.

5. Where several appeals are filed against the same decision, those appeals shall be considered in the same proceedings. Where appeals involving the same parties are filed against separate decisions concerning the same mark, or have other relevant factual or legal elements in common, those appeals may be considered in joined proceedings with the consent of the parties.

Article 36

Cases falling under the authority of a single member

1. The Board of Appeal handling the case may designate a single member within the meaning of Article 135(2) of Regulation (EC) No 207/2009 for the purposes of the following decisions:

- (a) decisions pursuant to Article 23;
- (b) decisions closing the appeal proceedings following withdrawal, rejection, surrender or cancellation of the contested or the earlier mark;
- (c) decisions closing the appeal proceedings following withdrawal of the opposition, of the request for revocation or for declaration of invalidity or of the appeal;
- (d) decisions on measures pursuant to Article 79d(1) and Article 80(2) of Regulation (EC) No 207/2009, provided that the correction or, as the case may be, the revocation of the decision on the appeal concerns a decision taken by a single member;
- (e) decisions pursuant to Article 81(4) of Regulation (EC) No 207/2009;
- (f) decisions pursuant to Article 85(3), (4) and (7) of Regulation (EC) No 207/2009;
- (g) decisions on appeals against decisions in *ex parte* proceedings taken on the grounds laid down in Article 7 of Regulation (EC) No 207/2009, which are either manifestly unfounded or manifestly well founded.

2. Where the single member considers that the conditions set out in paragraph 1 or in Article 135(5) of Regulation (EC) No 207/2009 are not, or no longer, met, the single member shall refer the case back to the Board of Appeal in its composition of three members by submitting a draft decision pursuant to Article 41 of this Regulation.

Article 37

Referral to the Grand Board

1. Without prejudice to the faculty to refer a case to the Grand Board under Article 135(3) of Regulation (EC) No 207/2009, a Board of Appeal shall refer a case allocated to it to the Grand Board if it considers that it must deviate from an interpretation of the relevant legislation given in an earlier decision of the Grand Board, or if it observes that the Boards of Appeal have issued diverging decisions on a point of law which is liable to affect the outcome of the case.

2. All decisions on referrals of appeal cases to the Grand Board shall state the reasons for which the referring Board of Appeal or, as the case may be, the Presidium of the Boards of Appeal considers that this is justified, shall be communicated to the parties to the case and shall be published in the Official Journal of the Office.

3. The Grand Board shall, without delay, refer the case back to the Board of Appeal to which it was originally allocated if it believes that the conditions for the original referral are not, or no longer, met.

4. Requests for a reasoned opinion on questions on a point of law pursuant to Article 128(4)(l) of Regulation (EC) No 207/2009 shall be referred to the Grand Board in writing, shall state the questions of law of which the interpretation is sought, and may also state the Executive Director's view on the different possible interpretations as well as on their respective legal and practical consequences. The request shall be published in the Official Journal of the Office.

5. Where a Board of Appeal has to decide, in a case pending before it, on the same point in law that has already been raised in a referral to the Grand Board pursuant to Article 135(3) or Article 128(4)(l) of Regulation (EC) No 207/2009, it shall suspend the proceedings until the Grand Board has taken its decision or delivered its reasoned opinion.

6. Groups or bodies representing manufacturers, producers, suppliers of services, traders or consumers which can establish an interest in the result of a case on appeal or a request for a reasoned opinion brought before the Grand Board, may submit written observations within two months following the publication in the Official Journal of the Office of the decision of referral or, as the case may be, the request for a reasoned opinion. They shall not be parties to the proceedings before the Grand Board and shall bear their own costs.

Article 38

Change in the composition of a Board

1. Where, after oral proceedings, the composition of a Board of Appeal is changed pursuant to Article 43(2) and (3), all parties to the proceedings shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board of Appeal in its new composition. Fresh oral proceedings shall also be held if the new member so requests and provided that the other members of the Board of Appeal have given their agreement.

2. The new member of a Board of Appeal shall be bound to the same extent as the other members by any interim decision which has already been taken.

Article 39

Deliberation, voting and signing of decisions

1. The rapporteur shall submit to the other members of the Board of Appeal a draft of the decision to be taken and shall set a reasonable time limit within which to oppose it or to ask for changes.

2. The Board of Appeal shall meet to deliberate on the decision to be taken if it appears that its members are not all of the same opinion. Only members of the Board of Appeal shall participate in the deliberations; the chairperson of the Board of Appeal may, however, authorise other officers such as the Registrar or interpreters to attend. Deliberations shall be and remain secret.

3. During the deliberations between members of a Board of Appeal, the opinion of the rapporteur shall be heard first, and, if the rapporteur is not the chairperson, the opinion of the chairperson shall be heard last.

4. If voting is necessary, votes shall be taken in the same sequence, save that the chairperson shall always vote last. Abstentions shall not be permitted.

5. All members of the Board of Appeal taking the decision shall sign it. However, where the Board of Appeal has already reached a final decision and a member is unable to act, that member shall not be replaced and the chairperson shall sign the decision on the member's behalf. Where the chairperson is unable to act, the most senior member of the Board of Appeal as determined in accordance with Article 43(1) shall sign the decision on behalf of the chairperson.

6. Paragraphs 1 to 5 shall not apply where a decision is to be taken by a single member pursuant to Article 135(2) of Regulation (EC) No 207/2009 and Article 36(1) of this Regulation. In such cases, decisions shall be signed by the single member.

Article 40

Chairperson of a Board of Appeal

A chairperson shall preside over a Board of Appeal and shall have the following duties:

- (a) designate a member of the Board of Appeal, or himself or herself, as rapporteur for each case allocated to that Board of Appeal in accordance with Article 35(2);

- (b) designate, on behalf of the Board of Appeal, the rapporteur as single member pursuant to Article 135(2) of Regulation (EC) No 207/2009;
- (c) request the Board of Appeal to decide on the admissibility of the appeal in accordance with Article 23(2) of this Regulation;
- (d) direct the preparatory examination of the case carried out by the rapporteur in accordance with Article 41 of this Regulation;
- (e) preside over, and sign the minutes of, oral hearings and the taking of evidence.

Article 41

Rapporteur to a Board of Appeal

1. The rapporteur shall carry out a preliminary study of the appeal assigned to the rapporteur, prepare the case for examination and deliberation by the Board of Appeal, and draft the decision to be taken by the Board of Appeal.
2. To that effect, the rapporteur shall, where necessary and subject to the direction of the chairperson of the Board of Appeal, have the following duties:
 - (a) invite the parties to file observations in accordance with Article 63(2) of Regulation (EC) No 207/2009;
 - (b) decide on requests for the extension of time limits and, as the case may be, set time limits within the meaning of Article 24(1), Article 25(5) and Article 26 of this Regulation, and on suspensions pursuant to Article 71;
 - (c) prepare communications in accordance with Article 28 and the oral hearing;
 - (d) sign the minutes of oral proceedings and of the taking of evidence.

Article 42

Registry

1. A Registry shall be set up at the Boards of Appeal. It shall be responsible for the receipt, dispatch, safekeeping and notification of all documents relating to the proceedings before the Boards of Appeal, and for the compilation of the relevant files.
2. The Registry shall be headed by a Registrar. The Registrar shall fulfil the tasks referred to in this Article under the authority of the President of the Boards of Appeal, without prejudice to the provisions in paragraph 3.
3. The Registrar shall ensure that all formal requirements and time limits, laid down in Regulation (EC) No 207/2009, in this Regulation or in decisions of the Presidium of the Boards of Appeal adopted in accordance with Article 136(4)(c) and (d) of Regulation (EC) No 207/2009 are respected. To this effect, the Registrar shall have the following duties:
 - (a) sign the decisions taken by the Boards of Appeal in respect of appeals;
 - (b) take and sign the minutes of oral proceedings and of the taking of evidence;
 - (c) provide, either on its own motion or upon request of the Board of Appeal, reasoned opinions to the Board of Appeal on procedural and formal requirements including on irregularities pursuant to Article 23(2) of this Regulation;
 - (d) submit the appeal, in accordance with Article 34(1) of this Regulation, to the instance of the Office which adopted the contested decision;
 - (e) order, on behalf of the Board of Appeal, in the cases referred to in Article 33(a) and (b) of this Regulation, the reimbursement of the appeal fee.

4. The Registrar shall, upon delegation of the President of the Boards of Appeal, have the following duties:
 - (a) allocate cases in accordance with Article 35(1) and (4);
 - (b) implement, pursuant to Article 136(4)(b) of Regulation (EC) No 207/2009, decisions of the Presidium of the Boards of Appeal relating to the conduct of proceedings before the Boards of Appeal.
5. The Registrar may, upon delegation of the Presidium of the Boards of Appeal made upon proposal of the President of the Boards of Appeal, perform other tasks relating to the conduct of appeal proceedings before the Boards of Appeal and the organisation of their work.
6. The Registrar may delegate the tasks referred to in this Article to a member of the Registry.
7. Where the Registrar is prevented from acting within the meaning of Article 43(4), or where the post of Registrar is vacant, the President of the Boards of Appeal shall appoint a member of the Registry who shall perform the tasks of the Registrar in the Registrar's absence.
8. The members of the Registry shall be managed by the Registrar.

Article 43

Order of seniority and replacement of members and chairpersons

1. The seniority of chairpersons and members shall be calculated according to the date on which they took up their duties as specified in the instrument of appointment or, failing that, as fixed by the Management Board of the Office. Where there is equal seniority on that basis, the order of seniority shall be determined by age. Chairpersons and members whose term of office is renewed shall retain their former seniority.
2. Where the chairperson of a Board of Appeal is prevented from acting, that chairperson shall be replaced, on the basis of seniority as determined in accordance with paragraph 1, by the most senior member of that Board of Appeal, or, where no member of that Board of Appeal is available, by the most senior of the other members of the Boards of Appeal.
3. Where a member of a Board of Appeal is prevented from acting, that member shall be replaced, on the basis of seniority as determined in accordance with paragraph 1, by the most senior member of that Board of Appeal, or, where no member of that Board of Appeal is available, by the most senior of the other members of the Boards of Appeal.
4. For the purposes of paragraphs 2 and 3, chairpersons and members of the Boards of Appeal shall be considered to be prevented from acting in case of leave, sickness, inescapable commitments and exclusion pursuant to Article 137 of Regulation (EC) No 207/2009 and Article 35(4) of this Regulation. A chairperson shall also be considered to be prevented from acting where that chairperson acts *ad interim* as President of the Boards of Appeal pursuant to Article 47(2) of this Regulation. Where the post of chairperson or member is vacant, their respective functions shall be exercised *ad interim* pursuant to the provisions in paragraphs 2 and 3 of this Article concerning replacement.
5. Any member considering itself prevented from acting shall without delay inform the chairperson of the Board of Appeal concerned. Any chairperson considering itself prevented from acting shall without delay inform simultaneously that chairperson's alternate determined in accordance with paragraph 2 and the President of the Boards of Appeal.

Article 44

Exclusion and objection

1. Before a decision is taken by a Board of Appeal pursuant to Article 137(4) of Regulation (EC) No 207/2009, the chairperson or member concerned shall be invited to present comments as to whether there is a reason for exclusion or objection.

2. Where the Board of Appeal obtains knowledge, from a source other than the concerned member itself or a party to the proceedings, of a possible reason for exclusion or objection under Article 137(3) of Regulation (EC) No 207/2009, the procedure laid down in Article 137(4) of Regulation (EC) No 207/2009 shall be applied.

3. The proceedings concerned shall be suspended until a decision is taken on the action to be taken pursuant to Article 137(4) of Regulation (EC) No 207/2009.

Article 45

Grand Board

1. The list comprising the names of all members of the Boards of Appeal other than the President of the Boards of Appeal and the chairpersons of the Boards of Appeal for the purposes of drawing in rotation the members of the Grand Board referred to in Article 136a(2) of Regulation (EC) No 207/2009 shall be drawn up in the order of seniority determined in accordance with Article 43(1) of this Regulation. Where an appeal has been referred to the Grand Board pursuant to Article 135(3)(b) of Regulation (EC) No 207/2009, the Grand Board shall comprise the rapporteur designated prior to the referral.

2. Article 40 shall apply to the President of the Boards of Appeal acting in the capacity of chairperson of the Grand Board. Article 41 shall apply to the rapporteur to the Grand Board.

3. Where the President of the Boards of Appeal is prevented from acting as chairperson of the Grand Board, the President of the Boards of Appeal shall be replaced in that function and, as the case may be, as rapporteur to the Grand Board, on the basis of seniority as determined in accordance with Article 43(1), by the most senior chairperson of the Boards of Appeal. Where a member of the Grand Board is prevented from acting, that member shall be replaced by another member of the Boards of Appeal to be designated pursuant to Article 136a(2) of Regulation (EC) No 207/2009 and paragraph 1 of this Article. Article 43(4) and (5) of this Regulation shall apply *mutatis mutandis*.

4. The Grand Board shall not deliberate or vote on cases, and oral proceedings shall not take place before the Grand Board unless seven of its members are present, including its chairperson and the rapporteur.

5. Article 39(1) to (5) shall apply to the deliberation and voting of the Grand Board. In the event of a tie, the vote of the chairperson shall be decisive.

6. Article 32 shall apply to decisions of the Grand Board and *mutatis mutandis* to its reasoned opinions within the meaning of Article 128(4)(l) of Regulation (EC) No 207/2009.

Article 46

Presidium of the Boards of Appeal

1. The Presidium of the Boards of Appeal shall have the following duties:

- (a) decide on the constitution of Boards of Appeal;
- (b) determine the objective criteria for the allocation of appeal cases to the Boards of Appeal and rule on any conflict as regards the application thereof;
- (c) upon proposal of the President of the Boards of Appeal, establish the Boards of Appeal's expenditure requirements with a view to drawing up the Office's expenditure estimates;
- (d) lay down its internal rules;
- (e) lay down rules for the processing of exclusion and objection of members pursuant to Article 137 of Regulation (EC) No 207/2009;

- (f) lay down the working instructions for the Registry;
 - (g) take any other measure for the purpose of exercising its functions of laying down the rules and of organising the work of the Boards of Appeal pursuant to Article 135(3)(a) and Article 136(4)(a) of Regulation (EC) No 207/2009.
2. The Presidium may validly deliberate only if at least two-thirds of its members, including the chairperson of the Presidium and half of the chairpersons of the Boards of Appeal, rounded up if necessary, are present. Decisions of the Presidium shall be taken by a majority vote. In the event of a tie, the vote of the chairperson shall be decisive.
3. The decisions adopted by the Presidium pursuant to Article 43(1), to Article 45(1), and to paragraph 1(a) and (b) of this Article shall be published in the Official Journal of the Office.

Article 47

President of the Boards of Appeal

1. Where the President of the Boards of Appeal is prevented from acting within the meaning of Article 43(4), the managerial and organisational functions conferred upon the President of the Boards of Appeal by Article 136(4) of Regulation (EC) No 207/2009 shall be exercised, on the basis of seniority as determined in accordance with Article 43(1) of this Regulation, by the most senior chairperson of the Boards of Appeal.
2. Where the post of the President of the Boards of Appeal is vacant, the functions of that president shall be exercised *ad interim*, on the basis of seniority as determined in accordance with Article 43(1), by the most senior chairperson of the Boards of Appeal.

Article 48

Applicability to appeal proceedings of provisions relating to other proceedings

Unless otherwise provided in this title, the provisions relating to proceedings before the instance of the Office which adopted the decision subject to appeal shall be applicable to appeal proceedings *mutatis mutandis*.

TITLE VI

ORAL PROCEEDINGS AND TAKING OF EVIDENCE

Article 49

Summons to oral proceedings

1. The parties shall be summoned to oral proceedings provided for in Article 77 of Regulation (EC) No 207/2009 and their attention shall be drawn to paragraph 3 of this Article.
2. When issuing the summons, the Office shall request, where necessary, that the parties provide all relevant information and documents before the hearing. The Office may invite the parties to concentrate on one or more specified issues during the oral proceedings. It may also offer to the parties the possibility to take part in the oral proceedings by video conference or other technical means.
3. If a party who has been duly summoned to oral proceedings before the Office does not appear as summoned, the proceedings may continue without that party.
4. The Office shall ensure that the case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary.

*Article 50***Languages of oral proceedings**

1. Oral proceedings shall be conducted in the language of the proceedings unless the parties agree to use a different official language of the Union.
2. The Office may communicate in oral proceedings in another official language of the Union and it may, upon request, authorise a party to do so provided that simultaneous interpretation into the language of proceedings can be made available. The costs of providing simultaneous interpretation shall be borne by the party making the request or by the Office as the case may be.

*Article 51***Oral evidence of parties, witnesses or experts and inspection**

1. Where the Office considers it necessary to hear the oral evidence of parties, witnesses or experts or to carry out an inspection, it shall take an interim decision to that end, stating the means by which it intends to obtain the evidence, the relevant facts to be proved and the date, time and place of hearing or inspection. Where the hearing of oral evidence of witnesses or experts is requested by a party, the Office shall determine in its decision the period within which that party must make known to the Office the names and addresses of the witnesses or experts.
2. The summons of parties, witnesses or experts to give evidence shall contain:
 - (a) an extract from the decision referred to in paragraph 1, indicating the date, time and place of the hearing ordered and stating the facts regarding which the parties, witnesses and experts are to be heard;
 - (b) the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under Article 54(2) to (5).

The summons shall also offer to the witnesses or experts being summoned the possibility to take part in the oral proceedings by video conference or other technical means.

3. Article 50(2) shall apply *mutatis mutandis*.

*Article 52***Commissioning of and opinions by experts**

1. The Office shall decide in what form an opinion is to be submitted by an expert.
2. The terms of reference of the expert shall include:
 - (a) a precise description of the expert's task;
 - (b) the time limit laid down for the submission of the expert opinion;
 - (c) the names of the parties to the proceedings;
 - (d) particulars of the rights which the expert may invoke pursuant to Article 54(2), (3) and (4).
3. Where an expert is appointed, the expert opinion shall be submitted in the language of the proceedings or accompanied by a translation into that language. A copy of any written opinion, and of the translation if needed, shall be submitted to the parties.
4. The parties may object to the appointment of an expert on grounds of incompetence or on the same grounds as those on which objection may be made to an examiner or to a member of a Division or Board of Appeal pursuant to Article 137(1) and (3) of Regulation (EC) No 207/2009. Any objection to the appointment of an expert shall be submitted in the language of the proceedings, or accompanied by a translation into that language. The department of the Office concerned shall rule on the objection.

*Article 53***Minutes of oral proceedings**

1. Minutes of oral proceedings or the taking of oral evidence shall be drawn up, containing:
 - (a) the number of the case to which the oral proceedings relate and the date of the oral proceedings;
 - (b) the names of the officials of the Office, the parties, their representatives, and of the witnesses and experts who are present;
 - (c) the submissions and requests made by the parties;
 - (d) the means of giving or obtaining evidence;
 - (e) where applicable, the orders or the decision issued by the Office.
2. The minutes shall become part of the file of the relevant EU trade mark application or registration. They shall be notified to the parties.
3. Where oral proceedings or the taking of evidence before the Office are recorded, the recording shall replace the minutes and paragraph (2) shall apply *mutatis mutandis*.

*Article 54***Costs of taking of evidence in oral proceedings**

1. The taking of evidence by the Office may be made conditional upon deposit with it, by the party who has requested the evidence to be taken, of a sum which shall be fixed by reference to an estimate of the costs.
2. Witnesses and experts who are summoned by and appear before the Office shall be entitled to reimbursement of reasonable expenses for travel and subsistence where such expenses are incurred. An advance for such expenses may be granted to them by the Office.
3. Witnesses entitled to reimbursement pursuant to paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. That compensation shall be paid to the witnesses and experts after they have fulfilled their duties or tasks, where such witnesses and experts have been summoned by the Office of its own initiative.
4. The amounts and advances for expenses to be paid pursuant to paragraphs 1, 2 and 3 shall be determined by the Executive Director and shall be published in the Official Journal of the Office. The amounts shall be calculated on the same basis as laid down in the Staff Regulations of the Officials of the Union and the Conditions of Employment of Other Servants of the Union, laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council ⁽¹⁾ and Annex VII thereto.
5. Liability for the amounts due or paid pursuant to paragraphs 1 to 4 shall lie with:
 - (a) the Office where it, at its own initiative, has summoned the witnesses or experts;
 - (b) the party concerned where that party has requested the giving of oral evidence by witnesses or experts, subject to the decision on apportionment and fixing of costs pursuant to Articles 85 and 86 of Regulation (EC) No 207/2009 and Article 18 of Implementing Regulation (EU) 2017/1431. Such party shall reimburse the Office for any advances duly paid.

⁽¹⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

*Article 55***Examination of written evidence**

1. The Office shall examine any evidence given or obtained in any proceedings before it to the extent necessary to take a decision in the proceedings in question.
2. The documents or other items of evidence shall be contained in annexes to a submission which shall be numbered consecutively. The submission shall include an index indicating, for each document or item of evidence annexed:
 - (a) the number of the annex;
 - (b) a short description of the document or item and, if applicable, the number of pages;
 - (c) the page number of the submission where the document or item is mentioned.The submitting party may also indicate, in the index of annexes, which specific parts of a document it relies upon in support of its arguments.
3. Where the submission or the annexes do not comply with the requirements set out in paragraph 2, the Office may invite the submitting party to remedy any deficiency, within a period specified by the Office.
4. Where the deficiency is not remedied within the period specified by the Office, and where it is still not possible for the Office to clearly establish to which ground or argument a document or item of evidence refers, that document or item shall not be taken into account.

TITLE VII

NOTIFICATIONS BY THE OFFICE*Article 56***General provisions on notifications**

1. In proceedings before the Office, notifications to be made by the Office shall be in accordance with Article 75(2) of Regulation (EC) No 207/2009 and shall consist in the transmission of the document to be notified to the parties concerned. Transmission may be effected by providing electronic access to that document.
2. Notifications shall be made by one of the following means:
 - (a) electronic means pursuant to Article 57;
 - (b) post or courier pursuant to Article 58;
 - (c) public notification pursuant to Article 59.
3. Where the addressee has indicated contact details for communicating with the addressee through electronic means, the Office shall have the choice between those means and notification by post or courier.

*Article 57***Notification by electronic means**

1. Notification by electronic means covers transmissions by wire, by radio, by optical means or by other electromagnetic means, including the internet.
2. The Executive Director shall determine the details regarding the specific electronic means to be used, the manner in which electronic means will be used, and the time limit for notification by electronic means.

*Article 58***Notification by post or courier**

1. Notwithstanding Article 56(3), decisions subject to a time limit for appeal, summons and other documents as determined by the Executive Director shall be notified by courier service or registered post, in both cases with advice of delivery. All other notifications shall be either by courier service or registered post, whether or not with advice of delivery, or by ordinary post.
2. Notwithstanding Article 56(3), notifications in respect of addressees having neither their domicile nor their principal place of business or a real and effective industrial or commercial establishment in the European Economic Area ('EEA') and who have not appointed a representative as required by Article 92(2) of Regulation (EC) No 207/2009 shall be effected by posting the document requiring notification by ordinary post.
3. Where notification is effected by courier service or registered post, whether or not with advice of delivery, it shall be deemed to be delivered to the addressee on the tenth day following that of its posting, unless the letter has failed to reach the addressee or has reached the addressee at a later date. In the event of any dispute, it shall be for the Office to establish that the letter has reached its destination or to establish the date on which it was delivered to the addressee, as the case may be.
4. Notification by courier service or registered post shall be deemed to have been effected even if the addressee refuses to accept the letter.
5. Notification by ordinary post shall be deemed to have been effected on the tenth day following that of its posting.

*Article 59***Public Notification by public notice**

Where the address of the addressee cannot be established or where after at least one attempt notification in accordance with Article 56(2)(a) and (b) has proved impossible, notification shall be effected by public notice.

*Article 60***Notification to representatives**

1. Where a representative has been appointed or where the applicant first named in a common application is considered to be the common representative pursuant to Article 73(1), notifications shall be addressed to that appointed or common representative.
2. Where a single party has appointed several representatives, notification shall be effected in accordance with Article 2(1)(e) of Implementing Regulation (EU) 2017/1431. Where several parties have appointed a common representative, notification of a single document to the common representative shall be sufficient.
3. A notification or other communication addressed by the Office to the duly authorised representative shall have the same effect as if it had been addressed to the represented person.

*Article 61***Irregularities in notification**

Where a document has reached the addressee and where the Office is unable to prove that it has been duly notified or where provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established as the date of receipt.

*Article 62***Notification of documents in the case of several parties**

Documents emanating from parties shall be notified to the other parties as a matter of course. Notification may be dispensed with where the document contains no new pleadings and the matter is ready for decision.

TITLE VIII

WRITTEN COMMUNICATIONS AND FORMS*Article 63***Communications to the Office in writing or by other means**

1. Applications for the registration of an EU trade mark as well as any other application provided for in Regulation (EC) No 207/2009 and all other communications addressed to the Office shall be submitted as follows:

- (a) by transmitting a communication by electronic means, in which case the indication of the name of the sender shall be deemed to be equivalent to the signature;
- (b) by submitting a signed original of the document in question to the Office by post or courier.

2. In proceedings before the Office, the date on which a communication is received by the Office shall be considered to be its date of filing or submission.

3. Where a communication received by electronic means is incomplete or illegible or where the Office has reasonable doubts as to the accuracy of the transmission, the Office shall inform the sender accordingly and shall invite the sender, within a period to be specified by the Office, to retransmit the original or to submit it in accordance with paragraph (1)(b). Where that request is complied with within the period specified, the date of receipt of the retransmission or of the original shall be deemed to be the date of the receipt of the original communication. However, where the deficiency concerns the granting of a filing date for an application to register a trade mark, the provisions on the filing date shall apply. Where the request is not complied with within the period specified, the communication shall be deemed not to have been received.

*Article 64***Annexes to communications by post or courier**

1. Annexes to communications may be submitted on data carriers in accordance with the technical specifications determined by the Executive Director.

2. Where a communication with annexes is submitted in accordance with Article 63(1)(b) by a party in a proceeding involving more than one party, the party shall submit as many copies of the annexes as there are parties to the proceedings. Annexes shall be indexed in accordance with the requirements laid down in Article 55(2).

*Article 65***Forms**

1. The Office shall make forms available to the public free of charge, which may be completed online, for the purposes of:

- (a) filing an application for an EU trade mark, including, where appropriate, requests for the search reports;

- (b) entering an opposition;
 - (c) applying for revocation of rights;
 - (d) applying for a declaration of invalidity or the assignment of an EU trade mark;
 - (e) applying for the registration of a transfer and the transfer form or document referred to in Article 13(3)(d) of Implementing Regulation (EU) 2017/1431;
 - (f) applying for the registration of a licence;
 - (g) applying for the renewal of an EU trade mark;
 - (h) making an appeal;
 - (i) authorising a representative, in the form of an individual authorisation or a general authorisation;
 - (j) submitting an international application or a subsequent designation pursuant to the Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989 ⁽¹⁾ to the Office.
2. Parties to the proceedings before the Office may also use:
- (a) forms established under the Trademark Law Treaty or pursuant to recommendations of the Assembly of the Paris Union for the Protection of Industrial Property;
 - (b) with the exception of the form referred to in point (i) of paragraph 1, forms with the same content and format as those referred to in paragraph 1.
3. The Office shall make the forms referred to in paragraph 1 available in all the official languages of the Union.

Article 66

Communications by representatives

Any communication addressed to the Office by the duly authorised representative shall have the same effect as if it originated from the represented person.

TITLE IX

TIME LIMITS

Article 67

Calculation and duration of time limits

1. The calculation of a time limit shall start on the day following the day on which the relevant event occurred, either a procedural step or the expiry of another time limit. Where that procedural step is a notification, the event shall be the receipt of the document notified, unless otherwise provided for.
2. Where a time limit is expressed as one year or a certain number of years, it shall expire on the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the relevant event occurred. Where the relevant month has no day with the same number, the time limit shall expire on the last day of that month.
3. Where a time limit is expressed as one month or a certain number of months, it shall expire on the relevant subsequent month on the day which has the same number as the day on which the relevant event occurred. Where the relevant subsequent month has no day with the same number, the time limit shall expire on the last day of that month.

⁽¹⁾ OJ L 296, 14.11.2003, p. 22.

4. Where a time limit is expressed as one week or a certain number of weeks, it shall expire on the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Article 68

Extension of time limits

Subject to specific or maximum time limits laid down in Regulation (EC) No 207/2009, Implementing Regulation (EU) 2017/1431 or this Regulation, the Office may grant an extension of a time limit upon reasoned request. Such request shall be submitted by the party concerned before the time limit in question expires. Where there are two or more parties, the Office may subject the extension of a time limit to the agreement of the other parties.

Article 69

Expiry of time limits in special cases

1. Where a time limit expires on a day on which the Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary post is not delivered in the locality in which the Office is located, the time limit shall be extended until the first day thereafter on which the Office is open for receipt of documents and on which ordinary mail is delivered.
2. Where a time limit expires on a day on which there is a general interruption in the delivery of mail in the Member State where the Office is located, or, if and to the extent that the Executive Director has allowed communications to be sent by electronic means pursuant to Article 79b(1) of Regulation (EC) No 207/2009, on which there is an actual interruption of the Office's connection to those electronic means of communication, the time limit shall be extended until the first day thereafter on which the Office is open for receipt of documents and on which ordinary mail is delivered or the Office's connection to those electronic means of communication is restored.

TITLE X

REVOCATION OF A DECISION

Article 70

Revocation of a decision or entry in the Register

1. Where the Office finds of its own motion or pursuant to corresponding information provided by the parties to the proceedings that a decision or entry in the Register is subject to revocation pursuant to Article 80 of Regulation (EC) No 207/2009, it shall inform the affected party about the intended revocation.
2. The affected party shall submit observations on the intended revocation within a time limit specified by the Office.
3. Where the affected party agrees to the intended revocation or does not submit any observations within the time limit, the Office shall revoke the decision or entry. If the affected party does not agree to the intended revocation, the Office shall take a decision on the intended revocation.
4. Where the intended revocation is likely to affect more than one party, paragraphs 1, 2 and 3 shall apply *mutatis mutandis*. In those cases the observations submitted by one of the parties pursuant to paragraph 3 shall always be communicated to the other party or parties with an invitation to submit observations.
5. Where the revocation of a decision or an entry in the Register affects a decision or entry that has been published, the revocation shall also be published.

6. Competence for revocation pursuant to paragraphs 1 to 4 shall lie with the department or unit which took the decision.

TITLE XI

SUSPENSION OF PROCEEDINGS

Article 71

Suspension of proceedings

1. As regards opposition, revocation and declaration of invalidity and appeal proceedings, the competent department or Board of Appeal may suspend proceedings:

- (a) on its own motion where a suspension is appropriate under the circumstances of the case;
- (b) at the reasoned request of one of the parties in *inter partes* proceedings where a suspension is appropriate under the circumstances of the case, taking into account the interests of the parties and the stage of the proceedings.

2. At the request of both parties in *inter partes* proceedings, the competent department or Board of Appeal shall suspend the proceedings for a period which shall not exceed six months. That suspension may be extended upon a request of both parties up to a total maximum of two years.

3. Any time limits related to the proceedings in question, other than the time limits for the payment of the applicable fee, shall be interrupted as from the date of suspension. Without prejudice to Article 137a(5) of Regulation (EC) No 207/2009, the time limits shall be recalculated to begin again as from the day on which the proceedings are resumed.

4. Where appropriate under the circumstances of the case, the parties may be invited to submit their observations as regards the suspension or resumption of the proceedings.

TITLE XII

INTERRUPTION OF PROCEEDINGS

Article 72

Resumption of proceedings

1. Where proceedings before the Office have been interrupted pursuant to Article 82a(1) of Regulation (EC) No 207/2009, the Office shall be informed of the identity of the person authorised to continue the proceedings before it pursuant to Article 82a(2) of Regulation (EC) No 207/2009. The Office shall communicate to that person and to any interested third parties that the proceedings shall be resumed as from a date to be fixed by the Office.

2. Where, three months after the beginning of the interruption of the proceedings pursuant to Article 82a(1)(c) of Regulation (EC) No 207/2009, the Office has not been informed of the appointment of a new representative, it shall inform the applicant for or proprietor of the EU trade mark that:

- (a) where Article 92(2) of Regulation (EC) No 207/2009 shall apply, the EU trade mark application shall be deemed to be withdrawn if the information is not submitted within two months after the communication is notified;
- (b) where Article 92(2) of Regulation (EC) No 207/2009 does not apply, the proceedings will be resumed with the applicant for or proprietor of the EU trade mark as from the date on which this communication is notified.

3. The time limits in force as regards the applicant for or proprietor of the EU trade mark at the date of interruption of the proceedings, other than the time limit for paying the renewal fees, shall begin again as from the day on which the proceedings are resumed.

TITLE XIII

REPRESENTATION

Article 73

Appointment of a common representative

1. Where there is more than one applicant and the application for an EU trade mark does not name a common representative, the first applicant named in the application having the domicile or principal place of business or a real and effective industrial or commercial establishment in the EEA, or its representative if appointed, shall be considered to be the common representative. Where all of the applicants are obliged to appoint a professional representative, the professional representative who is named first in the application shall be considered to be the common representative. This shall apply *mutatis mutandis* to third parties acting in common in filing notice of opposition or applying for revocation or for a declaration of invalidity and to joint proprietors of an EU trade mark.
2. Where, during the course of proceedings, transfer is made to more than one person and those persons have not appointed a common representative, paragraph 1 shall apply. Where such an appointment is not possible, the Office shall require those persons to appoint a common representative within two months. If that request is not complied with, the Office shall appoint the common representative.

Article 74

Authorisations

1. Employees who represent natural or legal persons within the meaning of Article 92(3) of Regulation (EC) No 207/2009, as well as legal practitioners and professional representatives entered on the list maintained by the Office pursuant to Article 93(2) of Regulation (EC) No 207/2009, shall file a signed authorisation with the Office for insertion in the files pursuant to Article 92(3) and Article 93(1) of Regulation (EC) No 207/2009 only where the Office expressly requires it or where there are several parties to the proceedings in which the representative acts before the Office and the other party expressly asks for it.
2. Where it is required, pursuant to Article 92(3) or Article 93(1) of Regulation (EC) No 207/2009, that a signed authorisation be filed, such an authorisation may be filed in any official language of the Union. It may cover one or more applications or registered trade marks or may be in the form of a general authorisation authorising the representative to act in respect of all proceedings before the Office to which the person giving the authorisation is a party.
3. The Office shall specify a time limit within which such an authorisation shall be filed. Where the authorisation is not filed in due time, proceedings shall be continued with the represented person. Any procedural steps taken by the representative other than the filing of the application shall be deemed not to have been taken if the represented person does not approve them within a time limit specified by the Office.
4. Paragraphs 1 and 2 shall apply *mutatis mutandis* to a document withdrawing an authorisation.
5. Any representative who has ceased to be authorised shall continue to be regarded as the representative until the termination of that representative's authorisation has been communicated to the Office.
6. Subject to any provisions to the contrary contained therein, an authorisation shall not automatically cease to be valid *vis-à-vis* the Office upon the death of the person who gave it.
7. Where the appointment of a representative is communicated to the Office, the name and the business address of the representative shall be indicated in accordance with Article 2(1)(e) of Implementing Regulation (EU) 2017/1431. Where a representative who has already been appointed appears before the Office, that representative shall indicate the name and the identification number attributed to the representative by the Office. Where several representatives are appointed by the same party, they may, notwithstanding any provisions to the contrary in their authorisations, act either jointly or singly.
8. The appointment or authorisation of an association of representatives shall be deemed to be an appointment or authorisation of any representative who practices within that association.

*Article 75***Amendment of the list of professional representatives**

1. Pursuant to Article 93(5) of Regulation (EC) No 207/2009, the entry of a professional representative shall be deleted automatically:
 - (a) in the event of the death or legal incapacity of the professional representative;
 - (b) where the professional representative is no longer a national of one of the Member States of the EEA, unless the Executive Director has granted an exemption under Article 93(4)(b) of Regulation (EC) No 207/2009;
 - (c) where the professional representative no longer has the place of business or employment in the EEA;
 - (d) where the professional representative no longer possesses the entitlement referred to in the first sentence of Article 93(2)(c) of Regulation (EC) No 207/2009.
2. The entry of a professional representative shall be suspended of the Office's own motion where the representative's entitlement to represent natural or legal persons before the Benelux Office for Intellectual Property or the central industrial property office of a Member State as referred to in the first sentence of Article 93(2)(c) of Regulation (EC) No 207/2009 has been suspended.
3. Where the conditions for deletion no longer exist, a person whose entry has been deleted shall, upon request, accompanied by a certificate pursuant to Article 93(3) of Regulation (EC) No 207/2009, be reinstated in the list of professional representatives.
4. The Benelux Office for Intellectual Property and the central industrial property offices of the Member States concerned shall, where they are aware of any relevant events referred to in paragraphs 1 and 2, promptly inform the Office thereof.

TITLE XIV

PROCEDURES CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS*Article 76***Collective and certification marks**

1. Without prejudice to Article 154 of Regulation (EC) No 207/2009, where an international registration designating the Union is dealt with as an EU collective mark or as an EU certification mark pursuant to Article 154a(1) of Regulation (EC) No 207/2009, a notification of an *ex officio* provisional refusal shall also be issued in accordance with Article 33 of Implementing Regulation (EU) 2017/1431 in the following cases:
 - (a) where one of the grounds for refusal provided for in Article 68(1) or (2) of Regulation (EC) No 207/2009, in conjunction with paragraph 3 of that Article, or in Article 74c(1) or (2) of Regulation (EC) No 207/2009, in conjunction with paragraph 3 of that Article exists;
 - (b) where the regulations governing use of the mark have not been submitted in accordance with Article 154a(2) of Regulation (EC) No 207/2009.
2. Notice of amendments to the regulations governing the use of the mark pursuant to Articles 71 and 74f of Regulation (EC) No 207/2009 shall be published in the European Union Trade Marks Bulletin.

*Article 77***Opposition proceedings**

1. Where opposition is entered against an international registration designating the Union pursuant to Article 156 of Regulation (EC) No 207/2009, the notice of opposition shall contain:
 - (a) the number of the international registration against which opposition is entered;

- (b) an indication of the goods or services listed in the international registration against which opposition is entered;
- (c) the name of the holder of the international registration;
- (d) the requirements laid down in Article 2(2)(b) to (h) of this Regulation.

2. Article 2(1), (3) and (4) and Articles 3 to 10 of this Regulation shall apply for the purposes of opposition proceedings relating to international registrations designating the Union, subject to the following conditions:

- (a) any reference to an application for registration of the EU trade mark shall be read as a reference to an international registration;
- (b) any reference to a withdrawal of the application for registration of the EU trade mark shall be read as a reference to the renunciation of the international registration in respect of the Union;
- (c) any reference to the applicant shall be read as a reference to the holder of the international registration.

3. Where the notice of opposition is filed before the expiry of the period of one month referred to in Article 156(2) of Regulation (EC) No 207/2009, the notice of opposition shall be deemed to have been filed on the first day following the expiry of the period of one month.

4. Where the holder of the international registration is obliged to be represented in proceedings before the Office pursuant to Article 92(2) of Regulation (EC) No 207/2009, and where the holder of the international registration has not already appointed a representative within the meaning of Article 93(1) of Regulation (EC) No 207/2009, the communication of the opposition to the holder of the international registration pursuant to Article 6(1) of this Regulation shall contain a request for the appointment of a representative within the meaning of Article 93(1) of Regulation (EC) No 207/2009 within a time limit of two months from the date of notification of the communication.

Where the holder of the international registration fails to appoint a representative within that time limit, the Office shall take a decision refusing the protection of the international registration.

5. The opposition procedure shall be stayed where an *ex officio* provisional refusal of protection is issued pursuant to Article 154 of Regulation (EC) No 207/2009. Where the *ex officio* provisional refusal has led to a decision to refuse protection of the mark which has become final, the Office shall not proceed to a decision and refund the opposition fee and no decision on the apportionment of costs shall be taken.

Article 78

Notification of provisional refusals based on an opposition

1. Where a notice of opposition against an international registration is entered at the Office pursuant to Article 156(2) of Regulation (EC) No 207/2009, or where an opposition is deemed to have been entered pursuant to Article 77(3) of this Regulation, the Office shall issue a notification of provisional refusal of protection based on an opposition to the International Bureau of the World Intellectual Property Organisation ('the International Bureau').

2. The notification of provisional refusal of protection based on an opposition shall contain:

- (a) the number of the international registration;
- (b) the indication that the refusal is based on the fact that an opposition has been filed, together with a reference to the provisions of Article 8 of Regulation (EC) No 207/2009 upon which the opposition relies;
- (c) the name and the address of the opposing party.

3. Where the opposition is based on a trade mark application or registration, the notification referred to in paragraph 2 shall contain the following indications:

- (a) the filing date, the registration date and the priority date, if any;
- (b) the filing number and, the registration number, if different;

- (c) the name and address of the owner;
 - (d) a reproduction of the mark;
 - (e) the list of goods or services upon which the opposition is based.
4. Where the provisional refusal relates to only part of the goods or services, the notification referred to in paragraph 2 shall indicate those goods or services.
5. The Office shall inform the International Bureau of the following:
- (a) where as a result of the opposition proceedings the provisional refusal has been withdrawn, the fact that the mark is protected in the Union;
 - (b) where a decision to refuse protection of the mark has become final following an appeal pursuant to Article 58 of Regulation (EC) No 207/2009 or an action pursuant to Article 65 of Regulation (EC) No 207/2009, the fact that protection of the mark is refused in the Union;
 - (c) where the refusal referred to in point (b) concerns only part of the goods or services, the goods or services for which the mark is protected in the Union.
6. Where more than one provisional refusal has been issued for one international registration pursuant to Article 154(2) of Regulation (EC) No 207/2009 or paragraph 1 of this Article, the communication referred to in paragraph 5 of this Article shall relate to the total or partial refusal of protection of the mark pursuant to Articles 154 and 156 of Regulation (EC) No 207/2009.

Article 79

Statement of grant of protection

1. Where the Office has not issued an *ex officio* provisional notification of refusal pursuant to Article 154 of Regulation (EC) No 207/2009 and no opposition has been received by the Office within the opposition period referred to in Article 156(2) of Regulation (EC) No 207/2009 and the Office has not issued an *ex officio* provisional refusal as a result of the third party observations submitted, the Office shall send a statement of grant of protection to the International Bureau indicating that the mark is protected in the Union.
2. For the purposes of Article 151(2) of Regulation (EC) No 207/2009, the statement of grant of protection referred to in paragraph 1 of this Article shall have the same effect as a statement by the Office that a notice of refusal has been withdrawn.

TITLE XV

FINAL PROVISIONS

Article 80

Repeal

Regulations (EC) No 2868/95 and (EC) No 216/96 are repealed. However, they shall continue to apply to ongoing proceedings where this Regulation does not apply in accordance with its Article 81, until such proceedings are concluded.

Article 81

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. It shall be applicable from 1 October 2017, subject to the following exceptions:
- (a) Articles 2 to 6 shall not apply to notices of opposition entered before the abovementioned date;
 - (b) Articles 7 and 8 shall not apply to opposition proceedings, the adversarial part of which has started before the abovementioned date;
 - (c) Article 9 shall not apply to suspensions made before the abovementioned date;
 - (d) Article 10 shall not apply to requests for proof of use made before the abovementioned date;
 - (e) title III shall not apply to requests for amendment entered before the abovementioned date;
 - (f) Articles 12 to 15 shall not apply to applications for revocation or for a declaration of invalidity or requests for assignment entered before the abovementioned date;
 - (g) Articles 16 and 17 shall not apply to proceedings, the adversarial part of which has started before the abovementioned date;
 - (h) Article 18 shall not apply to suspensions made before the abovementioned date;
 - (i) Article 19 shall not apply to requests for proof of use made before the abovementioned date;
 - (j) title V shall not apply to appeals entered before the abovementioned date;
 - (k) title VI shall not apply to oral proceedings initiated before the abovementioned date or to written evidence where the period for its presentation has started before that date;
 - (l) title VII shall not apply to notifications made before the abovementioned date;
 - (m) title VIII shall not apply to communications received and to forms made available before the abovementioned date;
 - (n) title IX shall not apply to time limits set before the abovementioned date;
 - (o) title X shall not apply to revocations of decisions taken or entries in the Register made before the abovementioned date;
 - (p) title XI shall not apply to suspensions requested by the parties or imposed by the Office before the abovementioned date;
 - (q) title XII shall not apply to proceedings interrupted before the abovementioned date;
 - (r) Article 73 shall not apply to EU trade mark applications received before the abovementioned date;
 - (s) Article 74 shall not apply to representatives appointed before the abovementioned date;
 - (t) Article 75 shall not apply to entries on the list of professional representatives made before the abovementioned date;
 - (u) title XIV shall not apply to designations of the EU trade mark made before the abovementioned date.

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

Done at Brussels, 18 May 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1431**of 18 May 2017****laying down detailed rules for implementing certain provisions of Council Regulation (EC) No 207/2009 on the European Union trade mark**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark ⁽¹⁾, and in particular Article 17(5b), Article 26(4), Article 30(2), Article 33(4), Article 34(5), Article 39(5), Article 44(9), Article 45(3), the second subparagraph of Article 48(3), Article 48a(1), Article 49(8), Article 50(5), Article 67(3), Article 74b(3), the first subparagraph of Article 85(1a), Article 89(4), Article 90(3), Article 113(6), Article 119(10), the second subparagraph of Article 132(2), Article 147(9), Article 148a(2), Article 149(2), Article 153a(6), Article 154(8), Article 158(4), Article 159(10) and Article 161(6) thereof,

Whereas:

- (1) Council Regulation (EC) No 40/94 ⁽²⁾, which was codified as Regulation (EC) No 207/2009, created a system specific to the Union for the protection of trade marks to be obtained at the level of the Union on the basis of an application to the European Union Intellectual Property Office ('the Office').
- (2) Regulation (EU) 2015/2424 of the European Parliament and the Council ⁽³⁾ aligns the powers conferred upon the Commission under Regulation (EC) No 207/2009 to Articles 290 and 291 of the Treaty on the Functioning of the European Union. In order to conform with the new legal framework resulting from that alignment, certain rules should be adopted by means of implementing and delegated acts. The new rules should replace the existing rules which are laid down in Commission Regulation (EC) No 2868/95 ⁽⁴⁾ and aim at implementing Regulation (EC) No 207/2009.
- (3) In the interest of clarity, legal certainty and efficiency, and with a view to facilitating the filing of EU trade mark applications, it is of essential importance to specify, in a clear and exhaustive manner while avoiding unnecessary administrative burdens, the mandatory and optional particulars to be contained in an application for an EU trade mark.
- (4) Regulation (EC) No 207/2009 no longer requires the representation of a mark to be graphic, as long as it enables the competent authorities and the public to determine with clarity and precision the subject matter of protection. It is therefore necessary, in order to ensure legal certainty, to clearly affirm that the precise subject matter of the exclusive right conferred by the registration is defined by the representation. The representation should, where appropriate, be complemented by an indication of the type of the mark concerned. It may be complemented by a description of the sign in appropriate cases. Such an indication or description should accord with the representation.
- (5) Moreover, in order to ensure consistency in the process of filing an EU trade mark application and in order to enhance the effectiveness of clearance searches, it is appropriate to establish general principles to which the representation of every mark must conform, as well as lay down specific rules and requirements for the representation of certain types of trade mark, in accordance with the trade mark's specific nature and attributes.
- (6) The introduction of technical alternatives to graphic representation, in line with new technologies, derives from the necessity of modernisation, bringing the registration process closer to technical developments. At the same

⁽¹⁾ OJ L 78, 24.3.2009, p. 1.

⁽²⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 14.1.1994, p. 1).

⁽³⁾ Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ L 341, 24.12.2015, p. 21).

⁽⁴⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 303, 15.12.1995, p. 1).

time, the technical specifications for filing a representation of the trade mark, including representations filed electronically, should be laid down with a view to ensuring that the EU trade mark system remains interoperable with the system established by the Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989 ⁽¹⁾ (Madrid Protocol). In accordance with Regulation (EC) No 207/2009, and for the sake of increased flexibility and quicker adaptation to technological advances, it should be left to the Executive Director of the Office to lay down the technical specifications for marks filed electronically.

- (7) It is appropriate to streamline proceedings so as to reduce administrative burdens in the filing and process of priority and seniority claims. It should therefore not be necessary any more to submit certified copies of the previous application or registration. Furthermore, the Office should no longer be required to include a copy of the prior trade mark application in the file in the case of a priority claim.
- (8) Following the abolition of the requirement of a graphic representation of a trade mark, certain types of trade marks can be represented in electronic format and accordingly, their publication using conventional means is no longer suitable. In order to guarantee the publication of all the information concerning an application, which is required for reasons of transparency and legal certainty, access to the representation of the trade mark by way of a link to the Office's electronic register should be recognised as a valid form of representation of the sign for publication purposes.
- (9) For the same reasons, it should also be permissible for the Office to issue certificates of registration in which the reproduction of the trade mark is substituted by an electronic link. Furthermore, for certificates issued after the registration, and to cater for requests made at a time when registration particulars may have changed, it is appropriate to provide for the possibility of issuing updated versions of the certificate, where relevant subsequent entries in the register are indicated.
- (10) Practical experience in applying the former regime revealed the need of clarifying certain provisions, in particular in relation to partial transfers and partial surrenders, in order to ensure clarity and legal certainty.
- (11) In order to ensure legal certainty, while keeping a certain level of flexibility, it is necessary to establish a minimum content of the regulations governing the use of EU Collective marks and of EU Certification marks submitted pursuant to Regulation (EC) No 207/2009, with the purpose of enabling market operators to avail themselves of this new type of trade mark protection.
- (12) Maximum rates for representation costs incurred by the successful party to proceedings before the Office should be specified, taking into account the need to ensure that the obligation to bear the costs may not be misused, inter alia, for tactical reasons by the other party.
- (13) For reasons of efficiency, electronic publications by the Office should be allowed.
- (14) It is necessary to ensure an effective and efficient exchange of information between the Office and the authorities of the Member States in the context of administrative cooperation, taking appropriate account of the restrictions to which the inspection of files is subject.
- (15) The requirements concerning requests for conversion should ensure a smooth and effective interface between the EU trade mark system and the national trade mark systems.
- (16) In order to streamline proceedings before the Office, it should be possible to limit the submission of translations to those parts of documents that are relevant to the proceedings. For the same purpose, the Office should be authorised to require proof that a translation corresponds to the original only in the event of doubt.
- (17) For reasons of efficiency, certain decisions of the Office in relation to oppositions or applications for the revocation or a declaration of invalidity of an EU trade mark should be taken by a single member.
- (18) Due to the accession of the Union to the Madrid Protocol, it is necessary that the detailed requirements governing the procedures concerning the international registration of marks be entirely consistent with the rules of that Protocol.

⁽¹⁾ OJ L 296, 14.11.2003, p. 22.

- (19) The detailed rules laid down in this Regulation relate to provisions of Regulation (EC) No 207/2009 that have been amended by Regulation (EU) 2015/2424 with effect from 1 October 2017. It is therefore necessary to defer the applicability of those rules until the same date. At the same time, certain proceedings initiated before that date should continue to be governed until their conclusion by specific provisions of Regulation (EC) No 2868/95.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Implementation Rules,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules specifying:

- (a) the details to be contained in an application for an EU trade mark to be filed at the European Union Intellectual Property Office ('the Office');
- (b) the documentation required for claiming the priority of a previous application and for claiming seniority, and the evidence to be filed for claiming an exhibition priority;
- (c) the details to be contained in the publication of an application for an EU trade mark;
- (d) the content of a declaration of division of an application, how the Office has to process such a declaration, and the details to be contained in the publication of the divisional application;
- (e) the content and form of the certificate of registration;
- (f) the content of a declaration of division of a registration and how the Office has to process such a declaration;
- (g) the details to be contained in requests for alteration and for the change of name or address;
- (h) the content of an application for registration of a transfer, the documentation required to establish a transfer, and how to process applications for partial transfers;
- (i) the details to be contained in a declaration of surrender and the required documentation to establish a third party's agreement;
- (j) the details to be contained in the regulations governing use of an EU collective mark and those governing use of an EU certification mark;
- (k) the maximum rates for costs essential to proceedings and actually incurred;
- (l) certain details concerning publications in the European Union Trade Marks Bulletin and the Official Journal of the Office;
- (m) 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;
- (n) the details to be contained in requests for conversion and in the publication of a request for conversion;
- (o) the extent to which supporting documents to be used in written proceedings before the Office may be filed in any official language of the Union, the need to supply a translation and the requisite standards of translations;
- (p) the decisions to be taken by single members of the opposition and cancellation division;

- (q) concerning the international registration of marks:
 - (i) the form to be used for the filing of an international application;
 - (ii) the facts and decisions of invalidity to be notified to the International Bureau and the relevant time of such notification;
 - (iii) the detailed requirements regarding requests for territorial extension subsequent to international registration;
 - (iv) the details to be contained in a seniority claim for an international registration and the details of the information to be notified to the International Bureau;
 - (v) the details to be contained in the notification of *ex officio* provisional refusal of protection to be sent to the International Bureau;
 - (vi) the details to be contained in the final grant or refusal of protection;
 - (vii) the details to be contained in the notification of invalidation;
 - (viii) the details to be contained in the requests for conversion of an international registration and in the publication of such requests;
 - (ix) the details to be contained in an application for transformation.

TITLE II

APPLICATION PROCEDURE

Article 2

Content of the application

1. The application for an EU trade mark shall contain:
 - (a) a request for registration of the trade mark as an EU trade mark;
 - (b) the name and address of the applicant and the State in which that applicant is domiciled or has a seat or an establishment. Names of natural persons shall be indicated by the person's family name(s) and given name(s). Names of legal entities, as well as bodies falling under Article 3 of Regulation (EC) No 207/2009, shall be indicated by their official designation and include the legal form of the entity, which may be abbreviated in a customary manner. The company's national identification number may also be specified if available. The Office may require the applicant to provide telephone numbers or other contact details for communication by electronic means as defined by the Executive Director. Only one address shall, in principle, be indicated for each applicant. Where several addresses are indicated, only the address mentioned first shall be taken into account, except where the applicant designates one of the addresses as an address for service. Where an identification number has already been given by the Office, it shall be sufficient for the applicant to indicate that number and the name of the applicant;
 - (c) a list of the goods or services for which the trade mark is to be registered, in accordance with Article 28(2) of Regulation (EC) No 207/2009. That list may be selected, in whole or in part, from a database of acceptable terms made available by the Office;
 - (d) a representation of the trade mark in accordance with Article 3 of this Regulation;
 - (e) where the applicant has appointed a representative, the name and business address of that representative or the identification number in accordance with point (b); where the representative has more than one business address or where there are two or more representatives with different business addresses, only the first-mentioned address shall be taken into account as an address for service unless the application indicates which address is to be used as an address for service;
 - (f) where the priority of a previous application is claimed pursuant to Article 30 of Regulation (EC) No 207/2009, a declaration to that effect, stating the date on which and the country in or for which the previous application was filed;
 - (g) where exhibition priority is claimed pursuant to Article 33 of Regulation (EC) No 207/2009, a declaration to that effect, stating the name of the exhibition and the date of the first display of the goods or services;

- (h) where the seniority of one or more earlier trade marks, 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 referred to in Article 34(1) of Regulation (EC) No 207/2009, is claimed together with the application, a declaration to that effect, stating the Member State or Member States in or for which the earlier trade mark is registered, the date from which the relevant registration was effective, the number of the relevant registration, and the goods or services for which the trade mark is registered. Such declaration may also be made within the period referred to in Article 34(1a) of Regulation (EC) No 207/2009;
 - (i) where applicable, a statement that the application is for registration of an EU collective mark pursuant to Article 66 of Regulation (EC) No 207/2009 or for registration of an EU certification mark pursuant to Article 74a of Regulation (EC) No 207/2009;
 - (j) specification of the language in which the application has been filed, and of the second language pursuant to Article 119(3) of Regulation (EC) No 207/2009;
 - (k) the signature of the applicant or the applicant's representative in accordance with Article 63(1) of Commission Delegated Regulation (EU) 2017/1430 ⁽¹⁾;
 - (l) where applicable, the request of a search report referred to in Article 38(1) or (2) of Regulation (EC) No 207/2009.
2. The application may include a claim that the sign has acquired distinctive character through use within the meaning of Article 7(3) of Regulation (EC) No 207/2009, as well as an indication of whether this claim is meant as a principal or subsidiary one. Such claim may also be made within the period referred to in Article 37(3), second sentence, of Regulation (EC) No 207/2009.
3. The application for an EU collective mark or an EU certification mark may include the regulations governing its use. Where such regulations are not included with the application, they shall be submitted within the period referred to in Article 67(1) and Article 74b(1) of Regulation (EC) No 207/2009.
4. If there is more than one applicant, the application may contain the appointment of one applicant or representative as common representative.

Article 3

Representation of the trade mark

1. The trade mark shall be represented in any appropriate form using generally available technology, as long as it can be reproduced on the register in a clear, precise, self-contained, easily accessible, intelligible, durable and objective manner so as to enable the competent authorities and the public to determine with clarity and precision the subject-matter of the protection afforded to its proprietor.
2. The representation of the trade mark shall define the subject matter of the registration. Where the representation is accompanied by a description pursuant to paragraph 3(d), (e), (f)(ii), (h) or paragraph 4, such description shall accord with the representation and shall not extend its scope.
3. Where the application concerns any of the trade mark types listed in points (a) to (j), it shall contain an indication to that effect. Without prejudice to paragraphs 1 or 2, the type of the trade mark and its representation shall accord with each other as follows:
- (a) in the case of a trade mark consisting exclusively of words or letters, numerals, other standard typographic characters or a combination thereof (word mark), the mark shall be represented by submitting a reproduction of the sign in standard script and layout, without any graphic feature or colour;
 - (b) in the case of a trade mark where non-standard characters, stylisation or layout, or a graphic feature or a colour are used (figurative mark), including marks that consist exclusively of figurative elements or of a combination of verbal and figurative elements, the mark shall be represented by submitting a reproduction of the sign showing all its elements and, where applicable, its colours;

⁽¹⁾ Commission Delegated Regulation (EU) 2017/1430 of 18 May 2017 supplementing Council Regulation (EC) No 207/2009 on the European Union trade mark and repealing Commission Regulations (EC) No 2868/95 and (EC) No 216/96 (see page 1 of this Official Journal).

- (c) in the case of a trade mark consisting of, or extending to, a three-dimensional shape, including containers, packaging, the product itself or their appearance (shape mark), the mark shall be represented by submitting either a graphic reproduction of the shape, including computer-generated imaging, or a photographic reproduction. The graphic or photographic reproduction may contain different views. Where the representation is not provided electronically, it may contain up to six different views;
 - (d) in the case of a trade mark consisting of the specific way in which the mark is placed or affixed on the product (position mark), the mark shall be represented by submitting a reproduction which appropriately identifies the position of the mark and its size or proportion with respect to the relevant goods. The elements which do not form part of the subject-matter of the registration shall be visually disclaimed preferably by broken or dotted lines. The representation may be accompanied by a description detailing how the sign is affixed on the goods;
 - (e) in the case of a trade mark consisting exclusively of a set of elements which are repeated regularly (pattern mark), the mark shall be represented by submitting a reproduction showing the pattern of repetition. The representation may be accompanied by a description detailing how its elements are repeated regularly;
 - (f) in the case of a colour mark,
 - (i) where the trade mark consists exclusively of a single colour without contours, the mark shall be represented by submitting a reproduction of the colour and an indication of that colour by reference to a generally recognised colour code;
 - (ii) where the trade mark consists exclusively of a combination of colours without contours, the mark shall be represented by submitting a reproduction that shows the systematic arrangement of the colour combination in a uniform and predetermined manner and an indication of those colours by reference to a generally recognised colour code. A description detailing the systematic arrangement of the colours may also be added;
 - (g) in the case of a trade mark consisting exclusively of a sound or combination of sounds (sound mark), the mark shall be represented by submitting an audio file reproducing the sound or by an accurate representation of the sound in musical notation;
 - (h) in the case of a trade mark consisting of, or extending to, a movement or a change in the position of the elements of the mark (motion mark), the mark shall be represented by submitting a video file or by a series of sequential still images showing the movement or change of position. Where still images are used, they may be numbered or accompanied by a description explaining the sequence;
 - (i) in the case of a trade mark consisting of, or extending to, the combination of image and sound (multimedia mark), the mark shall be represented by submitting an audiovisual file containing the combination of the image and the sound;
 - (j) in the case of a trade mark consisting of elements with holographic characteristics (hologram mark), the mark shall be represented by submitting a video file or a graphic or photographic reproduction containing the views which are necessary to sufficiently identify the holographic effect in its entirety.
4. Where the trade mark is not covered by any of the types listed in paragraph 3, its representation shall comply with the standards set out in paragraph 1 and may be accompanied by a description.
5. Where the representation is provided electronically, the Executive Director of the Office shall determine the formats and size of the electronic file as well as any other relevant technical specifications.
6. Where the representation is not provided electronically, the trade mark shall be reproduced on a single sheet of paper separate from the sheet on which the text of the application appears. The single sheet on which the mark is reproduced shall contain all the relevant views or images and shall not exceed DIN A4 size (29,7 cm high, 21 cm wide). A margin of at least 2,5 cm shall be left all around.
7. Where the correct orientation of the mark is not obvious, it shall be indicated by adding the word 'top' to each reproduction.
8. The reproduction of the mark shall be of such quality as to enable it to be:
- (a) reduced to a size of not less than 8 cm wide by 8 cm high; or
 - (b) enlarged to a size of not more than 8 cm wide by 8 cm high.
9. The filing of a sample or a specimen shall not constitute a proper representation of a trade mark.

*Article 4***Claiming priority**

1. Where the priority of one or more previous applications is claimed together with the application pursuant to Article 30 of Regulation (EC) No 207/2009, the applicant shall indicate the file number of the previous application and file a copy of it within three months from the filing date. That copy shall state the date of filing of the previous application.
2. Where the language of the previous application for which priority is claimed is not one of the languages of the Office, the applicant shall, if required by the Office, provide the Office with a translation of the previous application into the language of the Office used as the first or second language of the application, within a period specified by the Office.
3. Paragraphs 1 and 2 shall apply *mutatis mutandis* where the priority claim relates to one or more previous registrations.

*Article 5***Exhibition priority**

Where an exhibition priority is claimed together with the application pursuant to Article 33(1) of Regulation (EC) No 207/2009, the applicant shall, within three months from the filing date, file a certificate issued at the exhibition by the authority responsible for the protection of industrial property at the exhibition. That certificate shall attest that the mark was used for the goods or services covered by the application. It shall also state the opening date of the exhibition and the date of first public use, if different from the opening date of the exhibition. The certificate shall be accompanied by an identification of the actual use of the mark, duly certified by the authority.

*Article 6***Claiming seniority of a national trade mark before registration of the EU trade mark**

Where the seniority of an earlier registered trade mark, as referred to in Article 34(1) of Regulation (EC) No 207/2009, is claimed pursuant to Article 34(1a) of Regulation (EC) No 207/2009, the applicant shall submit a copy of the relevant registration within three months from the receipt of the seniority claim by the Office.

*Article 7***Content of the publication of an application**

The publication of the application shall contain:

- (a) the applicant's name and address;
- (b) where applicable, the name and business address of the representative appointed by the applicant other than a representative falling within the first sentence of Article 92(3) of Regulation (EC) No 207/2009. Where there is more than one representative with the same business address, only the name and business address of the first-named representative shall be published and it shall be followed by the words 'and others'. Where there are two or more representatives with different business addresses, only the address for service determined pursuant to Article 2(1)(e) of this Regulation shall be published. Where an association of representatives is appointed in accordance with Article 74(8) of Delegated Regulation (EU) 2017/1430, only the name and business address of the association shall be published;
- (c) the representation of the mark, together with the elements and descriptions referred to in Article 3 where applicable. Where the representation has been provided in the form of an electronic file, it shall be made accessible by means of a link to that file;

- (d) the list of goods or services, 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 the classes of that classification;
- (e) the date of filing and the file number;
- (f) where applicable, particulars of the claim of priority filed by the applicant pursuant to Article 30 of Regulation (EC) No 207/2009;
- (g) where applicable, particulars of the claim of exhibition priority filed by the applicant pursuant to Article 33 of Regulation (EC) No 207/2009;
- (h) where applicable, particulars of the claim of seniority filed by the applicant pursuant to Article 34 of Regulation (EC) No 207/2009;
- (i) where applicable, a statement pursuant to Article 7(3) of Regulation (EC) No 207/2009 that the mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it;
- (j) where applicable, a statement that the application is for an EU collective mark or an EU certification mark;
- (k) an indication of the language in which the application was filed and of the second language which the applicant has indicated pursuant to Article 119(3) of Regulation (EC) No 207/2009;
- (l) where applicable, a statement that the application results from a transformation of an international registration designating the Union pursuant to Article 161(2) of Regulation (EC) No 207/2009, 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 subsequently to the international registration pursuant to Article 3 ter (2) of the Madrid Protocol was recorded in the international register and, where applicable, the priority date of the international registration.

Article 8

Division of the application

1. A declaration of the division of the application pursuant to Article 44 of Regulation (EC) No 207/2009 shall contain:
 - (a) the file number of the application;
 - (b) the name and address of the applicant in accordance with Article 2(1)(b) of this Regulation;
 - (c) the list of goods or services subject to the divisional application, or, where the division into more than one divisional application is sought, the list of goods or services for each divisional application;
 - (d) the list of goods or services which are to remain in the original application.
2. The Office shall establish a separate file for each divisional application, which shall consist of a complete copy of the file of the original application, including the declaration of division and the correspondence relating thereto. The Office shall assign a new application number to each divisional application.
3. The publication of each divisional application shall contain the indications and elements laid down in Article 7.

TITLE III

REGISTRATION PROCEDURE

Article 9

Certificate of registration

The certificate of registration issued in accordance with Article 45(2) of Regulation (EC) No 207/2009 shall contain the entries in the Register listed in Article 87(2) of Regulation (EC) No 207/2009 and a statement to the effect that those

entries have been recorded in the Register. Where the representation of the mark is provided in the form of an electronic file, the relevant entry shall be made accessible by means of a link to that file. The certificate shall be complemented, where applicable, by an extract showing all entries to be recorded in the Register in accordance with Article 87(3) of Regulation (EC) No 207/2009 and a statement to the effect that those entries have been recorded in the Register.

Article 10

Content of the request for alteration of a registration

A request for alteration of the registration pursuant to Article 48(2) of Regulation (EC) No 207/2009 shall contain:

- (a) the registration number of the EU trade mark;
- (b) the name and the address of the proprietor of the EU trade mark in accordance with Article 2(1)(b) of this Regulation;
- (c) an indication of the element in the representation of the EU trade mark to be altered and that element in its altered version in accordance with Article 48(3) of Regulation (EC) No 207/2009;
- (d) a representation of the EU trade mark as altered, in accordance with Article 3 of this Regulation.

Article 11

Declaration of the division of a registration

1. A declaration of the division of a registration pursuant to Article 49(1) of Regulation (EC) No 207/2009 shall contain:

- (a) the registration number of the EU trade mark;
- (b) the name and address of the proprietor of the EU trade mark in accordance with Article 2(1)(b) of this Regulation;
- (c) the list of goods or services which are to form the divisional registration, or, where the division into more than one divisional registration is sought, the list of goods or services for each divisional registration;
- (d) the list of goods or services which are to remain in the original registration.

2. The Office shall establish a separate file for the divisional registration, which shall consist of a complete copy of the file of the original registration, including the declaration of division and the correspondence relating thereto. The Office shall assign a new registration number to the divisional registration.

Article 12

Content of a request for the change of the name or address of the proprietor of an EU trade mark or of the applicant for an EU trade mark

A request for the change of the name or address of the proprietor of a registered EU trade mark pursuant to Article 48a(1) of Regulation (EC) No 207/2009 shall contain:

- (a) the registration number of the EU trade mark;
- (b) the name and the address of the proprietor of the EU trade mark as recorded in the Register, unless an identification number has already been given by the Office to the proprietor, in which case it shall be sufficient for the applicant to indicate that number and the proprietor's name;
- (c) the indication of the new name or address of the proprietor of the EU trade mark, in accordance with Article 2(1)(b) of this Regulation.

Points (b) and (c) of the first subparagraph shall apply *mutatis mutandis* for the purposes of a request for the change of the name or address of the applicant for an EU trade mark. Such a request shall also contain the application number.

TITLE IV

TRANSFER

Article 13

Application for registration of a transfer

1. An application for registration of a transfer under Article 17(5a) of Regulation (EC) No 207/2009 shall contain:
 - (a) the registration number of the EU trade mark;
 - (b) particulars of the new proprietor in accordance with Article 2(1)(b) of this Regulation;
 - (c) where not all the registered goods or services are included in the transfer, particulars of the registered goods or services to which the transfer relates;
 - (d) evidence duly establishing the transfer in accordance with Article 17(2) and (3) of Regulation (EC) No 207/2009;
 - (e) where applicable, the name and business address of the representative of the new proprietor, to be set out in accordance with Article 2(1)(e) of this Regulation.
2. Points (b) to (e) of paragraph 1 shall apply *mutatis mutandis* for the purposes of an application for the recording of a transfer of an EU trade mark application.
3. For the purposes of paragraph 1(d), any of the following shall constitute sufficient evidence of transfer:
 - (a) the signing of the application for registration of the transfer by the registered proprietor or a representative of that proprietor, and by the successor in title or a representative of that successor;
 - (b) where the application is submitted by the registered proprietor or a representative of that proprietor, a declaration signed by the successor in title or a representative of that successor that he agrees to the registration of the transfer;
 - (c) where the application for registration is submitted by the successor in title, a declaration, signed by the registered proprietor or a representative of that proprietor, that the registered proprietor agrees to the registration of the successor in title;
 - (d) the signing of a completed transfer form or document, as laid down in Article 65(1)(e) of Delegated Regulation (EU) 2017/1430, by the registered proprietor or a representative of that proprietor and by the successor in title or a representative of that successor.

Article 14

Processing of applications for partial transfer

1. Where the application for registration of a transfer relates only to some of the goods or services for which the mark is registered, the applicant shall distribute the goods or services in the original registration between the remaining registration and the application for partial transfer so that the goods or services in the remaining registration and the new registration do not overlap.
2. The Office shall establish a separate file for the new registration, which shall consist of a complete copy of the file of the original registration, including the application for registration of the partial transfer and the correspondence relating thereto. The Office shall assign a new registration number to the new registration.
3. Paragraphs 1 and 2 shall apply *mutatis mutandis* for the purposes of an application for the recording of a transfer of an EU trade mark application. The Office shall assign a new application number to the new EU trade mark application.

TITLE V

SURRENDER*Article 15***Surrender**

1. A declaration of surrender pursuant to Article 50(2) of Regulation (EC) No 207/2009 shall contain:
 - (a) the registration number of the EU trade mark;
 - (b) the name and address of the proprietor in accordance with Article 2(1)(b) of this Regulation;
 - (c) where surrender is declared only for some of the goods or services for which the mark is registered, an indication of the goods or services for which the mark is to remain registered.
2. Where a right of a third party relating to the EU trade mark is entered in the register, a declaration of consent to the surrender, signed by the proprietor of that right or a representative of that proprietor, shall be sufficient proof of the third party's agreement to the surrender.

TITLE VI

EU COLLECTIVE MARKS AND CERTIFICATION MARKS*Article 16***Content of regulations governing the use of EU collective marks**

The regulations governing EU collective marks referred to in Article 67(1) of Regulation (EC) No 207/2009 shall specify:

- (a) the name of the applicant;
- (b) the object of the association or the object for which the legal person governed by public law is constituted;
- (c) the bodies authorised to represent the association or the legal person governed by public law;
- (d) in the case of an association, the conditions for membership;
- (e) the representation of the EU collective mark;
- (f) the persons authorised to use the EU collective mark;
- (g) where appropriate, the conditions governing use of the EU collective mark, including sanctions;
- (h) the goods or services covered by the EU collective mark including, where appropriate, any limitation introduced as a consequence of the application of Article 7(1)(j), (k) or (l) of Regulation (EC) No 207/2009;
- (i) where appropriate, the authorisation referred to in the second sentence of Article 67(2) of Regulation (EC) No 207/2009.

*Article 17***Content of regulations governing the use of EU certification marks**

The regulations governing use of EU certification marks referred to in Article 74b of Regulation (EC) No 207/2009 shall specify:

- (a) the name of the applicant;
- (b) a declaration that the applicant complies with the requirements laid down in Article 74a(2) of Regulation (EC) No 207/2009;

- (c) the representation of the EU certification mark;
- (d) the goods or services covered by the EU certification mark;
- (e) the characteristics of the goods or services to be certified by the EU certification mark, such as the material, mode of manufacture of goods or performance of services, quality or accuracy;
- (f) the conditions governing the use of the EU certification mark, including sanctions;
- (g) the persons authorised to use the EU certification mark;
- (h) how the certifying body is to test those characteristics and to supervise the use of the EU certification mark.

TITLE VII

COSTS

Article 18

Maximum rates for costs

1. Costs referred to in the first subparagraph of Article 85(1a) of Regulation (EC) No 207/2009 shall be borne by the losing party on the basis of the following maximum rates:

- (a) where the successful party is not represented, the travel and subsistence costs of that party for one person for the outward and return journey between the place of residence or the place of business and the place where oral proceedings are held pursuant to Article 49 of Delegated Regulation (EU) 2017/1430, as follows:
 - (i) the cost of the first-class rail-fare including usual transport supplements where the total distance by rail does not exceed 800 km or the cost of the tourist-class air-fare where the total distance by rail exceeds 800 km or the route includes a sea-crossing;
 - (ii) subsistence costs as laid down in Article 13 of Annex VII to 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⁾;
- (b) travel costs of representatives pursuant to Article 93(1) of Regulation (EC) No 207/2009, at the rates provided for in point (a)(i) of this paragraph;
- (c) cost of representation, within the meaning of Article 93(1) of Regulation (EC) No 207/2009, incurred by the successful party, as follows:
 - (i) in opposition proceedings: EUR 300;
 - (ii) in proceedings relating to the revocation or invalidity of an EU trade mark: EUR 450;
 - (iii) in appeal proceedings: EUR 550;
 - (iv) where oral proceedings have taken place to which the parties have been summoned pursuant to Article 49 of Delegated Regulation (EU) 2017/1430, the amount referred to in points (i), (ii) or (iii) increased by EUR 400.

2. Where there are several applicants or proprietors of the EU trade mark application or registration or where there are several opposing parties or applicants for revocation or declaration of invalidity who have filed the opposition or application for revocation or declaration of invalidity jointly, the losing party shall bear the costs referred to in paragraph 1(a) for one such person only.

3. Where the successful party is represented by more than one representative within the meaning of Article 93(1) of Regulation (EC) No 207/2009, the losing party shall bear the costs referred to in paragraph 1(b) and (c) of this Article for one such person only.

⁽¹⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Staff Regulations of Officials) (OJ L 56, 4.3.1968, p. 1).

4. The losing party shall not be obliged to reimburse the successful party for any costs, expenses and fees relating to proceedings before the Office other than those referred to in paragraphs 1, 2 and 3.

TITLE VIII

PERIODICAL PUBLICATIONS

Article 19

Periodical publications

1. Where particulars are published in the EU Trade Marks Bulletin in accordance with Regulation (EC) No 207/2009, Delegated Regulation (EU) 2017/1430 or this Regulation, the date of issue shown on the Bulletin shall be taken as the date of publication of the particulars.
2. To the extent that the entries regarding the registration of a trade mark contain no changes as compared to the publication of the application, the publication of such entries shall be made by way of a reference to the particulars contained in the publication of the application.
3. The Office may make editions of the Official Journal of the Office publicly available by electronic means.

TITLE IX

ADMINISTRATIVE COOPERATION

Article 20

Exchange of information between the Office and the authorities of the Member States

1. Without prejudice to Article 123c of Regulation (EC) No 207/2009, the Office and the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, shall, upon request, communicate to each other relevant information about the filing of applications for EU trade marks or national marks and about proceedings relating to such applications and the marks registered as a result thereof.
2. The Office and the courts or authorities of the Member States shall exchange information for the purposes of Regulation (EC) No 207/2009 directly or through the central industrial property offices of the Member States.
3. Expenditure in respect of communications under paragraphs 1 and 2 shall be chargeable to the authority making the communications. Such communications shall be exempt from fees.

Article 21

Opening of files for inspection

1. Inspection of files relating to EU trade mark applications or registered EU trade marks by courts or authorities of the Member States shall be of the original documents or of copies thereof, or of technical means of storage if the files are stored in this way.
2. The Office shall, at the time of transmission of files relating to EU trade marks applied for or registered, or copies thereof, to the courts or Public Prosecutors' Offices of the Member States, indicate the restrictions to which the inspection of those files is subject pursuant to Article 88 of Regulation (EC) No 207/2009.
3. Courts or Public Prosecutors' Offices of the Member States may, in the course of proceedings before them, open files or copies thereof transmitted to them by the Office to inspection by third parties. Such inspection shall be subject to Article 88 of Regulation (EC) No 207/2009.

TITLE X

CONVERSION*Article 22***Content of a request for conversion**

A request for conversion of an EU trade mark application or a registered EU trade mark into a national trade mark application pursuant to Article 112 of Regulation (EC) No 207/2009 shall contain:

- (a) the name and the address of the applicant for conversion in accordance with Article 2(1)(b) of this Regulation;
- (b) the filing number of the EU trade mark application or the registration number of the EU trade mark;
- (c) an indication of the ground for conversion in accordance with Article 112(1)(a) or (b) of Regulation (EC) No 207/2009;
- (d) a specification of the Member State or the Member States in respect of which conversion is requested;
- (e) where the request does not relate to all of the goods or services for which the application has been filed or for which the EU trade mark has been registered, an indication of the goods or services for which conversion is requested, and, where conversion is requested in respect of more than one Member State and the list of goods or services is not the same for all Member States, an indication of the respective goods or services for each Member State;
- (f) where conversion is requested, pursuant to Article 112(6) of Regulation (EC) No 207/2009, on the grounds that an EU trade mark has ceased to have effect as a result of a decision of an EU trade mark court, an indication of the date on which that decision became final, and a copy of the decision, which may be submitted in the language in which the decision was given.

*Article 23***Content of the publication of a request for conversion**

The publication of a request for conversion in accordance with Article 113(2) of Regulation (EC) No 207/2009 shall contain:

- (a) the filing number or the registration number of the EU trade mark in respect of which conversion is requested;
- (b) a reference to the previous publication of the request or to the registration in the EU Trade Marks Bulletin;
- (c) an indication of the Member State or Member States in respect of which conversion has been requested;
- (d) where the request does not relate to all of the goods or services for which the application has been filed or for which the EU trade mark has been registered, an indication of the goods or services for which conversion is requested;
- (e) where conversion is requested in respect of more than one Member State and the list of goods or services is not the same for all Member States, an indication of the respective goods or services for each Member State;
- (f) the date of the request for conversion.

TITLE XI

LANGUAGES*Article 24***Filing of supporting documents in written proceedings**

Unless otherwise provided for in this Regulation or in Delegated Regulation (EU) 2017/1430, supporting documents to be used in written proceedings before the Office may be filed in any official language of the Union. Where the language of such documents is not the language of the proceedings as determined in accordance with Article 119 of Regulation (EC) No 207/2009, the Office may, of its own motion or upon reasoned request by the other party, require that a translation be supplied, within a period specified by it, in that language.

*Article 25***Standard of translations**

1. Where a translation of a document is to be filed with the Office, the translation shall identify the document to which it refers and reproduce the structure and contents of the original document. Where a party has indicated that only parts of the document are relevant, the translation may be limited to those parts.

2. Unless otherwise provided for in Regulation (EC) No 207/2009, in Delegated Regulation (EU) 2017/1430 or in this Regulation, a document for which a translation is to be filed shall be deemed not to have been received by the Office in the following cases:

- (a) where the translation is received by the Office after the expiry of the relevant period for submitting the original document or the translation;
- (b) where the certificate referred to in Article 26 of this Regulation is not filed within the period specified by the Office.

*Article 26***Legal authenticity of translations**

In the absence of evidence or indications to the contrary, the Office shall assume that a translation corresponds to the relevant original text. In the event of doubt, the Office may require the filing, within a specific period, of a certificate that the translation corresponds to the original text.

TITLE XII

ORGANISATION OF THE OFFICE*Article 27***Decisions of an Opposition Division or a Cancellation Division taken by a single member**

Pursuant to Article 132(2) or Article 134(2) of Regulation (EC) No 207/2009, a single member of an Opposition Division or of a Cancellation Division shall take the following types of decisions:

- (a) decisions on the apportionment of costs;
- (b) decisions to fix the amount of the costs to be paid pursuant to the first sentence of Article 85(6) of Regulation (EC) No 207/2009;
- (c) decisions to discontinue the proceedings or decisions confirming that there is no need to proceed to a decision on merits;
- (d) decisions to reject an opposition as inadmissible before expiry of the period referred to in Article 6(1) of Delegated Regulation (EU) 2017/1430;
- (e) decisions to stay proceedings;
- (f) decisions to join or separate multiple oppositions pursuant to Article 9(1) of Delegated Regulation (EU) 2017/1430.

TITLE XIII

PROCEDURES CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS*Article 28***Form to be used for the filing of an international application**

The form made available by the Office for the filing of an international application, as referred to in Article 147(1) of Regulation (EC) No 207/2009 shall include all the elements of the official form provided by the International Bureau of the World Intellectual Property Organisation ('the International Bureau'). Applicants may also use the official form provided by the International Bureau.

*Article 29***Facts and decisions on invalidity to be notified to the International Bureau**

1. The Office shall notify the International Bureau within a period of five years from the date of the international registration in the following cases:
 - (a) where the EU trade mark application on which the international registration was based has been withdrawn, is deemed to be withdrawn or has been refused by a final decision, in respect of all or some of the goods or services listed in the international registration;
 - (b) where the EU trade mark on which the international registration was based has ceased to have effect because it is surrendered, has not been renewed, has been revoked, or has been declared invalid by the Office by a final decision or, on the basis of a counterclaim in infringement proceedings, by a EU trade mark court, in respect of all or some of the goods or services listed in the international registration;
 - (c) where the EU trade mark application or the EU trade mark on which the international registration was based has been divided into two applications or registrations.
2. The notification referred to in paragraph 1 shall include:
 - (a) the number of the international registration;
 - (b) the name of the holder of the international registration;
 - (c) the facts and decisions affecting the basic application or registration, as well as the effective date of those facts and decisions;
 - (d) in the case referred to in paragraph 1(a) or (b), the request to cancel the international registration;
 - (e) where the act referred to in paragraph 1(a) or (b) affects the basic application or basic registration only with respect to some of the goods or services, those goods or services, or the goods or services which are not affected;
 - (f) in the case referred to in paragraph 1(c), the number of each EU trade mark application or registration concerned.
3. The Office shall notify the International Bureau at the end of a period of five years from the date of the international registration in the following cases:
 - (a) where an appeal is pending against a decision of an examiner to refuse the EU trade mark application on which the international registration was based pursuant to Article 37 of Regulation (EC) No 207/2009;
 - (b) where an opposition is pending against the EU trade mark application on which the international registration was based;
 - (c) where an application for revocation or an application for declaration of invalidity is pending against the EU trade mark on which the international registration was based;
 - (d) where mention has been made in the Register of EU Trade Marks that a counterclaim for revocation or for declaration of invalidity has been filed before an EU trade mark court against the EU trade mark on which the international registration was based, but no mention has yet been made in the Register of the decision of the EU trade mark court on the counterclaim.
4. Once the proceedings referred to in paragraph 3 have been concluded by means of a final decision or an entry in the register, the Office shall notify the International Bureau in accordance with paragraph 2.
5. For the purposes of paragraphs 1 and 3, an EU trade mark on which the international registration was based shall include an EU trade mark registration resulting from an EU trade mark application on which the international application was based.

*Article 30***Request for territorial extension subsequent to international registration**

1. A request for territorial extension filed at the Office pursuant to Article 149(1) of Regulation (EC) No 207/2009 shall meet the following requirements:
 - (a) it is filed using one of the forms referred to in Article 31 of this Regulation and contains all the indications and information required by the form used;

- (b) it indicates the number of the international registration to which it relates;
- (c) the list of goods or services is covered by the list of goods or services contained in the international registration;
- (d) the applicant is entitled, based on the indications made in the international form, to make a designation subsequent to the international registration through the Office in accordance with Article 2(1)(ii), and Article 3ter(2) of the Madrid Protocol.

2. Where a request for territorial extension does not meet all of the requirements laid down in paragraph 1, the Office shall invite the applicant to remedy the deficiencies within such time-limit as it may specify.

Article 31

Form to be used for a request for territorial extension

The form made available by the Office for a request for territorial extension subsequent to international registration, as referred to in Article 149(1) of Regulation (EC) No 207/2009 shall include all the elements of the official form provided by the International Bureau. Applicants may also use the official form provided by the International Bureau.

Article 32

Seniority claims before the Office

1. Without prejudice to Article 34(6) of Regulation (EC) No 207/2009, a seniority claim pursuant to Article 153a(1) of Regulation (EC) No 207/2009 shall contain:

- (a) the registration number of the international registration;
- (b) the name and address of the holder of the international registration in accordance with Article 2(1)(b) of this Regulation;
- (c) an indication of the Member State or Member States in or for which the earlier trade mark is registered;
- (d) the number and the filing date of the relevant registration;
- (e) an indication of the goods or services for which the earlier trade mark is registered and those in respect of which seniority is claimed;
- (f) a copy of the relevant registration certificate.

2. Where the holder of the international registration is obliged to be represented in proceedings before the Office pursuant to Article 92(2) of Regulation (EC) No 207/2009, the seniority claim shall contain the appointment of a representative within the meaning of Article 93(1) of Regulation (EC) No 207/2009.

3. Where the Office has accepted the seniority claim, it shall inform the International Bureau accordingly by communicating the following:

- (a) the number of the international registration concerned;
- (b) the name of the Member State or Member States in or for which the earlier trade mark is registered;
- (c) the number of the relevant registration;
- (d) the date from which the relevant registration was effective.

Article 33

Notification of *ex officio* provisional refusals to the International Bureau

1. The notification of an *ex officio* provisional refusal of protection of the international registration in whole or in part to be issued to the International Bureau pursuant to Article 154(2) and (5) of Regulation (EC) No 207/2009 shall, without prejudice to the requirements laid down in Article 154(3) and (4) of that Regulation, contain the following:

- (a) the number of the international registration;

- (b) a reference to the provisions of Regulation (EC) No 207/2009 which are relevant for the provisional refusal;
- (c) an indication that the provisional refusal of protection will be confirmed by a decision of the Office if the holder of the international registration does not overcome the grounds for refusal by submitting observations to the Office within a time limit of two months from the date on which the Office issues the provisional refusal;
- (d) where the provisional refusal relates to only part of the goods or services, an indication of those goods or services.

2. In respect of each notification of an *ex officio* provisional refusal to the International Bureau, and provided that the time limit for entering an opposition has expired and that no notification of provisional refusal based on an opposition has been issued pursuant to Article 78(1) of Delegated Regulation (EU) 2017/1430, the Office shall inform the International Bureau of the following:

- (a) where as a result of the proceedings before the Office the provisional refusal has been withdrawn, the fact that the mark is protected in the Union;
- (b) where a decision to refuse protection of the mark has become final, if applicable, following an appeal under Article 58 of Regulation (EC) No 207/2009 or an action under Article 65 of Regulation (EC) No 207/2009, the fact that protection of the mark is refused in the Union;
- (c) where the refusal pursuant to point (b) concerns only part of the goods or services, the goods or services for which the mark is protected in the Union.

Article 34

Notification of invalidation of the effects of an international registration to the International Bureau

The notification referred to in Article 158(3) of Regulation (EC) No 207/2009 shall bear a date and shall contain:

- (a) the indication that the invalidation has been pronounced by the Office, or the indication of the EU trade mark court which has pronounced the invalidation;
- (b) an indication of whether invalidation has been pronounced in the form of revocation of the rights of the holder of the international registration, of a declaration that the trade mark is invalid on absolute grounds, or of a declaration that the trade mark is invalid on relative grounds;
- (c) a statement to the effect that the invalidation is no longer subject to appeal;
- (d) the number of the international registration;
- (e) the name of the holder of the international registration;
- (f) where the invalidation does not concern all the goods or services, an indication of the goods or services in respect of which the invalidation has been pronounced or those in respect of which the invalidation has not been pronounced;
- (g) the date on which the invalidation has been pronounced, together with an indication of the date from when the invalidation is effective.

Article 35

Request for conversion of an international registration into a national trade mark application or into a designation of Member States

1. A request for conversion of an international registration designating the Union into a national trade mark application or into a designation of Member States pursuant to Articles 112 and 159 of Regulation (EC) No 207/2009 shall, without prejudice to the requirements laid down in Article 159(4) to (7) of that Regulation, contain:

- (a) the registration number of the international registration;
- (b) the date of the international registration or the date of the designation of the Union made subsequently to the international registration pursuant to Article 3ter(2) of the Madrid Protocol and, where applicable, particulars of the claim to priority for the international registration pursuant to Article 159(2) of Regulation (EC) No 207/2009, and particulars of the claim to seniority pursuant to Articles 34, 35 or 153 of Regulation (EC) No 207/2009;

- (c) the indications and elements referred to in Article 113(1) of Regulation (EC) No 207/2009 and Article 22(a), (c) and (d) of this Regulation.
- 2. The publication of a request for conversion referred to in paragraph 1 shall contain the details laid down in Article 23.

Article 36

Transformation of an international registration designating the Union into an EU trade mark application

An application for transformation pursuant to Article 161(3) of Regulation (EC) No 207/2009 shall contain, in addition to the indications and elements referred to in Article 2 of this Regulation, the following:

- (a) the number of the international registration which has been cancelled;
- (b) the date on which the international registration was cancelled by the International Bureau;
- (c) as appropriate, the date of the international registration pursuant to Article 3(4) of the Madrid Protocol or the date of recordal of the territorial extension to the Union made subsequently to the international registration pursuant to Article 3ter(2) of the Madrid Protocol;
- (d) where applicable, the date of priority claimed in the international application as entered in the International Register kept by the International Bureau.

TITLE XIV

FINAL PROVISIONS

Article 37

Transitional measures

Notwithstanding Article 80 of Delegated Regulation (EU) 2017/1430, the provisions of Regulation (EC) No 2868/95 shall continue to apply to ongoing proceedings where this Regulation does not apply in accordance with its Article 38, until such proceedings are concluded.

Article 38

Entry into force and application

- 1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- 2. It shall apply from 1 October 2017, subject to the following exceptions:
 - (a) title II shall not apply to applications for an EU trade mark entered before the abovementioned date, as well as to international registrations for which the designation of the Union was made before that date;
 - (b) Article 9 shall not apply to EU trade marks registered before the abovementioned date;
 - (c) Article 10 shall not apply to requests for alteration entered before the abovementioned date;
 - (d) Article 11 shall not apply to declarations of division entered before the abovementioned date;
 - (e) Article 12 shall not apply to requests for the change of name or address entered before the abovementioned date;
 - (f) title IV shall not apply to applications for registration of a transfer entered before the abovementioned date;

- (g) title V shall not apply to declarations of surrender entered before the abovementioned date;
- (h) title VI shall not apply to applications for EU collective marks or EU certification marks entered before the abovementioned date, as well as to international registrations for which the designation of the Union was made before that date;
- (i) title VII shall not apply to costs incurred in proceedings initiated before the abovementioned date;
- (j) title VIII shall not apply to publications made before the abovementioned date;
- (k) title IX shall not apply to requests for information or inspection entered before the abovementioned date;
- (l) title X shall not apply to requests for conversion entered before the abovementioned date;
- (m) title XI shall not apply to supporting documents or translations entered before the abovementioned date;
- (n) title XII shall not apply to decisions taken before the abovementioned date;
- (o) title XIII shall not apply to international applications, notifications of facts and decisions on invalidity of the EU trade mark application or registration on which the international registration was based, requests for territorial extension, seniority claims, notification of *ex officio* provisional refusals, notifications of invalidation of the effects of an international registration, requests for conversion for an international registration into a national trade mark application and applications for transformation of an international registration designating the Union into an EU trade mark application entered or made before the abovementioned date, as the case may be.

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

Done at Brussels, 18 May 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION REGULATION (EU) 2017/1432**of 7 August 2017****amending Regulation (EC) No 1107/2009 of the European Parliament and the Council concerning the placing of plant protection products on the market as regards the criteria for the approval of low-risk active substances****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 22(3) in conjunction with Article 78(1)(a) thereof,

Whereas:

- (1) Regulation (EC) No 1107/2009 aims at facilitating the placing on the market of plant protection products containing low-risk active substances by setting criteria for identification of low-risk active substances and accelerating the authorisation procedure for low-risk products.
- (2) Directive 2009/128/EC of the European Parliament and of the Council ⁽²⁾ promotes integrated pest management with priority for the use of plant protection products and other non-chemical techniques having the least side effects on human health, non-target organisms and the environment. In particular, its Article 12 provides for use of low-risk plant protection products to be considered in the first place in case of use of plant protection products in certain specific areas such as those used by the general public.
- (3) In accordance with Article 22 of Regulation (EC) No 1107/2009, point 5 of Annex II to that Regulation applies to the identification of low-risk active substances complying with the criteria of Article 4 of that Regulation.
- (4) Point 5 of Annex II refers to a number of hazard categories laid down in Regulation (EC) No 1272/2008 of the European Parliament and of the Council ⁽³⁾. For the sake of clarity and to reflect the contemporaneous application of that Regulation, it is appropriate to provide more details as regards those hazard categories.
- (5) In accordance with Article 16 of Directive 2000/60/EC of the European Parliament and of the Council ⁽⁴⁾, substances presenting a significant risk to or via the aquatic environment are defined as priority substances at Union level and listed in Annex X to that Directive. Therefore such listed priority substances should not be considered as low-risk active substances.
- (6) The criteria pertaining to persistence and bioconcentration, in light of current scientific and technical knowledge, could prevent approval as low-risk substances, of certain naturally occurring substances presenting considerably less of a risk than other active substances, such as certain botanicals or minerals. It is therefore appropriate to allow for the approval of such substances as being of low-risk, in cases where they comply with Article 22 of Regulation (EC) No 1107/2009.
- (7) Semio-chemicals, which are substances emitted by plants, animals and other organisms which are used for intra- and inter-species communication, have a target-specific and non-toxic mode of action and are naturally occurring. They are generally effective at very low rates, often comparable to levels that occur naturally ⁽⁵⁾. In light of current scientific and technical knowledge it is also appropriate to provide that semio-chemicals should be considered as low-risk substances.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71).

⁽³⁾ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

⁽⁴⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

⁽⁵⁾ OECD Report of the 5th Biopesticides Steering Group Seminar on application techniques for microbial pest control products and semiochemicals: use scenarios and associated risks ENV/JM/MONO(2015)38.

- (8) Active substances in the meaning of Article 2 of Regulation (EC) No 1107/2009 include micro-organisms whose properties differ from those of chemical substances. It is appropriate that the low-risk criteria applicable to micro-organisms are provided for based on the current scientific and technical knowledge.
- (9) Micro-organisms which are to be included in plant protection products are assessed at strain level in conformity with specific data requirements laid down in part B of the Annex to Commission Regulation (EU) No 283/2013 ⁽¹⁾. Consequently, micro-organisms should be identified and characterised at strain level also when assessed for compliance with the criteria concerning low-risk substances as toxicological properties of different strains belonging to the same species of micro-organism can vary greatly. A micro-organism may be considered to be of low-risk unless at strain level it has demonstrated multiple resistance to antimicrobials used in human or veterinary medicine.
- (10) It should be clearly indicated that baculoviruses which are a host-specific family of viruses infecting exclusively arthropods and occurring predominantly in the insect order of *Lepidoptera*, are to be considered as low-risk substances as there is no scientific evidence that baculoviruses have any negative effect on animals and humans ⁽²⁾. A baculovirus should be considered of low-risk unless at strain level it has demonstrated adverse effects on non-target insects.
- (11) Point 5 of the Annex II to Regulation (EC) No 1107/2009 should therefore be amended accordingly.
- (12) The amended criteria reflect the current state of scientific and technical knowledge and clarify the existing criteria in point 5. The new criteria should therefore apply as soon as possible, except where the relevant Committee has voted on the draft Regulation presented to it without that Regulation having been adopted by the Commission by 28 August 2017.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1107/2009 is amended in accordance with the Annex to this Regulation.

Article 2

Point 5 of Annex II to Regulation (EC) No 1107/2009, as amended by the present Regulation, shall apply as of 28 August 2017, except for procedures where the Committee has voted on the draft Regulation presented to it without that draft Regulation having been adopted by 28 August 2017.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

⁽¹⁾ Commission Regulation (EU) No 283/2013 of 1 March 2013 setting out the data requirements for active substances, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 93, 3.4.2013, p. 1).

⁽²⁾ EFSA BIOHAZ Panel (EFSA Panel on Biological Hazards), 2013. Scientific Opinion on the maintenance of the list of QPS biological agents intentionally added to food and feed (2013 update). *EFSA Journal* 2013;11(11):3449, 107 pp. doi:10.2903/j.efsa.2013.3449.

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

Done at Brussels, 7 August 2017.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Point 5 of Annex II to Regulation (EC) No 1107/2009 is replaced by the following:

‘5. Low-risk active substances

5.1. Active substances other than micro-organisms

5.1.1. An active substance, other than a micro-organism, shall not be considered as being of low-risk where it corresponds to any of the following:

(a) it is or has to be classified in accordance with Regulation (EC) No 1272/2008 as any of the following:

- carcinogenic category 1A, 1B or 2,
- mutagenic category 1A, 1B or 2,
- toxic to reproduction category 1A, 1B or 2,
- skin sensitiser category 1,
- serious damage to eye category 1,
- respiratory sensitiser category 1,
- acute toxicity category 1, 2 or 3,
- specific Target Organ Toxicant, category 1 or 2,
- toxic to aquatic life of acute and chronic category 1 on the basis of appropriate standard tests,
- explosive,
- skin corrosive, category 1A, 1B or 1C;

(b) it has been identified as priority substance under Directive 2000/60/EC;

(c) it is deemed to be an endocrine disruptor;

(d) it has neurotoxic or immunotoxic effects.

5.1.2. An active substance, other than a micro-organism, shall not be considered as being of low-risk where it is persistent (half-life in soil is more than 60 days) or its bio-concentration factor is higher than 100.

However, a naturally occurring active substance which does not correspond to any of points (a) to (d) of point 5.1.1 may be considered as being of low-risk, even if it is persistent (half-life in soil is more than 60 days) or its bio-concentration factor is higher than 100.

5.1.3. An active substance, other than a micro-organism, emitted and used by plants, animals and other organisms for communication, shall be considered as being of low-risk where it does not correspond to any of points (a) to (d) of point 5.1.1.

5.2. Micro-organisms

5.2.1. An active substance which is a micro-organism may be considered as being of low-risk unless at strain level it has demonstrated multiple resistance to anti-microbials used in human or veterinary medicine.

5.2.2. Baculoviruses shall be considered as being of low-risk unless at strain level they have demonstrated adverse effects on non-target insects.’

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1433**of 7 August 2017****entering a name in the register of protected designations of origin and protected geographical indications (Štajerski hmelj (PGI))**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(3)(a) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Slovenia's application to register the name 'Štajerski hmelj' as protected geographical indication (PGI) was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) 'Štajerski hmelj' is a hop plant. Its name means 'Styrian hops'. Styria is the name of a historical region related to the territories of Austria and Slovenia.
- (3) On 26 August 2016 the Commission received the notice of opposition and the reasoned statement of opposition from Austria. The Commission forwarded the notice of opposition and the reasoned statement of opposition sent by Austria to Slovenia on 12 September 2016. Additional documents completing the reasoned statement of opposition were received by the Commission on 20 October 2016.
- (4) Austria opposed to the registration of the name 'Štajerski hmelj' because it would jeopardise the existence of Austrian-Styrian hops. 'Styrian hops' ('Steirischer Hopfen') is used in beer-making and the designation 'Styrian beer from Styrian hops' ('Steirisches Bier aus steirischem Hopfen') is also a brand developed by Brau Union Österreich AG over decades both nationally and internationally. The registration of the name 'Štajerski hmelj' therefore would damage the economic interests both of members of the Association of Hops Producers and of Austrian breweries.
- (5) Finding such opposition admissible, by letter dated 13 December 2016, including the additional documents sent by Austria to complete the reasoned statement of opposition, the Commission invited Slovenia and Austria to engage in appropriate consultations for a period of three months to seek agreement among themselves in accordance with their internal procedures.
- (6) An agreement was reached between the parties. Slovenia communicated the results of the agreement to the Commission on 6 March 2017.
- (7) Slovenia and Austria concluded that the use of the terms 'Hopfen aus der Steiermark' (Hops from Styria) and 'Hopfen aus der Südsteiermark' (Hops from Southern Styria) referring to products produced in these two Austrian regions should continue to be allowed on the market even after the registration of the term 'Štajerski hmelj' as PGI. They recognised that 'Hopfen aus der Steiermark' and 'Hopfen aus der Südsteiermark' are clearly connected to Austria, do not represent in itself a misuse, imitation or evocation of 'Štajerski hmelj' and are not likely to mislead the consumers as to the true origin of the product.
- (8) In any event, in order to avoid any confusion for consumers, Slovenia and Austria agreed that when using the terms 'Hopfen aus der Steiermark' or 'Hopfen aus der Südsteiermark' on the market, clear additional reference to the Austrian origin should be made in labelling or presentation, by means of wording, symbols or presentation, in the same field of vision of the name. Austrian producers should not use elements referring to Slovenia in the packaging. When the products bearing the names 'Hopfen aus der Steiermark' or 'Hopfen aus der Südsteiermark'

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 194, 1.6.2016, p. 6.

are exported they could only be translated into 'Austrian Hops'. When the name 'Štajerski hmelj' needs to be translated into German language the term 'Štajerski' should be maintained as such and no reference should be made to 'Steiermark' or 'Südsteiermark'.

- (9) The Commission notes that the agreement recognises that 'Štajerski hmelj' fulfils the requirements for registration as PGI and sets out certain lawful conditions aiming at ensuring fair usage of the related rights.
- (10) In the light of the above, the name 'Štajerski hmelj' should be entered in the Register of protected designations of origin and protected geographical indications,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Štajerski hmelj' (PGI) is registered.

The name in the first paragraph identifies a product from Class 1.8. Other products of Annex I to the Treaty (spices etc.) of Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽¹⁾.

Article 2

The terms 'Hopfen aus der Steiermark' or 'Hopfen aus der Südsteiermark' referring to hops produced in the Austrian regions of 'Styria' and 'Southern Styria' may continue to be used on the market provided that clear additional reference to the Austrian origin is made in labelling or presentation, by means of wording, symbols or presentation, in the same field of vision of the name. Austrian producers shall not use elements referring to Slovenia in the packaging.

Article 3

The terms 'Hopfen aus der Steiermark' or 'Hopfen aus der Südsteiermark' used for the marketing of hops produced in the Austrian regions of 'Styria' and 'Southern Styria' may only be translated into 'Austrian Hops'. When the name 'Štajerski hmelj' is translated into German language the term 'Štajerski' shall be maintained as such and no reference shall be made to the terms 'Steiermark' or 'Südsteiermark'.

Article 4

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 7 August 2017.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1434
of 7 August 2017
fixing the import duties in the cereals sector applicable from 8 August 2017

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 183 thereof,

Whereas:

- (1) Article 1(1) of Commission Regulation (EU) No 642/2010 ⁽²⁾ states that the import duty on products covered by CN codes 1001 11 00, 1001 19 00, ex 1001 91 20 [common wheat seed], ex 1001 99 00 (high quality common wheat other than for sowing), 1002 10 00, 1002 90 00, 1005 10 90, 1005 90 00, 1007 10 90 and 1007 90 00 is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the CIF import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Article 1(2) of Regulation (EU) No 642/2010 lays down that, for the purposes of calculating the import duty referred to in paragraph 1 of that Article, representative CIF import prices are to be established on a regular basis for the products referred to in that paragraph.
- (3) Under Article 2(1) of Regulation (EU) No 642/2010, the import price to be used for the calculation of the import duty on products referred to in Article 1(1) of that Regulation is the daily CIF representative import price determined as specified in Article 5 of that Regulation.
- (4) Import duties should be fixed for the period from 8 August 2017 and should apply until new import duties are fixed and enter into force.
- (5) Under Article 2(2) of Regulation (EU) No 642/2010, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

From 8 August 2017, the import duties in the cereals sector referred to in Article 1(1) of Regulation (EU) No 642/2010 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 7 August 2017.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EU) No 642/2010 of 20 July 2010 on rules of application (cereal sector import duties) for Council Regulation (EC) No 1234/2007 (OJ L 187, 21.7.2010, p. 5).

ANNEX I

**Import duties on the products referred to in Article 1(1) of Regulation (EU) No 642/2010
applicable from 8 August 2017**

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 11 00	Durum wheat seed	0,00
1001 19 00	High quality durum wheat, other than for sowing	0,00
	Medium quality, other than for sowing	0,00
	Low quality, other than for sowing	0,00
ex 1001 91 20	Common wheat seed	0,00
ex 1001 99 00	High quality common wheat, other than for sowing	0,00
1002 10 00	Rye seed	5,16
1002 90 00	Rye, other than for sowing	5,16
1005 10 90	Maize seed, other than hybrid	5,16
1005 90 00	Maize, other than for sowing ⁽²⁾	5,16
1007 10 90	Grain sorghum, other than hybrids for sowing	5,16
1007 90 00	Grain sorghum, other than for sowing	5,16

- ⁽¹⁾ The importer may benefit, under Article 2(4) of Regulation (EU) No 642/2010, from a reduction in the duty of:
- EUR 3/tonne, where the port of unloading is located on the Mediterranean Sea (beyond the Strait of Gibraltar) or on the Black Sea, for goods arriving in the Union via the Atlantic Ocean or the Suez Canal,
 - EUR 2/tonne, where the port of unloading is located in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or on the Atlantic coast of the Iberian Peninsula, for goods arriving in the Union via the Atlantic Ocean.
- ⁽²⁾ The importer may benefit from a flat-rate reduction of EUR 24/tonne where the conditions laid down in Article 3 of Regulation (EU) No 642/2010 are met.

ANNEXE II

Éléments de calcul des droits fixés à l'annexe I

1. Moyennes sur la période de référence visée à l'article 2, paragraphe 2, du règlement (UE) n° 642/2010:

(EUR/t)

	Blé tendre ⁽¹⁾	Maïs
Bourse	Minnéapolis	Chicago
Cotation	241,54	123,83
Prime sur le Golfe	—	11,46
Prime sur Grands Lacs	31,54	—

⁽¹⁾ Prime positive de 14 EUR/t incorporée [article 5, paragraphe 3, du règlement (UE) n° 642/2010].

2. Moyennes sur la période de référence visée à l'article 2, paragraphe 2, du règlement (UE) n° 642/2010:

Frais de fret: Golfe du Mexique–Rotterdam:	16,58 EUR/t
Frais de fret: Grands Lacs–Rotterdam:	39,83 EUR/t

DECISIONS

COUNCIL DECISION (EU) 2017/1435

of 17 July 2017

on the position to be taken on behalf of the European Union within the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, with regard to the adoption of the EU-Republic of Moldova Association Agenda

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part ⁽¹⁾ (the 'Agreement'), was signed on 27 June 2014 and entered into force on 1 July 2016.
- (2) In accordance with Article 436(1) of the Agreement, the Association Council has the power to adopt recommendations, for the purposes of attaining the objectives of the Agreement.
- (3) To facilitate the application of the Agreement, the Parties have agreed to establish an Association Agenda with a view to providing a list of priorities for their joint work on a sector-by-sector basis.
- (4) The Parties have agreed on an Association Agenda to facilitate the implementation of the Agreement. The Association Agenda will be adopted by the Association Council established by the Agreement.
- (5) The Union's position in the Association Council on the adoption of the EU-Republic of Moldova Association Agenda for 2017-2019 is to be adopted by the Council,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, with regard to the adoption of the EU-Republic of Moldova Association Agenda for 2017-2019, shall be based on the draft Recommendation of the Association Council attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 17 July 2017.

For the Council

The President

F. MOGHERINI

⁽¹⁾ OJ L 260, 30.8.2014, p. 4.

DRAFT

RECOMMENDATION No 1/2017 OF THE EU-REPUBLIC OF MOLDOVA ASSOCIATION COUNCIL
of
on the EU-Republic of Moldova Association Agenda

THE EU-REPUBLIC OF MOLDOVA ASSOCIATION COUNCIL,

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part,

Whereas:

- (1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part ⁽¹⁾ ('the Agreement') was signed on 27 June 2014 and entered into force on 1 July 2016.
- (2) In accordance with Article 436(1) of the Agreement, the Association Council has the power to adopt recommendations, for the purposes of attaining the objectives of the Agreement.
- (3) Pursuant to Article 453(1) of the Agreement, the Parties are to take any general or specific measures required to fulfil their obligations under the Agreement and are to ensure that the objectives set out in the Agreement are attained.
- (4) The review of the European Neighbourhood Policy proposed a new phase of engagement with partners, allowing a greater sense of ownership by both sides.
- (5) The Union and the Republic of Moldova have agreed to consolidate their partnership by agreeing on a set of priorities for the period 2017-2019 with the aim of supporting and strengthening the resilience and stability of the Republic of Moldova while seeking closer political association and deeper economic integration.
- (6) The Parties to the Agreement have agreed on the text of the EU-Republic of Moldova Association Agenda, which will support the implementation of the Agreement, focusing cooperation on commonly identified shared interests,

HAS ADOPTED THE FOLLOWING RECOMMENDATION:

Article 1

The Association Council recommends that the Parties implement the EU-Republic of Moldova Association Agenda, as set out in the Annex.

Article 2

The EU-Republic of Moldova Association Agenda, as set out in the Annex, shall replace the EU-Republic of Moldova Association Agenda which was adopted on 26 June 2014.

Article 3

This Recommendation shall take effect on the day of its adoption.

Done at ..., [day month 2017].

For the Association Council
The Chair

⁽¹⁾ OJ EUL 260, 30.8.2014, p. 4.

COMMISSION DECISION (EU) 2017/1436**of 1 December 2015****on state aid for Lynemouth Power Station biomass conversion SA.38762 (2015/C) which the United Kingdom is planning to implement***(notified under document C(2015) 8441)***(Only the English text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments ⁽¹⁾ pursuant to the provision(s) cited above and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) Following pre-notification contacts, on 17 December 2014 the United Kingdom notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), the support for the Lynemouth Power Station biomass conversion project. It provided the Commission with further evidence on 5 February 2015.
- (2) By letter dated 19 February 2015, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of that aid (the 'Opening Decision').
- (3) The United Kingdom provided its comments on 23 March 2015.
- (4) On 10 April 2015 the Commission decision to initiate the procedure was published in the *Official Journal of the European Union* (see footnote 1). The Commission invited interested parties to submit their comments.
- (5) The Commission received observations from 30 interested parties. It forwarded them to the United Kingdom on 20 May 2015, which was given the opportunity to react. The United Kingdom replied to these observations on 12 June 2015.
- (6) The Commission requested further information on 23 July 2015, which the United Kingdom provided on 29 July 2015. On 7 October 2015 the United Kingdom provided additional information.

2. DETAILED DESCRIPTION OF THE MEASURE**2.1. The Lynemouth biomass conversion project and beneficiary**

- (7) The United Kingdom selected eight renewable projects under the 'Final Investment Decision Enabling for Renewables' (FIDeR) process ⁽²⁾. Support for these selected projects will be provided on the basis of investment contracts. The notified project is part of the eight projects selected under FIDeR.

⁽¹⁾ OJ C 116, 10.4.2015, p. 52.

⁽²⁾ The Commission adopted a decision on six of these eight projects. On 23 July 2014 a no objection decision was adopted for five offshore wind projects (cases SA.38758, SA.38759, SA.38761, SA.38763 and SA.38812 (OJ C 393, 7.11.2014, p. 7) and on 22 January 2015 a no objection decision was adopted for the Teesside CHP biomass project (SA. 38796), decision not yet published).

- (8) The notified aid measure concerns aid for the conversion of the coal fired Lynemouth power station to operate entirely on biomass. The power plant is situated in Northumberland on the north-eastern coast of England. The power plant is owned and operated by Lynemouth Power Limited, a wholly owned subsidiary of RWE Supply & Trading GmbH.
- (9) Lynemouth is a 420 MW coal-fired power station that started commercial operation in 1972. Under the current proposal, the power plant will be retrofitted to operate exclusively on biomass. Due to the characteristics of the combustion process, the plant will be able to burn only industrial-grade wood pellets. The plant will provide electricity to the Northern Power Grid powering the north-east of England. The United Kingdom estimates that project will generate 0,7 % of the United Kingdom future final electricity consumption.
- (10) According to United Kingdom estimates, the project will save approximately 17,7 million tons of CO₂ over its 12-year lifetime and supply about 2,3 TWh of electricity per year. The plant will operate at base-load, thus providing schedulable low-carbon electricity.
- (11) According to the United Kingdom authorities, the plant is designed to operate at 420 MW nominal electrical power with a mean load factor of 77 % ⁽³⁾. The plant will use approximately 1,44-1,56 million dry tonnes of wood pellets a year, most of which imported from the South-East of the United States ([60 %-80 %] of the total fuel required). Approximately [5 %-20 %] of the fuel will be sourced from Europe and the remainder from Canada. The plant conversion will not be designed to be compliant with the waste incineration regulations, and therefore will not be able to burn waste wood.
- (12) The table shows the expected operating parameters of the Lynemouth plant. According to the United Kingdom authorities, the load factor is the product of the amount of time the plant is technically available to generate electricity (subtracting, for example, the time required for maintenance or repair) and the time the plant is actually scheduled to generate (subtracting, for example, the time the Distribution Network Operator curtails the plant due to network congestion; this is sometimes referred to as the gross load factor). The net load factor shown in the table is obtained multiplying a mean technical availability of 80,77 % and a gross load factor of 95,51 %.

Lynemouth operating parameters

Fuel cost (GBP/GJ)	Thermal efficiency (%)	Mean net load factor (%)
7,17	36,9	77

2.2. National legal basis, financing and budget

- (13) The national legal basis is the Energy Act 2013.
- (14) The total budget for this project is estimated at GBP 0,8 billion. The United Kingdom confirmed that no aid will be paid to the beneficiary before the commissioning date.
- (15) The aid will be disbursed by a government counterparty funded through a statutory levy imposed on all licensed electricity suppliers, based on the suppliers' market share, defined by metered electricity use. Suppliers will have to meet their obligations from their own resources but will be free to pass the costs on to consumers as part of their overall pricing strategies.

⁽³⁾ The load factor was estimated at 75,3 % in the original notification and subsequently updated by the United Kingdom.

2.3. The form of the aid, duration and production costs

- (16) Aid to the project would be granted in the form of a variable premium (a so-called 'Contract for Difference' (CfD)) calculated as the difference payment between a pre-fixed price (the strike price) and a measure of the market price for electricity (the reference price). The reference price is a price based on forward wholesale market electricity prices in a given period. The beneficiary will earn money from selling its electricity into the market, but when the average wholesale price of electricity is below the strike price, the beneficiary will receive a top-up payment from a United Kingdom Government-owned counterparty (Low Carbon Contracts Company Ltd — the 'CfD Counterparty') for the difference. The beneficiary will however retain the risks of not achieving the reference price and a volume risk of not achieving the forecasted sales volumes ⁽⁴⁾.
- (17) The support to the biomass project is accordingly determined on the basis of an administratively set strike price. Strike prices were set at such levels that the support under the FIDeR is broadly equivalent to that provided under the current renewable obligation scheme ⁽⁵⁾, in order to smoothen the transition between the support schemes.
- (18) For calculating the strike price for dedicated biomass conversion plants (applicable to the Lynemouth plant), the United Kingdom in particular considered the ranges of levelised costs of electricity in the range of 105 GBP/MWh to 115 GBP/MWh. The United Kingdom explained that the level of the strike price for biomass conversion projects was calculated considering a range in hurdle rates ⁽⁶⁾ of 8,8 %-12,7 %.
- (19) The applicable strike price for this project is 105 GBP/MWh (2012 Prices — indexed annually to the consumer price index). The same amount per MWh will be the maximum strike price offered to biomass conversion plants under the CfD scheme. The levelised costs include the financing costs of new power plants based on a 10 % discount rate for all technologies. The United Kingdom presented in detail how these costs were calculated, the sources of data used and the hurdle rates considered ⁽⁷⁾.
- (20) The key assumptions used for the calculation of strike prices, including for levelised costs, fossil fuel prices, effective tax rates and maximum build assumptions are listed in the United Kingdom Government's levelised cost report ⁽⁸⁾ and the reports from the Department of Energy and Climate Change ⁽⁹⁾. For this purpose, the wholesale price of electricity is assumed to be approximately 55 GBP/MWh in real terms increasing to 65 GBP/MWh in 2020.
- (21) Based on this strike price, the internal rate of return (IRR) for the project was estimated at 9,7 % on a real, pre-tax basis. The proposed investment contract will end on 31 March 2027 regardless of the starting date.

2.4. Cumulation

- (22) The United Kingdom clarified that the projects that have been awarded investment contracts will be unable to receive a CfD for the same electricity generation under the new support scheme. Moreover, no project receiving payments under the investment contracts will be able to receive renewable obligation certificates for the same electricity generation. Finally, renewable generation that receives support through an investment contract will not be able to participate in the Capacity Market or receive investment aid during the term of the investment contract.

⁽⁴⁾ For more detail on the CfD remuneration mechanism, see recitals 17 to 31 of the Commission decision on Case SA.36196 Electricity Market Reform — Contract for Difference for Renewables (C(2014) 5079 final).

⁽⁵⁾ The scheme was originally approved by the Commission Decision of 28 February 2001 in Case N504/2000 and subsequently amended several times. In its current form, the scheme was approved by the Commission in its Decision of 2 April 2013 in case SA.35565 (OJ C 167, 13.6.2013, p. 5). Some specific elements were afterwards approved for Northern Ireland (case SA.36084) and Scotland (case SA.37453).

⁽⁶⁾ The hurdle rate is defined as the minimum rate of return needed to realise a project of this kind.

⁽⁷⁾ All these elements have been published by the UK authorities in the document 'Electricity Generation Costs', available on <https://www.gov.uk/government/publications/electricity-generation-costs>

⁽⁸⁾ 'Electricity Generation Costs December 2013' DECC (2013), available at <https://www.gov.uk/government/publications/electricity-generation-costs>

⁽⁹⁾ Available at <https://www.gov.uk/government/publications/electricity-market-reform-delivery-plan>

- (23) Based on the principles described in recital 22, the United Kingdom confirmed that neither the generator nor any of its direct or indirect stakeholders has received, been granted or applied for any other support from the United Kingdom or from any other Member State.

2.5. Use and availability of biomass

- (24) As explained in recital 9 above, the Lynemouth project will only be able to burn wood pellets. Wood pellets used in the Lynemouth plant will have to satisfy the United Kingdom sustainability criteria including a minimum of 60 % greenhouse gas savings against the average fossil grid intensity in the Union (namely, against the coal and gas average in the Union, measured using the methodology set out in the Renewable Energy Directive). These targets will be reinforced to a minimum of 72 % greenhouse gas saving from April 2020, and then to a minimum of 75 % saving from April 2025. The United Kingdom sustainability criteria also contain provisions to protect biodiversity and avoid unsustainable practices ⁽¹⁰⁾.
- (25) The global trade of wood chips was estimated at 22 million tonnes per year in 2011. Demand in the Union is higher than production which means wood pellets are imported in the Union. Net imports of wood pellets in the Union in the same year were estimated at 3,2 million tonnes per year and increased to about 4 million tonnes per year in 2012.
- (26) The global wood pellet consumption was estimated at 22,4 to 24,5 million tonnes ⁽¹¹⁾ in 2012, of which approximately 15,1 million tonnes were consumed in the Union. The Member States consuming most wood pellets in power plants are the United Kingdom (1,3 million tonnes, in 2013) ⁽¹²⁾, Belgium (1,3 million tonnes), Netherlands (1,2 million tonnes), Denmark (1 million tonnes) and Sweden (1 million tonnes).

2.6. Transparency

- (27) With regard to reporting and transparency, the United Kingdom indicated that all the investment contracts awarded through the FIDeR process have been published online in the form in which they were signed ⁽¹³⁾.

2.7. The decision to initiate the formal investigation

- (28) On 19 February 2015 the Commission decided to initiate the formal investigation procedure regarding the compatibility of the aid with the internal market, in particular in view of the proportionality of the aid and the risk of market distortion.
- (29) More specifically, the Commission concluded that the risk of overcompensation could not be excluded. The Commission noted that the IRR was significantly affected by the initial assumptions used in the financial calculations and that the values of the operating parameters initially estimated by the United Kingdom were not fully consistent with available market information.
- (30) The Commission carried out a sensitivity calculation to estimate the impact on the IRR of changes in the plant average thermal efficiency, load factor and fuel cost. According to these calculations, if the thermal efficiency and the load factor were to increase by 5 % and fuel cost to decrease by 5 %, the IRR (on pre-tax real basis) would have increased from 9,7 % to 23,1 %. A similar 10 % variation of the three parameters would have increased the IRR to 31,7 %. The Commission therefore considered that uncertainties in the assumptions used in the cost calculation might result in potential overcompensation.
- (31) Moreover, the Commission expressed concern that the amount of feedstock required to operate Lynemouth entirely on biomass is significant compared to both the European Union and the global market. On the basis of 2012 data, the Lynemouth power station would amount to approximately 7,4 % of the world wood pellet consumption, 11,2 % of the European consumption and 88,2 % of the United Kingdom consumption with increasing imports.

⁽¹⁰⁾ For more details, see: www.gov.uk/government/consultations/ensuring-biomass-affordability-and-value-for-money-under-the-renewables-obligation

⁽¹¹⁾ AEBIOM European Bioenergy Outlook 2013.

⁽¹²⁾ AEBIOM European Bioenergy Outlook 2013.

⁽¹³⁾ Available on the website <https://www.gov.uk/government/publications/final-investment-decision-fid-enabling-for-renewables-investment-contracts>

- (32) The Commission expressed doubts that such demand increase in a short timeframe could be accommodated by the wood pellet market without significant market distortions. The Commission further noted that wood biomass is used as raw material in a number of industries (such as the pulp and paper or board manufacturing) and could not exclude market distortions.

3. COMMENTS FROM INTERESTED PARTIES

- (33) The Commission received 30 comments from concerned stakeholders. Comments from trade organisations ⁽¹⁴⁾ and United Kingdom Members of Parliament highlighted the economic and social importance of the project. Support letters from various stakeholders were also submitted by Lynemouth Power Ltd and the Spencer Group.
- (34) Four non-governmental organisations stressed the environmental risks of the project ⁽¹⁵⁾. In particular, the submissions questioned the CO₂ savings obtained by generating electricity from imported biomass and expressed concerns on possible negative impacts on air pollution and biodiversity.
- (35) Six organisations provided argument supporting the view that the Lynemouth project may distort competition in the raw material market for wood fibre. The submissions received covered: the effect of increase use of biomass for energy on the global wood fibre market (UK Wood Panel Industries Federation, WPF) and on the European price for raw materials (European Panel Federation, EPF); the effects on the pulpwood market in the United States (US) South-East (the American Forest & Paper Association, Steptoe and Johnson on behalf of a stakeholder from the US South-East and a US-based pulpwood user) and effects in the North America market for wood residues (Mulch & Soil Council).
- (36) A US-based pulpwood user and Steptoe and Johnson claim that, although the manufacturing sites concerned are based in the US, semi-finished materials are exported to the Union. Therefore, potential market distortion might affect operations in the Union. The contributions submitted by the WPF and the EPF argue that the Lynemouth conversion project may distort competition in the United Kingdom and European Union market for wood fibre. To substantiate their claim, the WPF provided data showing an increase in prices for sawdust, wood chips and round wood in the United Kingdom market based on a survey. The data (graph) show a price increase of approximately 80 % (data not corrected for inflation). The EPF submitted a graph about prices of roundwood, sawdust and wood chips in Europe taken from a study by consultant Ecofys ⁽¹⁶⁾. The data show an increase of approximately 40 % from 2009. However, the data show that the price increase is limited to some countries (Austria, France, Italy, Sweden, United Kingdom) while prices were relatively constant in others (Belgium, Lithuania, Slovakia, Spain).
- (37) Submissions from a US-based pulpwood user, the American Forest & Paper Association ('AFPA') and Steptoe and Johnson argue that, since most of the wood pellets will be imported from the US South-East, the proposed measure might distort competition in the US market.
- (38) A US-based pulpwood user and AFPA submitted that the total timber output in the US South-East in 2011 amounted to 230 million green tonnes ('GT', equivalent to 107 dry tonnes since due to moisture content 2,15 GT are required to obtain 1 dry tonne ⁽¹⁷⁾). Out of this total approximately 115 million GT was pulpwood (mostly softwood pulpwood). Figure 1 shows the total harvest in the US South-East per type of product ⁽¹⁸⁾.

⁽¹⁴⁾ North East Local Enterprise Partnership; North East Chamber of Commerce; UK Trade & Investment.

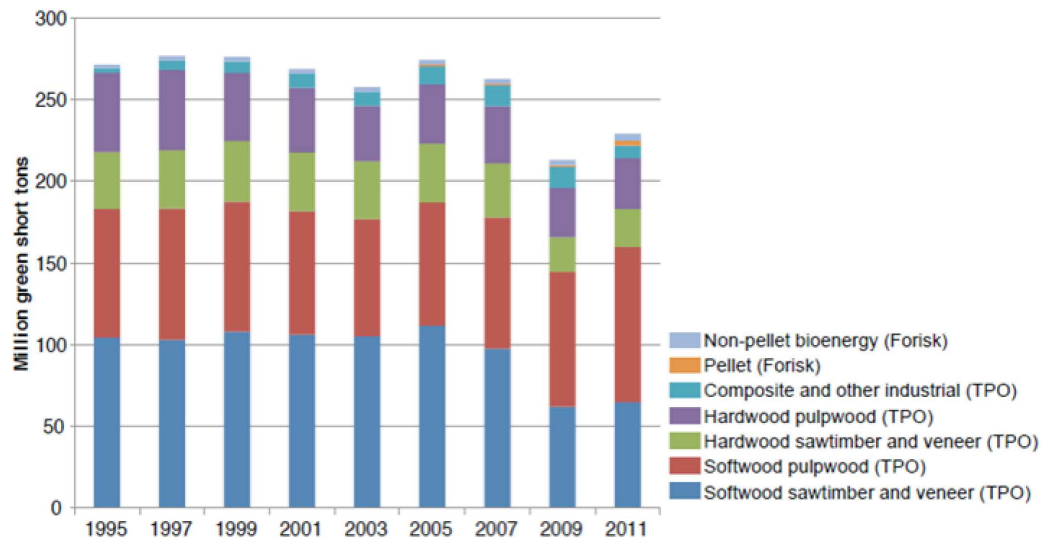
⁽¹⁵⁾ Friends of the Earth; Natural Resources Defense Council; Fern and Biofuel watch.

⁽¹⁶⁾ Ecofys (2014), Carbon Leakage assessment for the European Panel Federation — Wood panel industry and the carbon leakage list 2015-2019 criteria.

⁽¹⁷⁾ For reasons of consistency all data regarding the pulpwood market and the US South-East market are presented in green tonnes. The conversion factor of 2,15 GT per 1 dry tonne is consistently used.

⁽¹⁸⁾ Karen Lee Abt, Robert C. Abt, Christopher S. Galik, and Kenneth E. Skogn. 2014. 'Effect of Policies on Pellet Production and Forests in the US South'. Accessible at: <http://www.srs.fs.usda.gov/pubs/47281> This report was submitted in the context of the opening phase of the investigation by several parties.

Figure 1

Timber product output (TPO) removals for US South for 1995-2011 (Abt et al., 2014)

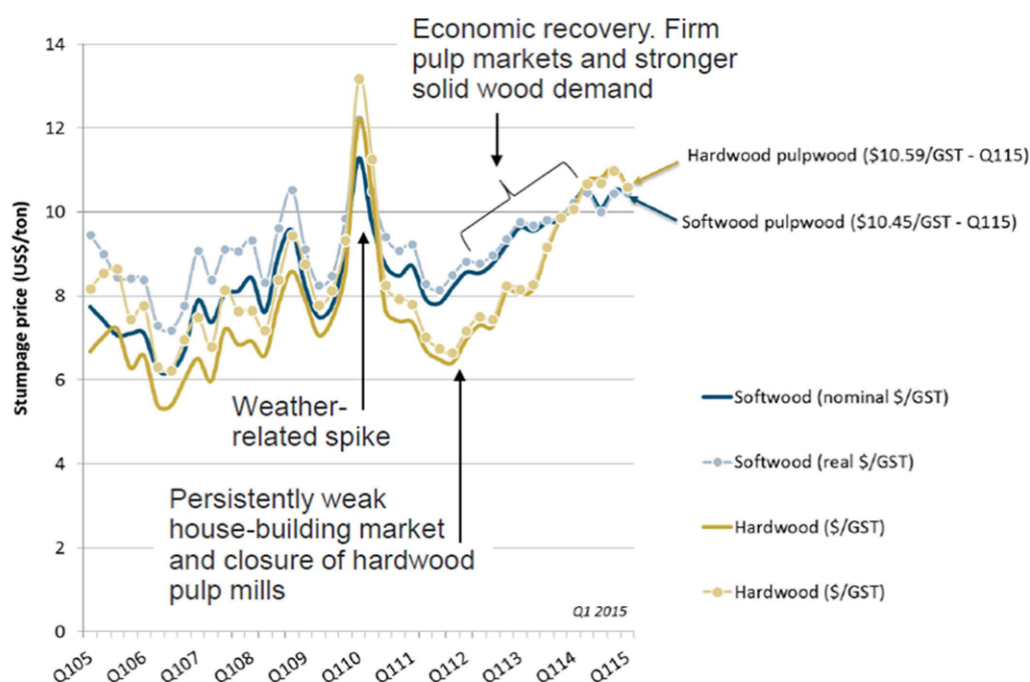
- (39) The data submitted in the report show an increase in pellet production from the US South-East in recent years and during the same period an increase in pellet exports from the US South-East. Based on the same report, wood pellet production capacity in the US South-East increased from 2 million GT in 2010 to 6 million GT in 2011. Nearly all of this new capacity was developed to produce pellets for export to EU Member States.
- (40) According to data submitted by Steptoe and Johnson, the price of pine pulpwood in the US South-East increased by 25 % between 2011 and 2014 and the price of hardwood pulpwood by 60 %. According to AFPA, pine pulpwood stumpage prices in the US South increased by 11 % in 2013 and by 10 % in 2014. These parties claim that the increase is caused by increased wood pellet production. The pulpwood user mentioned in point 36 above does not provide cost data, but makes similar claims about the risk of increased raw material price due to subsidised wood pellet use.
- (41) According to data submitted by Steptoe and Johnson, the price of pine pulpwood in the US South-East increased by 25 % between 2011 and 2014 and the price of hardwood pulpwood by 60 %. The parties mentioned claimed that the increase is caused by increased wood pellet production.
- (42) To support this claim, a US-based pulpwood user and AFPA submitted a theoretical study analysing the economic impact of large increase in pellet production on the US South-East wood fibre market ⁽¹⁹⁾. This study models scenarios with high penetration of biomass. The authors estimated the future demand of wood pellets taking into account high penetration of bioenergy (including domestic and international policy trends and the forecasts in the EU National Renewable Energy Action Plans). The model assumes that by 2020 as much as 44 million GT of pellets and wood chips per year will be produced in the US South-East for energy use. According to the model used, this high volume of additional demand causes a significant increase in raw material price in the short term (in the range of 70 % on average for the whole market). In the long term, however, forestry resources would increase to meet demand and prices would decrease.
- (43) Steptoe and Johnson noted that planting of commercial trees in the US South-East has been declining for 3 decades. Combined with increased pellet production, this might lead to negative growth rates in the region leading to unsustainable environmental practices and loss of biodiversity.

⁽¹⁹⁾ Abt et al., 2014.

- (44) A US-based pulpwood user, the EPF and Steptoe and Johnson expressed concerns about the cumulated impact of other large projects (in particular those of the Drax power plant in the United Kingdom) and of the European biomass policy in general.
- (45) The Mulch & Soil Council raised concerns about possible distortion in the North America market for wood residues.
- (46) The WPF, Steptoe and Johnson and the Mulch & Soil Council questioned the CO₂ savings obtained by generating electricity from biomass imported from North America. Steptoe and Johnson also raised doubts about the proportionality of the aid and provided further data about the source of the wood used for pellet manufacturing and the raw material needs of the packaging industry.
- (47) Twelve ⁽²⁰⁾ companies and industry associations submitted technical arguments stressing the soundness and the positive impact of the project. The submissions cover topics including (among others): the project IRR; the availability and sustainability of biomass; the role of biomass energy in reaching the United Kingdom renewable targets; the plant's expected operating parameters and the logistic of the fuel supply.
- (48) In particular, the United States Industrial Pellet Association highlighted the emission reduction associated with bioenergy and sustainability of pellets produced in the US. They also provided data on the price of raw materials in the US South-East (see Figure 2 below).
- (49) The Wood Pellet Association of Canada reported data on the availability of wood pellets. In particular the submission quotes a study by consultant Pöyry ⁽²¹⁾ according to which the supply regions United States South-East, West Canada, and Russia collectively have 50 million oven dry tonnes of surplus biomass feedstock.

Figure 2

Stumpage prices in the US South-East



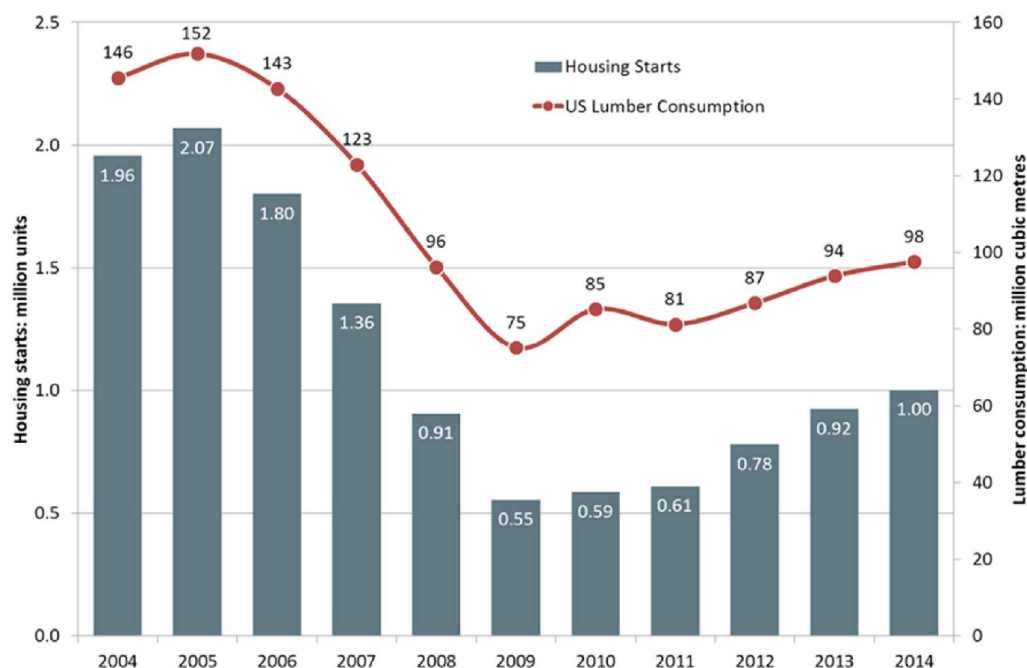
⁽²⁰⁾ RWE Group; EDF; Lynemouth Power Ltd; the Renewable Energy Association; Port of Tyne; Dong Energy; Energy UK; US pellets association; Canada pellet association; Enviva; Doosan; European Pellet Council.

⁽²¹⁾ Pöyry. The Risk of Indirect Wood Use Change, Final Report Prepared for Energie Nederland. July 2014.

- (50) Enviva submitted data on the projected demand and supply for wood pellets. According to Enviva, there were wood pellet projects in development in the first quarter of 2015, which, once completed, will together add 18,1 million dry tonnes to the global production capacity. The submission also provided data on the US lumber production (see Figure 3).

Figure 3

US housing starts and lumber consumption, 2004-2014



- (51) The European Pellet Council provided data on the price and availability of wood pellets and on raw material prices in the Union and in the US. According to the European Pellet Council, the strong increase of pellet demand between 2012 and 2014 did not lead to a significant increase in pellet prices. To substantiate this argument, the European Pellet Council submitted data on the price of wood pellets in the US from December 2013 to April 2015 and in the Union from January 2011 to March 2015. In both cases no increase in prices could be observed.
- (52) According to these data, the strong increase of pellet demand between 2012 and 2014 did not lead to a significant increase in pellet prices.
- (53) Finally, one contribution (Société Générale) submitted data on the profitability of the project.

4. COMMENTS FROM THE UNITED KINGDOM

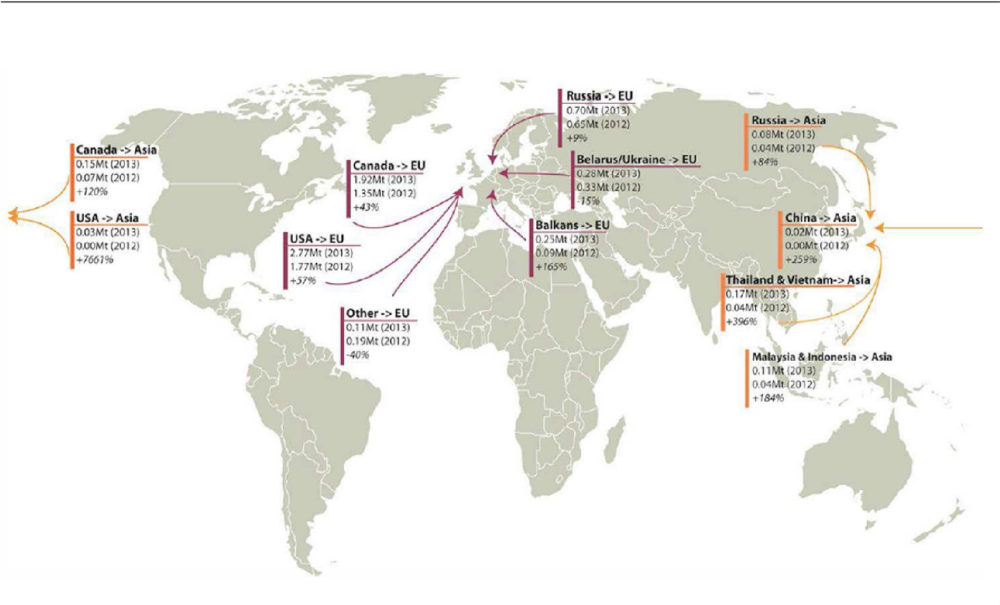
- (54) The United Kingdom provided additional information on the operating parameters of the Lynemouth power plant. Following a review of other biomass plants, the plant load factor was increased from 75,3 % to 77 % (as reported in the table, see also footnote 3). In addition, the United Kingdom showed that the thermal efficiency of pulverised coal power plants is around 36 % for the United Kingdom coal fleet for the 2009-2013 period. Finally, the United Kingdom provided a breakdown of the fuel costs and explained that all operating parameters are robust as they are benchmarked against other plants and reviewed by independent experts ⁽²²⁾.
- (55) The United Kingdom claims that the economics of the Lynemouth project changed considerably since the notification. In particular, the project was foreseen to be commissioned in the third quarter of 2016, but the United Kingdom estimates that the project will now be commissioned by the second half of 2017. Since the support to biomass conversion will end in March 2027 regardless of the starting date, the project lost approximately one year of subsidy. The project also had increased capital costs. Moreover, due to a policy change, from August 2015 renewable sources of electricity would not be exempt from the climate change levy (a carbon tax). Finally, the depreciation of the pound with respect to the US dollar further reduced the profitability of the project.

⁽²²⁾ Oxera, Parsons, Brinckerhoff and Ramboll.

- (56) According to the United Kingdom authorities, these developments significantly reduced the profitability of the project. The estimated IRR is now approximately [3 %-8 %] on a real, pre-tax basis.
- (57) In 2014 the global wood pellet market grew to reach 27 million dry tonnes. The United Kingdom also provided data on the trade in the global wood pellet market (see Figure 4). Wood pellet consumption in the Union almost doubled from approximately 8 million dry tonnes in 2009 to approximately 16 million dry tonnes in 2013 ⁽²³⁾.

Figure 4

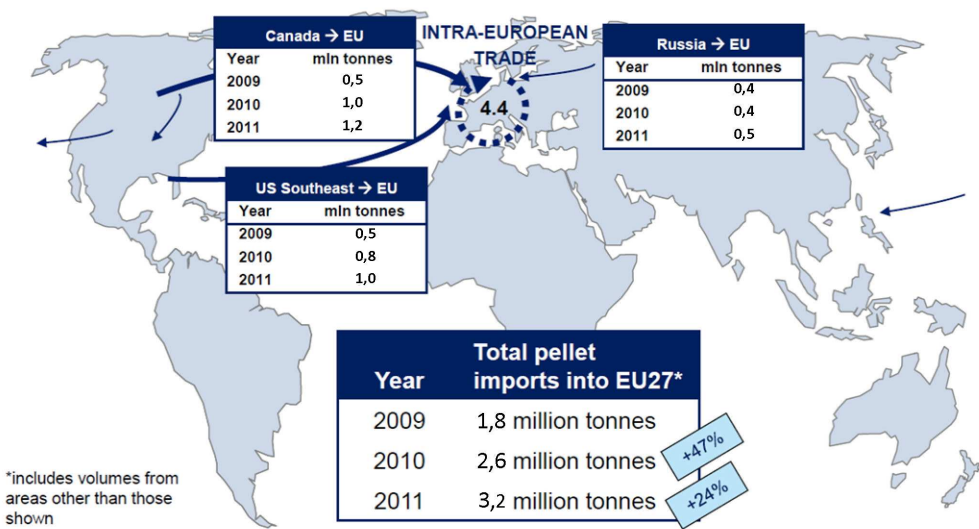
Trade in wood pellet imports in the EU in dry tonnes



- (58) Figure 5 shows that the pellet imports in the Union increased from 1,8 million dry tonnes in 2009 to 3,2 million dry tonnes in 2011. In 2012 the imports to the Union amounted to approximately 4 million dry tonnes and imports are expected to increase in the coming years. In 2014 wood pellet imports from the US South-East to the Union amounted to approximately 7,3 million dry tonnes ⁽²⁴⁾.

Figure 5

Wood pellet import in the EU in dry tonnes



Source: UK data.

⁽²³⁾ AEBIOM, 2013.

⁽²⁴⁾ UK data.

- (59) The United Kingdom also clarified that the vast majority of available pellet supply is currently bought under individually negotiated contracts (usually lasting 5 to 10 years). The wood pellet spot market represents a very limited proportion of the overall wood pellet supply. Pellet mills can be built in 18 to 30 months and, potentially, backed by a long-term supply contract. Due to low barriers for new market entrants, the United Kingdom authorities claim that the wood pellet market can accommodate the increase in demand required to supply Lynemouth.
- (60) To support this point, the United Kingdom compared pellet consumption in the Union with the spot price in the US South-East. As shown in Figure 5, imports to the Union from the US South-East doubled from 2009 to 2011. During this period, the prices on the spot market did not change substantially despite increased imports in the Union as shown in Figure 6.

Figure 6

Wood pellet consumption and FOB US South-East spot wood pellet prices (2009-2013)

[...] (*)

- (61) The United Kingdom also provided data on the proposed supply chain. Lynemouth plans to source approximately [60 %-80 %] of the required pellets from the US South-East. Approximately [5 %-20 %] will be sourced from other Member States and the remainder from West Canada. Lynemouth has identified [...] possible suppliers, of which [...] in [...] different States in the US South-East and [...] in Europe. Lynemouth does not intend to source any biomass from the United Kingdom.
- (62) According to the United Kingdom, the increase in raw material prices can be explained by a lack of sawmill residues. The United Kingdom explained that mill residues are produced in large quantities when processing sawtimber and can be used for wood pellet production as well as for other uses. However, the availability of sawmill residues is limited and tied to the production of sawtimber. According to the United Kingdom, the US building sector didn't fully recover since the financial crisis. Reduced housing starts and sawtimber production reduces the available supply of mill residues that could be used for wood pulp and wood pellet production. In the United Kingdom's view, the scarcity of sawmill residues contributes significantly to the increase in raw material prices.
- (63) To support this argument, the United Kingdom authorities claim that the raw material price increase in local markets does not correlate with increased pellet production. Figure 7 shows the price increase in local US markets from the second quarter of 2013 to the first quarter of 2015, indicating which markets have seen a significant increase of pellet production.

Figure 7

Pine stumpage price increase in US local markets Q2 2013-Q1 2015

[...] (*)

- (64) Finally, the United Kingdom confirmed that, through amendment of the contract provisions, the Lynemouth plant can be required to amend the sustainability criteria described in recital 24, for instance in case of any future European mandatory sustainability criteria for solid biomass.

5. ASSESSMENT OF THE MEASURE

- (65) A measure constitutes State aid within the meaning of Article 107(1) TFEU if it is 'granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods [...] in so far as it affects trade between Member States'.

(*) Business secret.

- (66) As set out in the Opening Decision of 19 February 2015, the beneficiary will receive operating aid in form of a variable premium (see recitals 16 to 19 above) from the United Kingdom Government-owned counterparty, the Low Carbon Contracts Company Ltd, for the electricity generated. The measure favours the generation of electricity from renewable energy sources (in this case biomass) by the selected beneficiary. Electricity is widely traded between Member States. The notified measure might therefore distort competition on the electricity market and affect trade between the Member States. Moreover, the plant will compete for biomass fuel in the raw material market. More specifically, due to a lack of sufficient local forestry resources, most of the solid biomass needed to fuel the plant will be imported from abroad (see recital 61).
- (67) The Commission concludes that the notified measure constitutes State aid in the meaning of Article 107 of the Treaty ⁽²⁵⁾.

5.1. Legality of the aid

- (68) Based on the information provided by the United Kingdom, the Commission notes that no final investment decision has been taken. No payments will be made before State aid approval has been obtained. The Commission considers therefore that the United Kingdom has fulfilled its obligations under Article 108(3) TFEU.

5.2. Compatibility of the aid

- (69) The Commission notes that the notified measure aims at promoting the generation of electricity from renewable energy sources, namely from solid biomass. The notified measure falls within the scope of the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG) ⁽²⁶⁾. The Commission has therefore assessed the notified measure based on the general compatibility provisions of the EEAG (set out in Section 3.2 EEAG) and based on the specific compatibility criteria for operating aid granted for electricity from renewable energy sources (Section 3.3.2.1 EEAG).

5.2.1. Objective of common interest

- (70) As concluded in its Opening Decision, the Commission notes that the aim of the notified aid measure is to help the United Kingdom to reach the renewable energy targets and the CO₂ reduction objectives set by the EU as part of its EU 2020 strategy ⁽²⁷⁾. As described in recital 10 above, according estimates from the United Kingdom, the plant is expected to generate about 2,3 TWh of renewable electricity saving 17,7 million tons of CO₂. Therefore, in line with paragraphs 30, 31 and 33(a) EEAG, the United Kingdom explicitly provided the expected CO₂ savings and renewable electricity expected from the project. The Commission concludes that the notified aid measure is aimed at an objective of common interest in accordance with Article 107(3)(c) of the Treaty.
- (71) Environmental organisations and Steptoe and Johnson raised concerns about the environmental effects of the project. The United Kingdom confirmed that aid will only be granted to biomass meeting the definitions set out in the EEAG (see recital 6 EEAG). The Commission recalls that the aid will meet the environmental objectives set out in recital 69 and thereby meets the environmental test to be undertaken for State aid control purposes. In addition to meeting this State aid relevant test, the plant will have to respect all applicable environmental legislation, in particular regarding impacts on air pollution. The plant is subject to and has to comply with Directive 2010/75/EU of the European Parliament and of the Council ⁽²⁸⁾, which sets limits for NO_x, SO₂ and particle emissions from large combustion plants. In addition, the Commission notes that the wood pellets used

⁽²⁵⁾ See also the decisions for cases SA.38758, SA.38759, SA.38761, SA.38763 and SA.38812; and case SA.38796 (decision not yet published) which benefit from a similar CfD aid.

⁽²⁶⁾ OJ C 200, 28.6.2014, p. 1.

⁽²⁷⁾ See Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16) and Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32) and Communication COM/2011/0885 final.

⁽²⁸⁾ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

by Lynemouth will have to satisfy the United Kingdom sustainability criteria. According to the UK authorities these criteria including minimum CO₂ savings are calculated on a life cycle basis. The United Kingdom sustainability criteria also contain provisions to avoid other negative environmental effects (such as loss of biodiversity).

5.2.2. *Need for State intervention, incentive effect and appropriateness of the aid.*

- (72) The Commission also concluded in its Opening Decision that the aid is necessary, has an incentive effect and is appropriate. In particular, with reference to paragraphs 38, 107 and 115 EEAG, the Commission notes that the market failures (i.e. the failure to include externalities generated by the use of fossil fuels in the price of energy) are not sufficiently addressed by the existing policy framework and without the operating aid under assessment the project would not be financially viable.
- (73) With reference to paragraphs 49 and 58 EEAG, the United Kingdom showed that the levelised costs of electricity are well above the expected electricity market price and the United Kingdom authorities provided a financial analysis demonstrating that without the aid under assessment the IRR of the project would be negative. In such a situation, market players would not want to invest in the biomass project. The aid therefore changes the beneficiary's behaviour. The United Kingdom confirmed that the beneficiary was required to submit applications and that this was submitted before work on the project has started (paragraph 51 EEAG).
- (74) With reference to in particular paragraphs 40 and 116 EEAG, the United Kingdom showed that the aid is an appropriate instrument. As explained in the Opening Decision, the levelised costs of electricity are above the expected electricity market price and the expected IRR without State aid would be negative. In order to remedy the lack of sufficient revenues for the specific project, the United Kingdom grants State aid, that is particularly targeted at the specific project and addressing the needs for the project to be undertaken without exceeding the expected IRR (e.g., within the hurdle rates described in point 18 above). In particular, the Lynemouth project was selected among several others for the purpose of reaching the Union renewable energy targets (see recital 7 above) and awarded operating aid in the form of a CfD. The Commission in its decision on case SA.36196 ⁽²⁹⁾ (Electricity Market Reform — Contract for Difference for Renewables) concluded that the CfD is an appropriate instrument for reaching the objective of common interest.
- (75) Therefore, the Commission concludes that the aid for the notified project is necessary, has an incentive effect and that it is granted by means of an appropriate instrument.

5.2.3. *Proportionality*

- (76) In its Opening Decision, the Commission expressed doubts that the aid is proportionate (see recital 28 above). The Commission recalls that the levelised cost of electricity (LCOE) for such biomass project, on the basis of an IRR of 10 %, was calculated by the United Kingdom as at least 105 GBP/MWh (see recital 19). The Commission considers the LCOE appropriate as was already confirmed in previous decisions ⁽³⁰⁾. The United Kingdom demonstrated that the aid per unit of energy does not exceed the difference between the LCOE and the expected market price of electricity, as the strike price (reflecting the market price plus the premium) does not exceed the LCOE ⁽³¹⁾. Furthermore, the United Kingdom confirmed that aid will be granted until the investment is depreciated according to normal accounting rules.
- (77) The hurdle rate for the project is between 8,8 % and 12,7 % on a real, pre-tax basis as described recital 18 above and accepted by the Commission in its Opening Decision. It was in line with the rates previously approved by the Commission for biomass projects in the United Kingdom ⁽³²⁾. The Commission will assess whether the IRR of the project is respecting the hurdle rate.

⁽²⁹⁾ OJ C 393, 7.11.2014, p. 2.

⁽³⁰⁾ See for example the decision for cases SA.38758, SA.38759, SA.38761, SA.38763 and SA.38812 and the decisions for case SA.38796 (decision not yet published).

⁽³¹⁾ See recitals 20 to 33 of the opening decision for more details on the LCOE of the project.

⁽³²⁾ See for instance the Renewable Obligation scheme — SA.35565 (OJ C 167, 13.6.2013, p. 5).

- (78) Following the Opening Decision, the United Kingdom submitted updated information about the project showing that the IRR for the Lynemouth project is considerably lower compared to the notification mainly due to the loss of approximately one year of subsidy, higher capital costs, abolishment of the exemption from the climate change levy and unfavourable foreign exchange rate developments. In addition, the United Kingdom authorities updated favourably the load factor, one of the operating parameters.
- (79) According to the financial calculation submitted, the IRR for the project is now approximately [3 %-8 %] on a pre-tax real basis which is well below the hurdle rate and therefore is already an indication of the absence of overcompensation. Nevertheless, the Commission notes that the operating parameters can still vary such as the average thermal efficiency, load factor and fuel cost.
- (80) In this light, the United Kingdom provided data demonstrating that the thermal efficiency of pulverised coal plants is around 36 % and market information suggests this type of biomass conversion project could reach a thermal efficiency of approximately 38 % to 39 %. An increase of 10 % of the thermal efficiency as was reflected in the Opening Decision does therefore not seem realistic.
- (81) As set out above, the load factor of the project (see recital 12) was increased to 77 % on the basis of an analysis of data from other biomass plants reviewed by the United Kingdom following the Opening Decision. In addition, information submitted by the United Kingdom indicates the net load factor for this type of plant would not exceed approximately 80 % ⁽³³⁾.
- (82) As regards the fuel cost, the United Kingdom explained in detail the cost of securing sufficient supplies of wood pellets. The documentation provided was verified by independent experts and includes a detailed breakdown of the main cost elements in the Lynemouth supply chain including manufacturing costs, transport and logistic (including the costs associated with upgrading the port facilities required by Lynemouth). Based on the explanation provided, the Commission concludes that the fuel cost of 7,17 GBP/GJ is a reasonable estimate of the expected fuel cost.
- (83) The IRR was estimated if the thermal efficiency and the load factor were to increase by 5 % and fuel cost to decrease by 5 %. Changes of this magnitude are considered consistent with the realistic ranges of the operating parameters as discussed in recitals 79 to 81. Such cumulative changes would increase the IRR (pre-tax real basis) from approximately [3 %-8 %] to [...]. This value is still within the range of hurdle rates envisaged by the United Kingdom.
- (84) In light of the above the Commission concludes that the aid does not lead to overcompensation. Therefore, the notified measure is proportionate to reach the objective of common interest.

5.2.4. Avoidance of undue negative effects on competition and trade.

- (85) In assessing the compatibility of a State aid measure, the Commission must establish that 'the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest' (see paragraph 88 EEAG).
- (86) With reference to paragraphs 94-96 EEAG, the Commission finds that the measure does not lead to manifest negative effects, as the aid is proportionate and does not purely lead to a relocation of the activity without an environmental effect. The aid will help the Lynemouth project to convert from coal to biomass leading to CO₂ savings (see recital 10 above).
- (87) In assessing the negative effects of the aid measure, the Commission focuses on the distortions resulting from the foreseeable impact the aid has on competition in the product markets affected and the location of economic activity (see paragraph 97 EEAG). As the aid is granted for producing electricity from renewable energy sources, the affected product market is the electricity market.

⁽³³⁾ These assumptions are in line with the data provided by Société Générale in the submission (see recital 53 above).

- (88) Firstly, the Commission recalls the limited market share of the beneficiary (0,7 % of the United Kingdom electricity generation market). Secondly, with reference to paragraph 101 EEAG, the Commission further notes that the project consist of retrofitting an existing coal-fired power plant and therefore will not lead to negative effects such as, in particular, enhancing the beneficiary's market power. Therefore, the Commission concludes that the measure would not have any significant impact on competition in the United Kingdom electricity generation market.
- (89) In its Opening Decision, the Commission expressed doubts about whether the project distorts competition in the wood pellet market and further upstream in the raw material market to an extent contrary to the common interest. In view of the specific characteristics of this individually notified project, the Commission extended the analysis to indirect effects on the secondary markets.

5.2.5. *Distortion in the wood pellet market.*

- (90) The Commission first recalls that the Lynemouth plant will only be able to use industrial-grade wood pellets. While some plant might be able to partially substitute wood pellets for other fuels, it is not expected that the Lynemouth plant will be able to substitute wood pellets for another product in view of its design. For the purpose of analysing the scale of distortion of competition of the project, the industrial wood pellet market constitutes the appropriate product market.
- (91) Data provided by the United Kingdom (see Figure 4) show that wood pellets are traded between the main production and consumption areas. In addition, trade flows have increased significantly in the past few years (more than 40 % in one year). In addition, the United Kingdom provided data that the wood pellet imports in the EU from the US South-East doubled from 2009 to 2011 (as shown in Figure 5).
- (92) Therefore, based on the trade flows and the volume of the imports into the Union, the Commission concludes that the wood pellet market is not limited to a single Member State or the Union but should be considered a global market for assessing the market distortions in the wood pellet market.
- (93) In 2014 the global wood pellet market grew to reach 27 million dry tonnes. The European consumption of wood pellets doubled between 2009 and 2012 (as shown in Figure 5). Despite this increase, the data in Figure 6 show that the prices on the spot market did not change significantly.
- (94) Furthermore, from the information submitted in reply to the Opening Decision, the Commission notes that most of the wood pellet supply is currently bought under individually negotiated long-term contracts. Pellet mills can be built within 2 years once (or before) new contracts are signed and sales are secured. Therefore, the market barriers for new production facilities seem to be low. The recent increase in pellet production capacity both in the US South-East and the Union ⁽³⁴⁾ supports this observation.
- (95) The amount of wood pellets required by Lynemouth represents approximately 5,5 % of the 2014 global wood pellet market. This is substantially less than the 7,4 % estimated in the Opening Decision based on 2012 data. In view of the fact that new pellet mills can be built more or less in parallel with the conversion project in terms of duration (see recitals 59 and 60), it can be anticipated that additional capacity will become available with additional demand as confirmed by the envisaged supply chain for the project.
- (96) Also looking at the past, imports and consumption levels have increased rapidly in the Union which is another indicator that the wood pellet market can absorb large increases in wood pellet demand. It is also noted that the spot price in the US South-East, the main area from which the project is anticipated to source wood pellets, did not change significantly (Figure 6) while imports in the Union from that region increased (Figure 5).
- (97) The analysis shows that the market for wood pellets is global and can accommodate growth in the wood pellet demand as expected to result from the project. The Commission therefore concludes that the aid does not adversely affect trading conditions on the wood pellet market to an extent contrary to the common interest (CO₂ savings and increased generation of electricity from renewable energy sources).

⁽³⁴⁾ See, for example Figure 2 in the Opening Decision (OJ C 116, 10.4.2015, p. 52).

5.2.6. Distortion in the raw material market.

- (98) The Commission noted in the Opening Decision (see recital 75 of the Opening Decision) that increased demand for wood pellets can lead to further distortions in the raw material market (that is the wood fibre market). In this respect it is recalled that the aid is granted for the MWh of electricity produced by the Lynemouth plant. The potential distortions in the wood pellet market and raw material market do not result from direct subsidies for wood pellets or raw material but from the increased demand of fuel for electricity generation. In addition, the effects on the raw material market are indirect compared to the distortions in the wood pellet market.
- (99) While pellets can be transported overseas, for economic reasons, raw materials used by the wood pellet industry can normally be only transported over limited distances. Manufacturing plants of semi-finished pulpwood products source wood supply from within an average distance of approximately 100 km to 150 km (called the catchment radius of the plant). To assess the impact of those plants on competition, it is therefore necessary to determine from which local market the pellets will or are likely to be sourced.
- (100) As explained in recital 11 above, the Lynemouth plant is to source [60 %-80 %] of the total wood pellet fuel required from the US South-East. Approximately [5 %-20 %] to 15 % will be sourced from other Member States. This implies that approximately [...] million dry tonnes per year will be sourced from other Member States from about 16 different suppliers. This would amount to approximately [...] of the EU wood pellet consumption (see Figure 6). Moreover, the Lynemouth project does not intend to source from the United Kingdom. It is therefore unlikely that the project will increase raw material prices in the United Kingdom or on the European Union market as claimed by the EPF and the WPF respectively. Therefore, the measure is not expected to lead to undue distortions of competition within the Union. As most of the wood pellets are sourced from outside the Union and the market for raw materials is local, the effects take place outside the Union.
- (101) Approximately [10 %-30 %] of the wood pellets required will be sourced from Canada. Potential supplies from Canada are considered to be significantly higher than from Europe. The data submitted by the Canadian Pellet Association estimated a surplus of 14 million dry tonnes of biomass in West Canada. The sourcing from Canada would amount to [...] of the estimated surplus. Therefore, the project is not expected to cause an undue impact on the Canadian market concerning the raw material for wood pellets.
- (102) Most of the supply for the project will be imported from the US South-East. Therefore, the investigation of potential market distortions in the raw material market (wood fibre) focusses on that region.
- (103) Lynemouth will import approximately 2 million GT (equivalent to approximately 0,9 million dry tonnes) from the US South-East. This amounts to 1,7 % of the total supply of pulpwood in 2011 in the US South-East and 0,9 % of the total removals in the same year in that region. Such low percentages alone do not give strong indications of undue distortions in the raw material market. In particular, taking into account the total removals, the impact would not lead to undue distortions in the market. Furthermore, these figures only take into account pulpwood and do not take into account other input materials such as logging and sawmill residues that can also, to some extent, be used to produce wood pellets.
- (104) However, some third parties submitted that the increase in pellet production caused an increase in raw material (pulpwood) prices in the US South-East. In particular, Steptoe and Johnson and AFPA submitted data showing a price increase in the 2011-2014 period. The same data, but over a longer period, were submitted by the US Industrial Pellet Association (Figure 3).
- (105) The Commission notes that, as shown in Figure 2, the average raw material (stumpage) price in the US South-East is not outside the historical range. Therefore, the increase in prices since 2011 does not appear unusual. In 2010 prices were even higher, allegedly because of weather events.
- (106) In addition, the United Kingdom submitted that the US market was still affected by the reduction in demand following the financial crisis. In particular sawtimber production was reduced by approximately 57 million GT compared to 2005. If this quantity would be available, this would generate approximately 28-19 million GT of residues which could serve as a source for wood pellets or competing products. Moreover, the United Kingdom claims that there is no correlation between areas with strong pellet production and increase in pulpwood prices in local markets (Figure 7).

- (107) Indeed, the data in Figure 1 show that larger volumes of sawtimber, and therefore residues, were available before 2008. A more limited availability of residues could therefore have negatively impacted the price of pulpwood. Furthermore, the United Kingdom has shown that a strong pellet production does not necessarily correlate with raw material price increases (see recital 63 above).
- (108) As set out above (see recital 62 above), the pulpwood price is affected by elements such as weather conditions, the availability of residues (linked to the sawtimber market) and price fluctuations were also observed in the past. Moreover, price increases and price decreases do take place both in areas with strong and weak pellet production. Therefore, the indirect demand for raw materials resulting from the Lynemouth project is not expected to lead to undue distortions in the market.
- (109) Interested parties also submitted a theoretical study modelling the possible effects of future scenarios with high penetration of bioenergy. The study does not assess the impact of the Lynemouth project on the market, but assesses the effect of expected global biomass demand taking into account existing and future policies. It is however uncertain to what extent future biomass plans will be realised and if so under what conditions and from which regions biomass would then be actually sourced. The study therefore does not change the conclusions on the potential impact of the Lynemouth project, as it addresses in particular the potential effects of future developments.
- (110) Finally, according to data submitted by the United Kingdom, Lynemouth intends to source biomass from approximately [...] production mills across [...] States in the US South-East. The diversification of the supply chain will further mitigate any risk of distortions in local markets.
- (111) The Commission therefore concludes that the measure is not expected to lead to undue distortions in the raw material market. In this respect, it is recalled that the aid is granted for the production of electricity from solid biomass and any effects of the aid would be indirect to the sourcing of raw material used by the wood pellet industry.

5.2.7. *Balancing test*

- (112) As set out in paragraph 97 EEAG, for State aid measures that are well-targeted to the market failure they aim to address, the risk that the aid will unduly distort competition is more limited. The Commission notes that the aid is directly aimed at achieving the renewable energy targets and CO₂ reduction in a proportionate and appropriate way. Therefore the risk of undue distortions of competition is also more limited. As set out in recital 110 above, the Commission did not find undue distortions in the affected product market (wood pellets). Also, no undue distortions were found in upstream markets (raw material).
- (113) In addition, the Commission needs to assess whether the measures distort or threatens to distort competition in so far as it affects trade between Member States. The effects in the raw material market are local and mostly take place outside Europe as the wood pellets are imported. The effects on trade between Member States would therefore in any case be limited.
- (114) Therefore, the Commission considers that the negative effects of the aid to the Lynemouth project in terms of distortions of competition and impact on trade between Member States are limited and out-weighted by the positive effects in terms of contribution to the objective of common interest (production of energy from renewable sources and reduction of CO₂ in the electricity generation) so that the overall balance is positive.

5.2.8. *Other aspects — Compliance with Article 30 and 110 TFEU.*

- (115) In the context of the decision on CfD for renewables (SA.36196) and the decision regarding FIDeR aid to five offshore wind projects (SA.38758, SA.38759, SA.38761, SA.38763 and SA.38812) and to a CHP biomass plant (SA.38796), the United Kingdom has committed that it will adjust the way in which electricity suppliers' liabilities for CfD payments are calculated so that eligible renewable electricity generated in EU Member States outside the United Kingdom and supplied to customers in the United Kingdom is not counted towards suppliers' market shares.

- (116) The United Kingdom will ensure that no CfD payments are made before this exemption is in place, or if this is not possible the United Kingdom will put in place a mechanism to reimburse suppliers for any imported eligible renewable electricity supplied before the exemption comes into effect but after CfD payments have started to be made.
- (117) The commitment referred to in recital 114 will also apply to the notified measure.
- (118) In the light of the commitment referred to in recital 114, the Commission considers that the financing mechanism of the notified aid measures should not introduce any restrictions contrary to Article 30 or Article 110 TFEU.

6. CONCLUSION

- (119) In light of the above, the Commission considers that the notified aid measure pursues an objective of common interest in a necessary and proportionate way in accordance with the EEAG and that therefore the aid is compatible with the internal market on the basis of Article 107(3)(c) TFUE,

HAS ADOPTED THIS DECISION:

Article 1

The aid measure notified by the United Kingdom is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 1 December 2015.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2017/1437
of 4 August 2017
concerning certain protective measures relating to African swine fever in the Czech Republic
(notified under document C(2017) 5418)
(Only the Czech text is authentic)
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting domestic and feral pig populations and can have a severe impact on the profitability of pig farming causing disturbance to trade within the Union and exports to third countries.
- (2) In the event of an outbreak of African swine fever, there is a risk that the disease agent may spread to other pig holdings and to feral pigs. As a result, it may spread from one Member State to another Member State and to third countries through trade in live pigs or their products.
- (3) Council Directive 2002/60/EC ⁽³⁾ lays down minimum measures to be applied within the Union for the control of African swine fever. Article 15 of Directive 2002/60/EC provides for the establishment of an infected area following the confirmation of one or more cases of African swine fever in feral pigs.
- (4) Czech Republic has informed the Commission of the up-to-date African swine fever situation on its territory, and in accordance with Article 15 of Directive 2002/60/EC, it has established an infected area where the measures referred to in Article 15 of that Directive are applied.
- (5) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to identify at Union level the infected area for African swine fever in Czech Republic in collaboration with that Member State.
- (6) Accordingly, the infected area in Czech Republic should be listed in the Annex to this Decision and the duration of that regionalisation fixed.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Czech Republic shall ensure that the infected area established in accordance with Article 15 of Directive 2002/60/EC comprises at least the areas listed as the infected area in the Annex to this Decision.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

Article 2

This Decision shall apply until 30 September 2017.

Article 3

This Decision is addressed to the Czech Republic.

Done at Brussels, 4 August 2017.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

Areas established as Infected Area in the Czech Republic as referred to in Article 1	Date until applicable
The district of Zlin	30 September 2017

COMMISSION IMPLEMENTING DECISION (EU) 2017/1438**of 4 August 2017****amending Decision 2007/131/EC on allowing the use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the Community***(notified under document C(2017) 5456)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ⁽¹⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) Commission Decision 2007/131/EC ⁽²⁾ harmonises the technical conditions for radio equipment using ultra-wideband ('UWB') technology in the Union. It ensures that the radio spectrum is available across the Union under harmonised conditions, eliminates barriers to the uptake of UWB technology and creates an effective single market for UWB systems with significant economies of scale and benefits to the consumer.
- (2) Pursuant to Decision No 676/2002/EC, the Commission issued a permanent mandate to the European Conference of Postal and Telecommunications Administrations ('CEPT') on short-range devices, to update the Annex to Commission Decision 2006/771/EC ⁽³⁾ in response to technological and market developments in the area of short-range devices. On 2 July 2014, in its sixth guidance letter ⁽⁴⁾ in the context of this mandate, the Commission called on CEPT to also review other existing Decisions pertaining to short-range devices such as Decision 2007/131/EC for UWB-technology based short-range devices.
- (3) CEPT concluded that as regards UWB-technology based short-range devices some references to harmonised standards in Decision 2007/131/EC needed to be updated.
- (4) Decision 2007/131/EC should therefore be amended.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Radio Spectrum Committee,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Decision 2007/131/EC, point 11 is replaced by the following:

‘11. “total power spectral density” means the average of the mean power spectral density values measured over a sphere around the measurement scenario with a resolution of at least 15 degree. The detailed measuring setup is contained within ETSI EN 302 065-4.’.

The Annex is amended in accordance with the Annex to this Decision.

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.

⁽²⁾ Commission Decision 2007/131/EC of 21 February 2007 on allowing the use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the Community (OJ L 55, 23.2.2007, p. 33).

⁽³⁾ Commission Decision 2006/771/EC of 9 November 2006 on harmonisation of the radio spectrum for use by short-range devices (OJ L 312, 11.11.2006, p. 66).

⁽⁴⁾ RSCOM 13-78rev2.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 4 August 2017.

For the Commission
Mariya GABRIEL
Member of the Commission

ANNEX

The Annex to Decision 2007/131/EC is amended as follows:

(1) point 5.1 is amended as follows:

(a) the second indent of the first indent of the first sub-paragraph is replaced by the following:

‘— The transmitter shall implement a TPC with a dynamic range of 10 dB, as described in the harmonised standard ETSI EN 302 065-4 for material sensing devices;’;

(b) the second sub-paragraph is replaced by the following:

‘Emissions radiating from material sensing devices permitted under this decision shall be kept to a minimum and in any case not exceed the e.i.r.p. density limits within the following Table. The compliance with the limits of the following Table for non-fixed installations (application B) has to be ensured with the device on a representative structure of the investigated material (e.g. representative wall as defined in ETSI EN 302 065-4).’;

(c) footnote (1) to the table is replaced by the following:

‘⁽¹⁾ devices using a Listen Before Talk (LBT) mechanism, as described in the harmonised standard ETSI EN 302 065-4, are permitted to operate in frequency ranges 2,5 to 2,69 and 2,9 to 3,4 GHz with a maximum mean power spectral density of – 50 dBm/MHz;’;

(2) point 5.2 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Emissions radiating from BMA devices shall be kept to a minimum and in any case not exceed the maximum power limits within the table below with the BMA device on a representative wall as defined within ETSI EN 302 065-4.’;

(b) footnote (1) to the table is replaced by the following:

‘⁽¹⁾ Devices using a Listen Before Talk (LBT) mechanism described in the harmonised standard ETSI EN 302 065-4 are permitted to operate in frequency range 1,215 to 1,73 GHz with a maximum mean power spectral density of – 70 dBm/MHz and in the frequency ranges 2,5 to 2,69 and 2,7 to 3,4 GHz with a maximum mean power spectral density of – 50 dBm/MHz.’.

