



European Communities Trade Mark Association

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Utilization of the OHIM surplus

As a result of our recent most constructive discussions please find below some additional thoughts on the utilization of the surplus of the Office for Harmonization in the Internal Market (OHIM). ECTA would like to further precise its opinion expressed in the past and most recently in collaboration with the other user associations. The aim here is therefore to try to find a compromise solution, in case there is a political consensus that all EU Agencies have to be treated the same, which could be satisfactory for all parties involved.

We have understood that the work on the Trade Mark Reform is coming to an end. The last triologue will apparently take place shortly after Catholic Easter and as things stand right now there is a clear hope that the whole "Package" will be ready for implementation later this year or early next year. There are, however, still some questions, which need to be settled, among them the challenging matter of the OHIM surplus.

Since the available figures vary from 200 to 600 M€ we will of course not argue about the size of the surplus, but will provide some thoughts of a more principled nature, which we hope that the negotiating parties will find of interest and help put the matter to rest:

1. First of all it is apparent that the current accumulated surplus, be it lower or higher, is the result of payments, i.e. fees, from the private corporate sector until the new law comes into force. Taking this into account and at the same time naturally accepting that no repayments can take place there must be established a mechanism, which makes it possible for these very same entities to get some advantage, besides a trade mark, of the money spent. It could otherwise be argued that a part of this money, i.e. the very same amount as the surplus, is appropriated. This is of course particularly the case if the surplus goes into the general budget of the European Union (EU).

ECTA therefore suggests that in addition to the money reserved to guarantee the smooth running of the Office for three consecutive years, **the current surplus**, accumulated under the old law or at least a certain amount is reserved as a **fund** (similar to the cooperation fund) for projects serving the IP community within the EU. The governing of this money should be spent under the common control of the Administrative Board of OHIM in cooperation with the Commission and the Users. By involving the users we will be able to secure that the accumulated surplus is used particularly for IP projects serving the industry, consumers and competition in the EU and thus helping to enhance the economy and defeat unemployment and recession. We have earlier indicated what kind of projects we have in mind.



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2. Counted from the first calendar year, corresponding to the financial year of OHIM, after the trade mark reform has come into force, a **separate mechanism** is to be instituted, whereby the appropriate costs of OHIM are covered. If a surplus accumulates even after this has been achieved, at least one third shall be used for projects directly serving the IP community within EU, at least one half shall be allocated to enhance the conversion of the national and CTM systems and only the rest be directed to the EU Budget with a priority for IP related investments. The project money shall be governed in the same way as above regarding the existing surplus.

3. ECTA does understand that there might arise some discussions concerning how to define surplus, etc., but emphasizes that if we want to act according to sound and transparent legislative practice the existing situation should be treated separately from the situation when the reform has come into force. By doing as proposed, the EU will create trust among the users, a quality which is of great need today. By separating the two phases from one another as suggested every user knows what to expect.