

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 481 final

Brussels, 28 November 1991

Proposal for a

COUNCIL DECISION

on the deferment of the date on which the laws
of the Member States must comply with
Council Directive 89/104/EEC of 21 December 1988
to approximate the laws of the Member States
relating to Trade Marks

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The objective of this Communication is to request the Council to decide that the date of implementation of Council Directive 89/104/EEC of 21 December 1988 on the harmonization of the laws of the Member States relating to trade marks be deferred from 28 December 1991 until 31 December 1992.
2. Council Directive 89/104/EEC provides in Article 16(1), that the Member States must comply with its provisions not later than 28 December 1991. Paragraph 2 of this Article, however, contains a provision in accordance with which the Council, acting on a proposal from the Commission, may defer the said date until 31 December 1992 at the latest.

This provision has been included, exceptionally, in the Directive to ensure the envisaged "parallelism" between the Community Trade Mark Regulation and the Trade Mark Directive. The parallelism implies that the date from which Community Trade Mark applications may be filed should be the same as the date of the entry into force of the national legislative measures mandated by Directive 89/104/EEC.

The reason behind this exceptional provision has been included as a statement of the Council and the Commission in the minutes of the Council meeting at which the Directive was adopted.

3. Recently, the Commission received a request from a Member State to propose the deferment of the date of implementation in accordance with Article 16(2) of the said Directive.

The Commission realises that Community Trade Mark applications can not be filed before 28 December 1991 and that it is possible that that may not even be the case by 31 December 1992. The latter is, however, not yet excluded if the necessary decisions for the adoption of the Community Trade Mark system were to be taken shortly.

Furthermore, it should be underlined that the deferment of the date of implementation until 31 December 1992 would in any case have the effect that the parallelism between the date of implementation of the Directive and the date on which applications for Community Trade Marks may be filed will be assured for, at least, another 12 months.

4. The deferment of the date of implementation until 31 December 1992 would still meet with the objectives set for the completion of the Internal Market by 1992. In this light, the Commission notes that any further deferment of the date of implementation is not foreseen by the Directive nor shall it be proposed by the Commission.

5. Proposal for a Council Decision

Accordingly, the Commission proposes that the Council adopts the attached draft Decision.

**PROPOSAL
FOR A
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of the Member States must comply with
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THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community,

Having regard to First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks⁽¹⁾, in particular Article 16(2) thereof,

Having regard to the proposal from the Commission,

whereas under Article 16(1) of Directive 89/104/EEC the Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 28 December 1991,

whereas under Article 16(2) of Directive 89/104/EEC, on a proposal from the Commission, the Council, acting by qualified majority, may defer the date referred to in Article 16(1) until 31 December 1992 at the latest,

whereas this exceptional provision has been included in Directive 89/104/EEC exclusively to ensure, if necessary, that the date of the entry into force of the legislative measures mandated by it should, as far as possible, be aligned with the date as from which it will be possible for Community trade mark applications to be filed,

whereas the Commission's proposal for a Council Regulation on the Community trade mark⁽²⁾ has not yet been adopted,

whereas it is expected that the said Regulation will be adopted shortly,

whereas it seems therefore appropriate to defer the date on which the Member States shall bring into force the legislative measures mandated by Directive 89/104/EEC until 31 December 1992 so that the objective, referred to above, may be pursued,

(1) OJ No. L40 of 11 February 1989, p. 1.

(2) OJ No. C351 of 31 December 1980, p. 1 and OJ No. C230 of 31 August 1984, p. 1.

whereas the objectives set for the completion of the Internal Market by 1992 continue to be respected notwithstanding the deferment, until 31 December 1992, of the date on which the laws, regulations and administrative provisions of the Member States must comply with Directive 89/104/EEC.

HAS ADOPTED THIS DECISION :

Article 1

The date referred to in Article 16(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks shall be deferred until 31 December 1992.

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

For the Council

The President

Note on impact for small and medium sized enterprises

The object of this Communication is to recommend the Council to decide that the date on which the laws of the Member States must comply with Council Directive 89/104/EEC be deferred from 28 December 1991 until 31 December 1992.

Thus, this concerns an act which has no effect on small and medium sized enterprises or on employment.



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