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European Union

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COVER NOTE

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| From: | Ms Michèle Coninx, President of Eurojust |
| date of receipt: | 21 May 2015 |
| To: | H.E. Ms Laimdota Straujuma, Prime Minister of Latvia |
| Subject: | Draft Memorandum of Understanding between Eurojust and OHIM |

Delegations will find attached a letter from the President of Eurojust (Annex I) related to the draft Memorandum of Understanding between Eurojust and OHIM (Annex 2) and the opinion of the Joint Supervisory Body of Eurojust on this draft Memorandum of Understanding (Annex 3).

A draft Council Decision to approve the conclusion of the Memorandum of Understanding will issue separately (doc. 10794/15).



D150143

To the attention of the President
of the Council of the European Union
H.E. Laimdota Straujuma
Prime Minister of Latvia

The Hague, 21 May 2015

Approval by the Council of the European Union of the draft Memorandum of Understanding between Eurojust and OHIM

Your Excellency,

On 2 February 2015, we informed the Council of the European Union that Eurojust envisaged instituting formal negotiations aimed at the conclusion of a Memorandum of Understanding with the Office for Harmonization in the Internal Market (OHIM). I am now pleased to inform you that the negotiations have been successfully concluded.

The draft Memorandum of Understanding attached to this letter was approved by the College of Eurojust by its decision of 19 May 2015. The Joint Supervisory Body of Eurojust delivered a positive opinion on 21 May 2015 and welcomed the draft Memorandum of Understanding.

In accordance with Article 26(2) of the Eurojust Decision, the attached draft Memorandum of Understanding between Eurojust and OHIM requires approval by the Council of the European Union.

To this end, I would be most grateful if you could submit it for consideration at the next meeting of the Council. Eurojust welcomes the Council's approval of this draft Memorandum of Understanding, which will enable both organisations to enhance their cooperation in the fight against serious cross-border crime, including counterfeiting and product piracy.

Yours faithfully,

Michèle Coninx
President of Eurojust

Encl.: Draft Memorandum of Understanding between Eurojust and OHIM



OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)



Memorandum of Understanding
Between the
Office for Harmonization in the Internal Market
And
Eurojust

DRAFT

The Office for Harmonization in the Internal Market, located at Avenida Europa 4,
03008 Alicante, Spain, and **(OHIM)**,
represented for the purpose of signing this Memorandum of Understanding (the "MoU")
by Mr. António Campinos, President, duly entitled to sign,

of the one part

AND

The **European Union Judicial Cooperation Unit (Eurojust)**, located at Saturnusstraat
9, 2516 AD Den Haag, Netherlands, and represented for the purpose of signing this MoU
by Mrs. Michèle Coninx, President, duly entitled to sign,

of the other part

Hereafter jointly referred to as the "Parties" or individually as the "Party"

Whereas Eurojust was established by Council Decision of 28 February 2002 as last
amended by Council Decision 2009/426/JHA of 16 December 2008 with a view to
reinforcing the fight against serious crime (hereinafter referred to as the "Eurojust
Decision") ;

Considering Article 26(1) of the Eurojust Decision, which provides that Eurojust may
establish and maintain cooperative relations with the institutions, bodies and agencies set
up by, or on the basis of, the Treaties establishing the European Communities or the
Treaty on European Union;

Whereas the Regulation (EU) No 386/2012 of 19 April 2012 entrusts OHIM with tasks
related to the enforcement of intellectual property rights, including the assembling of
public and private-sector representatives as the European Observatory on Infringements
of Intellectual Property Rights;

Considering that Article 1 of the Regulation (EU) No 386/2012 entrusts OHIM with tasks
aimed at facilitating and supporting, amongst others, the activities of the European Union
institutions and that of the Member States in the fight against infringements of the
intellectual property rights covered by the Directive 2004/48/EC of 29 April 2004;

Aware of the increasing involvement of international organised crime in counterfeiting
and piracy;

Considering that the Parties are willing and ready to develop a strategic cooperation that
could help them to achieve their respective objectives;

Respectful of the obligations of the Parties under the Charter of Fundamental Rights of
the European Union;

Have agreed as follows:

Article 1
Purpose of the cooperation

The purpose of this MoU is to foster cooperation between the Parties in compliance with their respective mandates.

1. Any activity conducted under this MoU is subject to its prior inclusion in the Parties' respective work programmes and to their budgetary capacity. The Parties undertake to implement any such activity in full observance of their respective rules and practices.

Article 2
Areas for enhanced cooperation

1. Specific cooperation projects and terms of use of the statistical data to be exchanged between the Parties shall be jointly agreed in writing and their implementation shall be undertaken with reference to each Party's annual work programme taking into account the availability of adequate resources.
2. Eurojust and OHIM:
 - a. Shall invite each other to awareness raising and knowledge building events on intellectual property and enforcement issues convened under their respective auspices whenever matters in which the other Party might have an interest are being discussed. The Parties shall ensure the timely exchange of information on meeting schedules and agendas to facilitate the expression of such interest.
 - b. Shall cooperate in the exchange and sharing of statistical data in the area of counterfeiting and product piracy in full respect of Article 3.5 of this MoU.

Article 3
Exchange of strategic and technical information

1. Exchange of information between the Parties shall only take place and be used for the purpose of and in accordance with the provisions of this MoU.
2. Any information exchanged shall be in accordance with Article 3(5) of this MoU.
3. The exchange of "strategic information" includes, but it is not limited to:
 - a. Information and analysis of strategic nature such as trends and challenges faced as result of OHIM's or Eurojust's activities;
 - b. Observations and general findings resulting from OHIM's or Eurojust's activities that could support the work of the other Party;
4. The exchange of "technical information" includes, but is not limited to:
 - a. Means of strengthening administrative, judicial and law enforcement structures and cooperation in the fields covered by this MoU, including the sharing of know-how and statistics related to the estimate of the extent of

counterfeiting and product piracy, and intellectual property rights enforcement.

- b. Training for the Parties' experts in the areas of cooperation.
5. Exchange of information or experience provided for in this MoU shall not include the transmission of operational information including data relating to an identified or identifiable person.

Article 4 Confidentiality

6. Each Party shall ensure that information, including EU classified information (EUCI), provided or exchanged under the MoU will receive a level of protection that is equivalent to the level of protection offered by the security standards applied to that information by the other Party, based on the basic principles and minimum standards of the applicable legal framework at EU level.

Article 5 Consultations and assessment of cooperation

1. Each Party shall establish a contact point to coordinate the cooperation with the other Party. The contact points shall maintain mutual and regular exchange of information and consultation on the cooperation activities undertaken, on projects of mutual interest that may be jointly implemented, and on all other matters of common interest falling under the present MoU.
2. At least once per year, the Parties shall report to each other on the state of implementation of this MoU and propose, where appropriate, methods for improvement.

Article 6 Settlement of Disputes

1. All disputes which may emerge in connection with the interpretation or application of the present MoU shall be settled by means of consultations and negotiations between representatives of the Parties with the view to finding an equitable solution.
2. In the event of serious failings of either Party to comply with the provisions of this MoU, or a Party is of the view that such a failing may occur in the near future, either Party may suspend the application of this MoU temporarily, pending the application of paragraph 1.

Article 7 Expenses

The Parties shall commit to bear their own expenses which might arise in the course of implementation of the present MoU, unless otherwise agreed on a case-by-case basis.

**Article 8
Amendments and Supplements**

1. This MoU may be amended and supplemented in writing, at any time by mutual consent between the Parties. Such amendment shall enter into force after the Parties have notified each other of the completion of their respective internal requirements.
2. The Parties shall enter into consultations with respect to any amendment and supplement of this MoU at the request of either of them.

**Article 10
Termination of the Agreement**

This MoU may be terminated in writing by either of the Parties by giving three months' notice.

**Article 9
Entry into force and validity**

This MoU shall enter into force on the first day of the month following its signature by both parties.

Done at _____, on the _____ in duplicate in the English language.

For OHIM
The President

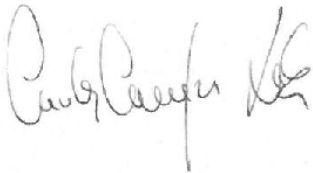
For Eurojust
The President

Opinion of the Joint Supervisory Body of Eurojust on the draft Memorandum of Understanding between the Office for Harmonization in the Internal Market (OHIM) and Eurojust

On 19 May 2015, the Joint Supervisory Body of Eurojust was invited by Eurojust to give its opinion in writing on the draft memorandum of Understanding between the Office for Harmonization in the Internal Market (OHIM) and Eurojust, in accordance with Article 26(2) of the Eurojust Decision.

The JSB appreciated this opportunity to give its views. It welcomed in particular Article 3.5 of the draft memorandum which provides that data relating to an identified or identifiable person is excluded from the scope of exchange of information or experience. The JSB also noted that Article 2.2 b of the draft memorandum on the legal obligation of both OHIM and Eurojust to co-operate in the exchange and sharing of statistical data in counterfeiting and product piracy cross-refers to Article 3.5 of the draft memorandum. Such cross-reference clearly provides that data relating to an identified or identifiable person is thus excluded from the scope of exchange of operational information including statistical data.

The Joint Supervisory Body of Eurojust therefore issues a positive opinion on this draft memorandum of understanding.



Done at The Hague
21 May 2015

Carlos Campos Lobo
Chair
Joint Supervisory Body of Eurojust

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