

The Executive Director

**Communication No 2/17 of the Executive Director of the Office**

**of 1 October 2017**

**concerning parties and representatives from EFTA States  
(Iceland, the Principality of Liechtenstein and the Kingdom of Norway)  
in proceedings on design matters**

THE EXECUTIVE DIRECTOR OF THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (as amended) (CDR), and in particular Articles 77 and 78 thereof,

Having regard to Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (as amended) (CDIR), and in particular Articles 61 to 64 thereof,

Whereas,

- (1) Article 77(2) CDR stipulates a requirement to be represented before the Office for natural or legal persons without a domicile, place of business or establishment in the European Union.
- (2) Article 78 CDR requires the qualification, place of business/employment and/or nationality of professional representatives to be related to a Member State of the European Union.
- (3) Article 78(1)(b) CDR confers the right to represent in design matters before the Office to those professional representatives whose name has been on the list of professional representatives referred to in Article 89(1)(b) of the Regulation on the Community trade mark, that is Article 93(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark<sup>1</sup> (now Article 120(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (EUTMR)).
- (4) Article 119 EUTMR and Article 120 EUTMR refer for European Union trade mark matters, as regards representation requirements related to a territory, to the European Economic Area. This includes professional representatives entered on the list under Article 120(1)(b) EUTMR from EFTA States, who are thus entitled to represent in design matters by virtue of Article 78(1)(b) CDR.
- (5) Article 36 of the Agreement on the European Economic Area of 2 May 1992 (EEA-Agreement) (as amended) prohibits restrictions on the freedom to provide services within the European Economic Area in respect of nationals of EU Member States and EFTA States established therein.

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<sup>1</sup> Before its amendment by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015.

- (6) The legal requirements concerning the representation in proceedings before the Office must be interpreted by the Office in the light of Article 36 of the EEA-Agreement, which has direct effect in the European Economic Area. The EUTMR allows parties and representatives from EFTA States to act before the Office, following a confirmatory alignment of the former Regulation (EC) No 207/2009 with the obligations arising from the EEA-Agreement (Judgment of the General Court of 13 July 2017, T-527/14, Paul Rosenich/EUIPO, ECLI:EU:T:2017:487).
- (7) Articles 77 and 78 CDR correspond in essence to Articles 92 and 93 of the former Regulation (EC) No 207/2009 and should thus be interpreted in accordance therewith and with the EUTMR respectively, both in view of the obligations arising from the EEA-Agreement and in the interest of avoiding an unwarranted divergence between design and trade mark proceedings,

HAS ADOPTED THE FOLLOWING COMMUNICATION:

### **1. General principles of representation**

The reference to the European Union (Community) pursuant to Article 77 CDR and any other provision, decision or communication in application thereof shall be interpreted as a reference to the European Economic Area.

Therefore, subject to Article 77(2) CDR, natural or legal persons having either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the European Economic Area must not be represented in design proceedings before the Office.

### **2. Professional representation**

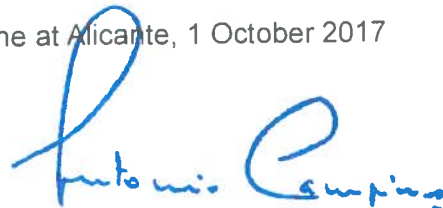
The reference to the European Union (Community) and to its Member States pursuant to Article 78 CDR and any other provision, decision or communication in application thereof shall be interpreted as a reference to the European Economic Area and its European Union Member States and its EFTA States.

Therefore, subject to the legal conditions set by Article 78 CDR, representation of natural or legal persons in design proceedings before the Office may be undertaken by any legal practitioner qualified in the European Economic Area and having his place of business therein, or by other professional representatives from the European Economic Area under Article 78(1)(b) and (c) CDR.

### **3. Entry into force**

This Communication shall be applied to all pending and future proceedings on design matters. It shall be published in the Official Journal of the Office.

Done at Alicante, 1 October 2017



António Campinos