



Europa

de en fr

The European
Commission

Internal Market

Industrial Property

▶ [Industrial Property](#)

▶ [Community Trade Mark](#)

Communiqué from Commissioner Bolkestein on the issue of exhaustion of trade mark rights

Existing Community legislation relating to intellectual property rights (designs, trademarks, copyright and neighbouring rights) provides for the principle of Community exhaustion. This regime aims at ensuring the free movement of goods within the EU. However, concerning goods which have been put for the first time on the market outside the Community, the Community-wide exhaustion regime gives the possibility for the right holder to prevent importation into the Community if he has not given his approval. A regime of international exhaustion would put an end to this possibility and deprives the right holder of this possibility.

The issue of trademark exhaustion has been discussed for nearly two years in the Internal Market Council. It has been claimed that trademark holders in the EU use the current Community exhaustion regime for trade marks to block parallel imports of branded goods into the Community, so as to maintain higher prices on the EU market than in other parts of the world. The Member States which agree with this analysis have invited the Commission to propose a change to the exhaustion regime for trade mark rights from Community-wide exhaustion to international exhaustion.

At the Internal Market Council on 25 May 2000, the Ministers had an exchange of views on the basis of the outcome of recent discussions at expert level. At this meeting Commissioner Bolkestein informed the Member States' Ministers that the Commission has, at this stage, decided not to propose a change to the current Community-wide exhaustion regime. Four Member States strongly supported the Commission approach, while eight Member States regretted the Commission's position and emphasised the need for a change. The remaining Member States did not express a position on this issue.

The reasoning behind the Commission's decision is explained in the following text:

Background

The NERA study

In order to obtain a clearer picture of the economic aspects of a possible change to the exhaustion regime, the Commission commissioned a study in 1999 from the NERA Institute in London. The conclusions of that study are as follows:

- The short term effects on consumer pricing of a change of exhaustion regime would vary from small (less than 2% price reduction) for certain products to "negligible" (0 % price reduction) for other products.
- The long term effects of a change of exhaustion are more difficult to predict. It is however likely that the marginal, positive effect on consumer pricing in the long

run will disappear.

- A change in the exhaustion regime may have an impact not only on pricing, but for example, also on product quality, product availability, after-sales services and employment in Europe.
- Trade mark policy has only a marginal effect on parallel trade: other elements like distribution arrangements, transport costs, health and safety legislation and technical standards and labelling differences may have a greater, and more direct impact.

Consultations

The Commission has consulted extensively with Member States and interested parties. Two meetings of Member States' experts have been organised, on the basis of a working document from the services of the Commission. The issue has been discussed in several meetings of the Internal Market Council. These consultations produced the following findings:

- The introduction and use of new technologies (e-commerce) may give consumers access to a greater choice of products at lower prices. Pressure on consumer prices would make a change of exhaustion regime in order to lower prices less relevant. The future enlargement of the EU may also have considerable impact on the Union's internal market by lowering consumer prices.
- Products are in many cases protected not only by trademarks, but by a multiple set of Intellectual Property Rights (IPR) (copyright, patents, etc.). The introduction of international exhaustion for trade marks only would therefore affect only a limited number of sectors in a limited way.
- There are currently two regimes of trademarks in Europe: national trademarks – harmonised on the basis of directive 89/104 – and the Community trademark regime put in place by Regulation 40/94. It is crucial that the exhaustion regimes for both national trade mark and Community trade marks remain the same. The possible co-existence of two different schemes would create confusion in the market place as well as in the minds of consumers, in particular in relation to the question of whether a given trade marked product has been lawfully put on the market or not.

Conclusions

The issue of exhaustion of trade mark rights and a possible change from the current Community-wide exhaustion regime to international exhaustion has been discussed at some length. The NERA study, together with the comments of the Member States and interested circles, have provided sufficient information as a basis for a decision. Further discussions on this issue would only serve to create more uncertainty, on the market place, about the future direction of intellectual property policy within the EU. It was therefore important to make a decision on whether to change the current Community-wide exhaustion regime or not.

The Commission has based its decision on the following conclusion:

- A change from Community exhaustion of trade mark rights to international exhaustion will not lead to a significant fall of consumer prices.
- Changing the exhaustion regime for trade marks only would produce little effect on the market place given that the large majority of products are covered by a number of intellectual property rights. However, to introduce international exhaustion for all IP rights would not be appropriate.
- It is crucial that the exhaustion regimes for national trade mark and Community trade marks are the same. A change of the exhaustion regime in the two legal instruments which govern this matter (a Directive for national trademarks and the Regulation on the Community trademark) cannot however be guaranteed, as the Directive may be changed through a qualified majority decision of the Council. Unanimity is necessary to change the Regulation. It is believed that at

least some Member States would possibly resist any change to the Regulation. The possible co-existence of two different schemes would create confusion in the market place as well as in the minds of consumers, in particular in relation to the question of whether a given trade marked product has been lawfully put on the market or not.

- A change of exhaustion regime would make it more difficult for EC firms to sell at a lower price outside the Community. The change of regime may over time inhibit investment in new brands or even make trade mark holders withdraw products from the market. Trade mark holders who continue to provide the branded goods may choose to reduce the quality of goods or the provision of associated services.
- An EU-exhaustion policy has been developed to foster the integration of the Single Market. With an international exhaustion policy EU companies might face a competitive disadvantage, given that such an integration process has not occurred world-wide yet. Market conditions for goods from third countries are less equal at this stage than within the EU; parallel trade may be influenced by differences regarding trade conditions in different countries such as administrative burdens of registration and labour costs. Most of these issues have been addressed by EC legislation or EC policy to ensure a certain uniformity throughout the EU. This is not the case at international level yet.

On the basis of these conclusions the Commission has decided, at this stage, not to propose a change to the current Community-wide exhaustion regime

Date: 7 June 2000

Contact: markt-e3@cec.eu.int



[[Update on the Single Market](#)] - [[Economic Reform](#)] - [[Financial Services](#)] - [[Financial Reporting & Company Law](#)] - [[E-Commerce](#)] - [[Media](#)] - [[Commercial Communications & Unfair Competition](#)] - [[Data Protection](#)] - [[Intellectual Property](#)] - [[Industrial Property](#)] - [[Free Movement of Goods](#)] - [[Services & Establishment](#)] - [[Professional Qualifications](#)] - [[Postal Services](#)] - [[Public Procurement](#)]



