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Report on the annual accounts of the European Union Intellectual Property Office (EUIPO) for the financial year 2019,

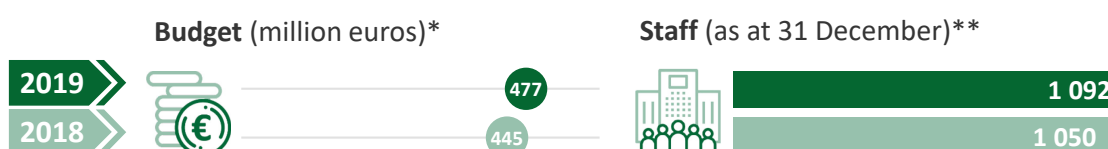
together with the Office's reply

Introduction

01 The European Union Intellectual Property Office (“the Office”, or “EUIPO”), known as the Office for Harmonization in the Internal Market (“OHIM”) until 23 March 2016, was established in 1993. Its initial founding Regulation was last revised by Regulation (EU) 2017/1001 of the European Parliament and of the Council¹. The core business of the Office, which is located in Alicante, is the registration of EU trademarks and registered Community designs which are valid throughout the EU.

02 *Graph 1* presents key figures for the Office².

Graph 1: Key figures for the Office



* Budget figures are based on the total payment appropriations available during the financial year.

** “Staff” includes EU officials, EU temporary agents, EU contract staff and seconded national experts, but excludes interim workers and consultants.

Source: Consolidated annual accounts of the European Union for the financial year 2018 and Provisional consolidated annual accounts of the European Union Financial year 2019; Staff figures provided by the Office.

Information in support of the statement of assurance

03 The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Office’s supervisory and control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of information provided by the Office’s management.

¹ OJ L 154, 16.6.2017, p. 1.

² More information on the Office’s competences and activities is available on its website: www.euiipo.europa.eu.

The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

Opinion

04 We have audited:

- (a) the accounts of the Office which comprise the financial statements³ and the reports on the implementation of the budget⁴ for the financial year ended 31 December 2019 and
- (b) the legality and regularity of the transactions underlying those accounts

as required by Article 287 of the Treaty on the Functioning of the European Union (TFEU).

Reliability of the accounts

Opinion on the reliability of the accounts

05 In our opinion, the accounts of the Office for the year ended 31 December 2019 present fairly, in all material respects, the financial position of the Office at 31 December 2019, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector.

³ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁴ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts

Revenue

Opinion on the legality and regularity of revenue underlying the accounts

06 In our opinion, revenue underlying the accounts for the year ended 31 December 2019 is legal and regular in all material respects.

Payments

Opinion on the legality and regularity of payments underlying the accounts

07 In our opinion, payments underlying the accounts for the year ended 31 December 2019 are legal and regular in all material respects.

Basis for opinions

08 We conducted our audit in accordance with the IFAC International Standards on Auditing (ISAs) and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions (ISSAIs). Our responsibilities under those standards are further described in the 'Auditor's responsibilities' section of our report. We are independent, in accordance with the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA Code) and with the ethical requirements that are relevant to our audit, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the IESBA Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Responsibilities of management and those charged with governance

09 In accordance with Articles 310 to 325 of the TFEU and the Office's Financial Regulation, the Office's management is responsible for preparing and presenting the Office's accounts on the basis of internationally accepted accounting standards for the public sector, and for the legality and regularity of the transactions underlying them. This includes the design, implementation and maintenance of internal controls relevant to the preparation and presentation of

financial statements that are free from material misstatement, whether due to fraud or error. The Office's management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements comply with the official requirements which govern those statements. The Office's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the Office's accounts.

10 In preparing the accounts, the Office's management is responsible for assessing the Office's ability to continue as a going concern. It must disclose, as applicable, any matters affecting the Office's status as a going concern, and use the going concern basis of accounting, unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.

11 Those charged with governance are responsible for overseeing the Office's financial reporting process.

The auditor's responsibilities for the audit of the accounts and underlying transactions

12 Our objectives are to obtain reasonable assurance about whether the accounts of the Office are free from material misstatement and the transactions underlying them are legal and regular, and to provide, on the basis of our audit, the European Parliament and the Council or the other respective discharge authorities with statements of assurance as to the reliability of the Office's accounts and the legality and regularity of the transactions underlying them. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit will always detect a material misstatement or non-compliance when it exists. These can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these accounts.

13 For revenue, we verify subsidies received from the Commission or cooperating countries and assess the Office's procedures for collecting fees and other income, if any.

14 For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments (including those made for the purchase of assets) other than advances at the point they are made. Advance payments are examined when the recipient of funds provides justification for their proper use and the Office accepts the justification by clearing the advance payment, whether in the same year or later.

15 In accordance with the ISAs and ISSAIs, we exercise our professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirements of the legal framework of the European Union, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement or non-compliance resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the overriding of internal controls.
- Obtain an understanding of internal controls relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal controls.
- Evaluate the appropriateness of the accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Office's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the accounts or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause an entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the accounts, including the disclosures, and whether the accounts represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the Office to express an opinion on the accounts and transactions underlying them. We are responsible for the direction, supervision and performance of the audit. We remain solely responsible for our audit opinion.

We communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal controls that we identify during our audit. From the matters on which we communicated with the Office, we determine those

matters that were of most significance in the audit of the accounts of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

16 The observations which follow do not call the Court's opinion into question.

Observations on the legality and regularity of transactions

17 The Office published a vacancy notice to constitute a reserve list of Project Specialists in its Customer Department. As this department comprises two different services (Customer management and Communication) the vacancy notice established two different candidate profiles which were to be evaluated separately. However, during the selection process, all candidates were assessed against all selection criteria, thus giving an advantage to candidates with both profiles. According to the case-law of the Court of Justice, selection committees are bound by the text of the vacancy notice as published. Had all candidates been evaluated according to the provisions set out in the vacancy notice, some candidates would not have been placed on the reserve list, as they would not have reached the pre-established pass-marks.

Furthermore, in the same procedure, the selection committee replaced a candidate who had declined an invitation for an interview with a candidate who had not reached the pre-established pass-mark. While 17 other candidates had been awarded at least the same number of points as the invited candidate, the selection committee did not provide any documentary justification as to why this candidate, who was already employed by the Office, had been invited.

The selection procedure was therefore irregular, as these weaknesses undermined the principles of transparency and equal treatment of candidates.

18 Also, in order to respect the principles of transparency and equal treatment, and to prevent favouritism, selection committee members must declare potential conflicts of interest, which must then be reviewed by the Appointing Authority. However, for the three audited selection procedures, selection committee members signed a general confidentiality note for participation in a selection procedure, which included a declaration on conflicts of interest. This note was signed before the list of candidates

was known. According to the note, each committee member and alternate was obliged to declare any individual issues that may potentially create a conflict of interest.

In its current form, the declaration of absence of conflict of interest only confirms the intention of the committee members to declare potential conflicts of interest if they arise, as it is signed before the list of candidates is known. Provisions in the Staff Regulations require every board member to sign a declaration once the candidates are known, in which they declare any professional or personal links with candidates. Potential conflicts of interest should also be reviewed by the Appointing Authority. In the audited recruitment procedures, selection committee members did not declare their professional links to candidates. These weaknesses undermine the principles of transparency and equal treatment. There is a risk that these procedures do not effectively prevent favouritism.

Observations on sound financial management

19 Using provisions contained in the Staff Regulations, and in order to ensure business continuity, the Office grants an allowance for stand-by duty from home to staff working in the areas of infrastructure, human resources and reputation management. This allowance is paid to 43 staff members, including 29 administrators. Of these 29 administrators, 12 are managers, including the Executive Director of the Office and the head of his private office. Each year, the European Commission issues a report to the Council and to the European Parliament on stand-by duty across the EU institutions. In the latest published report (COM(2019) 217 final), which concerns 2017, 25,6 % of staff receiving a stand-by duty allowance in the EU institutions are in the “administrator” function group, compared to 67,4 % in the Office. The majority of staff on stand-by duty in the EU institutions are in the “assistant” function group, or are contract agents. Most of them work in the areas of security and ICT.

According to the Office’s business continuity plan, staff may be entitled to the stand-by duty allowance “where there is a confirmed necessity for regular standby services”. The audit established that in the previous four years, the business continuity plan had never been activated.

During this period, a number of pre-BCP events occurred that could have required the intervention of technical staff, but not of Senior Management.

Furthermore, compliance checks carried out by the Office identified a staff member who was not reachable during his stand-by duty. Our audit established that this staff member had still received the allowance for this period.

Because the activation of the business continuity plan is highly exceptional, we consider that there is no confirmed need for a stand-by duty allowance to be paid to the senior management of the Office. This is in line with the practice in the EU institutions, where the allowance is paid mainly to technical staff. The current size of the stand-by duty team in the Office is excessive, and does not respect the principle of sound financial management.

Furthermore, the Office should improve the checks it carries out in connection with stand-by duty in order to prevent irregular payments.

20 In March 2014, the Office informed the Budget Committee about the start of negotiations for the potential acquisition of a third plot of land adjacent to the Office's headquarters, intended to cover the Office's future space needs. In November 2018, following several negotiation attempts with the owner of the land, the Budget Committee approved the proposal to acquire the plot for the price of 4 700 000 euros. The Office did not provide any further evidence to justify the need to secure a long-term extension of the campus.

We have analysed the Office's buildings policy and its multi-annual staff policy plan, and compared planned capacity and needs with the current building capacity. The Office estimates to increase the number of staff by some 300 until 2025. The current capacities and the existing possibilities to expand on land already owned by the Office prior to the acquisition of the new plot, enable to accommodate 439 additional staff. From this analysis, we conclude that the Office's current capacities in terms of buildings and available land are sufficient to cover the Office's future needs.

We recall that in the Court's opinion No 1/2019 on the Office's Financial Regulation, the Court concluded that the Office's budget surpluses were not being put to any productive use, either at the level of the Office or at the level of the European Union, and that the Office, together with the Commission, should explore for example the possibility of using the budget surpluses to back up financial instruments supporting European enterprises' research and innovation activities (R&I) and growth.

If the EUIPO had not acquired this plot of land, its budget surplus for 2019 would have been higher. We have seen no evidence of any real need for EUIPO to acquire the land. We therefore consider that buying the land was not a productive use of EUIPO's budget surplus, and that the purchase did not respect the principle of sound financial management.

Follow-up of previous years' observations

21 An overview of the action taken in response to the Court's observations from previous years is provided in the **Annex**.

This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg on 22 September 2020.

For the Court of Auditors

A handwritten signature in black ink, appearing to read 'K-H Lehne', written in a cursive style.

Klaus-Heiner Lehne

President

Annex - Follow-up of previous years' observations

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2016	The Office's founding Regulation establishes that translation services are to be provided by the Translation Centre for the Bodies of the European Union (CdT), resulting in the Office being CdT's main client. The Office makes increasing use of in-house solutions, which may result in a duplication of effort and related costs.	Completed
2018	The Office signed a contract for cleaning services with a tenderer who submitted an abnormally low offer. The procurement procedure and the underlying payments are irregular. The Office should analyse situations of potentially abnormal offers in a rigorous manner to ensure compliance with the Financial Regulation and fair competition.	Ongoing
2018	The specific contracts under an IT framework contract were not clearly and transparently linked to the main contract. The part of the payments representing the additionally calculated uplifts are irregular. The Office should sign and use specific contracts only in accordance with the price schemes laid down in the related framework contracts.	Completed
2018	The Office pays large amounts of negative interest. The Office should reconsider this, and use its financial resources in a more productive manner.	N/A

Year	Court's observations	Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A)
2018	The Office <u>had made</u> extensive use of consultancy services. A four-year framework contract <u>had been</u> fully used up within only two years and six months, and external consultants accounted for 20 % of the Office's total staff.	Completed
2018	The office used a consultancy services contract, which in practice resulted in the loan of staff instead of the provision of services. This, however, is not a service which can be offered by a consultancy company.	Ongoing
2018	The annual work programme and the annual activity report do not contain information on the full-time equivalent staff members provided by service providers executing tasks of a non-core business nature but embedded in the core business of the Office. Such information would further increase transparency.	Ongoing⁵
2018	Most fixed-price specific contracts did not contain clearly defined deliverables or timetables but were instead defined in a general way. All deliverables for a fixed price should be clearly defined in the contracts.	Completed

⁵ In 2019, there was no "time and means" contract implemented by the Office.

The EUIPO's reply

17. The Office takes note of the Court's observation. While the text of the vacancy notice is followed by the Selection Committee in general in this case there was a misinterpretation of the assessment of the selection criteria. The decisions of the Selection Board could also have been documented better. In light of the observation, the controls on these aspects will be further reinforced by the Office.

18. While the note on confidentiality and conflict of interest seeks to remind the basic tenets of confidentiality and impartiality already enshrined in the Staff Regulations and its signature re-confirms the commitment of the members of the Selection Committee to respect those principles throughout the procedure, their application and binding nature still remains once the names of candidates are known. The Office however takes note of the Court's observation. In line with the Court's suggestion, the Office has already introduced separate notifications for the declaration of confidentiality and conflicts of interests at a time of the procedure where the candidates' names are known.

19. In line with the requirements of international quality standards and the Office's internal control framework, the Office has put in place a Business Continuity Plan (BCP). The BCP is a set of strategies and procedures that aim to reduce confusion during a disaster by anticipating critical impacts and by providing directions to support an effective recovery and the return to normal operations.

The BCP foresees a number of roles under the crisis management team and the business support team that are on stand by and therefore eligible to a stand by duty allowance as provided for by the Staff Regulations.

In its annual report for the years 2013 and 2014, the Court had an observation regarding the stand by duty allowances. As a result of this, following a presentation to the Budget Committee which also highlighted the number of managers entitled to stand by duty allowance and the setting up of a control mechanism, the Office's Budget Committee confirmed the BCP regime. As a consequence, the observation was considered completed. In light of the Court's current observation, the Office will again present the situation on the standby allowances to the Budget Committee.

While the activation of the BCP is, fortunately, exceptional, it has been activated recently in consequence of the COVID-19 situation. It has permitted the Office to act rapidly, which has been key in order to guarantee the Office's reputation and image, extending time limits for customers, reacting rapidly with suppliers and, above all, acting quickly to secure the safety of its staff while guaranteeing the 24/7 high level services to its

clients. Considering the criticality of the Office's operations (over 1000 applications per day and 600 real-time interactions with customer), Senior management's continued availability and direction has proven to be necessary to guarantee that the Office was fully operational in remote scenario within 24 hours of the decision to lockdown.

The amount paid on standby allowances was 225 568.34 euro which represents 0.09% of the revenue of the Office for 2019 and 0.05% of the budget.

Finally, the Office takes note of the Court's invitation to improve the checks carried out. The undue payment identified has already been recovered.

20. As indicated by the Court, the Office informed the Budget Committee as early as 2014 of the start of the negotiations for the potential acquisition of a third plot of land adjacent to the Office's headquarters.

The purchase of the sole plot of land available adjacent to the campus was considered necessary to secure a long-term expansion of the campus especially taking into account the absence of alternative solutions.

The acquisition price of EUR 4 700 000 represents less than 40% of the debt secured by the plot of land and half the price of the initial offer. The Office considers that this price complies with the principle of sound financial management, and therefore proposed to acquire the plot to the Budget Committee. The Budget Committee approved the proposal unanimously.

With respect to the Court's comment on the productive use of the surplus, the Office confirms that the accumulated surplus was not used for the purchase of the plot of land. The acquisition was funded via the operational budget through the appropriations approved for this purpose.

The suggestion in the opinion of the Court to productively use the accumulated surplus has initiated discussions with the European Commission. A first set of initiatives mobilising funds under the accumulated surplus was already introduced in the 2020 budget and further actions are being set-up in collaboration with the European Commission for 2021.

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