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The Global IP Resource

EU OFFICIALS SET TO DECIDE ON TRADE MARK REFORMS

21 April 2015 | James Nurton, London

The so-called trilogue, comprising representatives of the EU Council, Commission and Parliament, could decide today how to reform the Trade Marks Directive and CTM Regulation, and what to do with OHIM's surplus

The discussions have been going on for more than five years but have now reached the point where a decision is expected. However, it's far from clear that users of the trade mark system will be satisfied with the outcome.

The proposals "could seriously damage the European trade mark system instead of improving it"

What started out as a process to update and harmonise trade mark protection in Europe has turned into a squabble over what to do with OHIM's accumulated surplus, which now exceeds €400 million.

Proposals under consideration include diverting money to member states' national offices; financing cooperation between offices; funding the European School in Alicante; contributing to the budget of the Court of Justice of the EU; and transferring money to the general budget of the EU.

In a [statement](#) published on April 8, a group of users' associations strongly opposed most of these moves, saying they "could seriously damage the European trade mark system instead of improving it" and that many of the budget proposals amounted to "an unacceptable tax" on trade mark owners.

The signatories to the statement were AIM, AmCham EU, APRAM, BUSINESSEUROPE, EFPIA, INTA, MARQUES and TIE.



In an [article in European Voice](#) on April 9, INTA President J Scott Evans (left) argued that OHIM renewal fees should be reduced to stop the surplus increasing further, adding: "The surplus that has already accumulated from fees paid by users and any future surplus should be dedicated to trade mark- and design-related activities."

Speaking at the [Fordham IP Conference](#) in Cambridge on April 8, OHIM President António Campinos suggested that a fee reduction be adopted, along with investment in convergence and cooperation programmes.

Diversion of OHIM fees to non-IP related purposes was not permitted under the CTMR. However, on February 26 the Committee on Budgets of the European Parliament adopted an amendment that would retroactively provide a legal basis for diversion of funds.

Users fear that if money is transferred to national offices, as well as the European School and CJEU, it will go out of the IP system for good. As Tove Graulund who represents MARQUES told Managing IP: "We are worried that there will be costs inserted into OHIM's budget that will be permanent. That could mean that if circumstances change in the future they will have to look at putting fees up."

In the debate over money, many of the original aims of the reform seem to have been lost. These included improvements such as requiring all national offices to provide administrative cancellation and opposition proceedings.

These do not exist in some national offices (such as France) at the moment, but Graulund said they should be a key part of the system: "Non-use actions should be easy and fast for the benefit of all users, and particularly SMEs and entrepreneurs."

"The money should stay in IP and benefit the fee-payers, and there should be transparency so that users have a say in any projects."

Etienne Sanz de Acedo, chief executive of INTA, told Managing IP that the reform felt like "a missed opportunity". For example, he said, the dropping of a proposal to make bad faith a ground for opposition looked odd when this is something that European companies are calling for in other parts of the world: "Other countries will say: why should we change our systems if you won't change yours?"

Asked what would be the best outcome that trade mark users could expect today, Graulund said: "The money should stay in IP and benefit the fee-payers, and there should be transparency so that users have a say in any projects."

Managing IP will report further once the outcome of today's discussions is known.

COMMENTS

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