

GUIDELINES FOR EXAMINATION

EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE
(EUIPO)

Part A

General rules

Section 8

Restitutio in integrum

Obsolete

1 General principles

[Article 104 EUTMR](#)

Article 67 CDR

Parties to proceedings before the Office may have their rights reinstated (*restitutio in integrum*) if they were unable to meet a time limit vis-à-vis the Office despite taking all due care required by the circumstances, provided that the failure to meet the time limit had the direct consequence, by virtue of the provisions of the Regulations, of causing a loss of rights or loss of means of redress (28/06/2012, [T-314/10](#), Cook's, EU:T:2012:329, § 16-17; 26/09/2017, [T-84/16](#), widiba (fig.) / ING DiBa (fig.) et al., EU:T:2017:661, § 27).

Observing time limits is a matter of public policy, and serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice. Derogations from these rules can only be made in exceptional circumstances (23/09/2020, [T-557/19](#), 7SEVEN (fig.), EU:T:2020:450, § 34). Consequently, the conditions for the application of *restitutio in integrum* have to be interpreted strictly (19/09/2012, [T-267/11](#), VR, EU:T:2012:446, § 35; 16/06/2015, [T-585/13](#), JBG Gauff Ingenieure (fig.) / Gauff et al., EU:T:2015:386, § 25).

Restitutio in integrum is only available upon application to the Office and is subject to the payment of a fee (see [paragraph 3.7](#)).

The Office is under no obligation to inform or advise a party to the proceedings before it to pursue any particular legal remedy, including *restitutio in integrum* (06/10/2021, [T-635/20](#), Juvéderm vybrance, EU:T:2021:656, § 36).

2 Criteria for granting *restitutio in integrum*

There are two requirements for *restitutio in integrum*:

1. that the party has exercised all due care required by the circumstances; and
2. that the non-observance (of a deadline) by the party has the direct consequence of causing the loss of a right or means of redress.

2.1 The condition of 'all due care required by the circumstances'

Rights will be re-established only under exceptional circumstances that cannot be predicted from experience (13/05/2009, [T-136/08](#), Aurelia, EU:T:2009:155, § 26) and are therefore unpredictable and involuntary.

If the party is represented, the representative's failure to take all due care is attributable to the party that they represent (19/09/2012, [T-267/11](#), VR, EU:T:2012:446, § 40;

16/12/2020, [T-3/20](#), Canoleum / Marmoleum, EU:T:2020:606, § 45). The question whether the party has exercised the necessary vigilance to mitigate the errors of its representative causing the loss of a right cannot excuse the representative (19/09/2012, [T-267/11](#), VR, EU:T:2012:446, § 41; 31/01/2019, [T-604/17](#), REJECTION OF RESTITUTIO IN INTEGRUM (RECORDAL), EU:T:2019:42, § 21).

1. Examples of where the ‘all due care’ requirement has been fulfilled

Failure to deliver mail

In principle, failure to deliver by postal or delivery service does not involve any lack of due care by the party concerned (25/06/2012, [R 1928/2011-4](#), SUN PARK HOLIDAYS / SUNPARKS). However, it is up to the parties’ representative to at least find out in advance from the delivery company what the usual delivery times are (for example, in the case of letters sent from Germany to Spain in the decision of 04/05/2011, [R 2138/2010-1](#), YELLOWLINE / Yello).

Errors of the Office and their repercussions

The degree of due care that the parties must demonstrate in order to have their rights re-established must be determined in the light of all the relevant circumstances. Relevant circumstances may include a relevant error made by the Office and its repercussions. Thus, even though the party concerned has failed to take all due care, a relevant error by the Office may result in the granting of *restitutio in integrum* (25/04/2012, [T-326/11](#), BrainLAB, EU:T:2012:202, § 57, 59).

Force majeure

Circumstances such as natural disasters and general strikes are regarded as fulfilling the requirement for all due care. Another unpredictable event may be when all the employees of a law firm representing the party concerned are factually prevented from accessing the physical files and, consequently, from taking any further action to observe the time limit (14/06/2021, [R 735/2021-4](#), MOOI MUSEUM OF OPTICAL ILLUSIONS (fig.) / MUSEUM OF ILLUSIONS (fig.) et al., § 15).

2. Examples of where the ‘all due care’ requirement has not been fulfilled

a. Errors in administration or organisation

Delegation of tasks

The party to proceedings who delegates the administrative tasks relating thereto must ensure that the person chosen provides the necessary guarantees to ensure the tasks are properly carried out (13/09/2011, [T-397/10](#), Sport shoe, EU:T:2011:464, § 25).

Management of files

Errors in the management of files caused by the representative’s employees or by the computerised system itself are predictable. Consequently, due care would require a system for monitoring and detecting any such errors (13/05/2009, [T-136/08](#), Aurelia, EU:T:2009:155, § 18; 26/09/2017, [T-84/16](#), widiba (fig.) / ING DiBa (fig.) et al., EU:T:2017:661, § 39; 21/04/2021, [T-382/20](#), Table knives, forks and spoons, EU:T:2021:210, § 31-34).

For example, an error by the Renewals Department Manager of a private company, who monitors staff performance daily, does not constitute an exceptional event (24/04/2013, [R 1728/2012-3](#), LIFTING DEVICES (PART OF-)).

Workload

The exceptional workload and organisational strains to which the applicants claim they were subject are, in principle, irrelevant (20/06/2001, [T-146/00](#), Dakota, EU:T:2001:168, § 62; 20/04/2010, [T-187/08](#), Dog, EU:T:2010:150, § 34).

Absence of a key member of the accounts department

The absence of a key member of the Accounts Department cannot be regarded as an exceptional or unpredictable event (10/04/2013, [R 2071/2012-5](#), STARFORCE).

Delay in instructions

Delay by the owner in providing instructions is not an exceptional event (15/04/2011, [R 1439/2010-4](#), SUBSTRAL NUTRI+MAX / NUTRIMIX).

Financial problems / closure of business

Financial problems at the proprietor's business, its closure and the loss of jobs cannot be accepted as reasons preventing the proprietor from being able to observe the time limit to renew its European Union trade mark (31/03/2011, [R 1397/2010-1](#), CAPTAIN).

b. Duties and errors of professional representatives

Legal errors and misunderstandings

Legal errors by a professional representative do not warrant *restitutio in integrum* (16/11/2010, [R 1498/2010-4](#), REGINE'S / REGINA DETECHA, CH.V.D). A misunderstanding of the applicable law may not, as a matter of principle, be regarded as an 'obstacle' to compliance with a time limit (14/06/2012, [R 2235/2011-1](#), KA; 28/04/2020, [R 2391/2019-5](#), STAHL (fig.)).

Consideration of time limits

The careful consideration of the time limits is part of the basic duties of professional representatives, including the careful checking of the facsimile transmission report after submitting documents (26/06/2017, [R 748/2017-2](#), GIBBS S3 Business, Technology and Community Partner (fig.) / STHREE et al., § 43). A clerical error in entering a deadline cannot be regarded as an exceptional or unpredictable event (31/01/2013, [R 265/2012-1](#), KANSI / Kanz).

Calculation of time limits

An erroneous calculation of the time limit does not constitute an exceptional event that cannot be predicted from experience (05/07/2013, [R 194/2011-4](#), PAYENGINE / SP ENGINE). The correct calculation of the deadline is governed by the EUTMR and the EUTMDR, and the party cannot justify its non-compliance with the time limit by the fact that the deadline was not displayed in the Office's online database (03/09/2019, [R 500/2019-5](#), minimon (fig.) / Minimensch, § 36).

The same rule applies to Community designs where the relevant provisions are in the CDR and the CDIR.

c. **Clerical mistakes**

Deletion of a deadline

The deletion of a deadline by an assistant is not unpredictable (28/06/2010, [R 268/2010-2](#), ORION).

Bank transfer error

An error in the transmission of the data to a bank or an error made by a bank in the execution of the transfer to the Office cannot be regarded as exceptional or unforeseeable. The party to the proceedings before the Office is under an obligation to anticipate those circumstances and to take the necessary precautions to ensure that the payment is made within the established time period (13/10/2021, [T-732/20](#), Crystal, EU:T:2021:696, § 29-31).

2.2 Loss of rights or means of redress caused directly by failure to meet the time limit

[Article 104\(1\) EUTMR](#)

Failure to meet the time limit must have had the direct consequence of causing the loss of rights or means of redress.

Articles [47\(2\)](#), [95\(2\)](#) and [96\(1\)](#) EUTMR

[Article 7](#), [Article 8\(1\) to \(4\)](#), [\(7\)](#) and [\(8\)](#), [Article 14](#) and [Article 17\(1\) and \(2\)](#) EUTMDR

This is not the case where the Regulations offer procedural options that parties to proceedings are free to use, such as requesting an oral hearing, requesting that the opponent prove genuine use of its earlier mark, or applying for an extension of the cooling-off period, pursuant to [Article 7 EUTMDR](#). The cooling-off period itself is not subject to *restitutio in integrum* either because it is not a time limit within which a party must perform an action.

[Article 38\(1\)](#), Articles [41](#) and [42](#), and [Article 155\(1\) EUTMR](#)

However, *restitutio in integrum* does apply to the late response to an examiner's notification of provisional refusal if the application is not rectified by the time limit specified because, in this case, there is a direct relationship between failure to meet the time limit and possible refusal.

Restitutio in integrum is also available for the late submission of facts and arguments and late filing of observations on the other party's statements in inter partes proceedings if and when the Office refuses to take them into account as being filed

late. The loss of rights in this case involves the exclusion of these submissions and observations from the facts and arguments on which the Office bases its decision.

3 Procedural Aspects

[Article 104\(2\) EUTMR](#)

[Article 65\(1\)\(i\) EUTMDR](#)

Article 67(2) CDR

Article 68(1)(g) CDIR

3.1 Proceedings to which *restitutio in integrum* applies

Restitutio in integrum is available in all proceedings before the Office (*ex parte*, *inter partes* and appeal proceedings).

This includes proceedings under the EUTMR and proceedings concerning registered Community designs under the CDR. The relevant provisions do not differ materially, however the requirements for translations differ (see [paragraph 3.8](#)).

Therefore, unless specifically excluded by [Article 104\(5\) EUTMR](#) or Article 67(5) CDR, *restitutio in integrum* is available.

The reference to [Article 105 EUTMR](#) in [Article 104\(5\) EUTMR](#) should be understood as only excluding from *restitutio in integrum* the time limits which are laid down as such in [Article 105 EUTMR](#), namely the time limits for requesting continuation of proceedings and paying the fee pursuant to [Article 105\(1\) EUTMR](#). Consequently, *restitutio in integrum* is available for the time limits mentioned in [Article 105\(2\) EUTMR](#) to the extent that they are not expressly excluded by [Article 104\(5\) EUTMR](#).

Unlike the EUTMR for EUTMs, the CDR does not provide for continuation of proceedings for RCDs.

For *restitutio* in renewal proceedings see [paragraph 3.13](#).

3.2 Parties

[Article 104 EUTMR](#)

Article 67 CDR

Restitutio in integrum is available to any party to proceedings before the Office.

The time limit must have been missed by the party concerned or its representative.

3.3 Time limit for national offices to forward an application to the Office

Articles 35(1) and 38(2) CDR

The time limit of 2 months for transmission of a Community design application filed at a national office has to be observed by the national office and not by the applicant and is consequently not open to *restitutio in integrum*.

Under Article 38(2) CDR, late transmission of a Community design application has the effect of postponing the date of filing to the date the Office actually receives the relevant documents.

3.4 Time limits excluded from *restitutio in integrum*

[Article 104\(5\) EUTMR](#)

Article 67(5) CDR

In the interests of legal certainty, *restitutio in integrum* is not applicable to the following time limits.

Articles 41(1) and 67(5) CDR

Article 8(1) CDIR

- The priority period, which is the 6-month time limit for filing an application claiming the priority of a previous design or utility model application pursuant to Article 41(1) CDR. However, *restitutio in integrum* does apply to the 3-month time limit for providing the file number of the previous application and filing a copy of it, as specified in Article 8(1) CDIR.

Articles [46\(1\) and \(3\)](#) and [104\(5\)](#) EUTMR

- The time limit for filing an opposition pursuant to [Article 46\(1\) EUTMR](#), including the time limit for paying the opposition fee referred to in [Article 46\(3\) EUTMR](#).

[Article 104\(2\) and \(5\) EUTMR](#)

Article 67(2) and (5) CDR

- The time limits for *restitutio in integrum* itself, namely:
 - a time limit of 2 months for filing the application for *restitutio in integrum* as from the removal of the cause of non-compliance;
 - a time limit of 2 months from the date for completing the act that was omitted;

- a time limit of 1 year for filing the application for *restitutio in integrum* as from the expiry of the missed time limit.

[Article 105\(1\) EUTMR](#)

- The time limit for requesting continuation of proceedings pursuant to [Article 105 EUTMR](#), including the time limit for paying the fee referred to in [Article 105\(1\) EUTMR](#).

[Article 72\(5\) EUTMR](#)

- The 2-month time limit to file an appeal against the decision of the Boards of Appeal before the General Court (08/06/2016, [T-583/15](#), DEVICE OF THE PEACE SYMBOL, EU:T:2016:338).

3.5 Effect of *restitutio in integrum*

Granting *restitutio in integrum* has the retroactive legal effect that the time limit that was not met will be considered to have been met, and that any loss of rights in the interim will be deemed never to have occurred. If the Office has taken a decision in the interim based on failure to meet the time limit, that decision will become void, with the consequence that, once *restitutio in integrum* is granted, there is no longer any need to lodge an appeal against such a decision of the Office in order to have it removed. Effectively, *restitutio in integrum* will re-establish all the rights of the party concerned.

3.6 Time limits

Articles [53\(3\)](#) and [104\(2\)](#) EUTMR

Articles 13(3) and 67(2) CDR

Applicants must apply to the Office in writing for *restitutio in integrum*.

The applicant must make the application within 2 months of the removal of the cause of non-compliance and no later than 1 year after expiry of the missed time limit. Within the same period, the act that was omitted must be completed. The date when the cause of non-compliance is removed is the first date on which the party knew or should have known about the facts that led to the non-observance. If the ground for non-compliance was the absence or illness of the professional representative dealing with the case, the date on which the cause of non-compliance is removed is the date on which the representative returns to work.

If the application for *restitutio in integrum* is filed late, it will be rejected as inadmissible.

3.7 Fees

[Article 104\(3\)](#) and [Annex I \(22\) EUTMR](#)

Article 67(3) CDR

Annex, point 15 CDFR

The applicant must also pay the fee for *restitutio in integrum* within the same time limit (see [paragraph 3.6](#) above).

As a general rule, the individual fee (EUR 200) must be paid for each application for *restitutio in integrum* (i.e. one fee is due per individual right). Nevertheless, in certain cases exceptions may apply. The minimum conditions for applying such exceptions are the following:

1. all the rights should relate to the same rights holder;
2. all the rights should be of the same type (e.g. EUTMs, RCDs);
3. the unobserved time limit should be the same for all rights (e.g. missed time limit for renewal);
4. the loss of all rights concerned should be the result of the same circumstances.

These conditions are cumulative. Therefore, only when all of them are met, can the application for *restitutio in integrum* relating to multiple rights be subject to a single fee.

If all the conditions are not met, an individual fee must be paid for each right concerned.

If the applicant does not pay the fee by expiry of the time limit, the application for *restitutio in integrum* will be deemed not to have been filed.

In the event the application is deemed not to have been filed due to late or insufficient payment of the fee or because it was filed in relation to a time limit that is excluded from *restitutio in integrum* (see [paragraph 3.4](#) above), any fee paid (including late or insufficient fees) will be refunded.

However, once the application for *restitutio in integrum* has been deemed to have been filed, the fee will not be refunded if the request for *restitutio in integrum* is later withdrawn, rejected as inadmissible or rejected on the grounds of the substance of the claim (i.e. if the 'all due care' requirement is not fulfilled, see [paragraph 2.1](#) above).

3.8 Languages and translations

[Article 146 EUTMR](#)

[Article 24 EUTMIR](#)

Article 98 CDR

Article 80 and 81 CDIR

The applicant must submit the application for *restitutio in integrum* in the language, or in one of the languages, of the proceedings in which the failure to meet the time limit occurred. For example, in the EUTM registration procedure, this is the correspondence language indicated in the application; in the RCD registration procedure this is the language used for filing the application or the second language indicated by the applicant in the application; in the opposition procedure, it is the language of the opposition procedure; in the RCD invalidity procedure, it is the language of the invalidity procedure (Article 98(4) CDR); and in the renewal procedure, it is any of the Office's five languages.

Where the application for *restitutio in integrum* is not filed in the language of the proceedings, the applicant must submit a translation into that language within one month of the date of submission of the application ([Article 146\(9\) EUTMR](#) and Article 81(1) CDIR). If a translation into the language of proceedings is not submitted on time, the application for *restitutio in integrum* will be rejected as inadmissible.

Evidence in support of the application for *restitutio in integrum* may be filed in any official language of the European Union. The rules for translation in EUTM proceedings differ from those in RCD proceedings. Where evidence in EUTM proceedings was not submitted in the language of the proceedings, the Office may require a translation into that language ([Article 24 EUTMIR](#)). In proceedings concerning RCDs, the Office may require that a translation be supplied, within a time limit specified by it, in the language of the proceedings or, at the choice of the party to the proceedings, in any language of the Office (Article 81(2) CDIR).

If a translation is not submitted on time, the evidence will be disregarded.

3.9 Particulars and evidence

Articles [97](#) and [104](#) EUTMR

Articles 65 and 67 CDR

In its application for *restitutio in integrum* the applicant must state the grounds on which the application is based and set out the facts on which it relies. The application must set out which deadline has been missed.

As granting *restitutio in integrum* is essentially based on facts, it is advisable for the requesting party to submit evidence by means of sworn or affirmed statements. Statements drawn up by the interested parties themselves or their employees are generally given less weight than independent evidence (16/06/2015, [T-586/13](#), Gauff THE ENGINEERS WITH THE BROADER VIEW (fig.) / Gauff et al., EU:T:2015:385, § 29).

Moreover, the act that was omitted must be completed, together with the application for *restitutio in integrum*, at the latest by the time limit for submitting that application. For example, if the deadline to submit observations has been missed, the observations must be submitted with the request for *restitutio in integrum*. A request for extension of the time limit will not be accepted as the 'omitted act'. If the payment of a fee has been missed, that fee must be paid together with the *restitutio in integrum* request.

If the grounds on which the application is based, and the facts on which it relies are not submitted, the application for *restitutio in integrum* will be rejected as inadmissible. The same applies if the omitted act is not completed.

3.10 Competence

[Article 104 EUTMR](#)

Article 67 CDR

The division or department competent to decide on the act that was omitted (i.e. responsible for the procedure in which failure to meet the deadline occurred) is responsible for dealing with applications for *restitutio in integrum*.

3.11 Publications

Articles [53\(5\)](#), [\(7\)](#) and [\(8\)](#), and [104\(7\)](#), Articles [111\(3\)\(k\)](#) and [\(l\)](#) and [116\(1\)\(a\)](#) EUTMR

Article 67 CDR

Article 22(4) and (5), Article 69(3)(m) and (n) and Article 70(2) CDIR

The EUTMR and CDR provide for a mention of the re-establishment of rights to be published in the Bulletin. This mention will be published only if the failure to meet the time limit that gave rise to the application for *restitutio in integrum* has actually led to publication of a change of status of the EUTM or RCD application or registration, because only in such a case would third parties be able to take advantage of the absence of such rights. For example, the Office will publish a mention that *restitutio in integrum* has been granted if it published a mention that registration had expired due to failure to meet the time limit for paying the renewal fee.

In the event of such a publication, a corresponding entry will also be made in the Register.

No mention of receipt of an application for *restitutio in integrum* will be published.

3.12 Decision, role of other parties in *restitutio in integrum* proceedings

Articles [66](#) and [67](#) EUTMR

The applicant for *restitutio in integrum* is the sole party to the *restitutio in integrum* proceedings, even where failure to meet the time limit occurred in *inter partes* proceedings.

The decision on *restitutio in integrum* will be taken, if possible, in the decision terminating the proceedings. The Office may also adopt a separate decision on the application for *restitutio in integrum*. In both cases, the applicant for *restitutio in integrum* can appeal the refusal of its request for *restitutio in integrum* together with an appeal against the decision terminating the proceedings.

The decision to grant *restitutio in integrum* cannot be appealed.

The other party to *inter partes* proceedings will be informed both that *restitutio in integrum* has been requested and about the outcome of the proceedings. If *restitutio in integrum* is granted, the other party's only means of redress is to initiate third-party proceedings (see [paragraph 4](#) below).

3.13 *Restitutio in integrum* in the event of renewals

The principles mentioned in this chapter also apply to requests for *restitutio in integrum* in renewal proceedings, but with the following particularities.

Party to the proceedings

In renewal proceedings, authorised persons within the meaning of [Article 53\(1\) EUTMR](#) or Article 13(1) CDR who missed the renewal deadline are party to the renewal proceedings and may, therefore, request *restitutio in integrum* in their own name (23/09/2020, [T-557/19](#), 7SEVEN (fig.), EU:T:2020:450, § 26, 31-32).

Time limits

Where a renewal deadline was missed and the loss of rights was notified to the EUTM proprietor, the day of this notification is the point in time from which a diligent proprietor has 2 months to comply with the requirements set out in [Article 104 EUTMR](#) or Article 67 CDR (30/09/2010, [C-479/09 P](#), DANELECTRO, EU:C:2010:571, § 36, 42; 28/09/2021, [R 396/2021-2](#), Netcomponents, § 28). The notification of the loss of right to the proprietor is also valid for an authorised person (23/09/2020, [T-557/19](#), 7SEVEN (fig.), EU:T:2020:450, § 47 et seq.).

If the applicant fails to submit the request for renewal or to pay the renewal fee, the 1-year period after expiry of the missed time limit ([Article 104\(2\) EUTMR](#) or Article 67(2) CDR) starts on the day on which the protection ends, and not on the date the further 6-month time limit set out by [Article 53\(3\) EUTMR](#) or Article 13(3) CDR expires.

Fees

The exception to the general rule that an individual fee must be paid for each application for *restitutio in integrum* also applies to renewals (see [paragraph 3.7](#)). When a party has missed renewing multiple EUTM registrations, it can file a single request for *restitutio in integrum* for the renewal of all of its marks and pay a single *restitutio in integrum* fee.

The fees must be paid together with the *restitutio in integrum* request. The fee amount depends on which time limit the party asks to have reinstated: the basic period for renewal, the grace period for renewal or the deadline for late payment within the meaning of [Article 180 EUTMR](#) or Article 7(3) CDFR.

Indication of which period should be reinstated

In its application for *restitutio in integrum*, the applicant must clearly state if it is seeking reinstatement of the basic period, the grace period or the period within the meaning of [Article 180 EUTMR](#) or Article 7(3) CDFR.

4 Third-Party Proceedings

[Article 104\(6\) and \(7\) EUTMR](#)

Article 67 CDR

A third party who, in the period between the loss of rights and publication of the mention of the re-establishment of rights,

- has, in good faith, put goods on the market or supplied services under a sign that is identical or similar to the EUTM, or
- in the case of a Community design, has, in good faith, put on the market products in which a design included within the scope of protection of the RCD is incorporated or to which it is applied,

may bring third-party proceedings against the decision re-establishing the rights of the applicant, proprietor or holder of the EUTM or RCD.

This request is subject to a 2-month time limit, which starts:

- on the date of publication, where publication has taken place;
- on the date on which the decision to grant *restitutio in integrum* took effect, where publication has not taken place.

The Regulations do not contain any provisions governing this procedure. The division or department that took the decision to re-establish the rights is responsible for third-

party proceedings. The Office will conduct adversarial *inter partes* proceedings, which means that it will hear both parties before taking a decision.

Obsolete