



Brussels, 05 DEC. 2008  
D(2008) 10088

## Opinion

**Title**                    **Impact Assessment on: Commission Regulation on the amendment of Commission Regulation (EC) No 2869/95 on the fees payable to the office for the harmonisation in the internal market (trade marks and designs)**

**(draft version of 11 November 2008)**

**Lead DG**                    **DG MARKT**

### **1) Impact Assessment Board Opinion**

#### **(A) Context**

Community trade marks and designs are registered by a specialised EU agency, the Office for Harmonisation in the Internal Market (OHIM) and grant rights valid in EU Member States. The OHIM is an EU agency with a budget independent from the Community budget and its income consists mainly of service fees. According to Article 139(2) of the Community Trade Mark Regulation, the amount of the Community trade mark and design fees must be fixed at such a level as to ensure that the subsequent revenue is sufficient to balance the OHIM's budget. With the present level of fees OHIM is generating substantial cash reserves. In its conclusions of May 2007 the Council called on the Commission, on the one hand to "immediately" propose a reduction of the fees charged by the OHIM and, on the other hand, to undertake a study on the overall functioning of the trade mark system, including possible further adaptations of the Community trade mark fees regime. In addition, the Commission stated in a Communication of 26 November 2008 to the European Council on "A European Economic Recovery Plan" that in order to promote entrepreneurship, the Commission will halve the costs for an EU trademark.

#### **(B) Positive aspects**

The IA report is generally well-written and provides a proportionate analysis, which should nevertheless be presented in a more balanced manner.

#### **(C) Main recommendations for improvements:**

*The recommendations below are listed in order of descending importance. Some more technical comments*

*will be transmitted directly to the author DG.*

**The IA report does not provide a sufficient analysis to support the choice of the preferred option and requires changes on several important points. Firstly, the problem definition should clarify whether budgetary balance is the only issue or whether there are other concerns related to the overall functioning of the trade mark system. The objectives should reflect all identified problems. Secondly, the report should clarify the planned two step approach (immediate action in order to address the budgetary surplus and more comprehensive revision of the OHIM's financial structure later) and address consistently only the issues relevant to the present stage. On this basis the range of policy options should be widened to address additional analytically feasible ways forward, such as a proportionate reduction of all fees or an even more far reaching, but temporary and targeted fee reduction. Finally the report should provide general explanation on the economics of trade marks including an indication of the effects on demand for OHIM and national trademark applications which may be triggered by decreases in fees.**

**At the meeting with the Board, DG MARKT largely accepted these recommendations. Given the fundamental nature of these changes, the Board would like to examine and issue an opinion on a revised IA report.**

**General recommendation:**

**(1) The report should provide a much clearer problem definition and develop further the set of objectives.** It should clarify whether besides the budgetary balance there are other problems to be considered, for instance the balance between the national and Community level trade mark systems. The report should define specific objectives so that these would correspond to the problem definition and could be used to assess and compare the effectiveness and efficiency of the policy options.

In addition, the report should more concretely outline the foreseen two step approach, where (i) immediate action will be taken in order to address the issue of excessive reserves and (ii) a full revision of the financial structure of the OHIM, including a reduction of fees and rationalisation of the entire fee structure, would be addressed later, after comprehensive assessment of the functioning of Community and national trade mark systems. The report should also indicate how follow-up actions would be accommodated to the Commission commitment to halve the cost for a Community trade mark, as expressed in the Commission Communication on a European Economic Recovery Plan.

**(2) The report should propose a wider range of options that could achieve the proposed objectives.** In addition to existing options (status quo, a complete revision of the financing of OHIM and immediate reduction of certain trade mark fees) the report should consider, at least at the level of broad policy options, other potential alternatives such as a proportionate reduction of all fees or an even more far reaching, temporary and targeted fee reduction to eliminate the accumulated cash reserves. Options which after preliminary screening appear to be economically, legally or politically unfeasible, could be discarded at an early stage.

**(3) The report should present the relevant trade mark issues in its wider economic context** by outlining the basic principles of the functioning of the trade mark system and its underlying economics, including the impact of fee changes at the EU and national

level.

**(4) The report should be fully transparent on methodological shortcomings.** This can be done by introducing caveats to indicate where data has been insufficient to provide a more robust analysis. To the extent feasible, assumption on price elasticities and the effects of the present economic downturn should be made explicit when providing projections on the volume of the trade mark applications for the different policy options (including the baseline).

**(D) Procedure and presentation**

The report should address more systematically the views of different stakeholders. It should explain why DG Enterprise was not consulted and why no inter-service steering group was established. In addition, the structure of the Executive Summary should be improved and it should contain a clear presentation of any quantified benefits.

## 2) IAB scrutiny process

Reference number	N/A (comitology)
Author DG	MARKT
External expertise used	No
Date of Board Meeting	3 December 2008
Date of adoption of Opinion	<b>0 5 DEC. 2008</b>