

**COMMON COMMUNICATION ON
THE REPRESENTATION OF NEW
TYPES OF TRADE MARKS**

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1 Introduction

Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (hereinafter referred to as the “new Trade Mark Directive”) contains provisions further approximating the laws of the Member States relating to trade marks, with regard to both substantive and procedural matters. At the same time, the new Trade Mark Directive mirrors the provisions of the EUTMR in most substantive matters and lays down a similar procedural framework. Member States will have to transpose the new Trade Mark Directive by adapting their national laws to its content within the deadlines set by Article 54(1) of the new Trade Mark Directive.

One of the key changes brought about by the new legislative instruments is the elimination of the graphic representation requirement from the definition of both EU and national trade marks. Such elimination gives rise to the possibility of accepting new types of trade marks, filed in formats not previously provided for by national or regional systems. Furthermore, it will make the representation of certain already acceptable types of trade marks easier and more accurate. These new types of trade marks and representation requirements have been introduced by Article 3 of the Implementing Regulation of the EUTMR. However, the new Trade Mark Directive does not contain detailed definitions of trade mark types, nor does it lay down specific representation requirements. There is a risk, therefore, of different types of trade marks being accepted by different offices, which may apply different definitions and impose different representation requirements.

The most efficient way of avoiding this risk is the voluntary adoption of the same standards by the central industrial property offices of the Member States, the Benelux Office for Intellectual Property (hereinafter referred to collectively as the “Member States IPOs”) and the EUIPO. Failure to do so would create a misalignment that could not be overcome by ordinary convergence initiatives due to legal constraints resulting from such divergent legislative instruments. It is therefore helpful for Member States to discuss common approaches ahead of legislative steps so that the harmonisation aims of the Directive are supported and a harmonised regulatory environment may be created.

Accordingly, to facilitate the transposition process, and to strengthen the harmonising impact of the new Trade Mark Directive, the EUIPO and Member States IPOs are working to ensure that the new provisions of the EUTMR and the Trade Mark Directive are implemented in a harmonised and consistent manner across the European Intellectual Property Network.

This communication fully respects the competencies and responsibilities of the European Commission and of the EU Member States, and takes account of the ongoing nature of the transposition process, as well as the different degrees of progress made by the Member States in drafting and implementing national legislation. Accordingly, this document serves merely as a compilation to inform about the understanding reached among the Member States IPOs and has no legally binding effect on the national legislative procedure of the Member States. Nor shall it be read and interpreted as containing specific undertakings by Member States that would limit their freedom to make their own choices within the framework of the provisions of the new Trade Mark Directive.

It is also understood that this Common Communication will be regularly updated to reflect the developing positions of the Member States, both prior to and following the transposition of the new Trade Mark Directive into their national legislation.

2 Objective of the Common Communication

Recognising the early stage of the implementation process and that implementation may be subject to consultation and approval at the national level, this document reflects the approach taken or that may be taken by the EUIPO and the Member States IPOs concerning the definitions and representation requirements for the new types of trade marks resulting from the abolishment of the graphical representation requirement.

It provides structured information in a transparent manner, with a view to facilitating pre-legislative alignment, on the types of marks, their definitions and means of representation in respect of each Office. This will assist in the transposition of the new Trade Mark Directive in as harmonised a manner as possible, with the intention of improving legal certainty, predictability and accessibility for users.

3 Structure of the document

This document refers to two substantive issues:

- (i) Definitions and means of representation for the different types of trade marks
- (ii) Acceptable electronic file formats for non-traditional trade marks

Accordingly, this document describes the approach and implementation status for each part separately. Section 4.1 shows the details of the state of play with regard to definitions and means of representation for the different types of trade marks, while Section 4.2 contains information regarding acceptable electronic file formats for non-traditional trade marks. Section 5 gives an overview of the current implementation status in the Member States as regards recognition of the different types of trade marks, definitions applied and file formats accepted.

4 Approach

4.1 Definitions and means of representation for the different types of trade marks

The table below summarises the definitions and means of representation for each of the different types of trade marks – the point of reference being the definitions and means of representations laid out in Article 3 of the Implementing Regulation. The last four types of trade marks given in the table are the non-traditional trade marks (sound, motion, multimedia, hologram).

Table 1: Definitions and means of representation for trade marks contained in Article 3 of the Implementing Regulation

Type of trade mark	Definition	Means of representation
Word	A trade mark consisting exclusively of words or letters, numerals, other standard typographic characters or a combination thereof.	The mark shall be represented by submitting a reproduction of the sign in standard script and layout, without any graphic feature or colour.
Figurative	A trade mark where non-standard characters, stylisation or layout, or a graphic feature or a colour are used, including marks that consist exclusively of figurative elements or a combination of verbal and figurative elements.	The mark shall be represented by submitting a reproduction of the sign for which registration is sought, showing all its elements and, where applicable, its colours.

Shape	A trade mark consisting of, or extending to, a three-dimensional shape, including containers, packaging, the product itself or their appearance.	The mark shall be represented by submitting either a graphic reproduction of the shape, including computer-generated imaging, or a photographic reproduction. The graphic or photographic reproduction may contain different views.
Position	A trade mark consisting of the specific way in which the mark is placed or affixed on the product.	The mark shall be represented by submitting a reproduction which appropriately identifies the position of the mark and its size or proportion with respect to the relevant goods. The elements which do not form part of the subject-matter of the registration shall be visually disclaimed, preferably by broken or dotted lines. The representation may be accompanied by a description detailing how the sign is affixed on the goods.
Pattern	A trade mark consisting exclusively of a set of elements which are repeated regularly.	The mark shall be represented by submitting a reproduction showing the pattern of repetition. The representation may be accompanied by a description detailing how its elements are repeated regularly.
Colour	A trade mark that consists (i) exclusively of a single colour without contours; or, (ii) exclusively of a combination of colours without contours.	The mark shall be represented by submitting (i) a reproduction of the colour and an indication of that colour by reference to a generally recognised colour code; or, (ii) a reproduction that shows the systematic arrangement of the colour combination in a uniform and predetermined manner, and an indication of those colours by reference to a generally recognised colour code. A description detailing the systematic arrangement of the colours may also be added.
Sound	A trade mark consisting exclusively of a sound or combination of sounds.	The mark shall be represented by submitting an audio file reproducing the sound or by an accurate representation of the sound in musical notation.
Motion	A trade mark consisting of, or extending to, a movement or a change in the position of the elements of the mark.	The mark shall be represented by submitting a video file or by a series of sequential still images showing the movement or change of position. Where still images are used, they may be numbered or accompanied by a description explaining the sequence.
Multimedia	A trade mark consisting of, or extending to, the combination of image and sound.	The mark shall be represented by submitting an audio-visual file containing the combination of the image and the sound.
Hologram	A trade mark consisting of elements with holographic characteristics.	The mark shall be represented by submitting a video file or a graphic or photographic representation containing the views which are necessary to sufficiently identify the holographic effect in its entirety.
Other	A trade mark not covered by any of the types listed above.	The mark shall be represented in any appropriate form using generally available technology, as long as it can be reproduced on the register in a clear, precise, self-contained, easily accessible, intelligible, durable and objective manner so as to enable the competent authorities and the public to determine with clarity and precision the subject-matter of the protection afforded to its proprietor. The representation may be accompanied by a description.

4.2 Acceptable electronic file formats for non-traditional trade marks

Member States IPOs plan to accept the electronic file formats laid out in Table 2 below for filing purposes. The table indicates which file formats are planned to be accepted for each type of non-traditional trade mark.

This approach, which can be called the ‘mono-format’ approach, is based on the principles of lower build-in and maintenance costs, and better interoperability between systems when conducting searches, e.g. in TMView.

Table 2: Planned acceptable electronic file formats for non-traditional trade marks – mono-format approach

Type of trade mark	Electronic file format
Sound	JPEG
	MP3
Motion	JPEG
	MP4
Multimedia	MP4
Hologram	JPEG
	MP4

Acceptance of the mono-format approach does not preclude the acceptance of other formats for the registration of these types of marks. These additional electronic formats are set out in Table 6 of this document.

5 Implementation status

Tables 3 to 6 below give an overview of the current plans of the Offices as regards recognition of the different types of trade marks, the definitions thereof, and the accepted electronic file formats.

Table 3: Types of trade marks that will be accepted

This table contains the types of trade marks that will be recognised by the Member States IPOs. The “Additional types” column refers to additional specific types of marks expressly recognised by the Member States IPOs. The “Other” column refers to marks not covered by any of the other types listed, within the meaning of Article 3(4) of the Implementing Regulation, provided they fulfil the mandatory requirements.

Implementation of recognition of the different types of trade mark													
Office	Implementation date	The Member State IPO will recognise the following types of trade mark:											
		Word	Figurative	Shape	Position	Pattern	Colour	Sound	Motion	Multimedia	Hologram	Additional types	“ Other”
AT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
BG		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X ⁽¹⁾	✓
BX		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓

CY		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
CZ		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
DE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X ⁽³⁾	✓
DK		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
EE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
ES		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
EUIPO		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
FI		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X ⁽¹⁾	✓
FR		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
GR		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
HR		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
HU		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X ⁽²⁾	✓
IE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
IT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
LV		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
LT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
MT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	⊗	✓
PL		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X ⁽¹⁾	✓
PT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X ⁽¹⁾	✓
RO		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
SE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
SI		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
SK		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
UK		✓	✓	✓	⊗	⊗	✓	✓	⊗	⊗	⊗	n/a	✓

✓	The Member State IPO will recognise this type of trade mark
⊗	This type of trade mark is not specifically mentioned in the current legislation of the Member State IPO but it will be possible to be filed as "Other"
N/A	Not answered

⁽¹⁾ = Any other type of trade mark appearing in future as a result of technological developments, provided it fulfils the mandatory requirements

⁽²⁾ = Slogans and light signals which have a distinctive character.

⁽³⁾ = Tracer marks are also recognized

Table 4: Definitions of the different types of trade mark

Implementation of the definitions contained in Article 3 of the draft Implementing Regulation		
Office	Implementation date	The Member State IPO will follow the definitions laid out in Article 3 of the draft Implementing Regulation of the following types of trade mark (Table 1):

		Word	Figurative	Shape	Position	Pattern	Colour	Sound	Motion	Multimedia	Hologram
AT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BG		✓		✓	✓	✓	✓	✓	✓	✓	✓
BX		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CY		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CZ		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DK		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ES		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EUIPO		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
FI		✓	✓	✓	✓	✓			✓	✓	✓
FR		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
GR		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
HR		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
HU		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
IE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
IT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
LV		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
LT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
MT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PL		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PT		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
RO		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SE		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SI		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SK		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
UK(*)		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

✓	The Member State IPO will recognise this type of trade mark
N/A	Not answered

(*) = The UK regards trade mark type as an aid to administration and does not seek to define types per se.

Table 5: Accepted electronic file formats for non-traditional trade marks

Implementation of the 'mono-format' approach for non-traditional trade marks					
Office	Implementation date	The Member State IPO will accept the electronic file formats specified in the 'mono-format' approach as shown in Table 2 for each of the following types of trade mark:			
		Sound	Motion	Multimedia	Hologram
AT(*)		✓	✓	✓	✓
BG		✓	✓	✓	✓
BX		✓	✓	✓	✓
CY		✓	✓	✓	✓

CZ		✓	✓	✓	✓
DE		✓	✓	✓	✓
DK		✓	✓	✓	✓
EE		✓	✓	✓	✓
ES		✓	✓	✓	✓
EUIPO		✓	✓	✓	✓
FI		✓	✓	✓	✓
FR		✓	✓	✓	✓
GR		✓	✓	✓	✓
HR		✓	✓	✓	✓
HU(*)		✓	✓	✓	✓
IE		✓	✓	✓	✓
IT		✓	✓	✓	✓
LV(*)		✓	✓	✓	✓
LT		✓	✓	✓	✓
MT		✓	✓	✓	✓
PL		✓	✓	✓	✓
PT		✓	✓	✓	✓
RO		✓	✓	✓	✓
SE		✓	✓	✓	✓
SI		✓	✓	✓	✓
SK		✓	✓	✓	✓
UK		✓	✓	✓	✓

(*) = Will follow the proposed formats, but will also accept additional formats. These are laid out in Table 6 below.

Table 6: Additional electronic file formats accepted

Additional electronic file formats accepted per non-traditional trade mark		
Type of trade mark	Format	Accepted by (Office)
Sound	PNG	HU, LV, ES
	TIF, TIFF	HU, LV, ES
	WAV	AT, HU, LV, RO
	WMA	LV
	M4A	LV
	BMP	LV, ES
	GIF	ES, RO
	OGG	PT
	MPEG	RO
	MP3	HU
	Motion	MP4
MPG, MPEG		HU, LV
PNG		HU, LV, ES
TIF, TIFF		HU, LV, ES
WMV		LV
MKV		LV
MOV		LV
M4V		LV
AVI		LV
BMP		LV, ES
OGG		PT
GIF		ES, RO
Multimedia	MP4	HU

	MPG, MPEG	HU, LV
	MOV	LV
	JPG	LV
	AVI	LV
	WMV	LV
	MKV	LV
	OGG	PT
	M4V	LV
	Hologram	MP4
MPG, MPEG		HU
PNG		HU, LV, ES
TIF, TIFF		HU, LV, ES
BMP		LV, ES
OGG		PT
GIF		ES, RO

The acceptance of the electronic file formats in tables 5 and 6 by the Member States IPOs is without prejudice to the acceptance of other formats in future, for example, as a result of technological developments.

A full overview of the accepted electronic file formats for all types of trade marks by each Office can be consulted [here](#).