NOTE

from: Presidency

Subject: Proposal for a Council Regulation on the Community trade mark
- further technical and legal aspects
1. The Working Party on Intellectual Property (Trade Marks) and the ad hoc Working Party of Counsellors set up by the Committee have finished discussing the proposal for a Council Regulation on the Community trade mark. The ad hoc Working Party's findings are contained in two reports to the Committee (6383/87 of 19 May 1987 and 9515/87 of 17 November 1987).

Apart from the issues dealt with in the reports and the political questions of headquarters and language, for which there are no Commission proposals, and the discussion which the Committee intends to hold on the legal basis, there are still a number of technical and legal points to be settled. These are summarized below, to give the Committee an idea of the time needed to deal with the questions.

2. Budget

At its meeting on 25 February 1987 the Committee instructed the Budget Committee to examine Articles 120 to 124 of the proposal for a Regulation on the Community trade mark, which deal with the budget for the Trade Marks Office. The Budget Committee has made an interim report on the matter (6314/87 of 13 May 1987).

When discussing the report on 4 June 1987, the Committee felt in the main, that the Community Trade Marks Office should have its own budget, and instructed the Budget Committee to continue its discussions on that basis. However, no final report has yet been submitted, and so the Working Party on Intellectual Property (Trade Marks) has not been able to give an opinion on what changes, if any, would have to be made to the proposal in the light of this report.
3. Legal remedies against decisions by the Trade Marks Office

The Committee instructed the ad hoc Working Party on the Court of Justice to examine whether jurisdiction for deciding at first instance on appeals against decisions of the Trade Marks Office should be transferred to the future Court of First Instance, and if so, in what manner; as far as possible, this examination was to be completed before the end of 1987.

The ad hoc Working Party on the Court of Justice looked into the question at its meetings in November and December 1987. Although the Working Party's initial reaction was favourable, some delegations were unable to state their definitive views at that stage. The Danish Chairman therefore proposed to make an interim report to the Committee on the question raised by the Working Party on Intellectual Property, outlining the state of play on the Chairman's responsibility. This report is not yet available.

4. Costs

In principle, the Community Trade Marks Office provided for in the proposal for a Regulation would finance itself from its income from fees. However, it would require a subsidy from the Community budget during a transitional period.

In its original proposal the Commission submitted a financial memorandum making provision - as at 31 December 1979 - for payments of 400 000 units of account from the Community budget in the first year, 3,1 million units of account in the second year and 3,7 units of account from the third to tenth years (Annex to 11788/80).
These figures will have to be updated, and further details are required of the additional costs that could arise through the introduction of searches for earlier marks, a possibility discussed at the Committee's meeting on 10 September 1987. In addition, there should be further examination of what extra costs would arise if proceedings at the Trade Marks Office were to be conducted in several languages instead of just one, and of the extra costs involved in the various solutions to the language problem that are being contemplated.

5. Link with the Madrid Agreement concerning Trade Marks

At present the proposal for a Regulation does not make any provision for a link with the system for the international registration of trade marks under the Madrid Agreement. Technical discussions on the matter have already been held in the Working Party on Intellectual Property (Trade Marks) and in the WIPO framework. A Diplomatic Conference to supplement the Madrid Agreement is scheduled to take place under the auspices of WIPO in the first half of 1989, with the aim of extending the existing system of international registration in order to enable more countries to take part, and of creating a link between the Madrid Agreement system and future Community trade mark law.

So far the Commission has not yet submitted any definitive suggestions to the Working Party on Intellectual Property (Trade Marks) on the legal basis for creating a link under Community trade mark law, or on the way the proposed link should be set up.

It will be necessary to work out an approach to this question.