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COVER NOTE

From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	4 November 2016
To:	Mr Peter KAZIMIR, President of the Council of the European Union
Subject:	Report on the annual accounts of the Office for Harmonization in the Internal Market for the financial year 2015 together with the Office's reply

Delegations will find attached the European Court of Auditors' report on the annual accounts of the Office for Harmonisation in the Internal Market for the financial year 2015.

This report is accompanied by the Office's reply and will shortly be published in the *Official Journal of the European Union*.

Encl.: Report on the annual accounts of the Office for Harmonisation in the Internal Market for the financial year 2015 together with the Office's reply.¹

¹ In English only. The other languages of this report are available on the European Court of Auditors' website: <http://eca.europa.eu/>.



EUROPEAN
COURT
OF AUDITORS

Report on the annual accounts
of the Office for Harmonization in the Internal Market
for the financial year 2015
together with the Office's reply

INTRODUCTION

1. The Office for Harmonization in the Internal Market² (hereinafter “the Office”, aka “OHIM”), which is located in Alicante, was established by Council Regulation (EC) No 40/94³, which was repealed and replaced by Regulation (EC) No 207/2009⁴. The Office’s task is to implement the Union legislation on trademarks and designs, which gives undertakings uniform protection throughout the entire area of the European Union.

2. **Table 1** presents key figures for the Office⁵.

TABLE 1: KEY FIGURES FOR THE OFFICE

	2014	2015
Budget (million euro) ⁶	419,6	384,2
Total staff as at 31 December ⁷	928	998

Source: data provided by the Office

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

3. The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Office’s supervisory and control systems. This is supplemented by evidence provided by the work of other auditors (where relevant) and an analysis of management representations.

² As of 23 March 2016, the Office is called the European Union Intellectual Property Office (EUIPO) and the Community trade mark is called the European Union trade mark.

³ OJ L 11, 14.1.1994, p. 1.

⁴ OJ L 78, 24.3.2009, p. 1.

⁵ More information on the Office’s competences and activities is available on its website: <https://euipo.europa.eu/ohimportal/en>.

⁶ Budget figure includes the reserve for unforeseen events.

⁷ Staff includes officials, temporary and contract staff and seconded national experts.

STATEMENT OF ASSURANCE

4. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

- (a) the annual accounts of the Office, which comprise the financial statements⁸ and the reports on the implementation of the budget⁹ for the financial year ended 31 December 2015, and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

5. The management is responsible for the preparation and fair presentation of the annual accounts of the Office and the legality and regularity of the underlying transactions¹⁰:

- (a) The management's responsibilities in respect of the Office's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer¹¹; making accounting estimates that are reasonable in the circumstances. The President approves the annual accounts of the Office after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, inter alia, that he has reasonable assurance that they present a true and fair view of the financial position of the Office in all material respects.

⁸ These include the balance sheet and the statement of financial performance, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

⁹ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

¹⁰ Articles 38 and 43 of Regulation No CB-3-09 of the Budget Committee of the Office for Harmonization in the Internal Market.

¹¹ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

The auditor's responsibility

6. The Court's responsibility is, on the basis of its audit, to provide the Budget Committee of the Office with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions¹². The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Office are free from material misstatement and the transactions underlying them are legal and regular.
7. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts.
8. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

¹² Articles 91 to 95 of Regulation No CB-3-09 of the Budget Committee of the Office for Harmonization in the Internal Market.

Opinion on the reliability of the accounts

9. In the Court's opinion, the Office's annual accounts present fairly, in all material respects, its financial position as at 31 December 2015 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

Opinion on the legality and regularity of the transactions underlying the accounts

10. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2015 are legal and regular in all material respects.

11. The comments which follow do not call the Court's opinions into question.

COMMENTS ON BUDGETARY MANAGEMENT

12. The level of committed appropriations carried over to 2016 was high for Title III at 12,9 million euro, i.e. 36 % (2014: 14,1 million euro, i.e. 38 %). The carry-overs mainly relate to cooperation agreements with National Offices which submit cost claims only after year-end.

OTHER COMMENTS

13. The procurement of services based on a negotiated procedure without publication of a contract notice limits competition to a single negotiating party and should therefore only be used in exceptional circumstances. The Office, following this procedure, in 2015 extended six framework contracts with a value of extended services of 1,9 million euro (in 2014: 12 framework contracts with a value of extended services of 12,6 million euro)¹³. The Office's use of this procedure cannot be considered as "exceptional" given the number, value and frequency of such contracts and did not fully comply with the formal requirements¹⁴.

¹³ Framework contracts extended based on Article 134(1)(f) of Commission Delegated Regulation (EU) No 1268/2012 (OJ L 362, 31.12.12, p. 1).

¹⁴ As stipulated in Article 134(3) of Regulation (EU) No 1268/2012.

14. The Office reimburses part or all of the gross salary of Seconded National Experts (“SNEs”) to their employers. This deviates from the Commission’s practice that SNEs’ employers continue to pay their salaries. In 2015, these reimbursements amounted to 1,9 million euro.

15. As at 31 December 2015, nine OHIM staff members were seconded in the interest of the service to the OHIM Board of Appeal. However the EU Staff Regulations do not provide for such secondments¹⁵.

FOLLOW-UP OF PREVIOUS YEARS’ COMMENTS

16. An overview of the corrective actions taken in response to the Court's comments from previous years is provided in **Annex I**.

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA, Member of the Court of Auditors, in Luxembourg at its meeting of 13 September 2016.

For the Court of Auditors

(s) Vítor Manuel da SILVA CALDEIRA

President

¹⁵ Article 37(a) of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385/62).

Follow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2013	The amount of cancelled carry-overs from previous years increased from 4,2 million euro (13 %) in 2012 to 6,0 million (16 %) in 2013. In both years this was mainly due to lower than estimated costs to be reimbursed under cooperation agreements with Member States' National Offices (1,9 million euro in 2012 and 3,8 million euro in 2013), which indicates the need to obtain more accurate information from National Offices at year-end on the actual cost incurred.	Completed
2013	The Office has a Business Continuity and Crisis Management Plan in place which stipulates that some 25 roles have to be covered permanently by employees on stand-by duty. Although budget appropriations for stand-by duty allowances are approved annually by the Office's Budget Committee, the amount paid in 2013 (402 458 euro) considerably exceeds such allowances paid by other agencies which need to ensure permanent service.	Ongoing
2014	In its 2013 Report on the annual accounts of the Office the Court questioned the amount spent on stand-by allowances (0,40 million euro). Such payments were higher in 2014 (0,44 million euro). In November 2014 the Office revised its policy and reduced the number of roles entitled to stand-by duty allowances from 25 to 17, the financial effect of which will be seen from 2015 ¹⁶ . Nine staff	Ongoing

¹⁶ In 2015 the Office paid 285 242 euro for stand-by duty allowances and 13 roles were entitled to it.

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
	members received more than 11 000 euro each in stand-by allowances, seven of whom are managers.	
	However, the system [stand by duty allowances] is poorly controlled and staff on sick leave, missions abroad or on holiday have been paid allowances.	Completed
2014	<p>The amount of cancelled carry-overs from previous years decreased from 6,0 million euro (16 %) in 2013 to 5,1 million (13 %) in 2014. In both years this was mainly due to lower than estimated costs to be reimbursed under cooperation agreements with Member States' National Offices (3,2 million euro in 2014 and 3,8 million euro in 2013), which indicates the need to obtain more accurate information from National Offices at year-end on the actual cost incurred. The level of committed 2014 appropriations for the different titles varied between 94 % and 97 % of total appropriations, indicating that legal commitments were made in a timely manner. The level of committed appropriations carried over to 2015 was high for title III at 14,1 million euro, i.e. 38 % (2013: 13,3 million euro, i.e. 38 %). It was mainly related to cooperation agreements with National Offices, for which cost claims were not due to be submitted by the National Offices until 2015, and the usual order of translation services in the last two months of 2014, which were only due for payment in 2015.</p>	N/A

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	<p>In 2004 new EU Staff Regulations entered into force, including provisions that future remunerations of officials recruited before May 2004 should not be less than under the previous EU Staff Regulations. The Court's audit revealed that this was not complied with and, in the case of 4 of the 648 staff members employed at that time, this led to a total underpayment of 96 998 euro for the period 2005 to 2014. The amount is not material and does not put the reliability of the Office's accounts into question. The Office decided to make the supplementary salary payments in due course.</p>	Completed¹⁷

¹⁷ The Office made the supplementary salary payments in August 2015.

THE OFFICE'S REPLY

12. In 2015, the Office has put in place several measures in order to reduce the historical high level of carry-overs; such as raising awareness through coaching, training, information notes and meetings with the financial actors. Thorough analysis of all commitments above 100 000 euro during December, permanencies of the financial actors during the whole Christmas period in order to pay invoices until 31 December 2015, amongst others, have enabled the Office to reduce the carry-overs in Title II from 21 % in 2014 to 16 % in 2015 and from 38 % in Title III in 2014 to 36 % in 2015. The Office continues to put in place further measures to lower the high level of carry-overs in Title III which, as pointed out by the Court, are mainly related to the structural characteristics of the Cooperation Activities with Member States' IP National Offices (the majority should be considered as planned carry-overs).

13. The Office acknowledges that it has made frequent use of Article 134 RAP and is taking short, mid and long term actions in order to improve the management and control of its procurement and contracting processes. These measures include that the negotiated procedure without prior publication of a contract notice shall only be used in duly justified cases.

14. The Office understands there is no legal obligation to strictly align both texts as SNE's are not covered by the Staff Regulations. The new founding regulation (Article 116) foresees the Office's Management Board to adopt a decision laying down rules on the secondment of national experts to the Office. On 31 May a decision was adopted by the Management Board of the Office acknowledging the existing practice.

15. The Office understands that the Staff Regulations do not give a clear answer about the administrative status that should apply to OHIM officials and temporary agents appointed at the Boards of Appeal. Nevertheless, the Office took note of the Court's observation and brought this issue to its Management Board on 26 May 2016 who adopted the decision to maintain the current practice.