

that were devised to govern trade mark rights after the reunification of the Federal Republic of Germany. The hybrid of these principles<sup>894</sup> will form a framework for the proposal regarding rules and principles that should govern the creation, maintenance and cession of EAC trade mark rights insofar as the contemplated EAC trade mark regime is concerned.

## ***B. Key Principles governing Community trade mark system***

CTMR enshrines the tenets of trade mark coexistence<sup>895</sup> and the unitary character<sup>896</sup> as the centrepiece of the EU's CTM system. The question may be posed as to whether CTMR's principles mentioned in the immediately preceding sentence could be adapted for devising the EAC regional trade mark system. A negative response to this question would mean that the principles under discussion should necessarily be modified to make them suit the ideal EAC trade mark system. A deliberation on these issues follows below.

### *I. The principle of unitary character*

The principle of unitary character is a legal technique that embellishes a particular regional trade mark system with more attractive features than those enjoyable under the national systems of trade mark protection. These features are reflected in the fact that when applied in relation to the Community trade mark system, the principle of unitary character, suggests avoidance of segmentation of the common market based on a system of protection of trade mark rights.<sup>897</sup> The principle requires that Community trade marks be registered for, and the exclusive rights stemming thereof be protected to the scale of, the entire Community.<sup>898</sup> In this sense, the Community trade mark registration must be

894 i.e. the principles underlying the EU's CTM system, the Benelux trade mark regime and Germany's trade mark system which was designed to concretise reunification of the East and West Germany after the cold war.

895 Cf. section B (I) of chapter 5.

896 Cf. Article 1(2) of the CTMR.

897 From a semantic point of view, the term "unitary" in the phrase "principle of unitary character" has been expounded as follows: "having the character of a single thing that is a constituent of a whole". <<http://dictionary.reference.com/browse/unitary>> (status: 30 July 2012).

898 Cf. MÜHLEDAHL, A., "Koexistenz und Einheitlichkeit im Europäischen Markenrecht - Überlegungen zur Berücksichtigung älterer Rechte im künftigen europäischen Markenrecht für den Gemeinsamen Markt", 25(1) GRUR Int. 27, 28 (1976).

refused on the basis of prior rights existing in only one Partner State.<sup>899</sup> The corollary of this is that a registered Community trade mark is vulnerable for revocation or cancellation even where the prior rights forming the basis for the invalidity proceedings are only protected in a single Member State of the regional organisation. Moreover, application of the principle of unitary character means that the Community trade mark rights can only be alienated or assigned for the whole territory of the regional organisation.<sup>900</sup>

## *II. The principle of Coexistence of trade mark rights*

When applied in relation to national and regional trade mark protection regimes, the principle of coexistence<sup>901</sup> connotes that introduction of a regional trade mark system does not become a replacement of, but a supplement to, the existing national trade mark protection schemes of the Member States of a given regional organization.<sup>902</sup> In this sense, the principle of trade mark coexistence allows existing national trade mark systems to operate alongside the regional trade mark scheme.<sup>903</sup> Thus, the principle provides trade mark proprietors with a freedom to pursue their own business interests. A choice between the national and the regional trade mark systems should naturally be dictated by one's own business plans. In this regard, a trade mark proprietor wishing to trade to the scale of a regional bloc would find registration of his trade mark as a Community trade mark a suitable option, whereas a national trade mark registration would suit a person who has resolved to confine his business in a single Member State. Moreover, a person owning several registrations of the same mark in different Member States may decide to consolidate those national registrations into a Community trade mark registration while being assured by the principle of coexistence that should the consolidation process fail, or the consolidated

899 In relation to grounds for trade mark refusal, *cf.* section D of chapter 4 *supra*.

900 Under certain circumstances, exceptions that avoid the rigidity of the unitary principle are applicable. For instance, registration of a sign as a Community trade mark may be granted even where identical or confusingly similar prior rights of mere local significance are protected in one of the Member States (*cf.* by implication Article 8(4) of the CTMR).

901 The World English Dictionary defines the term “coexistence” to mean “to exist together at the same time or in the same place” (*cf.* <http://dictionary.reference.com/browse/coexistence> (status: 30 July 2012)).

902 *Cf.* MÜHLEDAHL, A., “Koexistenz und Einheitlichkeit im Europäischen Markenrecht - Überlegungen zur Berücksichtigung älterer Rechte im künftigen europäischen Markenrecht für den Gemeinsamen Markt”, 25(1) GRUR Int. 27, 28 (1976).

903 *Cf.* section B (I) of chapter 5.