

EUROPEAN PARLIAMENT

LEGAL AFFAIRS COMMITTEE

Opinion

for the Political Affairs Committee
on the seat of the Community Trade Marks Office

Draftsman: Mrs Tove NIELSEN

9 November 1983

39/82

Opinion

of the Legal Affairs Committee.

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On 24 February 1983, the Legal Affairs Committee appointed Mrs Tove NIELSEN draftsman of an opinion on the motions for resolutions on the seat of the Community Trade Marks Office.

The Committee considered the draft opinion at its meetings of 28 and 29 September and 3 and 4 November 1983, and adopted it with 10 votes in favour and 3 abstentions at the latter meeting.

The following were present at the vote: Mrs Veil, chairman; Mr Turner and Mr Chambeiron, vice-chairmen; Mrs Tove Nielsen, draftsman; Mr D'Angelosante, Mr Del Duca, Mr Ephremidis, Mr Geurtsen, Miss Hooper, Mr Janssen van Raay, Mr Malangré, Mr Megahy, Mr Purvis (deputizing for Mr Dalziel), Mr Tyrrell and Mr Vié.

INTRODUCTION

1. Some 16 motions for resolutions¹ have been tabled under Rule 47 of the Rules of Procedure on the site of the Community Trade Mark Office which the Commission is proposing be set up under Article 2 of the Regulation on the Community Trade Mark (Doc. 1-682/80 = COM(80) 635/final; Bulletin of the European Communities Supplement No. 5/80: OJ C351, 31 December 1980, p.5.). The Committee has examined the substance of this proposal, and a related proposal for a first Directive to approximate the laws of the Member States on trade marks, on the basis of a draft report prepared by Mr TURNER which it adopted at its meeting of 20 - 21 June 1983 (see Doc 1-611/83). The report is largely favourable towards the Commission's proposals and although some 39 amendments were proposed by the Committee² to the proposed regulation, only one of these, examined below, could have any effect on the siting of the Community Trade Mark Office.

2. The provisions governing the proposed Trade Mark Office are to be found in the Title XII of the proposed regulation, Articles 99 - 124; it is to be a Community body with legal personality, under the supervision of the Commission, whose budget is to be included in the general budget of the Community³ Article 99(3) of the proposed regulation expressly leaves open the question of the seat of the Office, largely because "it would be unwise to complicate the discussion of the regulation by bringing in the political problem of the site at too early a stage" (Explanatory Memorandum to Article 99: COM (80) 635/final, p. 86). Likewise the single language for procedural purposes in which the Trade Mark Office will operate has also not been proposed: the connection between the two matters is also examined more closely below. Finally, it is to be noted that the largely self-financing operating budget of the Office was estimated, on figures based on the position on 31 December 1979, as being approximately 8.5m EUA income and 8.8m EUA expenditure: the total staff is expected to be 204, of whom 40 are in Grade A, 73 in Grade B, 66 in Grade C and 25 in Grade D.

¹ See PE 86.421/Ann./Rev.

² Largely adopted by Parliament at its sitting of 12 October 1983

³ The reasons behind the Commission's proposing the setting-up of the Community Trade Mark Office and an outline of its main features are contained in the general comments on Title XII. (Explanatory Memorandum to Doc. 1-682/80 = COM(80) 635 final, pages 83 - 5: Bulletin of the European Communities, Supplement No. 5/80, pages 81 - 2).

3. Some of the motions for resolution on the seat of the Office have already been examined by the rapporteur for the Committee responsible, Mr GEROKOSTOPOULOS; in the conclusions to his Working Document (PE 84.088), the rapporteur opines that the Legal Affairs Committee should have addressed itself to the question of the seat as part of its examination of the substantive proposal for a regulation on the Community Trade Mark. While the matters are clearly related, it does not follow that they must be treated by the same parliamentary Committee as part of a single discussion. The substantive issue as to whether such a Community Trade Mark Office should be set up is by way of being a preliminary question, one which the Legal Affairs Committee has answered in the affirmative: in the Committee's view, the matter of the seat is now "ripe for discussion" at the level of the European Parliament, if not quite ripe for decision.

4. In the resolution which it adopted following consideration of the report (Doc. 1-611/82), of the Legal Affairs Committee on trade mark proposals, the European Parliament has taken a very clear position in favour of Article 235 EEC as both an appropriate and a sufficient legal basis for the setting up of a Community Trade Mark Office¹; indeed, it is difficult to imagine any other legal basis short of a treaty amendment for such "Community action".

The idea of a Trade Mark Convention has been firmly rejected by the Commission in proposing a regulation and by the European Parliament; such a convention would in any case deprive the Parliament of any say in either the substantive law or the siting of the Office: any "uncertainty and suspense" which may surround the question of the legal basis should not be allowed to delay discussion of these matters by the European Parliament.

5. The Commission has proposed in Article 103 of the proposed regulation that the Office use only one language for procedural purposes. As the Community Trade Mark Office is concerned with commercial rather than political matters, the reasons which justify the European Parliament's working in all the Community languages do not apply to the Office; the extra costs involved in working in 7 (or 9) languages, which would be passed on to those who deal with the Office, would seriously jeopardize the commercial viability of the Community Trade Mark. Thus, the Legal Affairs Committee supports the Commission's proposal; although the Parliament adopted an amendment to this Article to enable parties appearing before the Office to conduct written or oral proceedings in

¹Minutes of the European Parliament of 12 October 1983.

any other language of the Community, it is clear that the costs of such arrangements will be included in the costs awarded in each case, should the parties choose to exercise this facility, which does not undermine the principle of one working language for the office. As Mr GERKOSTOPOULOS has remarked, "the matter of the seat is directly tied to the language question"; it is therefore, only realistic that the Office should be situated in a Member State whose language is the procedural language of the Office, as well as an international business language used or understood by most of the Community's trading partners.

6. The Committee cannot agree with conclusion(d) of the Working Document that "the choice of seat is basically a technical problem"; rather, it is a political question with a technical aspect. There are a large number of cities in the Community which would fulfil the technical requirements for hosting the Community Trade Mark Office, including, no doubt, most or all of the potential sites mentioned in the multitude of motions for a resolution: it is true that this is a matter beyond the purview of a parliamentary committee of the European Parliament, but as the Commission has noted, under Article 235, "the power to create Community bodies extends to the choice of their headquarters"¹ and thus the matter will eventually fall to be decided by the Council, on a proposal from Commission and after consulting Parliament.

7. At this stage, therefore, the role of the European Parliament, in the view of the Legal Affairs Committee, is to provide some political guidance as to the criteria upon which the Commission should base its own selection for the seat from amongst the sites which are considered technically adequate. In this perspective, the Legal Affairs Committee supports the Commission's tactic in omitting from the substantive proposals a very thorny political issue (witness the plethora of motions for a resolution) which in no way affects the substantive law on the Community Trade Mark but could otherwise have delayed discussion on it or even overshadowed its adoption.

¹ Doc 1-682/80, p. 85: commentary on Article 99.

The Motions for a Resolution

8. The motions for a resolution identify a large number of factors - sometimes conflicting - which could influence the eventual choice of a site for the Office; all the motions for a resolution opt for a particular city or region, though it should be noted that a number of them are very similarly worded with little more than the name of the city different. Two separate issues are involved in the choice of a site: first the choice of the Member State and, secondly, the choice of a city or town within the chosen Member State: different considerations apply to each.

a) Choice of the Member State

9. It is only politically realistic to recognize that the allocation of past Community agencies is one factor which will weigh heavily in the choice of the host Member State for the Trade Mark Office: it is important that the European Community be seen to be operating throughout the entire territory of the Community, and not simply in those few cities and countries where the institutions are situated, and therefore it is perfectly valid to strive to spread the Community agencies around the Member States.
10. It is only realistic to assume, for solely pragmatic reasons, that the language chosen will be either English or French. Equally it is only realistic that the Office should be situated in a Member State whose language is the procedural language of the Office, as well as an international business language used or understood by most of the Community's trading partners.

b) Choice of seat of the Community Trade Mark Office

11. Once the Member State has been chosen, there remains the question of where within that Member State the Office is to be sited. A large number of the motions for resolutions emphasize regional development and the need for decentralization as considerations which favour the range of non-capital cities proposed, especially in view of the fact that two Member States (Belgium and the United Kingdom) have already proposed their capital city as a suitable site; the Committee takes the view that while a certain technical infrastructure is a necessary minimum (notably in communications and transport facilities), regional development is a valid consideration for the selection of a site, which should not necessarily be situated in a capital city.
12. A high level of unemployment is also mooted as a relevant factor; it is unlikely that a body like the Community Trade Mark Office will have much effect on the unemployment level, although the expected 10,000 applications per year will generate a certain amount of service sector employment for the host region. Despite the limited practical effect on unemployment, all other things being equal, it would surely be more equitable to locate the Office where the minimal employment it would create is most needed.
13. A variety of other factors have been suggested; geographical location, historical and commercial importance of a particular city, a tradition in the field of intellectual property. None is obviously decisive on its own, but most of them could be taken into consideration in assessing the merits and demerits of a particular region or city within the chosen host Member State.

CONCLUSIONS

14.

- a) The Legal Affairs Committee reiterates its view that Article 235 of the EEC Treaty is the proper legal basis for the setting up of the Community Trade Mark Office and affirms that the European Parliament, without opting for any particular one of the sites proposed, or indeed any other potential site, should take a position on the criteria upon which the Commission should base its forthcoming proposal on the seat for the Office.

- b) The Legal Affairs Committee believes that it is a valid objective to situate Community agencies on the broadest possible geographical basis throughout the Member States of the Community.
- c) It is only realistic that the Office should be situated in a Member State whose language is the procedural language of the Office, as well as an international business language used or understood by most of the Community's trading partners.
- d) The need for regional development is a particularly relevant factor in the selection of the seat of the Office from amongst the sites which satisfy the technical requirements in relation to transport, communication and other facilities. Other considerations, such as a high level of unemployment among administrative staff, the availability of qualified and multi-lingual personnel together with optimum facilities and an established reputation in respect of intellectual property and international trademarks, should also be taken into account in the final choice of the site.