



EUROPEAN COMMISSION  
IMPACT ASSESSMENT BOARD

Brussels,  
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## Opinion

### Title

**DG MARKT - Impact Assessment on a regulation to entrust the tasks of the European Observatory on Counterfeiting and Piracy to the Office for Harmonisation in the Internal Market (OHIM)**

**(draft version of 12 January 2011)**

### **(A) Context**

Part of the Commission's efforts to protect intellectual property rights (IPR), the European Observatory of Counterfeiting and Piracy ("the Observatory") was launched in April 2009 to improve the quality of available information and statistics, help raise public awareness and spread good practices. It has so far relied on Commission administrative resources for its day-to-day work. Council Resolutions in September 2008 and March 2010 asked the Commission to elaborate further on the Observatory's role and tasks within existing structures.

The Office for Harmonisation in the Internal Market (OHIM) is the European Union agency responsible for registering EU-wide trademarks and designs. Its fees were reduced and simplified in 2005 and 2009. On 22 September 2010, the European Parliament adopted a report asking for the enhancement of OHIM's involvement in IPR enforcement matters.

### **(B) Overall assessment**

**While the report is of acceptable quality, it should be improved in certain regards. It should focus its analysis on the specific issues affecting the Observatory and provide a more precise assessment of the relevance of the various problem drivers (e.g. lack of administrative resources, limited expertise etc). It should also better define its baseline scenario, explaining why this should include new tasks for the Observatory and integrating the impact of the soon-to-be-approved memorandum of understanding between the Commission and OHIM on the enforcement of trademark and design rights. Finally, the report should strengthen the analysis of impacts and the comparison of options, most notably with respect to the impact that the preferred option would have on OHIM's budget and the expected evolution of its fees.**

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

#### **(1) Focus the analysis of problems on the specific issues affecting the Observatory.**

Rather than describing the problems affecting the enforcement of IPR in general, the report should develop a more detailed analysis of the specific issues affecting the Observatory and provide a more precise assessment of the relevance of the various problem drivers (lack of administrative resources, limited expertise, broadened range of tasks etc.). This should include more background information on the Observatory, clarifying its governance structure, illustrating the Commission's institutional responsibilities and clearly differentiating between current and prospective Observatory tasks. The origin of the latter should be explicitly presented.

**(2) Better define the baseline scenario.** When defining its baseline for comparing policy options, the report should avoid a general discussion of counterfeiting trends but rather focus on the expected impact of continued Observatory operation under the current circumstances. In so doing, the report should justify why the new policy tasks identified in the problem section are included under the baseline. The baseline should also include the expected impact of the soon-to-be approved memorandum of understanding between the Commission and OHIM in relation to the enforcement of trademark and design rights.

**(3) Strengthen the analysis of impacts and the comparison of options.** The report should more extensively analyze the impact of the preferred option on OHIM, notably with respect to the expected evolution of its budget surpluses and the opportunity for further fee reductions benefitting its clients. The report should also better justify, in the main text, the implications of the various options in terms of total number of staff (or external contractors) needed and should clarify how the staff currently tasked with Observatory duties are taken into account in the cost calculations for the various options. The latter should always refer to total costs and not just those for the EU budget. Accordingly, a separate column should be added to the comparison table on page 35. All signs in this comparison table should be clearly justified in the main text. When comparing options, the report should systematically consider differences in terms of expertise availability, ease of access to information, impacts on the Observatory's governance structure and Commission's institutional responsibilities.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

### **(D) Procedure and presentation.**

The report is written in clear and accessible language and can be read as a stand-alone document although an annex providing background information on OHIM could be usefully added. General discussions on problems and trends in the area of IPR enforcement should be moved to an annex, leaving only key background information in the main text. The description of the new agency option should recall the existing moratorium on the establishment of such bodies. Consulted parties' views should be referred to more explicitly, especially with regards to the envisaged change in OHIM's mandate.

<b>(E) IAB scrutiny process</b>	
Reference number	2011/MARKT/009
External expertise used	No
Date of Board Meeting	9 February 2011