

Proposal for a Council Regulation amending Regulation (EC) No 40/94 as regards the internal audit and control systems applicable to the Office for Harmonisation in the Internal Market and access to the Office's documents

(2002/C 331 E/16)

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(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ⁽¹⁾, which established the Office for Harmonisation in the Internal Market, should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof. With the entry into force of Council Regulation (EC, Euratom) No ... of ... on the financial regulation applicable to the general budget of the European Communities, the concept of *ex ante* financial control in the European institutions and bodies to which Article 185 of the Financial Regulation applies will be replaced by more modern control and audit systems.

(2) The Office for Harmonisation in the Internal Market should have control and audit systems comparable with those of the above-mentioned European institutions and bodies.

(3) The general principles and limits governing right of access to documents provided for in Article 255 of the EC Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽²⁾.

(4) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(5) Appropriate provisions should therefore be included in Regulation (EC) No 40/94 to make Regulation (EC) No 1049/2001 applicable to the Office for Harmonisation

in the Internal Market, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(6) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the President and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(7) Regulation (EC) No 40/94 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 40/94 is amended as follows:

1. The following Article 118a is inserted:

'Access to documents

Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Office.

The Administrative Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Office under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.'

2. Article 2(2) is replaced by the following:

'2. The President's term of office shall not exceed five years. The term of office may be extended, on a proposal from the Commission after the Administrative Board has been consulted, for one further period not exceeding five years.'

In Article 120(3) the following sentence is added:

'Their term of office may be extended, on a proposal from the Commission after the Administrative Board has been consulted, for additional periods not exceeding five years each.'

⁽¹⁾ OJ L 11, 14.1.1994, p. 1. Regulation amended by Regulation (EC) No 3288/94 (OJ L 349, 31.12.1994, p. 83).

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

3. Article 136 is replaced by the following:

'Article 136

Financial control

1. An internal audit function shall be set up within the Office, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the President, shall be responsible to him for verifying the proper operation of budget implementation systems and procedures.

2. The internal auditor shall advise the President on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing

recommendations for improving the conditions of implementation of operations and promoting sound financial management.

3. The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.'

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
