



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 May 2007

9427/07

PI 21

"A" ITEM NOTE

from: Permanent Representatives Committee (Part 1)
to: Council

No. prev. doc. : 8905/07 PI 17 + COR1

Subject : Financial Perspectives of the Office for Harmonisation in the Internal Market
(Trade Marks and Designs) and the further development of the Community trade
mark system.
- Adoption of Council Conclusions

1. The Commission presented on 22 December 2006 a Communication¹ to the European Parliament and the Council on the financial perspectives of the Office for Harmonisation in the Internal Market (Trade Marks and Designs).
2. At its meeting on 4 May 2007, the Permanent Representatives Committee (Part 1) reached unanimous agreement on a set of draft Council conclusions on this subject, as set out in the Annex to this Note.
3. The Council is therefore invited to adopt these conclusions as an A item at one of its future sessions.

¹ 5390/07 PI 1.

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)”²;
2. EMPHASISES that the establishment of the Office for Harmonisation in the Internal Market (Trade Marks and Designs)³ has been a great success; since the beginning of its operation in 1996 OHIM has contributed substantially to strengthening the competitiveness of the European Union; the success of the Community trade mark 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 high quality of OHIM’s work which contributes to the broad acceptance by all stakeholders cannot be taken for granted but requires further efforts to preserve and even improve OHIM’s performance and NOTES the need for Community-wide trademark and designs databases;

² 5390/07 PI 1.

³ 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. 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;
8. 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;
9. RECOGNISES that it is now over a decade since the introduction of the Community Trade Mark Regulations and the establishment of OHIM, and under the principles of better regulation, EMPHASIZES the need for an overall assessment of the functioning of the Community trade mark system;
10. CALLS on the Commission to:
 - immediately propose a reduction of the fees charged by OHIM, in particular of the fees for the application, registration and renewal of Community trade marks; the proposal should be accompanied by a comprehensive impact assessment;

- start work on a comprehensive study on the overall functioning of the Community trade mark system to be completed as a matter of priority; any future discussions on the fees policy should take into account the results of this study;

The study should in particular:

- analyze the use of certain criteria which could facilitate further adaptations of Community trade mark fees and possible ways of their application in the Comitology procedure; these criteria should in particular 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;
- evaluate the existing framework of cooperation of OHIM and national trade mark offices, with a view to intensifying and broadening the existing instruments of cooperation in the interest of the overall functioning of the Community trade mark system;
- explore possible instruments to finance such cooperation, including the establishment of a cooperation fund, if necessary by means of amending Regulation (EC) No 40/94;
- 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 the overall functioning of national trade mark systems, as well as the contributions of national trade mark offices to the overall functioning of the Community trade mark system;
- evaluate the effects of the recent reforms;
- evaluate the effects of the Community trade mark system on its users, in particular on SMEs and start-up enterprises, and in particular with regard to competitiveness and innovation.
