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COVER NOTE

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| From: | Mr Vítor CALDEIRA, President of the European Court of Auditors |
| date of receipt: | 29 October 2015 |
| To: | Mr Jean ASSELBORN, 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 2014 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 2014.

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 2014 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 2014
together with the Office's reply

INTRODUCTION

1. The Office for Harmonization in the Internal Market (hereinafter “the Office”, aka “OHIM”), which is located in Alicante, was established by Council Regulation (EC) No 40/94¹, which was repealed and replaced by Regulation (EC) No 207/2009². The Office’s task is to implement the Union legislation on trade marks and designs, which gives undertakings uniform protection throughout the entire area of the European Union³.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

2. 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.

STATEMENT OF ASSURANCE

3. 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 statements⁴ and the reports on the implementation of the budget⁵ for the financial year ended 31 December 2014, and
 - (b) the legality and regularity of the transactions underlying those accounts.

¹ OJ L 11, 14.1.1994, p. 1.

² OJ L 78, 24.3.2009, p. 1.

³ ***Annex II*** summarises the Office’s competences and activities. It is presented for information purposes.

⁴ 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.

⁵ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

The management's responsibility

4. 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 transactions⁶:
- (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 officer⁷; 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.
- (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

5. 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 transactions⁸. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of

⁶ Articles 38 and 43 of Regulation No CB-3-09 of the Budget Committee of the Office for Harmonization in the Internal Market.

⁷ 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.

⁸ Articles 91 to 95 of Regulation No CB-3-09 of the Budget Committee of the Office for Harmonization in the Internal Market.

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.

6. 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.

7. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

Opinion on the reliability of the accounts

8. In the Court's opinion, the Office's annual accounts present fairly, in all material respects, its financial position as at 31 December 2014 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

9. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2014 are legal and regular in all material respects.

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

COMMENTS ON INTERNAL CONTROLS

11. 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. However, the system is poorly controlled and staff on sick leave, missions abroad or on holiday⁹ have been paid allowances. Nine staff members received more than 11 000 euro each in stand-by allowances, seven of whom are managers.

COMMENTS ON BUDGETARY MANAGEMENT

12. 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.

OTHER COMMENTS

13. 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

⁹ According to the Office's policy, staff on stand-by duty must be available within a range of two hours' drive by car from the office, which however was not checked.

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.

FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

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

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 15 September 2015.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

Follow-up of previous years' comments

| Year | Court's comment | Status of corrective action (Completed / Ongoing / Outstanding / N/A) |
|-------------|---|---|
| 2011 | Cash held by the Office as at 31 December 2011 totalled 520 million euro (495 million euro in 2010). Following the treasury policy approved by the Budget Committee in 2010 the cash was held in 9 banks in 5 Member States. | Completed However the Court notes the still high level of cash. |
| 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. | Outstanding |

| Year | Court's comment | Status of corrective action (Completed / Ongoing / Outstanding / N/A) |
|-------------|--|---|
| 2013 | <p>The level of committed 2013 appropriations for the different titles varied between 98 % and 89 % of total appropriations, indicating that legal commitments were made in a timely manner. The level of committed appropriations carried over to 2014 was high for title II (administrative expenditure) at 23,9 million euro (28 %) and title III at 13,3 million euro (38 %). For title II this resulted from multiannual contracts mainly related to the construction of the new building and IT developments and services / supplies ordered, as planned, at the end of 2013 which were only due for payment in 2014. For title III, it was mainly related to cooperation agreements with National Offices for which cost claims were not due to be submitted by National Offices until 2014, and the usual order of translation services in the last months of 2013, which were only due for payment in 2014.</p> | N/A |
| 2013 | <p>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.</p> | Ongoing |

Office for Harmonization in the Internal Market**(Alicante)****Competences and activities**

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| <p>Areas of Union competence deriving from the Treaty</p> <p><i>(Articles 36 and 56 of the Treaty on the Functioning of the European Union)</i></p> | <p>Free movement of goods</p> <p>[...] prohibitions or restrictions [...] justified on grounds of [...] the protection of industrial and commercial property [shall not] constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.</p> <p>[...] restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. [...]</p> |
| <p>Competences of the Office</p> <p><i>(Council Regulation (EC) No 207/2009)</i></p> <p><i>(Regulation EU No 386/2012 of the European Parliament and of the Council)</i></p> | <p>Objectives</p> <p>To implement the Union legislation on trade marks and designs, which gives undertakings the right to uniform protection throughout the entire area of the European Union.</p> <p>To promote discussion, research, training, communication, the creation of advanced IT support tools and the spread of best practice on intellectual property (IP) matters.</p> <p>Tasks</p> <ul style="list-style-type: none"> – To receive and enter applications for registration, – to examine the conditions for entry in the Register and compatibility with Union legislation, – to search at the industrial property offices of the Member States for any pre-existing national trade marks, – to publish applications, – to examine any opposition by third parties, – to register or reject applications, – to examine applications for revocation or invalidity, – to handle appeals against decisions, – to improve understanding of the value of intellectual property, – to improve understanding of the scope and impact of infringements of intellectual property rights, – to enhance knowledge of best public and private sector practices to |

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| | <p>protect intellectual property rights,</p> <ul style="list-style-type: none"> – to assist in raising citizens’ awareness of the impact of infringements of intellectual property rights, – to enhance the expertise of persons involved in the enforcement of intellectual property rights, – to enhance knowledge of technical tools to prevent and tackle infringements of intellectual property rights, including tracking and tracing systems which help to distinguish genuine products from counterfeit ones, – to provide mechanisms which help to improve the online exchange, between Member States’ authorities working in the field of intellectual property rights, of information relating to the enforcement of such rights, and fostering cooperation with and between those authorities, – to work in consultation with Member States, to foster international cooperation with intellectual property offices in third countries so as to build strategies and develop techniques, skills and tools for the enforcement of intellectual property rights. |
| <p>Governance</p> | <p>Administrative Board</p> <p><i>Composition</i></p> <ul style="list-style-type: none"> – One representative from each Member State and one representative from the Commission, and their alternates. <p><i>Task</i></p> <ul style="list-style-type: none"> – To advise the President on matters for which the Office is responsible. – To prepare lists of candidates (Article 125) for President, Vice-Presidents and chairmen and members of the Boards of Appeal. <p>President of the Office</p> <ul style="list-style-type: none"> – Appointed by the Council from a list of at most three candidates which has been prepared by the Administrative Board. <p>Budget Committee</p> <p><i>Composition</i></p> <ul style="list-style-type: none"> – One representative of each Member State and one representative of the Commission and their alternates. <p><i>Task</i></p> <ul style="list-style-type: none"> – To adopt the budget and the financial regulation, grant discharge to the President and determine the cost of search reports. <p>Decisions related to the applications</p> <p>Decisions are taken by:</p> <ol style="list-style-type: none"> (a) the Examiners; (b) the Opposition Divisions; (c) the Administration of Trade Marks and Legal Division; (d) the Cancellation Divisions; |

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| | <p>(e) the Boards of Appeal.</p> <p>External audit</p> <p>European Court of Auditors.</p> <p>Discharge authority</p> <p>The Office's Budget Committee.</p> |
| <p>Resources made available to the Office in 2014¹ (2013)²</p> | <p>Budget</p> <p>420 (418) million euro.</p> <p>Staff at 31 December 2014</p> <p>844 (861) posts in the establishment plan; posts occupied: 721 (731) + 157 (171) other staff (auxiliary contracts, seconded national experts, local and employment agency staff, special advisers)</p> <p>Total staff: 878 (902)</p> |
| <p>Products and services supplied 2014¹ (2013)²</p> | <p>Trade marks</p> <p>Number of applications: 117 455 (114 270)</p> <p>Number of registrations: 103 777 (98 073)</p> <p>Cases of opposition: 15 660 (17 015)</p> <p>Appeals to the Boards of Appeal: 3 284 (2 602)</p> <p>Appeals pending: 2 833 (2 361)</p> <p>Designs</p> <p>Designs received: 97 671 (96 702)</p> <p>Designs registered: 85 430 (84 021)</p> |

¹ 2014 figures are subject to minor adjustments for statistical reasons.

² 2013 figures adjusted.

Source: Annex supplied by the Office.