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COVER NOTE

From:	Mr Klaus-Heiner LEHNE, President of the European Court of Auditors
date of receipt:	28 November 2017
To:	Mr Märt KIVINE, President of the Council of the European Union
Subject:	Report on the annual accounts of the Community Plant Variety Office for the financial year 2016 together with the Office's reply

Delegations will find attached the European Court of Auditors' report on the annual accounts of the Community Plant Variety Office for the financial year 2016.

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 Community Plant Variety Office for the financial year 2016 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 Community Plant Variety Office
for the financial year 2016

together with the Office's reply

INTRODUCTION

1. The Community Plant Variety Office (hereinafter “the Office”, aka “CPVO”), which is located in Angers, was created by Council Regulation (EC) No 2100/94¹. Its main task is to register and examine applications for the grant of Union industrial property rights for plant varieties and to ensure that the necessary technical examinations are carried out by the competent offices in the Member States.

2. **Table 1** presents key figures for the Office².

TABLE 1: KEY FIGURES FOR THE OFFICE

	2015	2016
Budget (million euro)	14,7	16,1
Total staff as at 31 December ³	46	44

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.

¹ OJ L 227, 1.9.1994, p. 1.

² More information on the Office's competences and activities is available on its website: www.cpvo.europa.eu.

³ Staff includes officials, temporary and contract staff and seconded national experts.

OPINION

4. We have audited:

- (a) the 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 2016, and
- (b) the legality and regularity of the transactions underlying those accounts,

as required by Article 287 of the Treaty on the Functioning of the European Union (TFEU).

Reliability of the accounts*Opinion on the reliability of the accounts*

5. In our opinion, the accounts of the Office for the year ended 31 December 2016 present fairly, in all material respects, the financial position of the Office at 31 December 2016, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector.

Legality and regularity of the transactions underlying the accounts**Revenue***Opinion on the legality and regularity of revenue underlying the accounts*

6. In our opinion, revenue underlying the accounts for the year ended 31 December 2016 is legal and regular in all material respects.

⁴ The financial statements comprise the balance sheet, the statement of financial performance, the cashflow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁵ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Payments

Opinion on the legality and regularity of payments underlying the accounts

7. In our opinion, payments underlying the accounts for the year ended 31 December 2016 are legal and regular in all material respects.

Responsibilities of management and those charged with governance

8. In accordance with Articles 310 to 325 of the TFEU and the Office's Financial Regulation, management is responsible for the preparation and presentation of the accounts on the basis of internationally accepted accounting standards for the public sector and for the legality and regularity of the transactions underlying them. This responsibility includes the design, implementation and maintenance of internal controls relevant to the preparation and presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them. The Office's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the accounts.

9. In preparing the accounts, management is responsible for assessing the Office's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

10. Those charged with governance are responsible for overseeing the entity's financial reporting process.

Auditor's responsibilities for the audit of the accounts and underlying transactions

11. Our objectives are to obtain reasonable assurance about whether the accounts of the Office are free from material misstatement and the transactions underlying them are legal and regular and to provide, on the basis of our audit, the European Parliament and the Council or other respective discharge authorities with a statement of assurance as to the reliability of the accounts and the legality and regularity of the transactions underlying them. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit will always detect a material misstatement or non-compliance when it exists. These can arise from fraud or error and are considered material if,

individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these accounts.

12. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and the regularity of the transactions underlying them. The procedures selected depend on the auditor's judgment, including an assessment of the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirements of the legal framework of the European Union, whether due to fraud or error. In making those risk assessments, internal controls relevant to the preparation and fair presentation of the accounts and legality and regularity of underlying transactions, are considered in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the accounts.

13. For revenue, we assess the Office's procedures for collecting fees and other income, if any.

14. For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. Advance payments are examined when the recipient of funds provides justification for their proper use and the Office accepts the justification by clearing the advance payment, whether in the same year or later.

Other matter

15. Without calling into question its opinion, the Court draws attention to the fact that the United Kingdom (UK) notified the European Council on 29 March 2017 of its decision to withdraw from the European Union. An agreement setting out the arrangements for its withdrawal will be negotiated. The Office's budget is fully self-financed, mainly by revenue from applicants for and holders of Community Plant Variety Rights. However, as only some 4% of its revenue originates from clients located in the UK, the Office considers that it is unlikely that the departure of the UK will cause a significant risk to its revenue. The Office also considers that measures can be taken to ensure that suitable facilities are available for species examinations presently carried out in the UK; without notable risk to the Office's business continuity.

16. The comments which follow do not call the Court's opinion into question.

COMMENTS ON BUDGETARY MANAGEMENT

17. The level of committed appropriations carried over was high for Title II (administrative expenditure) at 788 540 euro, i.e. 40 % (2015: 395 882 euro, i.e. 28 %). This can mainly be attributed to ongoing building renovations (284 423 euro), IT projects (253 483 euro) and costs of audits and evaluations (137 098 euro) for which services will partly be delivered or invoices will only be received in 2017.

18. The cancellation rate of 2015 payment appropriations carried over to 2016 was also high for Title II at 17 % (2015: 20 %), pointing to a need to improve budget planning.

OTHER COMMENTS

19. The Office's founding Regulation does not require periodic external performance evaluations. Although the Office or the Commission carried out evaluations of specific topics on an ad-hoc basis, the Office should, together with the Commission, consider commissioning comprehensive external performance evaluations at least every five years, as is the case for most other Agencies. Any future revision of the founding Regulation should introduce such a requirement.

FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

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

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 19 September 2017.

For the Court of Auditors

Klaus-Heiner LEHNE

President

Follow-up of previous years' comments

Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2014	The Office uses electronic banking for most of its payments. The Accounting Officer or her two deputies can sign the payments electronically. No signature of a second person is required, which represents a financial risk for the Office.	Outstanding
2014	Although the Office became operational in 1995, there is still no seat agreement signed with its host Member State that would clarify the conditions under which the Office can operate and that it can offer to its staff.	Ongoing
2015	The level of committed appropriations carried over was high for Title II (administrative expenditure) at 395 882 euro, i.e. 28 % (2014: 394 599 euro, i.e. 30 %). They mainly relate to IT projects (134 030 euro), mission costs (96 368 euro) and costs related to internal audit (82 070 euro) for which services will only be delivered or invoices received in 2016.	N/A
2015	The rate of cancelled 2014 carry-overs was high for Title II at 20 % (2014: 26 %) and indicates weaknesses in their planning.	Ongoing

Year	Court's comments	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2015	The expenditure for procedures associated with appeals was in principle to be covered by appeal fees ¹ . However, these fees cover only a small part of the actual costs incurred. In 2015, the income derived from appeal fees totalled 11 000 euro (2014: 12 500 euro) whilst the costs of the board of appeal members amounted to some 62 037 euro (2014: 80 114 euro).	N/A
2015	As at 31 December 2015, the fees unpaid for more than 90 days (mostly annual fees) amounted to 240 766 euro. The Office did not use all options provided for in its Financial Regulation to recover unpaid fees, such as enforced recovery ² .	Ongoing

¹ Recitals of Commission Regulation No 1238/95 (OJ L 121, 1.6.1995, p. 31–36)

² Article 53 of the Financial Regulation of the Office.

THE OFFICE'S REPLY

The Office takes note of the Courts comments.

17. The high level of carry-overs in 2016 related in large part to an ongoing building renovation and IT development project. The implementation of these projects, for operational reasons cannot be aligned with the calendar year.