

COUNCIL REGULATION (EC) No 3288/94

of 22 December 1994

amending Regulation (EC) No 40/94 on the Community trade mark for the implementation of the agreements concluded in the framework of the Uruguay Round

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas the Agreement establishing the World Trade Organization (hereinafter, the 'WTO Agreement') was signed on behalf of the Community; whereas the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter, the 'TRIPs Agreement'), annexed to the WTO Agreement, contains detailed provisions on the protection of intellectual property rights whose purpose is the establishment of international disciplines in this area in order to promote international trade and prevent trade distortions and friction due to the lack of adequate and effective intellectual property protection;

Whereas in order to ensure that all relevant Community legislation is in full compliance with the TRIPs Agreement, the Community must take certain measures in relation to current Community acts on the protection of intellectual property rights; whereas these measures entail in some respects the amendment or modification of Community acts; whereas these measures also entail complementing current Community acts;

Whereas Regulation (EC) No 40/94 creates the Community trade mark ⁽²⁾; whereas Article 5 of Regulation (EC) No 40/94 defines the 'Persons who can be proprietors of Community trade marks' by referring notably to the Paris Convention for the protection of industrial property and requires reciprocal national treatment from countries which are not parties to the Paris Convention; whereas Article 29 of Regulation (EC) No 40/94, concerning the right of priority, also needs to be amended in this respect; whereas in order to comply with the national treatment obligation in Article 3 of the TRIPs Agreement, these provisions should be modified to

ensure that nationals of all WTO Members, even if the Member in question is not a party to the Paris Convention, receive a treatment no less favourable than that accorded to nationals of Community Member States;

Whereas Article 23 (2) of the TRIPs Agreement provides for the refusal or invalidation of trade marks which contain or consist of false geographical indications for wines and spirits without the condition that they are of such a nature as to deceive the public, a new subparagraph (j) has to be added to Article 7 (1) of Regulation (EC) No 40/94,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 40/94 is amended as follows:

1. Article 5 (1) (b) shall be replaced by the following:

'(b) nationals of other States which are parties to the Paris Convention for the protection of industrial property, hereinafter referred to as 'the Paris Convention', or to the Agreement establishing the World Trade Organization;'

2. Article 5 (1) (d) shall be replaced by the following:

'(d) nationals, other than those referred to under subparagraph (c), of any State which is not party to the Paris Convention or to the Agreement establishing the World Trade Organization and which, according to published findings, accords to nationals of all the Member States the same protection for trade marks as it accords to its own nationals and, if nationals of the Member States are required to prove registration in the country of origin, recognizes the registration of Community trade marks as such proof.'

3. In Article 7 (1) after subparagraph (i) the following shall be added:

'(j) trade marks for wines which contain or consist of a geographical indication identifying wines or for spirits which contain or consist of a

⁽¹⁾ Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 11, 14. 1. 1994, p. 1.

geographical indication identifying spirits with respect to such wines or spirits not having that origin.'

4. Article 29 (1) shall be replaced by the following:

'1. A person who has duly filed an application for a trade mark in or for any State party to the Paris Convention or to the Agreement establishing the World Trade Organization, or his successors in title, shall enjoy, for the purpose of filing a Community trade mark application for the same trade mark in respect of goods or services which are identical with or contained within those for which the application has been filed, a right of priority during a period of six months from the date of filing of the first application.'

5. Article 29 (5) shall be replaced by the following:

'5. If the first filing has been made in a State which is not a party to the Paris Convention or to the Agreement establishing the World Trade Organization, paragraphs 1 to 4 shall apply only in so far as that State, according to published findings, grants, on the basis of the first filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect.'

Article 2

This Regulation shall enter into force on 1 January 1995.

It shall be applicable as of 1 January 1996.

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER