

Council Regulation (EC) No 40/94 of 20 December
1993 on the Community trade mark (repealed)

TITLE XII

THE OFFICE

SECTION 1

GENERAL PROVISIONS

Article 111

Legal status

- 1 The Office shall be a body of the Community. It shall have legal personality.
- 2 In each of the Member States the Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
- 3 The Office shall be represented by its President.

Article 112

Staff

- 1 The Staff Regulations of officials of the European Communities, the Conditions of Employment of other servants of the European Communities, and the rules adopted by agreement between the Institutions of the European Communities for giving effect to those Staff Regulations and Conditions of Employment shall apply to the staff of the Office, without prejudice to the application of Article 131 to the members of the Boards of Appeal.
- 2 Without prejudice to Article 120, the powers conferred on each Institution by the Staff Regulations and by the Conditions of Employment of other servants shall be exercised by the Office in respect of its staff.

Article 113

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Office.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

Article 114

Liability

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

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

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

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

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

Article 115

Languages

1 The application for a Community trade mark shall be filed in one of the official languages of the European Community.

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

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

If the application was filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application, as described in Article 26 (1), translated into the language indicated by the applicant.

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

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

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

If the language chosen, in accordance with paragraph 5, for the notice of opposition or the application for revocation or invalidity is neither the language of the application

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for a trade mark nor the second language indicated when the application was filed, the opposing party or the party seeking revocation or invalidity shall be required to produce, at his own expense, a translation of his application either into the language of the application for a trade mark, provided that it is a language of the Office, or into the second language indicated when the application was filed. The translation shall be produced within the period prescribed in the implementing regulation. The language into which the application has been translated shall then become the language of the proceedings.

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

Article 116

Publication; entries in the Register

1 An application for a Community trade mark, as described in Article 26 (1), and all other information the publication of which is prescribed by this Regulation or the implementing regulation, shall be published in all the official languages of the European Community.

2 All entries in the Register of Community trade marks shall be made in all the official languages of the European Community.

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

Article 117

The translation services required for the functioning of the Office shall be provided by the Translation Centre of the Bodies of the Union once this begins operation.

Article 118

Control of legality

1 The Commission shall check the legality of those acts of the President of the Office in respect of which Community law does not provide for any check on legality by another body and of acts of the Budget Committee attached to the Office pursuant to Article 133.

2 It shall require that any unlawful acts as referred to in paragraph 1 be altered or annulled.

3 Member States and any person directly and personally involved may refer to the Commission any act as referred to in paragraph 1, whether express or implied, for the Commission to examine the legality of that act. Referral shall be made to the Commission [^{F1}within one month] on which the party concerned first became aware of the act in question. The Commission shall take a decision [^{F1}within three months] . If no decision has been taken within this period, the case shall be deemed to have been dismissed.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

Textual Amendments

- F1** Substituted by [Council Regulation \(EC\) No 422/2004 of 19 February 2004 amending Regulation \(EC\) No 40/94 on the Community trade mark \(Text with EEA relevance\)](#).

f² Article 118a

Access to documents

1 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents⁽¹⁾ shall apply to documents held by the Office.

2 The Administrative Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of Regulation (EC) No 1653/2003 of 18 June 2003 amending Regulation (EC) No 40/94 on the Community trade mark⁽²⁾.

3 Decisions taken by the Office pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.]

Textual Amendments

- F2** Inserted by [Council Regulation \(EC\) No 1653/2003 of 18 June 2003 amending Regulation \(EC\) No 40/94 on the Community trade mark](#).

SECTION 2

MANAGEMENT OF THE OFFICE

Article 119

Powers of the President

- 1 The Office shall be managed by the President.
- 2 To this end the President shall have in particular the following functions and powers:
- a he shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office;
 - b he may place before the Commission any proposal to amend this Regulation, the Implementing Regulation, the rules of procedure of the Boards of Appeal, the fees regulations and any other rules applying to Community trade marks after consulting the Administrative Board and, in the case of the fees regulations and the budgetary provisions of this Regulation, the Budget Committee;
 - c he shall draw up the estimates of the revenue and expenditure of the Office and shall implement the budget;

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- d he shall submit a management report to the Commission, the European Parliament and the Administrative Board each year;
- e he shall exercise in respect of the staff the powers laid down in Article 112 (2);
- f he may delegate his powers.

3 The President shall be assisted by one or more Vice-Presidents. If the President is absent or indisposed, the Vice-President or one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Board.

Article 120

Appointment of senior officials

1 The President of the Office shall be appointed by the Council from a list of at most three candidates, which shall be prepared by the Administrative Board. Power to dismiss the President shall lie with the Council, acting on a proposal from the Administrative Board.

2 The term of office of the President shall not exceed five years. This term of office shall be renewable.

3 The Vice-President or Vice-Presidents of the Office shall be appointed or dismissed as in paragraph 1, after consultation of the President.

4 The Council shall exercise disciplinary authority over the officials referred to in paragraphs 1 and 3 of this Article.

SECTION 3

ADMINISTRATIVE BOARD

Article 121

Creation and powers

1 An Administrative Board is hereby set up, attached to the Office. Without prejudice to the powers attributed to the Budget Committee in Section 5 — budget and financial control — the Administrative Board shall have the powers defined below.

2 The Administrative Board shall draw up the lists of candidates provided for in Article 120.

3 It shall fix the date for the first filing of Community trade mark applications, pursuant to Article 143 (3).

4 It shall advise the President on matters for which the Office is responsible.

5 It shall be consulted before adoption of the guidelines for examination in the Office and in the other cases provided for in this Regulation.

6 It may deliver opinions and requests for information to the President and to the Commission where it considers that this is necessary.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

Article 122

Composition

1 The Administrative Board shall be composed of one representative of each Member State and one representative of the Commission and their alternates.

2 The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

Article 123

Chairmanship

1 The Administrative Board shall elect a chairman and a deputy chairman from among its members. The deputy chairman shall *ex officio* replace the chairman in the event of his being prevented from attending to his duties.

2 The duration of the terms of office of the chairman and the deputy chairman shall be three years. The terms of office shall be renewable.

Article 124

Meetings

1 Meetings of the Administrative Board shall be convened by its chairman.

2 The President of the Office shall take part in the deliberations, unless the Administrative Board decides otherwise.

3 The Administrative Board shall hold an ordinary meeting once a year; in addition, it shall meet on the initiative of its chairman or at the request of the Commission or of one-third of the Member States.

4 The Administrative Board shall adopt rules of procedure.

5 The Administrative Board shall take its decisions by a simple majority of the representatives of the Member States. However, a majority of three-quarters of the representatives of the Member States shall be required for the decisions which the Administrative Board is empowered to take under Article 120 (1) and (3). In both cases each Member State shall have one vote.

6 The Administrative Board may invite observers to attend its meetings.

7 The Secretariat for the Administrative Board shall be provided by the Office.

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SECTION 4

IMPLEMENTATION OF PROCEDURES

Article 125

Competence

For taking decisions in connection with the procedures laid down in this Regulation, the following shall be competent:

- (a) Examiners;
- (b) Opposition Divisions;
- (c) an Administration of Trade Marks and Legal Division;
- (d) Cancellation Divisions;
- (e) Boards of Appeal.

Article 126

Examiners

An examiner shall be responsible for taking decisions on behalf of the Office in relation to an application for registration of a Community trade mark, including the matters referred to in Articles 36, 37, 38 and 66, except in so far as an Opposition Division is responsible.

Article 127

Opposition Divisions

1 An Opposition Division shall be responsible for taking decisions on an opposition to an application to register a Community trade mark.

[^{F12} The decisions of the Opposition Divisions shall be taken by three-member groups. At least one member shall be legally qualified. In certain specific cases provided for in the Implementing Regulation, the decisions shall be taken by a single member.]

Textual Amendments

- F1** Substituted by [Council Regulation \(EC\) No 422/2004 of 19 February 2004 amending Regulation \(EC\) No 40/94 on the Community trade mark \(Text with EEA relevance\)](#).

Article 128

Administration of Trade Marks and Legal Division

1 The Administration of Trade Marks and Legal Division shall be responsible for those decisions required by this Regulation which do not fall within the competence of an examiner, an

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Opposition Division or a Cancellation Division. It shall in particular be responsible for decisions in respect of entries in the Register of Community trade marks.

2 It shall also be responsible for keeping the list of professional representatives which is referred to in Article 89.

3 A decision of the Division shall be taken by one member.

Article 129

Cancellation Divisions

1 A Cancellation Division shall be responsible for taking decisions in relation to an application for the revocation or declaration of invalidity of a Community trade mark.

[^{F12} The decisions of the Cancellation Divisions shall be taken by three-member groups. At least one member shall be legally qualified. In certain specific cases provided for in the Implementing Regulation, the decisions shall be taken by a single member.]

Textual Amendments

- F1** Substituted by [Council Regulation \(EC\) No 422/2004 of 19 February 2004 amending Regulation \(EC\) No 40/94 on the Community trade mark \(Text with EEA relevance\)](#).

Article 130

Boards of Appeal

1 The Boards of Appeal shall be responsible for deciding on appeals from decisions of the examiners, Opposition Divisions, Administration of Trade Marks and Legal Division and Cancellation Divisions.

[^{F12} The decisions of the Boards of Appeal shall be taken by three members, at least two of whom are legally qualified. In certain specific cases, decisions shall be taken by an enlarged Board chaired by the President of the Boards of Appeal or by a single member, who must be legally qualified.]

[^{F33} In order to determine the special cases which fall under the jurisdiction of the enlarged Board, account should be taken of the legal difficulty or the importance of the case or of special circumstances which justify it. Such cases may be referred to the enlarged Board:

- a by the authority of the Boards of Appeal set up in accordance with the rules of procedure of the Boards referred to in Article 157(3), or
- b by the Board handling the case.

4 The composition of the enlarged Board and the rules on referrals to it shall be laid down pursuant to the rules of procedure of the Boards referred to in Article 157(3).

5 To determine which specific cases fall under the authority of a single member, account should be taken of the lack of difficulty of the legal or factual matters raised, the limited importance of the individual case or the absence of other specific circumstances. The decision to confer a case on one member in the cases referred to shall be adopted by the Board handling the case. Further details shall be laid down in the rules of procedure of the Boards referred to in Article 157(3).]

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

Textual Amendments

- F1** Substituted by Council Regulation (EC) No 422/2004 of 19 February 2004 amending Regulation (EC) No 40/94 on the Community trade mark (Text with EEA relevance).
- F3** Inserted by Council Regulation (EC) No 422/2004 of 19 February 2004 amending Regulation (EC) No 40/94 on the Community trade mark (Text with EEA relevance).

f¹ Article 131

Independence of the members of the Boards of Appeal

1 The President of the Boards of Appeal and the chairmen of the Boards shall be appointed, in accordance with the procedure laid down in Article 120 for the appointment of the President of the Office, for a term of five years. They may not be removed from office during this term, unless there are serious grounds for such removal and the Court of Justice, on application by the institution which appointed them, takes a decision to this effect. The term of office of the President of Boards of Appeal and the chairmen of the Boards may be renewed for additional five-year periods, or until retirement age if this age is reached during the new term of office.

The President of the Boards of Appeal shall, *inter alia*, have managerial and organisational powers, principally to:

- a chair the authority of the Boards of Appeal responsible for laying down the rules and organising the work of the Boards, which authority is provided for in the rules of procedure of the Boards referred to in Article 157(3);
- b ensure the implementation of the authority's decisions;
- c allocate cases to a Board on the basis of objective criteria determined by the authority of the Boards of Appeal;
- d forward to the President of the Office the Boards' expenditure requirements, with a view to drawing up the expenditure estimates.

The President of the Boards of Appeal shall chair the enlarged Board.

Further details shall be laid down in the rules of procedure of the Boards referred to in Article 157(3).

2 The members of the Boards of Appeal shall be appointed by the Administrative Board for a term of five years. Their term of office may be renewed for additional five-year periods, or until retirement age if that age is reached during the new term of office.

3 The members of the Boards of Appeal may not be removed from office unless there are serious grounds for such removal and the Court of Justice, after the case has been referred to it by the Administrative Board on the recommendation of the President of the Boards of Appeal, after consulting the chairman of the Board to which the member concerned belongs, takes a decision to this effect.

4 The President of the Boards of Appeal and the chairmen and members of the Boards of Appeal shall be independent. In their decisions they shall not be bound by any instructions.

5 The President of the Boards of Appeal and the chairmen and members of the Boards of Appeal may not be examiners or members of the Opposition Divisions, Administration of Trade Marks and Designs and Legal Division or Cancellation Divisions.]

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

Textual Amendments

- F1** Substituted by Council Regulation (EC) No 422/2004 of 19 February 2004 amending Regulation (EC) No 40/94 on the Community trade mark (Text with EEA relevance).

Article 132

Exclusion and objection

1 Examiners and members of the Divisions set up within the Office or of the Boards of Appeal may not take part in any proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties. Two of the three members of an Opposition Division shall not have taken part in examining the application. Members of the Cancellation Divisions may not take part in any proceedings if they have participated in the final decision on the case in the proceedings for registration or opposition proceedings. Members of the Boards of Appeal may not take part in appeal proceedings if they participated in the decision under appeal.

2 If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Division or of a Board of Appeal considers that he should not take part in any proceedings, he shall inform the Division or Board accordingly.

3 Examiners and members of the Divisions or of a Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may be based upon the nationality of examiners or members.

4 The Divisions and the Boards of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision the member who withdraws or has been objected to shall be replaced in the Division or Board of Appeal by his alternate.

SECTION 5

BUDGET AND FINANCIAL CONTROL

Article 133

Budget Committee

1 A Budget Committee is hereby set up, attached to the Office. The Budget Committee shall have the powers assigned to it in this Section and in Article 39 (4).

2 Articles 121 (6), 122, 123 and 124 (1) to (4), (6) and (7) shall apply to the Budget Committee *mutatis mutandis*.

3 The Budget Committee shall take its decisions by a simple majority of the representatives of the Member States. However, a majority of three-quarters of the representatives of the Member States shall be required for the decisions which the Budget

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Committee is empowered to take under Articles 39 (4), 135 (3) and 138. In both cases each Member State shall have one vote.

Article 134

Budget

1 Estimates of all the Office's revenue and expenditure shall be prepared for each financial year and shall be shown in the Office's budget, and each financial year shall correspond with the calendar year.

2 The revenue and expenditure shown in the budget shall be in balance.

[^{F43} Revenue shall comprise, without prejudice to other types of income, total fees payable under the fees regulations, total fees payable under the Madrid Protocol referred to in Article 140 for an international registration designating the European Communities and other payments made to Contracting Parties to the Madrid Protocol, and, to the extent necessary, a subsidy entered against a specific heading of the general budget of the European Communities, Commission section.]

Textual Amendments

F4 Substituted by [Council Regulation \(EC\) No 1992/2003 of 27 October 2003 amending Regulation \(EC\) No 40/94 on the Community trade mark to give effect to the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks adopted at Madrid on 27 June 1989.](#)

Article 135

Preparation of the budget

1 The President shall draw up each year an estimate of the Office's revenue and expenditure for the following year and shall send it to the Budget Committee not later than 31 March in each year, together with a list of posts.

2 Should the budget estimates provide for a Community subsidy, the Budget Committee shall immediately forward the estimate to the Commission, which shall forward it to the budget authority of the Communities. The Commission may attach an opinion on the estimate along with an alternative estimate.

3 The Budget Committee shall adopt the budget, which shall include the Office's list of posts. Should the budget estimates contain a subsidy from the general budget of the Communities, the Office's budget shall, if necessary, be adjusted.

[^{F5} Article 136

Audit and control

1 An internal audit function shall be set up within the Office, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the President, shall be responsible to him for verifying the proper operation of budget implementation systems and procedures of the Office.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

2 The internal auditor shall advise the President on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

3 The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.]

Textual Amendments

F5 Substituted by [Council Regulation \(EC\) No 1653/2003 of 18 June 2003 amending Regulation \(EC\) No 40/94 on the Community trade mark.](#)

Article 137

Auditing of accounts

1 Not later than 31 March in each year the President shall transmit to the Commission, the European Parliament, the Budget Committee and the Court of Auditors accounts of the Office's total revenue and expenditure for the preceding financial year. The Court of Auditors shall examine them in accordance with Article 188c of the Treaty.

2 The Budget Committee shall give a discharge to the President of the Office in respect of the implementation of the budget.

Article 138

Financial provisions

The Budget Committee shall, after consulting the Court of Auditors of the European Communities and the Commission, adopt internal financial provisions specifying, in particular, the procedure for establishing and implementing the Office's budget. As far as is compatible with the particular nature of the Office, the financial provisions shall be based on the financial regulations adopted for other bodies set up by the Community.

Article 139

Fees regulations

1 The fees regulations shall determine in particular the amounts of the fees and the ways in which they are to be paid.

2 The amounts of the fees shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Office to be balanced.

3 The fees regulations shall be adopted and amended in accordance with the procedure laid down in Article [F⁴158].

Textual Amendments

F4 Substituted by [Council Regulation \(EC\) No 1992/2003 of 27 October 2003 amending Regulation \(EC\) No 40/94 on the Community trade mark to give effect to the accession of the European Community](#)

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

to the Protocol relating to the Madrid Agreement concerning the international registration of marks adopted at Madrid on 27 June 1989.

Status: Point in time view as at 27/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE XII. (See end of Document for details)

- (1) [^{F2}OJ L 145, 31.5.2001, p. 43.
(2) OJ L 245, 29.9.2003, p. 36.]

Textual Amendments

- F2** Inserted by Council Regulation (EC) No 1653/2003 of 18 June 2003 amending Regulation (EC) No 40/94 on the Community trade mark.

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