

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 27 October 2003

approving 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

(2003/793/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308, in conjunction with Article 300(2), second sentence, and Article 300(3), first subparagraph, thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Whereas:

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ⁽⁴⁾, which is based on Article 308 of the Treaty, is designed to create a market which functions properly and offers conditions which are similar to those obtaining in a national market. In order to create a market of this kind and make it increasingly a single market, the said Regulation created the Community trade mark system whereby undertakings can by means of one procedural system obtain Community trade marks to which uniform protection is given and which produce their effects throughout the entire area of the European Community.

(2) Following preparations initiated and carried out by the World Intellectual Property Organisation with the participation of the Member States which are members of the Madrid Union, the Member States which are not members of the Madrid Union and the European Community, the Diplomatic Conference for the conclu-

sion of a Protocol relating to the Madrid Agreement concerning the international registration of marks adopted the Protocol relating to the Madrid Agreement concerning the international registration of marks (hereafter referred to as 'the Madrid Protocol') on 27 June 1989, at Madrid.

(3) The Madrid Protocol was adopted in order to introduce certain new features into the system of the international registration of marks existing under the Madrid Agreement concerning the international registration of marks of 14 April 1891 as amended (hereafter referred to as 'the Madrid Agreement') ⁽⁵⁾.

(4) The objectives of the Madrid Protocol are to ease the way for certain States, and in particular the Member States which are not currently parties thereto, to accede to the system of international registration of marks.

(5) As compared to the Madrid Agreement, the Madrid Protocol introduced, in its Article 14, as one of the main innovations, the possibility that an intergovernmental organisation which has a regional office for the purpose of registering marks with effect in the territory of the organisation may become party to the Madrid Protocol.

(6) The possibility that an intergovernmental organisation which has a regional office for the purpose of registering marks may become a party to the Madrid Protocol was introduced in the Madrid Protocol in order to allow, in particular, for the European Community to accede to the said Protocol.

⁽¹⁾ OJ C 293, 5.10.1996, p. 11.

⁽²⁾ OJ C 167, 2.6.1997, p. 252.

⁽³⁾ OJ C 89, 19.3.1997, p. 14.

⁽⁴⁾ OJ L 11, 14.1.1994, p. 1. Regulation as last amended by Regulation (EC) No 1653/2003, (OJ L 245, 29.9.2003, p. 36).

⁽⁵⁾ The Madrid Agreement concerning the international registration of marks as revised last at Stockholm on 14 July 1967 and as amended on 2 October 1979.

- (7) The Madrid Protocol entered into force on 1 December 1995 and became operational on 1 April 1996 and the Community trade mark system also became operational on the latter date.
- (8) The Community trade mark system and the international registration system as established by the Madrid Protocol are complementary. Therefore, in order to enable firms to profit from the advantages of the Community trade mark through the Madrid Protocol and vice versa, it is necessary to allow Community trade mark applicants and holders of such trade marks to apply for international protection of their trade marks through the filing of an international application under the Madrid Protocol and, conversely, holders of international registrations under the Madrid Protocol to apply for protection of their trade marks under the Community trade mark system.
- (9) Moreover, the establishment of a link between the Community trade mark system and the international registration system under the Madrid Protocol would promote a harmonious development of economic activities, will eliminate distortions of competition, will be cost efficient and will increase the level of integration and functioning of the internal market. Therefore, the accession of the Community to the Madrid Protocol is necessary in order for the Community trade mark system to become more attractive.
- (10) The European Commission should be authorised to represent the European Community in the Assembly of the Madrid Union after the accession of the Community to the Madrid Protocol. The European Community will not express a view in the Assembly in matters relating solely to the Madrid Agreement.
- (11) The competence of the European Community to conclude or accede to international agreements or treaties does not derive only from explicit conferral by the Treaty but may also derive from other provisions of the Treaty and from acts adopted pursuant to those provisions by Community institutions.
- (12) This Decision does not affect the right of the Member States to participate in the Assembly of the Madrid Union with regard to their national trade marks,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989 (hereafter referred to as the Madrid Protocol), is hereby approved on behalf of the Community with regard to matters within its competence.

The text of the Madrid Protocol is attached to this Decision.

Article 2

1. The President of the Council is hereby authorised to deposit the instrument of accession with the Director-General of the World Intellectual Property Organisation as from the date on which the Council has adopted the measures which are necessary for the establishment of a link between the Community trade mark and the Madrid Protocol.

2. The declarations and notification, which are attached to this Decision, shall be made in the instrument of accession.

Article 3

1. The Commission is hereby authorised to represent the European Community at the meetings of the Madrid Union Assembly held under the auspices of the World Intellectual Property Organisation.

2. On all matters within the sphere of competence of the Community with regard to the Community trade mark, the Commission shall negotiate in the Madrid Union Assembly on behalf of the Community in accordance with the following arrangements:

- (a) the position which the Community may adopt within the Assembly shall be prepared by the relevant Council working party or, if this is not possible, at on-the-spot meetings convened in the course of the work within the framework of the World Intellectual Property Organisation;
- (b) as regards decisions involving the amendment of Regulation (EC) No 40/94, or of any other act of the Council requiring unanimity, the Community position shall be adopted by the Council acting unanimously on a proposal from the Commission;
- (c) as regards other decisions affecting the Community trade mark, the Community position shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

Done at Luxembourg, 27 October 2003.

For the Council
The President
A. MATTEOLI