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tant than long paragraphs'. Moderation and, above all, making this Parliament work, that is what is involved in adopting a practice which is in the Rules but which could not be used, namely, delegating legislation to the competent committee. It is a practice which is enshrined in almost all democratic constitutions and rules of procedure all over the world, and especially in those of the Member States of this European Community, and it is absurd that it has not been used up to now throughout its entire potential range: requests for an opinion from the Commission, consultations requested by the Council, and also — why not? — individual motions for resolutions (Rule 63) and motions on the initiative of the competent committee. There have been difficulties on the point relating to the competent committee, but I think every Group has made an effort to reach a balance between the wishes of the Commission, the dictates of speed and efficiency and the capacities of the enlarged Bureau.

We all want speed and efficiency. If there is ever a need to inform this Assembly about any matter, there are guarantees for doing so through several Members representing various Groups, not by just one because a single Group could obstruct . . .

PRESIDENT. — The debate is closed.

The vote will be taken on Wednesday at 5 p.m.

8. Laws of the Member States relating to trade marks

PRESIDENT. — The next item is the recommendation for the second reading (Doc. A 2-209/88) by the Committee on Legal Affairs and Citizens’ Rights concerning the common position of the Council (Doc. C 2-132/86) on the proposal for a directive to approximate the laws of the Member States relating to trade marks (Rapporteur: Mr Turner)

TURNER (ED), rapporteur. — Mr President, we are concerned here with the common position on the trade mark directive, which harmonizes the important parts of the law on national trade marks. You may remember, Mr President, that in 1983 you were on the Legal Affairs Committee and we worked on this for about two years. I do not think we ever thought we would see it again, but under the new rules it comes back to us. I am very glad to say first of all that the Commission accepted all of our amendments essentially in 1983, and they have put them to the Council. The Council has substantially accepted all the amendments. Therefore my recommendation is that we approve the common position.

There is a second part to this whole question of trade marks, and that is the regulation. However, in the directive we have here today all the major issues of principle have already been settled. The first time around in the first reading, as we would now call it, we had at least 20 amendments of importance relating to the nature of a trade mark and what makes it distinctive, the nature of the reputation of a trade mark on the market, and what is actionable because of confusion in the market. We cut out certain non-trade mark law aspects of the original proposals on principle. The Commission supported our amendments at that time. For instance, we cut out the proposal that one could only use one trade mark for a particular type of goods, which was entirely impracticable. We have stated that the operation of Articles 36, 85, and 86 should be left entirely to the court and not legislated for. We also altered the rights of licensees and licensors and, most important in some respects, we recognize the rights of earlier users of unregistered trade marks.

All these things have been accepted by the other two institutions. They have, in essence, accepted everything we have put forward. It is five years since we last saw this document, and I must say that the Council — with the help of the Commission, of course — has made a very professional job of the final draft. The wording is to be highly commended. In a way, it is one of the best laws I have ever read, insofar as terminology goes.

Of course, it is vital to ensure that when the regulation comes up for consideration — and I hope it will soon — exactly the same wording is maintained in appropriate places to make sure that there is no discontinuity between the national laws and the laws of the EEC. What this directive is concerned with is solely the question of the rights of a trade mark owner of a national trade mark. What we are going to do in the regulation is to have a common Community trade mark which will cover the whole of the EEC. The two types of trade mark will certainly run together forever. So, both sides of this law are equally important.

I therefore recommend to the House that we accept the common position.

(Applause)

ROTHLEY (S). — (DE) Mr President, I will be brief: the Socialist Group will support the motion of the rapporteur. We have already done so in the Committee on Legal Affairs and Citizens’ Rights. I think the rapporteur has done a thorough and painstaking piece of work. There was great readiness on the part of the Commission and the Council to take on board the proposals we had worked out in the Committee on Legal Affairs and Citizens’ Rights. All this has contributed to a situation in which we now have a text which is legally very precise and which in this form we can actually accept. The Socialist Group will vote for this motion.
FONTAINE (PPE). — Mr President, ladies and gentlemen, my Group will vote for Mr Turner’s report, but in order to reduce some of the obstacles which have prevented the common position being adopted unanimously, I should like the Commission to remove certain ambiguities of interpretation. On this text, which once again we approve as a whole, I shall therefore propose various, mostly technical questions, the last one in my view being the most fundamental.

My first question concerns those signs capable of representing a trade mark. Clearly a trade mark can — and more and more frequently does — take the form of an acoustic signal which cannot be represented graphically, but which is capable of a material representation, on a tape, for example. To remove any difficulties, the term ‘graphic’ need only be interpreted in this way. Can the Commission confirm this? Likewise, I should like confirmation that a form is capable of representing a trade mark.

My second question concerns Article 4 of the common position, and more particularly the period between the moment a trade mark is applied for and the moment it can properly be registered, in the event of an earlier proprietor allowing his rights to cease by non-renewal of the registration. This period is fixed at two years. Does not such a period accord an excessive legal protection to a mark whose validity has rightly ceased through non-renewal? Furthermore it is liable to create a situation of risk for the new proprietor. Would it not be logical for the maximum period of protection not to exceed the period allowed for renewal, i.e. six months? How can such a long delay be justified when it departs from the provisions of the Convention of the Union de Paris?

Third, with regard to the grounds for refusal or nullity of registration, the expression ‘geographical origin’ certainly signifies an indication of origin and not of the fact of using a geographical place as a mark — can the Commission confirm this?

What I also want is an explanation from the Commission as to certain aspects of Article 5. Is there any good reason why profit should be derived from the distinctive character or renown of a mark?

Another point. The proprietor of a mark may, in certain very specific cases, oppose the further marketing of goods. This can be done, for instance, when the condition of goods is altered or spoiled after being put on the market. However, the notion of condition of goods may prove too narrow to guarantee the protection of all the distinctive elements of a product. Could this concept be extended to cover, for example, packaging or labelling?

My final observation is more fundamental. Article 3 includes the introduction of a new clause, which appears contrary to the terms of Article 7 of the Convention of the Union de Paris and on which I should also like to have some clarification. What is meant by the following statements: ‘Use of the trade mark may be banned by virtue of legislation other than that governing the trade-mark law of the Member State concerned or of the Community’. Is there not a risk in this wording of opening the door to arbitrary decisions by authorizing the adoption of legislation which would circumvent, perfectly lawfully as far as the Community is concerned, the present directive?

I thank the Commission in advance for any assurances it can give regarding the various concerns I have mentioned.

LAZARO LÓPEZ (ED). — (ES) Mr President, on behalf of the European Democratic Group, may I express our absolute and total support of the magnificent work done by Mr Turner and of the common position he recommends to us.

The common position is perfectly well-founded, in our opinion. This first directive refers to a process of approximation, that is to say, a special form which does not harmonize or coordinate but approximates, since, in accordance with Article 222 of the Treaty, it in no way prejudices the proprietary system in Member States, which could make coordination or harmonization unsuitable. Now that the Court of Justice has laid down that effectiveness is co-substantial with applicability, this directive on approximation deserves our full approval.

Our Group has already modified many of its points through amendments at the first reading. Virtually all our amendments establishing the definitive principles of this approximation were accepted by the Commission: the principle of exclusivity, covered by Article 1; effectiveness, covered by Article 4; confusion, Article 10; expiry, Article 6 and availability, Article 18. They also took cognizance of all the judgments of the Court of Justice in the cases of Park Davis, Grundig, Gramophone, Sirena, Campari, etc. So our Group will support the Turner report and its recommendation to allow this cooperation.

SUTHERLAND, Member of the Commission. — Mr President, first of all, as has been pointed out, Parliament is giving a second reading to the proposal for a directive to approximate the legislation of the Member States relating to trade marks. The aim of the directive is to harmonize the laws of the Member States as regards the principal conditions governing rights conferred by trade marks. This should ensure that trade marks are obtained and the rights they confer exercised under the same conditions in each Member State. The Council reached the common position on this proposal on 22 June. In its communication to Parliament of 5 September the Commission indicated that the common position reflects the principal amendments proposed by Parliament and incorporated by the Commission in its amended proposal.
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I am pleased to note that the rapporteur, Mr Turner, and the Legal Affairs Committee recommend that Parliament give a second reading to this proposal without further amendment. This should clear the way to the early adoption of the proposal by the Council. I trust that this will be followed in the very near future by the Council's adoption of the Community trade mark regulation.

I would like to take this opportunity to thank Mr Turner and the Legal Affairs Committee for their very constructive and consistent work in this particular area. Their work on this proposal, they will be glad to see, has borne fruit. It will make an important contribution to the free movement of trademarked goods and services within the Community, and the success that has been achieved is in no small measure due to their efforts.

Let me deal now with some of the specific points raised by Mrs Fontaine. In the first instance I would like to deal with the point she made about graphic representation. Article 2 of the regulation does not rule out the possibility that sounds may constitute trade marks if they distinguish the goods or services of one undertaking from those of others. It was clear from discussions within the Council that the Council shared this understanding of Article 2.

Secondly, in regard to the provisions of Article 4 and the ground for refusal or invalidation of a trade mark laid down in Article 4, paragraph 4(f) has been introduced by the Council as an option to Member States. It refers only to cases where an earlier trade mark is no longer registered because the registration has not been renewed by the proprietor. There are two reasons for preventing third parties from obtaining exclusive rights to such trade marks within a certain period after the expiry of the earlier registration. Firstly, if third parties are allowed to put goods on the market which bear an identical or similar trade mark to the lapsed trade mark, the public is likely to be confused as to the producer of the goods. Secondly, if third parties could obtain exclusive rights to such trade marks immediately after the expiration of the registration, they would take unfair advantage of the goodwill which the proprietor of the earlier trade mark had built up.

These arguments are less relevant if a certain period after the expiry of the registration of the earlier trade mark has passed. The Council fixed this period at a maximum of two years, which seems to be a reasonable period. The grace period of six months granted to the proprietor to request renewal of the registration should be distinguished from the situation under Article 4, paragraph 4(f). Article 4, paragraph 4(f), deals in principle with cases where the proprietor of the earlier trade mark does not request the renewal of his registration, whereas the grace period deals with the situation where the proprietor maintains his exclusive right.

With regard to the packaging and labelling of goods, the notion of condition of goods which was included in the initial proposal of the Commission was endorsed by Parliament, which in the meantime has asked for the deletion of the notion of repackaging of goods. Parliament's opinion, shared by the Commission and the Council, was based on the idea that it is not useful to attempt to codify the case law of the Court of Justice. It is clear from one decision that the proprietor of a trade mark may, subject to certain exceptions, prohibit third parties from repackaging goods put on the market by him and reaffixing his trade mark to the new packaging.

The Commission therefore does not think it necessary to clarify with more precision the notion of condition of the goods.

As regards indications of geographical origin of goods and services, the sign protected may not be of such a nature as to deceive the public, for instance as to the geographical origin of the goods and services. First of all, according to the function of the trade mark — which is to distinguish the goods or services of one undertaking from those of other undertakings on the market — the sign protected must have a distinctive character. For this reason the text of Article 3.1(e) of the common position, like the text of the Commission's proposal endorsed by the European Parliament, excludes in principle protection of indications of geographical origin. It is clear that enterprises cannot be allowed to monopolize for their products signs which could as well be used by their competitors established in the same area, such as is the case in the 'appellation d'origine'.

I would like to point out that the text limits the exclusion from protection in two ways. Firstly, the sign excluded from the protection must consist exclusively of indications of geographical origin. However, this allows protection of complex signs which include an indication of geographical origin. Secondly, the exclusion refers to signs which may serve in trade to designate the geographical origin, and this leaves open the possibility of protecting geographical names when they can be used in an imaginative and creative way. This could be the case with the name of an area completely unknown for the production of products protected by the mark.

In conclusion, I would like to underline that on this sensitive and difficult question a complete consensus exists between all the Community institutions. As I have already mentioned, the Council has adopted the text proposed by the Commission and endorsed by Parliament in its first opinion.

I hope I have covered most of the issues raised. Numerous and rather detailed questions were raised by Mrs Fontaine, who has revealed a mastery of the dossier rivalled only by Lord Cockfield himself, who, regrettably, is not here. However, if there are any
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particular issues which have not been covered by me in my attempt at a reply on the specific points she raised, then certainly I will try to talk to her in order to resolve the issues with the help of the experts who are in the Chamber. Hopefully, that will enable her to provide the unanimous support in the Chamber that one would wish for this particular proposal.

PRESIDENT. — Commissioner, having listened to the complexity of the answer, I remember in the Committee on Legal Affairs and Citizens' Rights when Mr Turner began I felt he was the only Member who actually understood anything about trade marks. I am glad he has convinced everybody else in the Community to be of the same accord. I would add my congratulations there.

The debate is closed.

The vote will be taken on Wednesday at 5 p.m.

9. Major holdings in a listed company

PRESIDENT. — The next item is the recommendation for the second reading (Doc. A 2-210/88) by the Committee on Legal Affairs and Citizens' Rights concerning the common position of the Council (Doc. C 2-139/88) on the proposal for a directive on the information to be published when a major holding in a listed company is acquired or disposed of.

PROUT (ED), rapporteur. — Mr President, the Council adopted its common position on 11 July 1988. The Commission in turn accepted all of Parliament's amendments in its modified proposal, a fact in itself worthy of note. The text of the Council's common position contains a number of modifications to the proposal upon which we gave our opinion at the first reading. In particular, the directive now applies to changes in the holdings of voting rights rather than in holdings of the subscribed capital of a company. Since the modification in question goes in exactly the same direction as one of Parliament's principal amendments to the original proposals, a move by us to see reconsultation at this stage would, in my submission, be inappropriate. A number of other modifications to the text of the directive are consequential upon this change. Further changes take up other amendments by Parliament and the remainder add new provisions of a minor character. The committee recommends that the House adopt the common position without amendment, satisfied that Parliament has had an important influence on the shape of a significant branch of Community law.

MEDINA ORTEGA (S). — (ES) Mr President, after hearing that the rapporteur recommends adoption of the proposal for a directive as it stands and given that, in effect, the proposal for a directive takes up Parliament's earlier amendments, the Socialist Group also supports the adoption of this proposal for a directive in its existing terms without any modification.

JANSSSEN VAN RAAY (PPE). — (NL) Mr President, once more we have before us one of the small but important elements of the internal market, or rather of company law. My Group will vote in favour of the rapporteur's recommendation. I can be quite brief on the proposal. But I should like to take this opportunity of making a general point, namely, that this piece of legislation is a fine example of good cooperation between Parliament, the Commission and the Council. I hope this example will be followed by many others. Cooperation, or concertation as we call it, has been excellent and I hope it will set an example for future legislation.

There is a second important point I would like to pass on to the Council of Ministers through the good offices of the Commissioner. We have two types of legislation here with regard to the important motivation. One important new element of the Single European Act which has not yet got through to the media is that the Council of Ministers has to present a complete motivation, and therefore also explain why Parliament's amendments forwarded via the Commission have not been accepted. It struck me that on this legislation referred to by the Legal Affairs Committee the Council specifically fulfils its obligation to produce a motivation, showing clearly which amendments it has accepted, which have been accepted in a different form and which have been rejected.

I say this specifically for the attention of the Commission, because other Directorates-General have not been so successful with the Council of Ministers. There you have to look, rather like in an Agatha Christie novel, for the reason why the Council has not accepted certain amendments, if it says it has not. We attach great importance to the obligation to provide a motivation, for that is a starting point for transparency in legislation, which is something we all want.

Let me finish with a few words in English. I compliment the Commissioner very much on this beautiful example of legislation and I hope that the Commission will see to it that the Council, under the Commission's guidance, will do what we expect from the Council of Ministers.

SUTHERLAND, Member of the Commission. — Mr President, I am always willing to take praise for someone else's work. In this case your compliments should be directed to Lord Cockfield. But thank you very much, in any case.

All that I can say is that, obviously, we are very pleased to note that the position which now pertains is