

REPORT**on the annual accounts of the Office for Harmonisation in the Internal
Market for the financial year 2006 together with the Office's replies**

(2007/C 309/24)

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INTRODUCTION

1. The Office for Harmonisation in the Internal Market (hereinafter 'the Office') was set up by Council Regulation (EC) No 40/94 ⁽¹⁾ of 20 December 1993. Its mandate is to implement the Community legislation on trade marks and designs, which gives undertakings uniform protection throughout the entire area of the European Union.

2. Table 1 summarises the Office's competences and activities. Key data summarised from the financial statements drawn up by the Office for the financial year 2006 is presented in Tables 2, 3 and 4 for information purposes.

STATEMENT OF ASSURANCE

3. This Statement is addressed to the Office Budget Committee in accordance with Article 137 of Council Regulation (EC) No 40/94.

4. The Office's accounts for the financial year ended 31 December 2006 ⁽²⁾ were drawn up by its President, pursuant to Article 119 of Council Regulation (EC) No 40/94, and sent to the Court, which is required to provide a statement on their reliability and on the legality and regularity of the underlying transactions.

5. The Court conducted its audit in accordance with the IFAC and INTOSAI International Auditing Standards and Codes of Ethics, insofar as these are applicable in the European Community context. The audit was planned and performed to obtain reasonable assurance that the accounts are reliable and that the underlying transactions are legal and regular.

6. The Court has thus obtained a reasonable basis for the Statement set out below.

Reliability of the accounts

The Office's accounts for the financial year ended 31 December 2006 are, in all material respects, reliable.

Legality and regularity of the underlying transactions

The transactions underlying the Office's annual accounts, taken as a whole, are legal and regular.

The observations which follow do not call the Court's Statement into question.

OBSERVATIONS

7. Implementation of the budget was characterised by a significant increase in revenue (27 % higher than the initial budget) and a lower overall level of expenditure resulting in a budgetary surplus of 69 million euro. The implementation rates for the commitment and payment appropriations were 92,7 % and 72,6 % respectively. Around 15 % of the appropriations for administrative expenditure (Title II) for the year and those carried over from the previous financial year were cancelled. More than one third of the commitments for the 2006 financial year were carried over. A high number of budgetary transfers were made ⁽³⁾. All transfers initiated in one day or within defined short periods are not processed for approval together. Thus, the budgetary principles of annuality and specification were not strictly observed.

8. The accumulated surplus in 2006 reached 200 million euro, the equivalent of the annual budget. On the basis of the recent analysis made, there was a need for the Office to propose to the Commission a level of fees which more accurately reflects its real costs ⁽⁴⁾.

⁽¹⁾ OJ L 11, 14.1.1994

⁽²⁾ These accounts were drawn up on 1 July 2007 and received by the Court on 2 July 2007.

⁽³⁾ During 2006 there were more than 30 transfers.

⁽⁴⁾ Article 134(2) of the Council Regulation (EC) No 40/94 of 20 December 1993.

9. The examination of procedures for recruiting staff showed the following shortcomings: a lack of formal decisions in appointing selection boards, selection board incomplete once having been set up, parity of members of the selection

board not assured and no minutes of the selection board meetings. Written procedures and guidelines for the recruitment of temporary staff have not yet been adopted and implemented ⁽¹⁾.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 27 September 2007.

For the Court of Auditors
Hubert WEBER
President

⁽¹⁾ Article 12(5) of the Conditions of Employment of other servants of the EC.

Table 1

Office for Harmonisation in the Internal Market (Alicante)

Area of Community competence deriving from the Treaty	Competences of the Office as specified in Council Regulation (EC) No 40/94 of 20 December 1993		Gouvernance	Resources made available to the Office in 2006 (2005)	Products and services supplied in the 2006 financial year
<p>Free movement of goods</p> <p>Prohibitions or restrictions justified on grounds of the protection of industrial and commercial property must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.</p> <p>(From Article 30 of the Treaty)</p> <p>Restrictions on freedom to provide services within the Community are prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.</p> <p>(From Article 49 of the Treaty)</p>	<p>Objectives</p> <p>To implement the Community legislation on trade marks and designs, which gives undertakings the right to uniform protection throughout the entire area of the European Union.</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 Community 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. 	<p>1. Administrative Board</p> <p>Composition</p> <ul style="list-style-type: none"> — One representative of each Member State — One representative of the Commission and their alternates <p>Task</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 120) for President, Vice-Presidents and chairmen and members of the Boards of Appeal <p>2. 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>3. Budget Committee</p> <p>Composition</p> <p>One representative of each Member State and one representative of the Commission and their alternates</p> <p>Task</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>4. Decisions in connection with procedures</p> <p>Decisions are taken by:</p> <ul 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; (e) the Boards of Appeal <p>5. External audit</p> <p>The Court of Auditors</p> <p>6. Discharge authority</p> <p>The Office's Budget Committee</p>	<p>Final budget</p> <p>212 million euro (218 million euro) including a Community subsidy: 0 % (0%)</p> <p>Staff numbers as at 31 December 2006</p> <p>675 (675) posts in the establishment plan, posts occupied: 603 (611)</p> <p>+ 72 (78) other staff (auxiliary contracts, seconded national experts, local and employment agency staff)</p> <p>Total staff: 675 (689)</p> <p>assigned to the following duties:</p> <ul style="list-style-type: none"> — production: 480 (548) — support: 195 (141) 	<p>Trade marks</p> <p>Number of applications: 77 461</p> <p>Number of registrations: 66 954</p> <p>Number of cases of opposition: 13 995</p> <p>of which cases settled: 13 979</p> <p>Appeals to the Boards of Appeal: 1 659</p> <p>Average time for registration (excluding opposition or appeal):</p> <ul style="list-style-type: none"> — before publication: 8 months — between publication and registration: 6 months <p>Designs</p> <p>Designs received: 68 500</p> <p>Designs registered: 69 555</p>

Source: Information supplied by the Office.

Table 2

Office for Harmonisation in the Internal Market (Alicante) — Implementation of the budget for the financial year 2006

(1 000 euro)

Revenue			Expenditure								
Source of revenue	Revenue entered in the final budget for the financial year	Revenue received	Allocation of expenditure	Final budget appropriations					Appropriations carried over from the previous financial year		
				entered	committed	paid	carried over	cancelled	available	paid	cancelled
Own revenue	146 723	184 020	Title I Staff	60 431	59 348	56 758	1 390	2 283	995	835	160
Other revenue	709	553	Title II Administration	37 772	31 337	20 639	10 691	6 442	9 685	8 866	819
Interest	4 500	7 692	Title III Operating activities	36 541	35 371	20 963	14 407	1 170	14 226	13 015	1 212
Balance of the previous financial year	59 797	59 296	Title X Reserve	76 985	0	0	0	76 985	0	0	0
Total	211 729	251 561	Total	211 729	126 056	98 360	26 488	86 880	24 906	22 716	2 191

Source: Data supplied by the Office. This table summarises the data provided by the Office in its annual accounts. Revenue collected and payments are estimated on a cash basis.

Table 3

Office for Harmonization in the Internal Market (Alicante) — Economic outturn account for the financial years 2006 and 2005

(1 000 euro)

	2006	2005
Operating revenue		
Revenue from fees	184 066	156 945
Revenue from the sale of publications	285	512
Other revenue	172	310
Total (a)	184 523	157 767
Operating expenses		
Staff expenses	58 055	56 278
Fixed asset related expenses	3 586	3 386
Other administrative expenses	26 833	25 224
Operational expenses	34 720	35 850
Total (b)	123 194	120 738
Surplus/(deficit) from operating activities (c = a - b)	61 329	37 029
Financial operations revenues (e)	8 149	4 451
Financial operations expenses (f)	63	38
Surplus/(deficit) from non-operating activities (g = e - f)	8 086	4 413
Economic result for the year (h = c + g)	69 415	41 442

Source: Data supplied by the Office. This table summarises the data supplied by the Office in its annual accounts: these accounts are drawn up on an accrual basis.

Table 4

Office for Harmonization in the Internal Market (Alicante) — Balance sheet at 31 December 2006 and 2005

(1 000 euro)

	2006	2005
Non-current assets		
Intangible fixed assets	1 023	829
Tangible fixed assets	25 948	26 627
Current assets		
Short-term pre-financing	190	185
Short-term receivables	2 453	2 011
Cash and cash equivalents	281 510	208 020
Total assets	311 125	237 672
Non-current liabilities		
Provisions for risks and charges	727	597
Other long-term liabilities	20	16
Current liabilities		
Provisions for risks and charges	12 266	10 499
Accounts payable	54 681	52 544
Total liabilities	67 693	63 656
Net assets		
Reserves	72 353	—
Accumulated surplus/deficit	101 663	132 575
Economic result of the year	69 415	41 442
Total net assets	243 431	174 017
Total liabilities and net assets	311 125	237 672

THE OFFICE'S REPLIES

7. The Office is continuing its efforts to improve its forecasts of its revenue and expenditure. The significant amount of carried over appropriations from 2006 to 2007 is mainly due to delays of some IT projects. The Office has put in April 2007 an improved procedure for handling transfers.

8. The Office takes good note of the observations of the Court of Auditors. In December 2006, the Commission made

proposals for a new fee mechanism. The Council, in May 2007, asked the Commission to make a proposal for a substantial reduction.

9. In 2006, the Office has already improved the formalising of its procedures regarding human resources management and in particular recruitment. In 2007, this effort will be pursued to take account of the Court's remarks.
