



Brussels, 12 DEC. 2008
D(2008) 10335

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) - Resubmission**

(revised draft version of 8 December 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 propose "immediately" 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

Some improvements have been made following the recommendations in the first Opinion of the IAB. These include clarifying the political context, elaborating the specific objectives and explaining trade mark issues in the wider economic context. Simplification gains and administrative burden reductions are now specified and quantified.

(C) Main recommendations for improvements:

The recommendations below are listed in order of descending importance.

General recommendation: The report still requires changes on several points that the IAB requested in its first opinion. Firstly, in the problem definition the report should better outline the further action in the context of the foreseen two step approach and planned comprehensive revision of the OHIM's financing structure. Secondly, it should propose and discuss a wider range of feasible options. Thirdly, in light of the explanation on the price elasticities and methodological shortcomings provided by the revised report, the incoherence in the projection of the volume of trade mark applications should be clarified. Finally, the Board notes that any future impact assessment on the broader reform of the OHIM financing structure should provide a full appraisal of the impact of fee levels on relative demands for Community and national trade marks.

(1) The report should further clarify the problem definition including the foreseen two step approach. More precisely, the report should clarify whether the conclusions of OHIM's Administrative Board and the Budget Committee on certain budgetary measures, such as the distribution of 50% of the renewal fees to the national offices and the creation of a Cooperation Fund (p. 7), are already acknowledged by the Commission as the preferred way forward or whether these represent possible options to be considered *after* the results of the study on the overall functioning of the trade mark system will be available in 2010. This can be done by providing a roadmap indicating the pace of the foreseen actions for which commitments are already in place and for those which are still under consideration. The report should also indicate whether a future impact assessment is planned on the broader reform of the OHIM financing structure.

(2) The report should propose a wider range of options that could achieve the objectives. While the revised report provides a more detailed description of the *content*, there has been no change in the *range* of options as the Board requested in its previous opinion. Given that the proposed option of reducing only some of the main fees conflicts with the Council conclusions which called on the Commission to reduce all main fees (p.19), the report should, as a minimum, consider an option which reduces all the main fees (i.e. the application, registration and renewal fees) while merging application and registration fees.

(3) The report should clarify the incoherence in the projection of the volume of trade mark applications. In line with the IAB first opinion the report is now more explicit on the assumptions made on price elasticity. However, the assumption is that the reduction of fees should not itself lead to an increase in demand for Community trade marks, i.e. elasticity close to or equal to zero. This assumption is not in line with the objective of making the Community Trade Mark system more accessible for businesses and especially for SMEs. The report should explain this apparent incoherence. Also, the IAB first opinion asked, to the extent feasible, to consider the effects of the present economic downturn in the baseline analysis as well as in the assessment of options. Chart 1 on page 10, which is based on actual data, indicates clearly that during the economic downturn in 2000-2002 there was a drop in the volume of applications of more than 20%. Therefore it appears feasible to include this factor while proposing a projection of the volume of applications.

(D) Procedure and presentation

As requested in the Board's first opinion, the report should address more systematically the views of different stakeholders. The Board notes that the inter-service consultation was launched before it had issued an opinion on the revised draft report.

2) IAB scrutiny process

| | |
|-----------------------------|---|
| Reference number | N/A (comitology) |
| Author DG | MARKT |
| External expertise used | No |
| Date of Board Meeting | Written procedure |
| Date of adoption of Opinion | 12 DEC. 2008 The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 5 December 2008 |