



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	Presidency
to :	Intellectual Property Attachés (Trade marks)
No prev. doc.:	5390/07 PI 1
Subject :	Draft Council Conclusions regarding the Financial Perspectives of the Office of Harmonisation in the Internal Market (Trade Marks and Designs) and the further development of the Community trade mark system

Attachés will find in Annex Draft Council Conclusions from the Presidency to be discussed at a future meeting.

Draft**Council Conclusions regarding the Financial Perspectives of the OHIM and the further development of the Community trade mark system**

THE COUNCIL OF THE EUROPEAN UNION,

1. TAKES NOTE of the Communication from the Commission to the European Parliament and the Council entitled “The Financial Perspectives of the Office for Harmonisation in the Internal Market (Trade Marks and Designs)”¹;
2. EMPHASISES that the establishment of the Office for Harmonisation in the Internal Market (Trade Marks and Designs)² has been an enormous and unprecedented success; since the beginning of its operation in 1996 OHIM has contributed substantially to strengthening the competitiveness of the European Union; OHIM’s success proves the value to business of Community wide trade mark rights which are efficiently administered and granted, are effectively enforceable and give legal certainty to all stakeholders throughout Europe;
3. NOTES that the work of OHIM has been very well received by all stake holders; consequently, the number of trademark applications and registrations at OHIM has exceeded the most optimistic predictions; as a result, OHIM has experienced annual budget surpluses which, by the end of 2006, resulted in cumulative cash reserves of more than € 200 million despite a reduction of the applicable fees which took effect in 2005;
4. UNDERLINES that the outstanding quality of OHIM’s work which contributes to the high degree of acceptance by all stakeholders cannot be taken for granted but requires further efforts in an enlarged European Union and NOTES the need for Community-wide trademark and designs databases;

¹ 5390/07 PI 1.

² Hereinafter referred to as „OHIM“.

5. RECALLS that the Regulation requires that the revenue and expenditure shown in the budget of OHIM shall be in balance, and that the amounts of the fees charged by OHIM shall be fixed at such a level as to ensure that the resulting revenue is in principle sufficient for the budget of the Office to be balanced;
6. RECOGNIZES that lower fees may facilitate access by users, including SMEs, to the Community trademark system and EMPHASISES that the accumulated fees paid by the users should not disproportionately exceed the overall costs of the Community trade mark system;
7. HOLDS that the fees should be fixed at a level that reflects both the need for a balanced budget of OHIM as well as the economic value of a Community trade mark;
8. RECALLS that the Community trademark system is designed to coexist with the national trade mark systems of Member States which continue to be necessary for those undertakings which do not want protection of their trade marks at Community level;
9. NOTES the importance of the complementary work of national trade mark offices of Member States and CALLS on OHIM to enlarge its cooperation with national offices in the interest of the overall functioning of the Community trademark system;
10. EMPHASIZES the need for an overall assessment of the functioning of the Community trade mark system after more than ten years of successful operation;
11. CALLS on the Commission to :
 - in the short term, make proposals on :
 - an immediate reduction of the fees charged for the application, registration and renewal of Community trade marks;

- the introduction of structural criteria which facilitate regular adaptations of Community trade mark fees in the Comitology procedure; these criteria should contribute to a long term balance of the OHIM's budget, ensure a continuous high quality of OHIM's performance, and take account of OHIM's cooperation with the trade mark offices of Member States; the criteria should respect the principles of prudence and sound financial management; in addition these criteria should keep the fee system reliable and transparent for users and its future adaptations predictable; the proposal should be accompanied by an impact assessment;
- encouraging joint projects of OHIM and national trademark offices which enhance the overall functioning of the Community trademark system;
- in the medium term, conduct a comprehensive study on the overall functioning of the Community trade mark system.

This study should in particular :

- assess the coexistence of the Community trade mark system and national trade marks, including the territorial requirements for genuine use of Community trade marks;
- evaluate the effects of the Community trade mark system on national trade mark offices, as well as the contributions of such offices to the overall functioning of the Community trade mark system;
- evaluate the effects of the recent reforms;
- address the effects of the Community trade mark system on SMEs and start-up enterprises.