

## REPORT

**on the annual accounts of the Office for Harmonization in the Internal Market for the financial year 2013, together with the Office's replies**

(2014/C 442/39)

## 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 40/94 <sup>(1)</sup>, which was repealed and replaced by Regulation (EC) No 207/2009 <sup>(2)</sup>. 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 Union <sup>(3)</sup>.

## 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 statements <sup>(4)</sup> and the reports on the implementation of the budget <sup>(5)</sup> for the financial year ended 31 December 2013, and
- (b) the legality and regularity of the transactions underlying those accounts.

**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 transactions <sup>(6)</sup>:

- (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 officer <sup>(7)</sup>; 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.

<sup>(1)</sup> OJ L 11, 14.1.1994, p. 1.

<sup>(2)</sup> OJ L 78, 24.3.2009, p. 1.

<sup>(3)</sup> *Annex II* summarises the Office's competences and activities. It is presented for information purposes.

<sup>(4)</sup> These include the balance sheet and the economic outturn account, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

<sup>(5)</sup> These comprise the budgetary outturn account and the annex to the budgetary outturn account.

<sup>(6)</sup> Articles 38 and 43 of Regulation No CB-3-09 of the Budget Committee of the Office for the harmonisation in the internal market.

<sup>(7)</sup> 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.

**The auditor's responsibility**

5. The Court's responsibility is, on the basis of its audit, to provide the Budget Committee of the Office a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions <sup>(8)</sup>. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of 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 2013 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 2013 are legal and regular in all material respects.

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

**COMMENTS ON BUDGETARY MANAGEMENT**

11. 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.

12. 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.

**OTHER COMMENTS**

13. 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.

<sup>(8)</sup> Articles 91 to 95 of Regulation No CB-3-09 of the Budget Committee of the Office for the harmonisation in the internal market.

**FOLLOW-UP OF PREVIOUS YEARS' COMMENTS**

14. An overview of the corrective actions taken in response to the Court's comments from 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 8 July 2014.

*For the Court of Auditors*  
Vítor Manuel da SILVA CALDEIRA  
*President*

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## ANNEX I

## Follow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed/Ongoing/Outstanding/N/A)
2011	The Court identified several shortcomings as regards the 2011 service level agreement between the Office and the Translation Center for the Bodies of the EU (CDT). The agreement was signed by the Office on 20 June 2011 and according to Article 10, applied from 1 January 2011. The execution of the contract started before the contract signature. On request of CDT, the Office made a payment of 1,8 million euro in compensation <sup>(1)</sup> . Furthermore, this payment was authorised without a budget commitment and without available appropriations <sup>(2)</sup> .	N/A
2011	There is a need to improve the Office's management of fixed assets. For intangible assets developed by the Office, accounting procedures and information on costs were not reliable.	Completed
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.
2012	Out of the 31,9 million euro of committed appropriations carried over from 2011 to 2012, 4,16 million euro (13 %) were cancelled in 2012. Of this amount, 1,93 million euro was related to cooperation agreements with Member States which did not absorb the full amounts allocated to them.	N/A
2012	In 2012 the overall level of committed appropriations was 93 %, indicating that commitments were made in a timely manner. The level of committed appropriations carried over to 2013 however was high at 36,7 million euro (19 % of total committed appropriations), out of which 21,7 million euro related to title II (administrative expenditure) and 14,1 million euro related to title III (operating expenditure). The main reason for the high level of carry-overs was the late receipt of invoices for goods and services delivered in 2012. More specifically, for title II, the high level of carry-overs also arose from a number of multiannual contracts relating to the construction of the Office's new building (6,09 million euro) and the procurement of IT developments (7,67 million euro). For title III, carry-overs are largely related to cooperation agreements signed with Member States for which cost claims were only due to be submitted in 2013 (8,13 million euro). In addition, translation services were ordered in the last months of 2012 (5,43 million euro) which were only due for payment in 2013.	N/A

<sup>(1)</sup> The minimum value was set in the agreement to be 16,3 million euro. The services provided in 2011 totalled 14,5 million euro.

<sup>(2)</sup> This payment was made from the 2012 budget.

## ANNEX II

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

<p><b>Areas of Union competence deriving from the Treaty</b> (Articles 36 and 56 of the Treaty on the Functioning of the European Union)</p>	<p><b>Free movement of goods</b></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><b>Competences of the Office</b> (Council Regulation (EC) No 207/2009) (Regulation EU No 386/2012 of the European Parliament and of the Council)</p>	<p><b>Objectives</b></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 IP matters.</p> <p><b>Tasks</b></p> <ul style="list-style-type: none"> <li>— To receive and enter applications for registration,</li> <li>— to examine the conditions for entry in the Register and compatibility with Union legislation,</li> <li>— to search at the industrial property offices of the Member States for any pre-existing national trade marks,</li> <li>— to publish applications,</li> <li>— to examine any opposition by third parties,</li> <li>— to register or reject applications,</li> <li>— to examine applications for revocation or invalidity,</li> <li>— to handle appeals against decisions,</li> <li>— to improve understanding of the value of intellectual property,</li> <li>— to improve understanding of the scope and impact of infringements of intellectual property rights,</li> <li>— to enhance knowledge of best public and private sector practices to protect intellectual property rights,</li> <li>— to assist in raising citizens' awareness of the impact of infringements of intellectual property rights,</li> <li>— to enhance the expertise of persons involved in the enforcement of intellectual property rights,</li> <li>— 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,</li> </ul>

	<ul style="list-style-type: none"> <li>— 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,</li> <li>— 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.</li> </ul>
<b>Governance</b>	<p><b>Administrative Board</b></p> <p><i>Composition</i></p> <ul style="list-style-type: none"> <li>— One representative from each Member State and one representative from the Commission, and their alternates.</li> </ul> <p><i>Task</i></p> <ul style="list-style-type: none"> <li>— To advise the President on matters for which the Office is responsible.</li> <li>— To prepare lists of candidates (Article 125) for President, Vice-Presidents and chairmen and members of the Boards of Appeal.</li> </ul> <p><b>President of the Office</b></p> <ul style="list-style-type: none"> <li>— Appointed by the Council from a list of at most three candidates which has been prepared by the Administrative Board.</li> </ul> <p><b>Budget Committee</b></p> <p><i>Composition</i></p> <ul style="list-style-type: none"> <li>— One representative of each Member State and one representative of the Commission and their alternates.</li> </ul> <p><i>Task</i></p> <ul style="list-style-type: none"> <li>— To adopt the budget and the financial regulation, grant discharge to the President and determine the cost of search reports.</li> </ul> <p><b>Decisions related to the applications</b></p> <p>Decisions are taken by:</p> <ol style="list-style-type: none"> <li>(a) the Examiners;</li> <li>(b) the Opposition Divisions;</li> <li>(c) the Administration of Trade Marks and Legal Division;</li> <li>(d) the Cancellation Divisions;</li> <li>(e) the Boards of Appeal.</li> </ol> <p><b>External audit</b></p> <p>European Court of Auditors.</p> <p><b>Discharge authority</b></p> <p>The Office's Budget Committee.</p>
<b>Resources made available to the Office in 2013 (2012)</b>	<p><b>Budget</b></p> <p>418 (429) million euro.</p> <p><b>Staff at 31 December 2013</b></p> <p>861 (775) posts in the establishment plan; posts occupied: 731 (680) + 171 (138) other staff (auxiliary contracts, seconded national experts, local and employment agency staff, special advisers)</p> <p>Total staff: 902 (818)</p>

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**Products and services supplied  
2013 (2012)****Trade marks**

Number of applications: 114 421 (107 924)

Number of registrations: 98 092 (95 645)

Cases of opposition: 17 006 (16 634)

Appeals to the Boards of Appeal: 2 602 (2 339)

Appeals pending: 2 361 (2 352)

**Designs**

Designs received: 95 429 (92 175)

Designs registered: 84 056 (78 658)

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Source: Annex supplied by the Office.

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**THE OFFICE'S REPLIES**

11. The Office is currently putting in place measures, together with the National Offices, to reduce the high cancellation rate of carryovers. A pilot of interim execution report every 6 months has been put in place. The idea is to extend these pilots to the important projects that the Office has with the National Offices, once the participation in this pilot has broadened. Finally, the Office will also analyse possible adjustments of the contracts (for 2015) with the National Offices in order to minimize unnecessary carryovers.

12. Apart from the measures referred to above, that would reduce the high level of carryovers mainly in title III, but also in title II, the Office is currently setting up a system with the CDT to reduce the volume of carryovers at year end. Furthermore, as mentioned by the Court, the extension of the Office's headquarters and IT developments justifies the high level of carryovers in title II.

The Office is putting in place measures in order to better control the amounts carried over every year.

13. In line with requirements of international quality standards (ISO 27001) and the internal control standards (ICS 10) adopted by the Office's Budget Committee, the Office put in place a Business Continuity Plan (BCP). This is now also foreseen in the 2013 Framework Financial Regulation.

In November 2006, the governing boards of the Office — Administrative Board and Budget Committee — were informed of and supported the OHIM strategy based on a three-level scenario (Level 0: Crisis management team; Level 1: IT & logistics teams, recovery coordination team, and global communication team; Level 2: teams that will work on the recovery). A payment to the staff involved in stand-by duties is prescribed by the Staff Regulation. The budgetary impact of this payment is included in a specific budget line, updated (in line with the needs of the organisation) and adopted in the budget every year.

The BCP was established after an exhaustive impact analysis made, with the help of external consultants and covers ALL activities of the Office.

The Office has 25 roles permanently on stand-by duty and the payments in 2013 amounted to € 402 458. The reasons for which the BCP implemented such a robust structure are the following:

The Office has a strong exposure and visibility towards its stakeholders and need to ensure a 24/7 operational e-business service and an immediate response to its users. Lack of availability of the IT system would have a serious impact on the continuity of business. Throughout the Office, business continuity is therefore essential and all departments are involved (visibility of activities such as cooperation activities with the Member States and in the remit of the Observatory, interaction with the Brussels office, support of teleworking staff, ensuring good functioning of fee collection (automated IT system used by the whole Office) and finally involvement of Procurement staff since it has a defined centralizing role of intervention (managing of all economic files) in case of a disaster. Due to the size and the international background of our suppliers, the quantity of formal documentation is very high and extremely dependent on IT.

These reasons justify, in our view, the differences with other agencies.

The Office has already made use of the stand-by shifts twice since its establishment, the last time in relation to the introduction of its new website.

The level of stand-by duty paid in 2013 represents less than 0,5 % of the total expenditure of title I. These costs also represent less than a business day of income through the Office's online services.

The Office will consider the observation made by the Court of Auditors in its yearly revision of processes, procedures and schemes with a view to continual improvement.

14. The Office takes note that the Court of Auditors has considered all previous year findings as completed or not applicable.

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