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*Committee on Legal Affairs  
The Chair*

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16.10.2013

Mr Klaus-Heiner Lehne  
Chair  
Committee on Legal Affairs  
BRUSSELS

Subject: Opinion drawn up pursuant to Rule 37a of the Rules of Procedure on the use of delegated acts, in the context of Parliament's scrutiny of the Community trade mark (COM(2013)0161 – C7-0087/2013 – 2013/0088(COD))

Dear Mr Chair,

The Committee on Legal Affairs has decided to give an opinion on its own initiative on the provisions in the above-mentioned proposal which delegate legislative powers to the Commission in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU).

The proposal contains the remarkable number of 63 different suggested delegations of legislative power to the Commission (see Annex).

### **I - Background**

The above-mentioned proposal for a Regulation is part of the trade mark package which the Commission presented on 27 March 2013 and which also consists of a proposal for a recast of the Trade Mark Directive<sup>1</sup>, and a proposal for an implementing act amending two Commission Regulations<sup>2</sup> intended to adapt the fee structure of the Community trade mark

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<sup>1</sup> Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ L 299, 8.11.2008, p. 25).

<sup>2</sup> Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 303, 15.12.1995, p. 1), and Commission Regulation (EC) No

system.

According to the Commission, the overall aim of the proposal is to foster innovation and economic growth by making trade mark registration systems all over the EU more accessible and efficient for businesses in terms of lower costs and complexity, increased speed, greater predictability and legal security. The Commission is however not proposing a new system, but a modernisation of existing provisions, with the main aims of adapting terminology to the Lisbon Treaty and provisions to the Common Approach of 19 July 2012 on decentralised agencies<sup>3</sup>, streamlining procedures to apply for and register a European trade mark, increasing legal certainty by clarifying provisions and removing ambiguities, incorporating case law of the Court of Justice, establishing an appropriate framework for cooperation between OHIM and national offices for the promoting convergence of practices and developing common tools, and aligning the framework to Article 290 of the TFEU.

## **II - The proposed draft implementing act on the fee system**

The above-mentioned proposal for an implementing act on the fee system is based on Articles 144, 162 and 163(2) of the Trade Mark Regulation currently in force, in conjunction with Article 13 of the Implementing Acts Regulation<sup>4</sup>. Under these provisions, the regulation of the fees shall determine the amounts of the fees, the ways in which they are to be paid, and shall ensure a balanced OHIM budget. They shall furthermore be adopted and amended using the examination procedure in Article 5 of the Implementing Acts Regulation.

The Commission is however simultaneously proposing to amend the Trade Mark Regulation so as to provide for future amendments of the fee system by delegated acts under Article 290 TFEU.

Recital 2 of the draft implementing act furthermore talks of it being "appropriate to make the fee structure more flexible by adapting it", which arguably goes beyond mere implementation and can be said to be rather a question of policy choices and touch upon essential elements of the trade mark package.

Following opposition to this approach from both the Parliament at shadow meetings and from Member States at Council working party meetings, the Commission announced in a letter to Parliament on 18 July 2013 that it will not go forward with the draft implementing act in the relevant committee, and intends to "convene the next meeting of the Committee towards the end of the year at the earliest". When the draft implementing act was presented, the aim of the Commission was to adopt it before the end of the year, and the Commission

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2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ L 303, 15.12.1995, p. 33). There is also a third implementing regulation under the current Trade Mark Regulation, namely Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (OJ L 28, 6.2.1996, p. 11), which is not however amended.

<sup>3</sup> [http://ec.europa.eu/commission\\_2010-2014/sefcovic/documents/120719\\_agencies\\_common\\_appr\\_en.pdf](http://ec.europa.eu/commission_2010-2014/sefcovic/documents/120719_agencies_common_appr_en.pdf)

<sup>4</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

appears to maintain the position that it may legally adapt the structure of the fees by an implementing act.

It should furthermore be noted that according to point 38 of the above-mentioned Common Approach on decentralised agencies, fees should be set at a realistic level for self-financed agencies (such as OHIM) to avoid the accumulation of significant surpluses.

Under Article 291 TFEU, where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission. The Common Approach is however a joint statement of the European Parliament, the Council and the European Commission, and is thus not a legally binding Union act.

### **III - Background to delegated and implementing acts**

Please see Section II of the Opinion of the Committee on Legal Affairs of 27 April 2012 to the Committee on Agriculture concerning the regulation amending Regulation (EC) No 834/2007 on organic production and labelling of organic products, and the working document drawn up in the context of the follow-up on the delegation of legislative powers and the control by Member States of the Commission's exercise of implementing powers (rapporteur: József Szájer), which provide for an extensive background to both delegated and implementing acts.

### **IV - Parliament's position on the delegation of legislative power**

The demarcation between delegated and implementing acts has been the subject of some controversy in a number of legislative procedures following the entry into force of the Lisbon Treaty. The Council has insisted on the use of implementing acts in order better to influence the preparatory phase of such acts through the experts from the Member States sitting in the relevant committees provided for in the Implementing Acts Regulation. In the preparation of delegated acts there is no formal role for national experts. Furthermore, the role, influence and prerogatives of Parliament are far greater when it comes to delegated acts, with the possibility of objecting to a proposed delegated act and revoking a delegation being the strongest tools in its possession. When it comes to implementing acts, the powers of Parliament are limited to a right of scrutiny, and the Commission may adopt a proposed implementing act notwithstanding any objection from Parliament.

The choice of the correct instrument has significant consequences not only for the possibility of Parliament to exercise its right of control or scrutiny, but also for the validity of the legal act itself. The President of the Commission, in a letter to the President of Parliament, has stressed that the delineation between implementing and delegated acts is not a matter of political choice, and that the starting point of any analysis therefore must be the legal criteria established in Articles 290 and 291 TFEU<sup>5</sup>. The Commission has therefore sought clarification from the Court of Justice on the delineation issue in a case where it considered that the wrong kind of act had been chosen<sup>6</sup>.

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<sup>5</sup> Letter of 3 February 2012 from President Barroso to President Schulz.

<sup>6</sup> On 19 September 2012, the Commission brought an action to the Court of Justice seeking to annul an article

In order to establish a horizontal political position on the issue of delegated acts to protect Parliament's prerogatives and avoid further risk of legal challenges and the risk of annulment of legislative acts with an incorrect choice of delegated or implementing acts, the Conference of Presidents endorsed in 2012 the following 4-step approach with a view to ensuring that Parliament is capable of exercising to the full the powers conferred on it by the Lisbon Treaty<sup>7</sup>:

1. Choice of the right instrument;
2. Strengthening the Member States' role in the preparatory phase of delegated acts;
3. Inclusion in the basic act ("codecision");
4. Adoption of Parliament's position without a first reading agreement.

As a last step, where delegated acts could not be included in a particular file, although it had been established that they should, this approach calls for refusing to submit the file to the plenary as such, and that further horizontal negotiations with the Council would then be required.

## **V - Analysis**

In the absence of any case law from the Court of Justice on the question of the demarcation between delegated and implementing acts, the starting point for any analysis must be the wording of the Treaty itself. Article 290 TFEU only permits a delegation of legislative power for the adoption of "*non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act*" (emphasis added).

To examine whether those criteria are fulfilled here, it is necessary to examine the nature of the power in question on a case-by-case basis. Please see the Annex.

First, when it comes to the fee structure of the trademark system, one needs to take into account that the actual levels of the fees have not been altered substantially in the last almost 20 years, and any adjustment in the basic act, using codecision, is likely to last an equal amount of time, thus not requiring any flexibility through the use of delegated act under Article 290 TFEU for the setting the levels of the fees. It is the prerogative of the legislator to delegate or not to delegate legislative power. In this case, the change to the fee structure is not a mere question of implementing rules in legislative acts but rather a question of making a policy choice which is an essential element of the trade mark package. Such a policy choice belongs in the basic act, and cannot be the subject of delegated or implementing acts.

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in the Biocidal Products Regulation which provides for the adoption of measures by an implementing act rather than by a delegated act. The Commission argues that since the article in question seeks to supplement certain non-essential elements of the legislative act, and with regard to the nature of the delegation and the purpose of the act to be adopted under those powers, such an act ought therefore to be adopted in accordance with the procedure laid down in Article 290 TFEU and not the procedures laid down in Article 291 TFEU. Case C-427/12, Commission v European Parliament and Council of the European Union.

<sup>7</sup> *Political guidelines on a horizontal approach within Parliament on dealing with delegated acts* (Letter of 19 April 2012 from the Chair of the CCC to the President of Parliament).

The view that the fee system should be kept in provisions in the basic act is furthermore reinforced by the fact that the driving force behind the fee aspects of the proposed trademark package was the above-mentioned Common Approach, which is not a legally binding Union act. It can therefore be questioned whether the Commission could even claim to have any implementing powers under Article 291 TFEU when it comes to the fees.

Second, concerning the provisions in the amending regulation, it should first be noted that the Commission only proposes provisions on delegated acts, and does not propose any provisions on implementing acts. It should furthermore be noted that the Commission has included the following provisions in the proposal for a basic act which were previously included in Regulation No 2868/95 implementing the Trade Mark Regulation: Articles 19(2), 20(4), 22(6), 75, 79a, 79c, 79d and 87(3).

One major problem with the Commission's approach is that there are a number of provisions on delegated acts in the proposal which lack any foundation in the basic act susceptible of being supplemented or amended, and whose sole purpose seems to be to provide an instrument to permit the Commission to come up with provisions from scratch. In many cases, these provisions could easily have been further specified already in the basic act. In many cases a provision in the basic act contains a reference to "the conditions established in accordance with Article [on delegation of power]" which in turn makes a reference to the "conditions referred to in Article [provision in the basic act]". In such cases, in order for Article 290 TFEU to be applicable the conditions need to be further specified in order to rectify the circular lack of a basic obligation or provision to be supplemented or amended.

This problem can be found in the following provisions: Article 35a(d), paragraphs a and c of Article 45a, Article 74a, Article 74k, paragraphs f, i, j, k, m and p of Article 93a, Article 114a, and paragraphs a, c and f of Article 161a

If no further specification were to be made in the basic act in such cases, one of the possible alternatives would be to confer implementing powers on the Commission, which could entail a loss of influence for Parliament.

A further questionable suggested form of delegation can be found in Article 65a of the basic act, which provides for delegated acts specifying the content of notices of appeal and the content and form of decisions by the Board of Appeal. It is unclear what the word "content" means in this case. This needs to be clarified in the basic act or an alternative needs to be found in order not to come unnecessarily close to the limits of non-essential elements.

Certain provisions providing for delegated acts make references to matters which do not appear in the Article in the basic act to which it refers. For instance, Article 65a provides for delegated acts "specifying the reimbursement of the appeal fees referred to in Article 60", whereas that Article does not refer to reimbursement. Similar discrepancies between provisions can be found in paragraphs h, j and k of Article 161a(h).

One peculiar aspect of the proposal which presents a problem when it comes to the delegation of legislative powers is the provisions on the powers of the Executive Director, which are often contradictory to provisions on delegated acts, for instance in Articles 30, 79, 88 and 128.

Lastly, there are a couple of incorrect references in the provisions providing for delegated acts, for instance in Article 144a(b) and in Article 161a(c).

## **VI - Conclusion and recommendation**

In light of the foregoing reasoning, the Committee on Legal Affairs takes the view that the fee system should not be the subject of an implementing act on the basis of the Trade Mark Regulation currently in force, in conjunction with the transitional provisions in the Implementing Acts Regulation, as originally proposed by the Commission, but should rather be governed by provisions in the basic act itself, and any amendments to it should be subject to the ordinary legislative procedure.

In certain cases, delegated acts could be used to specify or establish criteria and procedures, but only where the provisions are further specified in the basic act. Alternatively, the Commission could be required to draw up a report within a certain time-span to the co-legislators, with possible accompanying proposals for amending legislative acts.

In view of the political guidance endorsed by the Conference of Presidents, the Committee on Legal Affairs should therefore take these recommendations into consideration when finalising its report. If the Council takes a position contrary to these recommendations and favours delegated or implementing acts where the criteria therefore are not met, the Committee should inform the Council that the file will not be submitted to the plenary as such, and if the Council still persists, the Committee should recommend the adoption of Parliament's position without a first reading agreement.

At its meeting of 14 October 2013 the Committee on Legal Affairs adopted this opinion unanimously<sup>8</sup>.

Yours sincerely,

Klaus-Heiner Lehne

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<sup>8</sup> The following were present: Sebastian Valentin Bodu (Vice-Chair), Françoise Castex (Vice-Chair), Marielle Gallo, Jutta Haug (pursuant to Rule 187(2)), Klaus-Heiner Lehne (Chair), Eva Lichtenberger, Alajos Mészáros (pursuant to Rule 193(3)), Dezhnev Rapkay, Francesco Enrico Speranza, Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka.

**Annex - Provisions on delegated acts**

<b>Article</b>	<b>Relevant text</b>	<b>Objectives, content and scope</b>	<b>Recommendation</b>
Recital 24	Regulation (EC) No 207/2009 confers powers on the Commission in order to adopt rules implementing that Regulation. As a consequence of the entry into force of the Lisbon Treaty, the powers conferred upon the Commission under Regulation (EC) No 207/2009 need to be aligned to Article 290 of the Treaty on the Functioning of the European Union.	Whether to delegate legislative power or to confer implementing powers on the Commission is the sole prerogative of the legislator. The conclusion that the powers conferred upon the Commission under the current Trade Mark Regulation must be aligned to Article 290 TFEU is therefore incorrect. Those powers could also take the form of provisions on implementing acts under Article 290 TFEU or be kept in the basic act.	This recital could be reworded to take into account also the fact that the legislator is free to not delegate legislative powers or confer implementing powers.
Recital 25	It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.	This corresponds to parts of the standard recital in the Common Understanding.	Should be kept in since it corresponds to the correct template.

Recital 26	In order to ensure the efficient registration of legal acts concerning the European trade mark as object of property and ensure full transparency of the register of European trade marks, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying certain obligations of the applicant regarding specific trade marks, the details on the procedures for entering the transfer of European trade marks, the creation and transfer of a right in rem, the levy of execution, the involvement in an insolvency procedure and the grant or transfer of a licence in the Register and for cancelling or modifying relevant entries.	This recital corresponds to Article 24a.	See comments to Article 24a.
Recital 29	In order to provide for an effective and efficient regime for the filing of European trade mark applications including priority and seniority claims, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the means and modalities of filing a European trade mark application, the details regarding the formal conditions of a European trade mark application, the content of that application, the type of application fee, as well as the details on the procedures for ascertaining reciprocity, claiming the priority of a previous application, an exhibition priority and the seniority of a national trade mark.	This recital corresponds to Article 35a.	See comments to Article 35a.

Recital 31	<p>In order to ensure an effective, efficient and expeditious examination and registration of European trade mark applications by the Agency using procedures which are transparent, thorough, fair and equitable, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the details on the procedures related to the examination of compliance with the requirements on the filing date and with the formal conditions of an application, the procedures for verifying payment of class fees and the examination of absolute grounds for refusal, the details concerning the publication of the application, the procedures for correcting mistakes and errors in publications of applications, the details on the procedures related to third party observations, the details on the opposition procedure, the details on the procedures for filing and examining an opposition and those governing the amendment and division of the application, the particulars to be recorded in the Register when registering a European trade mark, the modalities of publication of the registration and the content and modalities of issue of a certificate of registration.</p>	This recital corresponds to Article 45a.	See comments to Article 45a.
Recital 32	<p>In order to allow European trade marks to be renewed in an effective and efficient manner and to safely apply the provisions on the alteration and the division of a</p>	This recital corresponds to Article 49a.	See comments to Article 49a.

	European trade mark in practice without compromising legal certainty, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the modalities for the renewal of a European trade mark and procedures governing the alteration and division of a European trade mark.		
Recital 33	In order to permit the proprietor of a European trade mark to easily surrender a European trade mark, while respecting the rights of third parties entered in the register in relation to that mark, and to ensure that a European trade mark can be revoked or declared invalid in an effective and efficient way by means of transparent, thorough, fair and equitable procedures, and to take into account the principles laid down in this Regulation, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the procedure governing the surrender of a European trade mark as well as the procedures for revocation and invalidity.	This recital corresponds to Article 57a.	See comments to Article 57a.
Recital 34	In order to allow for an effective, efficient and complete review of decisions of the Agency by the Boards of Appeal by means of a transparent, thorough, fair and equitable procedure which takes into account	This recital corresponds to Article 65a.  It is unclear what "details on the	See also comments to Article 65a.

	the principles laid down in Regulation (EC) No 207/2009, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the details on the content of the notice of appeal, the procedure for the filing and examination of an appeal, the content and form of the Board of Appeal's decisions and the reimbursement of the appeal fees.	content" of a notice appeal entails.	
Recital 36	In order to allow for an effective and efficient use of European collective and certification marks, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the periods for submitting the regulations governing the use of those marks and the content thereof.	This recital corresponds to Articles 74a and 74k.	See comments to Articles 74a and 74k.
Recital 38	In order to ensure a smooth, effective and efficient operation of the European trade mark system, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the requirements as to the form of decisions, the details on oral proceedings and the modalities of taking of evidence, the modalities of notification, the procedure for the noting of loss of rights, the means of communication and the forms to be used by the parties to proceedings,	This recital corresponds to Article 93a.	See comments to Article 93a.

	<p>the rules governing the calculation and duration of time limits, the procedures for the revocation of a decision or for cancellation of an entry in the Register and for the correction of obvious errors in decisions and errors attributable to the Agency, the modalities of the interruption of proceedings and the procedures concerning the apportionment and fixing of costs, the particulars to be entered in the Register, the details concerning the inspection and keeping of files, the modalities of publications in the European Trade Marks Bulletin and in the Official Journal of the Agency, the modalities of administrative cooperation between the Agency and the authorities of Member States, and the details on representation before the Agency.</p>		
Recital 44	<p>In order to allow for an effective and efficient conversion of an application or registration of a European trade mark into a national trade mark application while ensuring a thorough examination of the relevant requirements, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the formal conditions with which a request for conversion must comply and the details of its examination and publication.</p>	<p>This recital corresponds to Article 114a.</p>	<p>See comments to Article 114a.</p>
Recital 45	<p>In order to ensure an effective and efficient method to</p>	<p>This recital corresponds to</p>	<p>See comments to Article</p>

	<p>resolve disputes, to ensure consistency with the language regime laid down in Regulation (EC) No 207/2009, the expeditious delivery of decisions on a simple subject matter, and the effective and efficient organisation of the Boards of Appeal, and to guarantee an appropriate and realistic level of fees to be charged by the Agency, while complying with the budgetary principles set out in Regulation (EC) No 207/2009, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the details on the languages to be used before the Agency, the cases where opposition and cancellation decisions should be taken by a single member, the details on the organisation of the Boards of Appeal, the amounts of the fees to be paid to the Agency and details related to their payment.</p>	Article 144a.	144a.
Recital 46	<p>In order to ensure the effective and efficient registration of international trade marks in full consistency with the rules of the Protocol relating to the Madrid Agreement concerning the international registration of marks, the power to adopt delegated acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the details on the procedures concerning the international registration of trade marks.</p>	This recital corresponds to Article 161a.	See comments to Article 161a.

Article 24a	<p>The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:</p> <p>(a) the obligation of the applicant to provide a translation or transcription as referred to in Article 7(2)(b) in the language of the application;</p>	<p>The obligation referred to is introduced by the amending act. "Specifying the obligation" is very vague and opens up a possibility of altering the obligation in Article 7(2)(b), which is already clear.</p>	<p>Delete, not appropriate to delegate. Already sufficiently specified in the basic act.</p>
	<p>(b) the procedure for entering a transfer as referred to in Article 17(5) in the Register;</p>	<p>This relates to supplementing non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 26.</p>	<p>Delegated acts acceptable.</p>
	<p>(c) the procedure for entering the creation or transfer of a right in rem as referred to in Article 19(2) in the Register;</p>	<p>This relates to supplementing non-essential elements of an Article in the amended act which will only be amended by the <u>addition of transfers</u>, and the objective, content and scope are sufficiently stated also taking into account Recital 26.</p>	<p>Delegated acts acceptable.</p>

	(d) the procedure for entering levy of execution as referred to in Article 20(3) in the Register;	This relates to supplementing non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 26.	Delegated acts acceptable.
	(e) the procedure for entering the involvement in an insolvency procedure as referred to in Article 21(3) in the Register;	This relates to supplementing non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 26.	Delegated acts acceptable.
	(f) the procedure for entering the grant or transfer of a license as referred to in Article 22(5) in the Register;	This relates to supplementing non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 26.	Delegated acts acceptable.
	(g) the procedure for cancelling or modifying the entry	This relates to supplementing	Delegated acts

	in the Register of a right <i>in rem</i> , levy of execution or a license, as referred to in Articles 19(3), 20(4) and 22(6) respectively.';	non-essential elements of Articles in the amended act which will be consequently amended to take into account <u>requests of one of the parties</u> , and the objective, content and scope are sufficiently stated also taking into account Recital 26.	acceptable.
Article 35a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:  (a) the means and modalities of filing an application for a European trade mark with the Agency in accordance with Article 25;	This relates to supplementing non-essential elements of an Article in the amended act which will be amended only to the effect of <u>restricting filing with OHIM</u> , and the objective, content and scope are sufficiently stated also taking into account Recital 29.	Delegated acts acceptable.
	(b) the details regarding the content of the application for a European trade mark referred to in Article 26(1), the type of fees payable for the application referred to in Article 26(2), including the number of classes of goods and services covered by those fees, and the formal conditions of the application referred to in	The details concerning the application are non-essential elements, and the objective, content and scope are sufficiently stated also taking into account Recital 29.	Delegated acts acceptable for specifying details regarding the application.

	<p>Article 26(3);</p>	<p>The fee system does however constitute essential elements which should be kept in the basic act.</p> <p>The formal conditions of the application refers to new Article 26(3) which however in turn refers to the formal conditions established in accordance with Article 35a(b). There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define those formal conditions.</p>	<p>Provisions on the fee system should be kept in the basic act.</p> <p>The formal conditions of the application in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.</p>
	<p>(c) the procedures for ascertaining reciprocity in accordance with Article 29(5);</p>	<p>This relates to supplementing non-essential elements of an Article in the amended act which will be amended only to <u>allow the Commission to ascertain equivalent conditions</u>, and the</p>	<p>Delegated acts acceptable.</p>

		objective, content and scope are sufficiently stated also taking into account Recital 29.	
	(d) the procedure and the rules on information and documentation for claiming the priority of a previous application in accordance with Article 30;	<p>The rules refer to new Article 30 which however in turn refers to the rules adopted in accordance with Article 35a(d). There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define those rules.</p> <p>Under Article 30(2), the Executive Director may furthermore determine that additional information and documentation to be provided by an applicant may consist of less than is required under the rules adopted in accordance with Article 35a(d).</p>	<p>The rules in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.</p> <p>There should not be any contradiction between the requirements according to delegated acts and the powers of the Executive Director.</p>

	(e) the procedure and the rules on evidence for claiming an exhibition priority in accordance with Article 33(1);	This relates to supplementing non-essential elements of an Article in the amended act which will be marginally amended, and the objective, content and scope are sufficiently stated also taking into account Recital 29.	Delegated acts acceptable.
	(f) the procedure for claiming the seniority of a national trade mark in accordance with Article 34(1) and Article 35(1).';	This relates to supplementing non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 29.	Delegated acts acceptable.
Article 39	1. If the conditions which the application for a European trade mark must satisfy have been fulfilled, the application shall be published for the purposes of Article 42 to the extent that it has not been refused pursuant to Article 37. The publication of the application shall be without prejudice to information already made available to the public otherwise in accordance with this Regulation or with delegated acts adopted pursuant to this Regulation.	This relates to supplementing non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 29.	Delegated acts acceptable.

Article 45a	<p>The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:</p> <p>(a) the procedure for the examination of compliance with the requirements for a filing date referred to in Article 36(1)(a) and with the formal conditions referred to in Article 26(3) and the procedure for verifying payment of the class fees referred to in Article 36(1)(c);</p>	<p>The formal conditions of the application refer to new Article 26(3) which however in turn refers to the formal conditions established in accordance with Article 35a(b). There is therefore no obligation in the basic act, and the Commission is effectively giving itself an unlimited margin of appreciation to define those formal conditions.</p> <p>The specification of procedures for compliance with requirements for a filing date and for verifying payment concern non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 31.</p>	<p>The rules in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU. Alternatively, this could be the subject of an implementing act.</p> <p>Delegated acts acceptable for procedures for compliance with requirements for a filing date and for verifying payment.</p>

	(b) the procedure for the examination of the absolute grounds for refusal as referred to in Article 37;	This relates to supplementing non-essential elements of an Article in the amended act which will only be amended by <u>deleting the rule on disclaiming exclusive rights to non-distinctive elements</u> , and the objective, content and scope are sufficiently stated also taking into account Recital 31.	Delegated acts acceptable.
	(c) the details which the publication of the application referred to in Article 39(1) shall contain;	The details of the publication refer to new Article 39(1) which however in turn refers to information made available in accordance with delegated acts. There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define those details.	The details and information in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.
	(d) the procedure for correcting mistakes and errors in	This relates to supplementing	Delegated acts

	publications of European trade mark applications referred to in Article 39(3);	non-essential elements of new Article 39(3) in the amended act which aims at <u>obligating OHIM to correct mistakes</u> , and the objective, content and scope are sufficiently stated also taking into account Recital 31.	acceptable.
	(e) the procedure for the submission of observations by third parties referred to in Article 40;	This relates to supplementing non-essential elements of new Article 40 in the amended act which <u>clarifies the conditions for interventions by third parties</u> , and the objective, content and scope are sufficiently stated also taking into account Recital 31.	Delegated acts acceptable.
	(f) the details on the procedure for filing and examining an opposition set out in Articles 41 and 42;	This relates to supplementing non-essential elements of Articles in the amended act which will be amended to <u>clarify the conditions concerning opposition</u> , and the objective, content and scope are sufficiently stated also taking	Delegated acts acceptable.

		into account Recital 31.	
	(g) the procedures governing the amendment of the application pursuant to Article 43(2) and the division of the application pursuant to Article 44;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 31.	Delegated acts acceptable.
	(h) the particulars to be recorded in the Register when registering a European trade mark and the modalities of the publication of the registration referred to in Article 45(1), the content and the modalities of issue of the certificate of registration referred to in Article 45(2).';	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 31.	Delegated acts acceptable.
Article 49a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:  (a) the procedural modalities for the renewal of the European trade mark pursuant to Article 47, including the type of fees to be paid;	It is unclear why this provision uses the phrase " <u>the procedural modalities for</u> " rather than "the procedure for", which is used in the two ensuing suggested delegations in paragraphs (b) and (c) and elsewhere. The word "modalities" has connotations of policy choices which	Delegated acts acceptable if "procedural modalities" is changed to "procedure for".

		<p>"procedure" does not.</p> <p>With the use of "procedure for", this provision would concern non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 31.</p>	
	(b) the procedure governing the alteration of the registration of a European trade mark provided for in Article 48(2);	<p>This relates to supplementing non-essential elements of an untouched Article in the amended act, and the objective, content and scope are sufficiently stated also taking into account Recital 32.</p>	Delegated acts acceptable.
	(c) the procedure governing the division of a European trade mark provided for in Article 49.;	<p>This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 32.</p>	Delegated acts acceptable.

Article 57a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:  (a) the procedure governing the surrender of a European trade mark set out in Article 50, including the period referred to in paragraph 3 of that Article;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 33.	Delegated acts acceptable.
	(b) the procedures governing the revocation and invalidity of a European trade mark referred to in Articles 56 and 57.';	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 33.	Delegated acts acceptable.
Article 65a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:  (a) the content of the notice of appeal referred to in Article 60 and the procedure for the filing and the examination of an appeal;	It is unclear what is meant by "content" here, and in what way it is intended to be specified by delegated acts.  Without "content" this provision would concern non-essential elements of the Regulation, and the objective, content and scope would be sufficiently stated also	Delegated acts acceptable if "content" is deleted or clarified.

		taking into account Recital 34.	
	(b) the content and form of the Board of Appeal's decisions referred to in Article 64;	<p>It is unclear what is meant by "content" here, and in what way it is intended to be specified by delegated acts.</p> <p>Without "content" this provision would relate to supplementing non-essential elements of the Regulation, and the objective, content and scope would be sufficiently stated also taking into account Recital 34.</p> <p>It could be noted that Article 93a below uses the wording "requirements concerning the form of the decisions" without any mentioning of "content".</p>	Delegated acts acceptable if "content" is deleted or clarified.
	(c) the reimbursement of the appeal fees referred to in Article 60.;	There are no provisions in Article 60 providing for reimbursement of fees.	In order for this paragraph to be able to delegate powers, there needs to be rules on

			reimbursement in the basic act.
Article 74a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying the period referred to in Article 67(1) for submitting the regulations governing use of the European collective mark to the Agency and the content of those regulations as set out in Article 67(2).	<p>There is no period referred to in Article 67(1). That article as amended does refer instead to the period prescribed in accordance with Article 74a. There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define that period.</p> <p>It is furthermore unclear what is meant by "content of those regulations" here, and in what way it is intended to be specified by delegated acts. With "content of those regulations" this provision would be too wide and possibly touch upon essential elements.</p>	<p>The period in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.</p> <p>The "content of those regulations" should be further specified in the basic act.</p>

Article 74k	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying the period referred to in Article 74c(1) for submitting the regulations governing use of the European certification mark to the Agency and the content of those regulations as set out in Article 74c(2).	<p>There is no period referred to in Article 74c(1). That article as amended does refer instead to the period prescribed in accordance with Article 74k. There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define that period.</p> <p>It is furthermore unclear what is meant by "content of those regulations" here, and in what way it is intended to be specified by delegated acts. With "content of those regulations" this provision would be too wide and possibly touch upon essential elements.</p>	<p>The period in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU. Alternatively, this could be the subject of an implementing act.</p> <p>The "content of those regulations" should be further specified in the basic act.</p>
Article 79	1. The Agency shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit	This provision does not provide for the adoption of delegated acts, but for an obligation for	So long as the provisions on delegated acts in question allow

	is reckoned, or of which those concerned must be notified under other provisions of this Regulation or of delegated acts adopted pursuant to this Regulation, or of which notification has been ordered by the Executive Director of the Agency.	OHIM to make notifications of decisions and summonses if that is required under delegated acts adopted pursuant to the Regulation.	for the introduction of a notification requirement, this provision should be acceptable.
Article 79a	Where the Agency finds that the loss of any rights results from this Regulation or delegated acts adopted pursuant to this Regulation without any decision having been taken, it shall communicate this to the person concerned in accordance with Article 79. The latter may apply for a decision on the matter. The Agency shall adopt such a decision where it disagrees with the person requesting it; otherwise the Agency shall amend its finding and inform the person requesting the decision.	This provision does not provide for the adoption of delegated acts, but for an obligation for OHIM to communicate any loss of rights and take decisions on any affected findings, where a delegated act adopted pursuant to the Regulation results in a loss.	So long as the provisions on delegated acts in question allow for the loss of rights, this provision should be acceptable.
Article 83	In the absence of procedural provisions in this Regulation or in delegated acts adopted pursuant to this Regulation, the Agency shall take into account the principles of procedural law generally recognised in the Member States.	This provision does not provide for the adoption of delegated acts, but a possibility for OHIM to fill any lacunae created by delegated acts by taking into account recognised principles.	This provision aims at dealing with legal voids, and does not directly affect delegated acts.
Article 89	1. The Agency shall periodically publish:	This provision does not provide for the adoption of delegated	This provision provides a publication

	(a) a European Trade Marks Bulletin containing entries made in the Register as well as other particulars the publication of which is prescribed by this Regulation or by delegated acts adopted in accordance with this Regulation;	acts, it merely requires the publication of particulars prescribed by delegated acts adopted pursuant to the Regulation.	requirement, and does not directly affect delegated acts.
Article 93a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:  (a) the requirements concerning the form of the decisions referred to in Article 75;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 38.	Delegated acts acceptable.
	(b) the modalities of oral proceedings and of the taking of evidence referred to in Articles 77 and 78;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 38.	Delegated acts acceptable.
	(c) the modalities of the notification referred to in Article 79;	The provisions in Article 79 already include rules on notification by registered letter with advice of delivery and notification by electronic means.	Delegated acts do not seem to be necessary since the basic act and paragraph (e) already provides for modalities.

		<p>It also requires the Executive Director to determine how a public notice is to be given. It is therefore unclear what further modalities are required to be adopted by delegated acts.</p> <p>It could also be questioned whether this provision is redundant taking into account paragraph (e) below.</p>	
	(d) the procedure for the noting of loss of rights referred to in Article 79a;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 38.	Delegated acts acceptable.
	(e) the rules on the means of communication, including the electronic means of communication referred to in Article 79b, to be used by the parties to proceedings before the Agency and the forms to be made available by the Agency;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 38.	Delegated acts acceptable.

	(f) the rules governing the calculation and duration of the time limits referred to in Article 79c(1);	There are no rules or time limits in Article 74c(1). That article as amended does refer instead to the rules and time limits adopted in accordance with Article 93a(f). There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define the rules and time-limits.	The rules and time limits in question should be further specified in the basic in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.
	(g) the procedure for the correction of linguistic errors or errors of transcription and manifest oversights in the Agency's decisions and technical errors attributable to the Agency in registering the trade mark or in publishing its registration as referred to in Article 79d;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 38.	Delegated acts acceptable.
	(h) the procedure for the revocation of a decision or for the cancellation of an entry in the Register as referred to in Article 80(1);	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are	Delegated acts acceptable.

		sufficiently stated also taking into account Recital 38.	
	(i) the modalities of the interruption and resumption of proceedings before the Agency as referred to in Article 82a;	There are no modalities in Article 82a. That article as amended does rather refer to the modalities adopted in accordance with Article 93a(i). There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define the modalities.	The modalities in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.
	(j) the procedures concerning the apportionment and fixing of costs, as referred to in Article 85(1);	There are no conditions in Article 85(1). That article as amended does rather refer to the conditions laid down in accordance with Article 93a(j). There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively	The conditions in question should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or

		giving itself an unlimited margin of appreciation to define the modalities.	supplemented in accordance with Article 290 TFEU.
	(k) the particulars referred to in Article 87(1);	Under Article 87(1), there is already a requirement for OHIM to keep a register containing those particulars which are provided for by the Regulation. The Commission is therefore effectively supplementing or amending delegated acts, which is not possible under Article 290 TFEU.	The specific particulars not already provided for by other provisions should be further specified in the basic act and the phrase "or by a delegated act adopted pursuant to this Regulation" in Article 87(1) should be deleted in order to rectify the current situation whereby delegated acts effectively could be supplemented or amended.
	(l) the procedure for the inspection of files provided for in Article 88, including the parts of the file excluded from inspection, and the modalities of the keeping of files of the Agency provided for in Article 88(5);	Article 88 as amended already provides that the Executive Director shall determine the means of inspection and the form	No delegation needed, this provision should be deleted.

		in which the files shall be kept.	
	(m) the modalities of publication of the particulars and entries referred to in Article 89(1)(a) in the European Trade Marks Bulletin, including the type of information, and the languages in which those particulars and entries are to be published;	See paragraph (k) above.	The specific particulars not already prescribed by other provisions should be further specified in the basic act and the phrase "or by delegated acts adopted pursuant to this Regulation" in Article 89(1)(a) should be deleted in order to rectify the current situation whereby delegated acts effectively could be supplemented or amended.
	(n) the frequency, form and languages in which publications of the Official Journal of the Agency referred to in Article 89(1)(b) shall be made;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking	Delegated acts acceptable.

		into account Recital 38.	
	(o) the modalities of the exchange of information and communications between the Agency and the authorities of the Member States and of the inspection of files by or via courts or authorities of the Member States pursuant to Article 90;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 38.	Delegated acts acceptable.
	(p) derogations from the obligation to be represented before the Agency pursuant to Article 92(2), the conditions under which a common representative shall be appointed pursuant to Article 92(4), the conditions under which employees referred to in Article 92(3) and professional representatives referred to in Article 93(1) must file with the Agency a signed authorisation in order to be able to undertake representation, the content of that authorisation, and the conditions under which a person may be removed from the list of professional representatives referred to in Article 93(5).';	<p>The conditions under which employees referred to in Article 92(3) and professional representatives referred to in Article 93(1) must file with the Agency a signed authorisation relate to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 38.</p> <p>When it comes to paragraphs 2, 4 and 5 of Article 92, as amended, they refer to cases provided for</p>	<p>Delegated acts acceptable concerning Article 92(3).</p> <p>The specific cases and conditions in Paragraphs 2, 4 and 5 of Article 92, should be further specified in the basic act and the phrase "or by a delegated act adopted pursuant to this Regulation" in Article 87(1) should be deleted in order to rectify the current situation</p>

		and the conditions established in accordance with Article 93a(p). There are therefore no obligations in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define the modalities.	whereby delegated acts could effectively be supplemented or amended.
Article 114	In Article 114(2), the words 'the Implementing Regulation' are replaced by 'delegated acts adopted in accordance with this Regulation';	This Article relates to formal requirements of national law, concerning the transmission of applications or trade marks, which are different from or additional to those in the Regulation or delegated acts.	
Article 114a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying the formal conditions with which a request for conversion of a European trade mark application must comply, the details of its examination, and those concerning its publication.	This provision is a blanket delegation without any stated corresponding rule or obligation in the basic act. There is therefore nothing which can be amended or supplemented.	If there are no rules or obligations in Articles 112-114 in the Regulation on which to base the delegation, those should be further specified in the basic

			act.
Article 128	<p>4. The Executive Director shall have in particular the following functions:</p> <p>[...]</p> <p>(n) he shall exercise the powers conferred to him by Articles 26(3), 29(5), 30(2), 45(3), 75(2), 78(5), 79, 79b, 79c, 87(3), 88, 89, 93(4), 119(8) and 144 in accordance with the criteria set out in this Regulation and in the delegated acts adopted pursuant to this Regulation;</p>	<p>See above concerning Articles 30, 79 and 88.</p> <p>There cannot be any contradictions between the powers of the Executive Director and the scope of the delegation of legislative power.</p>	<p>Either the powers of the Executive Director or the delegations of power must be amended in order to avoid contradictions.</p>
Article 144a	<p>The Commission shall be empowered to adopt delegated acts in accordance with Article 163 in order to establish:</p> <p>(a) the specific criteria of use of the languages referred to in Article 119;</p>	<p>This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 45.</p>	<p>Delegated acts acceptable.</p>
	<p>(b) the cases in which opposition and cancellation decisions shall be taken by a single member under Article 132(2) and Article 134(2);</p>	<p>This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are</p>	<p>Delegated acts acceptable.</p> <p>The references in</p>

		<p>sufficiently stated also taking into account Recital 45.</p> <p>The references in Articles 132(2) and 134(2) are currently to Article 144a(c).</p>	<p>Articles 132(2) and 134(2) should however be to Article 144a(b).</p>
	<p>(c) the details on the organisation of the Boards of Appeal, including the setting up and the role of the authority of the Boards of Appeal referred to in Article 135(3)(a), the composition of the enlarged Board and the rules on referrals to it as referred to in Article 135(4), and the conditions under which decisions shall be taken by a single member in accordance with Article 135(2) and (5);</p>	<p>The "role of the authority" seems a bit wide, in terms of its scope, and could possibly touch upon essential elements.</p> <p>Other than that, this provision relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 45.</p>	<p>Delegated acts acceptable, except that the "role of the authority" could be made explicit in the basic act.</p>
	<p>(d) the system of fees and charges payable to the Agency in accordance with Article 144, including the amount of fees, the methods of payment, the currencies, the due date for fees and charges, the deemed date of payment and the consequences of lack of or late payment, and under- and overpayment, the services which may be free of charge, and the criteria under</p>	<p>With the exception of the structure and the amounts of fees, which are essential elements and should therefore not be the subject of delegations, this provision relates to supplementing non-essential</p>	<p>Delegated acts acceptable except for the structure and amounts of fees.</p>

	which the Executive Director may exercise the powers set out in Article 144(3) and (4).';	elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 45.	
Article 145	In Article 145, the words 'its Implementing Regulations' are replaced by 'the delegated acts adopted pursuant to this Regulation';	This provision concerns the application of rules to international registrations.	This provision does not directly affect the delegation of power.
Article 161a	The Commission shall be empowered to adopt delegated acts in accordance with Article 163 specifying:  (a) the formal conditions of an international application referred to in Article 147(5), the procedure for the examination of the international application pursuant to Article 147(6) and the modalities of forwarding the international application to the International Bureau pursuant to Article 147(4);	There are no formal conditions in Article 147(5). That article as amended does rather refer to the formal conditions established in accordance with Article 161a(a). There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define the formal conditions.  Other than that, this provision relates to supplementing non-essential elements of the	Delegated acts acceptable except for the formal conditions of an international application which should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.

		Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.	
	(b) the modalities of the notification provided for in Article 148a;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.	Delegated acts acceptable.
	(c) the formal conditions of a request for territorial extension as referred to in Article 149(2), the procedure for the examination of those conditions and the modalities of forwarding the request for territorial extension to the International Bureau;	There are no formal conditions in Article 149. That article as amended does rather refer to the formal conditions established in accordance with Article 161a(c). There is therefore no obligation in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define the formal conditions.	The formal conditions for a request should be further specified in the basic act in order to rectify the current circular lack of obligation which means that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.

		There is no Article 149(2), it has just one paragraph. The amendment concerning formal conditions is added as a final sentence.	The reference should be to Article 149.
	(d) the procedure for filing a seniority claim pursuant to Article 153;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.	Delegated acts acceptable.
	(e) the procedures for the examination of absolute grounds for refusal referred to in Article 154 and for the filing and examination of an opposition pursuant to Article 156, including the necessary communications to be made to the International Bureau;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.	Delegated acts acceptable.
	(f) the procedures with regard to the international registrations referred to in Article 154a;	There are no procedures referred to in Article 154a. That article as amended does rather refer to the procedures provided for in accordance with Article 161a(f). There is therefore no obligation	The procedures should be further specified in the basic act in order to rectify the current circular lack of obligation which means

		in the basic act which can be supplemented or amended, and the Commission is effectively giving itself an unlimited margin of appreciation to define the procedures.	that nothing is in fact amended or supplemented in accordance with Article 290 TFEU.
	(g) the cases where the Agency shall notify the International Bureau of the invalidation of the effects of an international registration pursuant to Article 158 and the information that such notification shall contain;	This relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.	Delegated acts acceptable.
	(h) the modalities of transmission of the requests referred to in Article 158c to the International Bureau;	Article 158c refers to "the cases specified in accordance with Article 161a(h)" and not "the modalities of transmission".  Whichever is the case, this relates to supplementing non-essential elements of the Regulation.	Delegated acts acceptable so long as it is clarified whether the object is modalities of transmission or specified cases.
	(i) the conditions with which a request for conversion	This relates to supplementing	Delegated acts

	pursuant to Article 159(1) shall comply;	non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.	acceptable.
	(j) the formal conditions of an application for transformation referred to in Article 161 and the procedures for such a transformation;	<p>There are no "formal conditions of an application for transformation" referred to in Article 161.</p> <p>The provision on procedures relates to supplementing non-essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.</p>	Delegated acts acceptable except for "formal conditions", which need to be clarified in the basic act.
	(k) the modalities of communications between the Agency and the International Bureau, including the communications to be made pursuant to Articles 147(4), 148a, 153(2) and 158c.;	<p>There is no "communication to be made" pursuant to Article 147(4).</p> <p>Except for this, the provision relates to supplementing non-</p>	Delegated acts acceptable except for "communication to be made", which needs to be clarified in the basic act.

		essential elements of the Regulation, and the objective, content and scope are sufficiently stated also taking into account Recital 46.	
Article 163a	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		Corresponds to the model Article in the Common Understanding.
	2. The delegation of power referred to in Articles 24a, 35a, 45a, 49a, 57a, 65a, 74a, 74k, 93a, 114a, 144a and 161a shall be conferred for an indeterminate period of time.	Parliament could opt for a set duration, for instance a number of years, coupled with reporting requirements (option 2 in the Common Understanding).	Corresponds to the model Article in the Common Understanding.
	3. The delegation of power referred to in paragraph 2 may be revocable at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts		Corresponds to the model Article in the Common Understanding.

	already in force.		
	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		Corresponds to the model Article in the Common Understanding.
	5. A delegated act adopted pursuant to Articles 24a, 35a, 45a, 49a, 57a, 65a, 74a, 74k, 93a, 114a, 144a and 161a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.';	The objection period is the standard 2+2 months, which Parliament is free to make longer or shorter.	Corresponds to the model Article in the Common Understanding.  Parliament is free to change the timeframes.