

APPENDIX 1 — Management of resources and assurance

Table of Contents

| | |
|--|-----------|
| 1. Management of Resources | 4 |
| 1.1 Budgetary and financial management | 4 |
| 1.1.1 The Budget and its implementation in general terms | 4 |
| 1.1.2 The evolution of the accumulated budgetary surplus and the yearly budgetary result | 5 |
| 1.1.3 Number and volume of Budget transfers | 6 |
| 1.1.4 Budget revenue and payment of fees | 7 |
| 1.1.5 Expenditure and payments..... | 8 |
| 1.1.6 Vendors and payment terms | 10 |
| 1.1.7 The investment perspective..... | 11 |
| 1.1.8 Treasury | 12 |
| 1.1.9 Procurement and grants..... | 14 |
| 1.2 Human resources management | 17 |
| 1.2.1 The establishment plan and its evolution | 17 |
| 1.2.2 Staff composition | 18 |
| 1.2.3 Recruitment and departures over the year..... | 19 |
| 1.2.4 Internal mobility..... | 20 |
| 1.2.5 Working conditions..... | 20 |
| 1.2.6 Job-screening benchmarking | 21 |
| 1.3 Assessment by management..... | 22 |
| 1.3.1 Office internal management bodies | 22 |
| 1.3.2 Office management systems..... | 22 |
| 1.3.3 <i>Ex ante</i> verification..... | 23 |
| 1.3.4 <i>Ex post</i> onsite evaluation visits related to cooperation agreements..... | 24 |
| 1.3.5 Register of Exceptions | 24 |
| 1.3.6 Instructions in accordance with Article 52(3) of the Office's Financial Regulation ... | 25 |
| 1.3.7 Authorising officer delegation embedded in the financial management system | 26 |
| 1.3.8 Network of administrative and financial officers and training in financial matters | 26 |
| 1.3.9 External resources management system (ERMS)..... | 26 |
| 2. Management Assurance | 28 |
| 2.1 Review of the elements supporting assurance | 28 |
| 2.2 Reservations (if applicable)..... | 28 |
| 2.3 Overall conclusions on assurance | 28 |
| 3. Declaration of Assurance | 29 |
| 4. Annexes..... | 30 |
| 4.1 Audit, control standards and anti-fraud strategy | 30 |
| 4.1.1 Internal audit..... | 30 |
| 4.1.2 Compliance with and effectiveness of internal control standards..... | 32 |

| | |
|---|-----------|
| 4.1.3 Anti-fraud strategy..... | 33 |
| 4.1.4 European Court of Auditors..... | 33 |
| 4.1.5 External audits of certified management systems..... | 37 |
| 4.2 EUIPO governing bodies | 38 |
| 4.3 Establishment plan | 40 |
| 4.4 Management of resources — specific annexes..... | 41 |
| 4.4.1 Waived recovery orders | 41 |
| 4.4.2 Negotiated procedures according to Article 24 of the Office's Implementing Rules. | 42 |
| 4.4.3 Statistics on payments | 43 |
| 4.5 Final Annual Accounts for the year | 44 |

1. Management of Resources

1.1 Budgetary and financial management

1.1.1 The Budget and its implementation in general terms

The Office's 2016 Budget was adopted in November 2015 and amounted to EUR 398 million.

On 23 March 2016, Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16/12/2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for the Harmonization in the Internal Market (Trade Marks and Design), entered into force.

It was therefore necessary to adopt a Supplementary and Amending Budget for 2016 in order to accommodate in particular:

- the implementation of a new fee structure;
- the implementation of Article 123c of the Amending Regulation (EUTMR) regarding cooperation activities with the IP offices of the EU Member States and the Benelux IP office and the application of Article 139 EUTMR concerning the offsetting of costs incurred by Member States as functional parts of the European Union trade mark system;
- the provision of a reserve fund;
- the incorporation of funds handled by the Office corresponding to technical cooperation projects with other countries in the area of industrial property on behalf of the European Commission by means of assigned revenue.

The Supplementary and Amending Budget for 2016 was adopted in June 2016 and amounted to EUR 421.3 million, composed of EUR 417.5 million corresponding to the normal Office Budget (revenues accruing from the operation of the Office and balance from the previous year) and EUR 3.8 million corresponding to assigned revenue for EU-funded projects.

The main assumptions for this Supplementary and Amending Budget were the following:

- a mono-class system one-fee-per-class and an estimation of 2.3 classes on average per application;
- new fees resulting from the EUTMR;
- the application of the new renewal fees from the expiry date of the trade mark;
- an estimate of 145 680 EUTM applications (+ 11.7 % compared with 2015), divided between 121 548 direct EUTM applications (filings where no filing date can be granted were estimated at 3.8 %), 24 132 trade mark applications received through the Madrid Protocol, and 97 513 RCD filings;
- a renewal rate for EUTMs of 57 % for first renewals and 38 % for second renewals (impact of the second wave of EUTM renewals for EUTMs filed on or after 1 April 1996);

- a renewal rate for RCDs of 48 % for first renewals and 29 % for second renewals;
- an e-filing rate of 98 %.

The total number of posts provided for in the establishment plan was 827. This represented a decrease of 1 % compared with 2015, in line with the endorsed roadmap on the implementation of the Interinstitutional Agreement (IIA), which called for the establishment plan to be reduced by 5 % by 2017.

Of the EUR 417.5 million referred to above, EUR 230.9 million correspond to the operational expenditure Budget, including the EU Cooperation projects under Article 123c EUTMR and the cost of the Strategic Plan 2020 (SP2020) projects. The remaining EUR 186.6 million were reserved for unforeseen events and the necessary funds to cover the amount to be allocated to the reserve fund, pursuant to Article 139(10) EUTMR.

| BUDGET FIGURES (in EUR million) | 2014 | 2015 | 2016 |
|---|---------------|---------------|---------------|
| Operational revenue | 194.20 | 206.16 | 232.30 |
| Balance from previous financial year | 225.40 | 178.04 | 185.20 |
| Total revenue | 419.60 | 384.20 | 417.50 |
| Operational expenditure | 251.00 | 249.10 | 230.90 |
| Expenditure for unforeseen events | 168.60 | 135.10 | 186.60 |
| Total expenditure | 419.60 | 384.20 | 417.50 |

Of the EUR 230.9 million for operational expenditure, EUR 205.7 million was executed. The final execution rate for 2015 was 89.1 %.

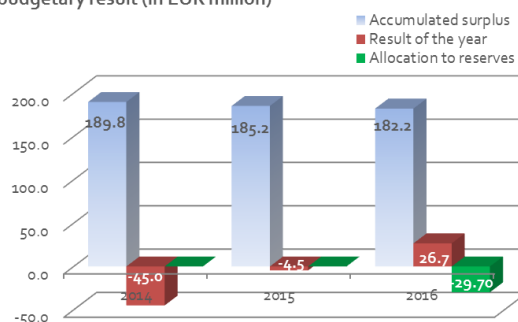
Relevant aspects of Budget implementation that are not dealt with in the Annual Accounts ¹ will be presented in the following pages.

1.1.2 The evolution of the accumulated budgetary surplus and the yearly budgetary result

The accumulated budgetary surplus in the year 2016 is the consequence of the accumulated budgetary surplus from the previous year, the 2016 Budget result and the allocation to the reserve fund.

It should be noted that the Office has a reserve fund pursuant to Article 139(10) EUTMR, which must cover the amount of appropriations in Titles 1, 2 and 3 of the adopted Budget.

Accumulated budgetary surplus and yearly budgetary result (in EUR million)



This reserve fund, which amounts to EUR 230.9 million, is not included in the accumulated

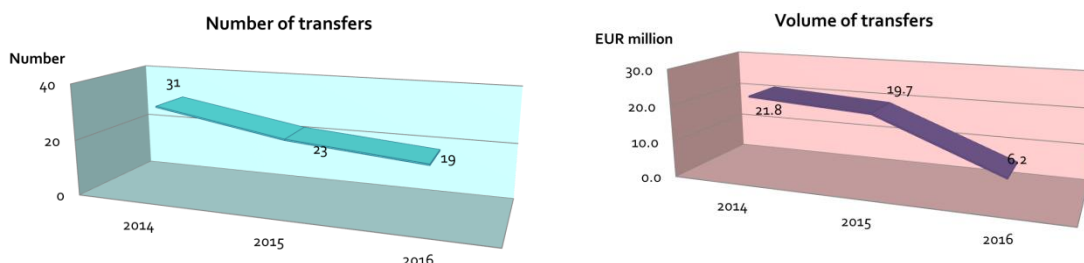
¹ For more detailed information about Budget execution, see the annex relating to the Final Annual Accounts.

budgetary surplus.

1.1.3 Number and volume of Budget transfers

Despite the Office's planning efforts when drawing up its Budget for the following year, a certain level of flexibility is required to adapt specific Budget items to the real needs that arise during the year of the Budget implementation. Certain funds may need to be moved from one Budget item to another, depending on the surpluses or shortages in the various items.

During the period 2014-2016, the number of Budget transfers was reduced. Furthermore, there was a decrease in their volume, particularly in 2016.



EUR 1.8 million was reallocated within HRD lines, due to staff recruitment and the associated increased costs; internalisation of services performed by consultants; the upcoming EPSO competitions; missions and travel-related expenditure; payments to the European School due to the increase in the number of Category I pupils; and for additional expatriation allowances.

EUR 1.7 million was transferred to building-related expenditure. This includes refurbishment works, health and safety improvements, adjustment to ISO 9001, EMAS, OSHAS, accessibility, information security and external resources management system (ERMS) requirements, as well as the improvement in the working conditions of the Office.

EUR 1.9 million was reallocated within IT lines due to additional needs in licences, increase in IT operations costs due to the provision of some applications in full service mode, and due to the increase in the quality assurance of operational requests for change, compensated by the reduction in operational projects and telecommunication costs.

1.1.4 Budget revenue and payment of fees

The Office's revenue is generated by fees from the registration of trade marks and designs, income from interest and other operational revenue.

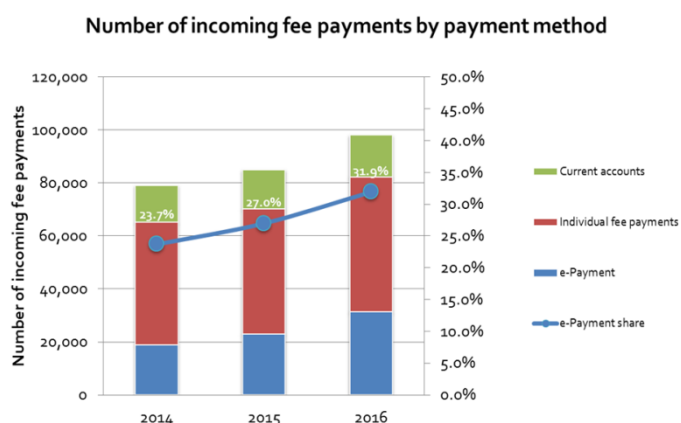
| <i>BUDGET REVENUE EXECUTED</i> <i>(in EUR million)</i> | 2014 | 2015 | 2016 |
|---|---------------|---------------|---------------|
| Revenue generated by fees | 194.20 | 212.61 | 227.60 |
| Interest income | 0.80 | 0.40 | 0.10 |
| Other operational revenue | 1.10 | 3.06 | 1.00 |
| Total revenue | 196.10 | 216.07 | 228.70 |

In 2016, the Office accrued² 131 926 EUTM application fees (compared with 125 850 in 2015) and 108 789 design fees (compared with 103 140 in 2015) as revenue. EUTM and design fees recorded as revenue increased by 7.5 % compared with 2015.

In 2016, 69 % of EUTM filings came from EU Member States and 31 % from non-EU countries. The leading countries were Germany (15.1 %), the USA (14.4 %), Italy (7.6 %), the United Kingdom (8.6 %), Spain (7.3 %), France (5.8 %), the Netherlands (3.5 %), Poland (2.7 %) and Switzerland (2.7 %).

The distribution of revenue from EUTMs and RCDs is relatively stable. In 2016, the EUTM share of total fee revenue stood at 88.7 % compared with 88.8 % and 87.8 % in the two preceding years. The Office receives revenue not only from fees relating to the registration of trade marks and designs, but also from fees for post-registration procedures, such as renewals, recordals and inspections. Basic fees, fees for additional classes, international application fees and renewal fees made up 95.8 % of all EUTM fees received, compared with 95.3 % in 2015.

In 2016, 98 177 incoming payments from clients were received by the Office (+ 15.4 %), amounting to EUR 230 million (+ 6.6 %); this included 12 incoming payments from WIPO, corresponding to EUR 25.4 million (– 17.1 %). The percentage of e-payments (payment by debit or credit card) has increased over the last few years.



² This means that the fee payment has been received and the filing fee has been verified and included in the accounts.

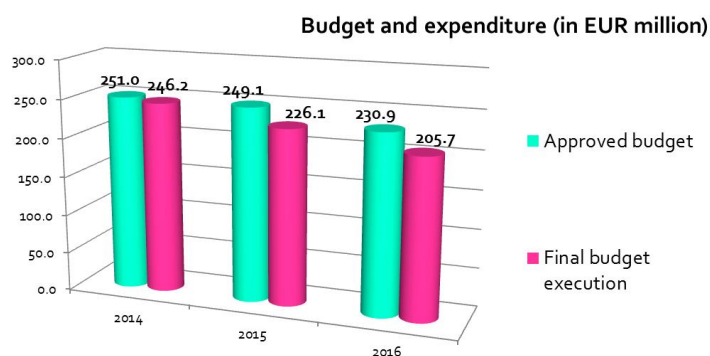
1.1.5 Expenditure and payments

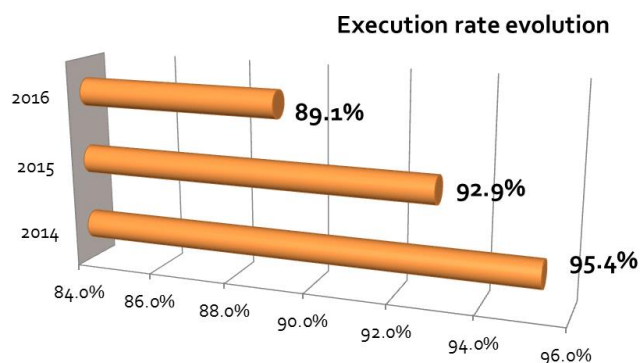
The table below illustrates the Office's operational expenditure over the last 3 years. It includes not only expenditure relating to staff, but also all expenditure relating to the functioning of the Office, such as IT, buildings and equipment (operating expenditure), and all expenditure relating to core activities, such as mail dispatch, translations and cooperation activities with EU Member States (specific expenditure).

| <i>BUDGET EXPENDITURE EXECUTED (in EUR million)</i> | <i>2014</i> | <i>2015</i> | <i>2016</i> |
|---|---------------|---------------|---------------|
| Staff expenditure | 92.50 | 92.92 | 95.60 |
| Operating expenditure | 117.10 | 96.90 | 71.70 |
| Specific expenditure | 36.60 | 36.27 | 38.40 |
| Total expenditure | 246.20 | 226.09 | 205.70 |

The Office's Budget covers all its required expenditure, which is usually broken down into the following main categories:

- staff expenditure (salaries and social security expenses, professional travel expenses, welfare, medical service, etc.);
- buildings and equipment (all expenses related to the Office's premises, IT infrastructure and programming, technical and workplace-related equipment, telecommunications, administrative translations, consultancy, etc.);
- expenditure related to the registration of trade marks and designs, as well as cooperation with National and Regional IP Offices and support for the Observatory.

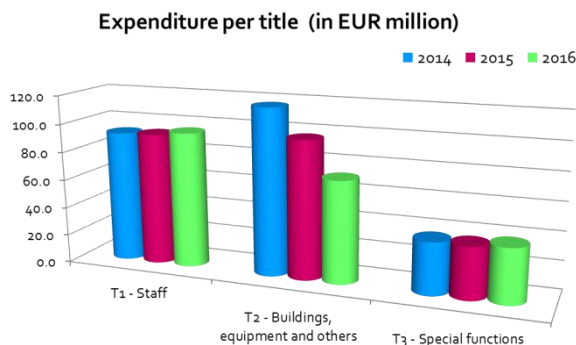




As indicated above, Budget transfers were made during the year in order to adjust to the needs that arose. When the final Budget after Budget transfers is compared with the executed expenditure, the execution rate decreased to 89.1 %.

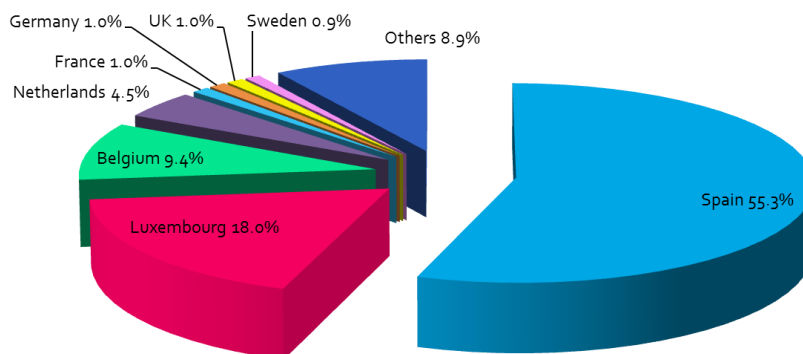
This low level of execution is due to staff expenditure being lower than planned (owing to a slower rate of recruitment, fewer national experts and fewer agency staff), delays in the payment of projects related to the SP2020, which was only approved in June, lower expenditure related to the Observatory, and lower expenditure related to the European Cooperation projects.

The following chart shows the evolution of the executed expenditure, focusing on the three main titles indicated above.



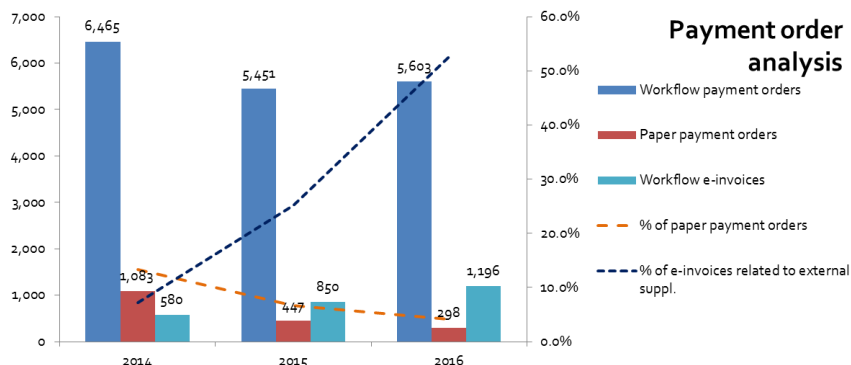
1.1.6 Vendors and payment terms

In 2016, approximately 55.3 % of purchases were from Spanish suppliers, while 44.7 % were from suppliers elsewhere: 18.0 % from Luxembourg, 9.4 % from Belgium and the remaining 17.3 % from other countries (figures in terms of purchase volume. Duty travel, committees, interviews and salaries are not included).

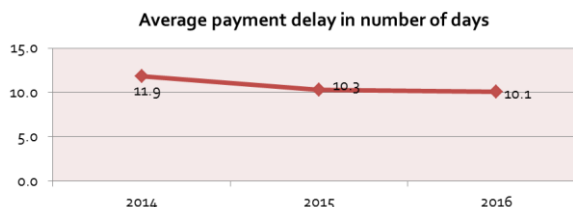


% of amounts paid to suppliers per country

The Office's e-invoicing tool, based on the European Commission's e-PRIOR tool, first became available for use by its suppliers in 2014. Since then, its use has increased to more than 50 % of all supplier invoices in 2016.



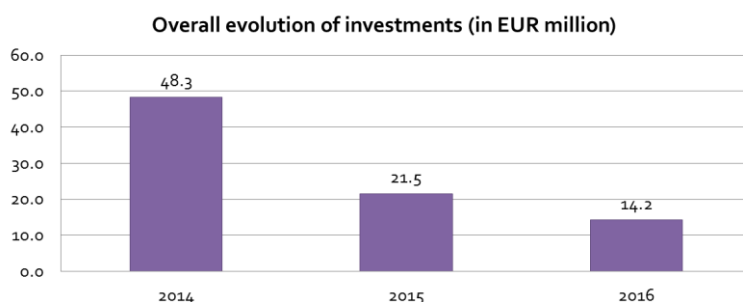
The Office follows a policy of paying its suppliers and third parties as quickly as possible. The official payment terms are 30 or 60 days, depending on the type of contract. In 2016, the average payment time was 10.1 days.



Since 2013, the number of invoices paid late has decreased by 90 % (from 154 to 14 invoices). In 2015, only one late payment resulted in interest being charged (EUR 450). This improvement is a consequence of the enhanced follow-up of payments and their notification to the Register of Exceptions.

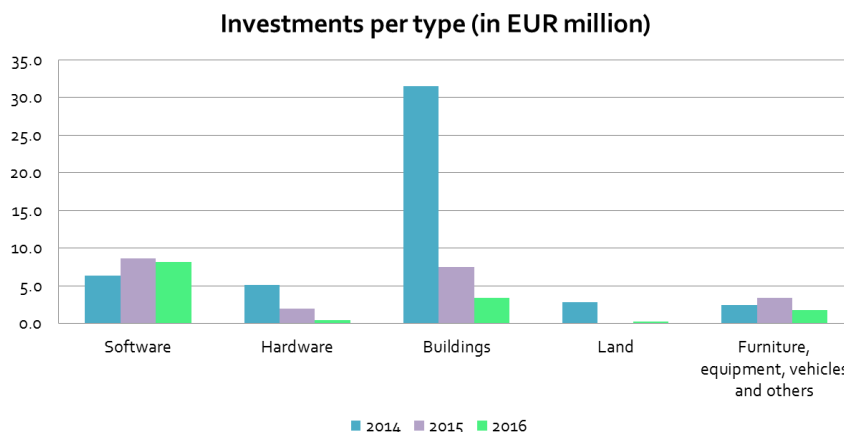
1.1.7 The investment perspective

In order to maintain and increase the Office's capacity, particularly in the context of the implementation of the Office's Strategic Plan 2011-2015, investment in fixed assets was very intense in 2014, it decreased in 2015 once the construction of the headquarters' extension was completed, and it decreased further in 2016 as a consequence of the finalisation of the first Strategic Plan and the starting phase of the SP2020.



Investment amounted to EUR 14.2 million, of which EUR 3.7 million were for buildings (including EUR 0.3 million for purchase of land), EUR 8.2 million for software, EUR 0.5 million for computer hardware, and EUR 1.8 million for furniture, vehicles, security, equipment, etc.

The major investment in buildings and land, in particular during 2014, is a direct and visible consequence of the implementation of the Strategic Plan.



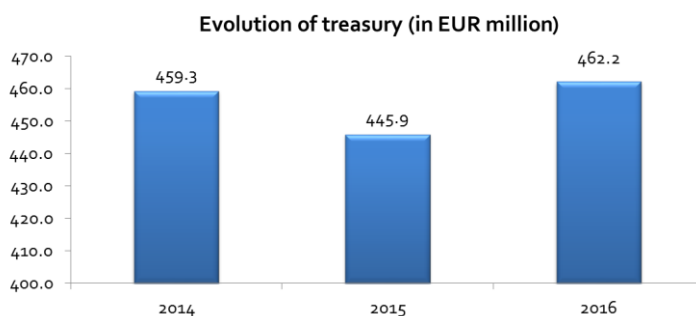


Total investment in software amounts to EUR 8.2 million — EUR 7.4 million correspond to software developed by the Office, of which EUR 2.8 million concern ongoing projects, and EUR 0.8 million correspond to investments in commercial software packages.

1.1.8 Treasury

The Office's treasury is composed of all funds deposited in current accounts and short-term deposits. A detailed breakdown is available in the Annual Accounts (see enclosure). The overall treasury amount includes the accumulated budgetary surplus, the reserve fund, the appropriations carried over, and advance payments by customers, in particular the current accounts.

The Office's treasury management is based on guidelines adopted by the Office's Budget Committee. These guidelines were revised and adopted in June. They require that the financial entities with which the Office keeps its funds have at least an A long-term rating with the three credit agencies, in line with the European Commission policy, instead of the former requirement of one AA —. For operational banks³, the Office may, if no other options are available, hold a maximum amount equivalent to 2 months of payments with financial entities that do not comply with this requirement.



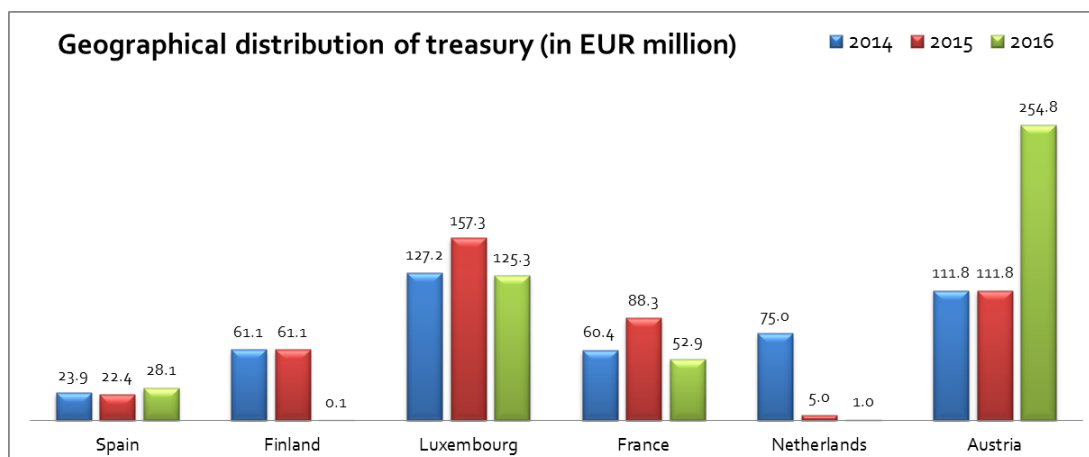
These amounts do not include the funds for EU projects agreed with the European Commission.

The Office's treasury, excluding funds from the EU-funded projects, increased by EUR 16.4 million during 2016, and reached EUR 462.2 million. This amount is composed of a positive cash flow of EUR 31.2 million generated by the Office's operating activity; a negative cash flow from the interest yielded by the Office's banks of EUR 0.6 million; and asset investments of EUR 14.2 million.

³ Banks used by the Office for handling incoming and outgoing payments.

The Office's risk diversification strategy is based on four elements:

- a distribution of funds by category of bank, whereby 69 % of all funds are held in central bank accounts at the end of the year;
- 2 months' coverage of outgoing payments for banks not complying with the A criterion;
- a geographical distribution shown in the following graph.



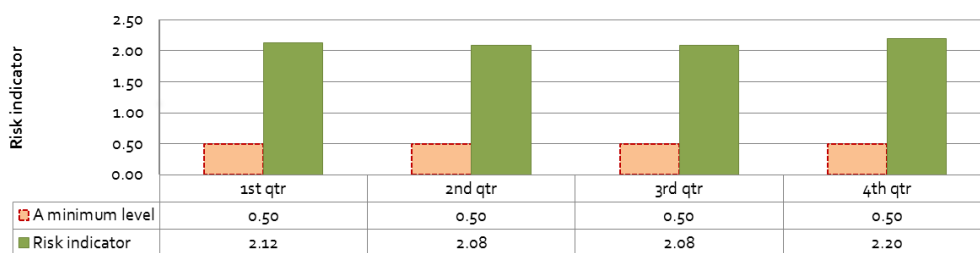
The Office receives its incoming fee payments through its operational banks, BBVA (62 %) and CaixaBank (38 %).

In 2016, all reimbursements to Office clients were made through BBVA and totalled EUR 1.7 million, compared with EUR 2.1 million in 2015.

Outgoing payments to suppliers and third parties in 2016 represented 91.9 % of incoming funds from all clients (106.2 % in 2015), amounting to a total of EUR 211.8 million (EUR 232.3 million in 2015).

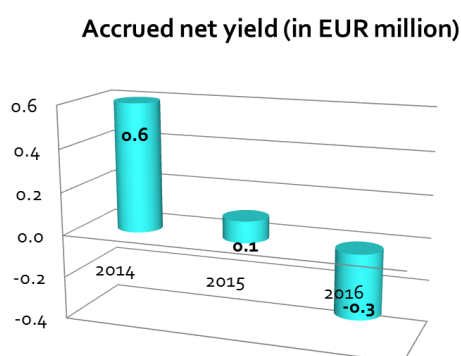
The Office follows up on the credit ratings of its banks periodically and has defined its own risk indicator. This indicator assigns points to each of the Office's banks according to their rating (e.g. 1.50 for an AA –, 3.00 for an AAA, 1.00 for an A rating). Funds deposited at each bank are then weighted accordingly. As a consequence of the revised treasury guidelines, the minimum risk level has been adapted.

The evolution of the indicator during the year shows that the A credit rating is fully respected.



The Office has also established an internal cross-departmental treasury committee, composed of staff working within and outside the Finance Department, in order to give advice on issues related to treasury management. During 2016, and in view of the greater stability of the financial markets, the degree of diversification reached, and the relative stability of the level of treasury, the committee carried out four general reviews of the treasury situation. Furthermore, the Office's Budget Committee was informed about the treasury management situation at each of its 2016 meetings.

The Office's policy is to benefit from interest generated mainly by short-term deposits and current accounts. As in former years, and given the situation of the financial markets, security aspects had clear priority over yield in 2016.



Budgetary interest income is cash-based, whereas accrued interest income does not depend on when the interest credited by the bank is received.

The accrued net yield fell considerably during the last two years as a consequence of negative interest levels set by the European Central Bank. The average yield in 2016, including negative interest, was -0.061% , compared with the average monthly Euribor 2016 of -0.337% .

1.1.9 Procurement and grants

The major challenge for procurement in 2016 was the complete revision of Title V of the general Financial Regulation and its corresponding Rules of Application, which entered into force on 1 January 2016. Moreover, in March, the Legal Reform of the Office also entered into force. As a consequence, all the legal workload of adapting the standard procurement documents, procedures and manuals had to be faced. Furthermore, 80 procedures of all types were managed during the year.

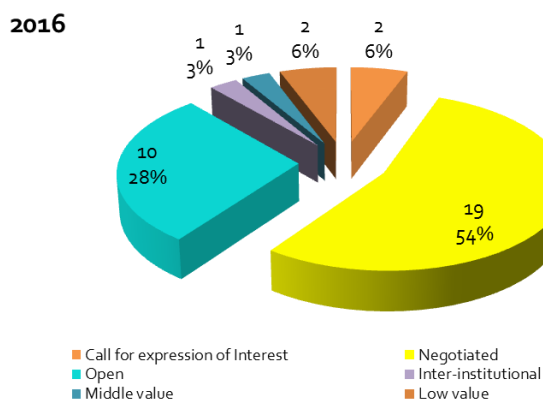
One of the consequences of the new applicable regulations was the implementation of the new 'middle-value' procurement procedure (below EUR 135 000). The Office has already managed two of these.

The following procedures were carried out at the Office:

- calls for expressions of interest;
- open procedures;
- negotiated procedures;
- middle-value contract procedures
- low-value contract procedures.

Regarding action grants, 2016 was dedicated to the management of the grants agreements signed in 2015, up to the final phase planned by the end of the year. A new call for proposals is envisaged in 2017.

Procurement and grant procedures (data in numbers and %)



The following chart gives an overview of the different procedures used, together with the total number of each procedure closed this year (figures are shown in absolute and relative values).

The Office participated in 11 interinstitutional and interagency procurement procedures, compared with only 2 in 2015.

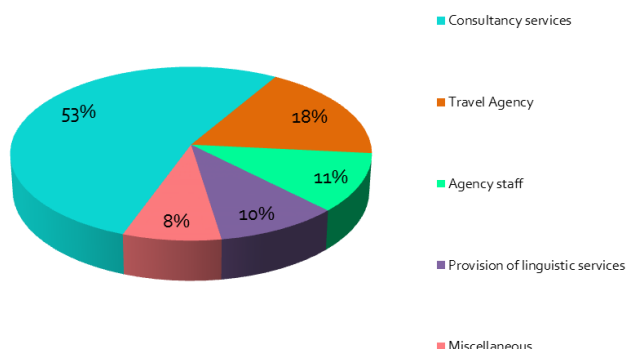
Procurement procedures above EUR 15 000

In procurement, the financial volume is determined by the duration of the contract, as well as by the yearly estimated consumption. The average duration of the different contracts signed in 2016 was 3.2 years, the majority having a duration of 4 years. The financial volume was distributed between the contracts signed in 2016, as shown in the chart.

The total procurement volume for the average contract duration of 3.2 years (starting in 2016), was EUR 150 million.

The average duration of a procurement procedure was 170 calendar days in 2016, compared with 245 calendar days in 2015.

Financial procurement volume



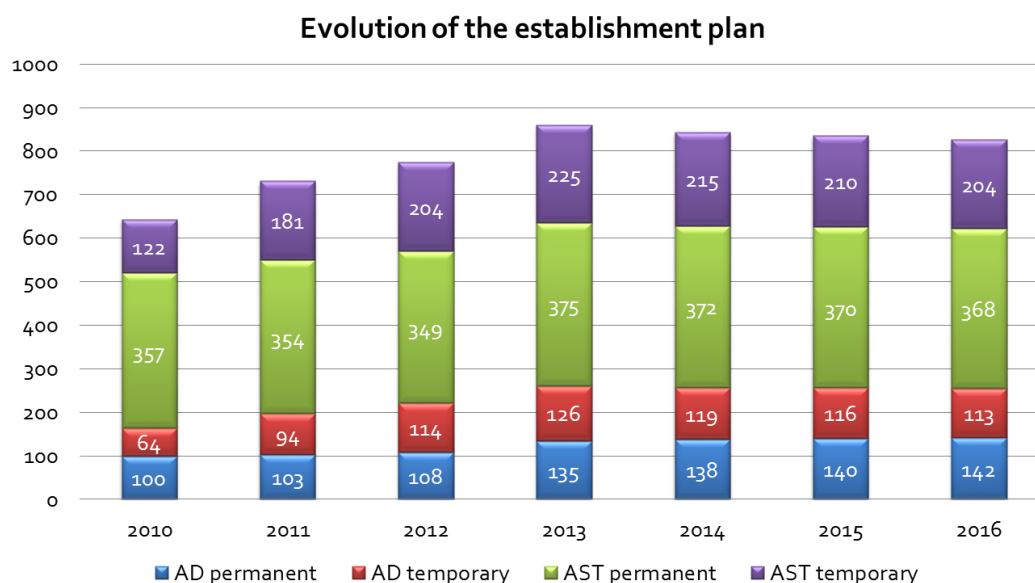
The decrease in the total average duration is mainly due to the following factors:

- legal delays have been reduced by the revised Financial Regulation;
- measures to improve the administrative management of procedures were implemented;
- the proportion of negotiated procedures, which are less time-consuming than other procedures, increased in 2016;
- the number of open procedures is lower than in the past.

1.2 Human resources management

1.2.1 The establishment plan and its evolution

The establishment plan of the Office is comprised of permanent and temporary posts available in the Budget. The posts are allocated according to the Office's workforce planning (Multiannual Staff Policy Plan) adopted by the Management Board.



The Office has implemented the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, cooperation in budgetary matters and on sound financial management. The Office strategy, endorsed by its governing bodies, provided for a 5 % reduction of the Office establishment plan: 2 % in 2014 by means of an Amended Budget and a further annual reduction of 1 % between 2015 and 2017. As a consequence, the number of posts in the establishment plan again decreased in 2016, from 836 to 827.

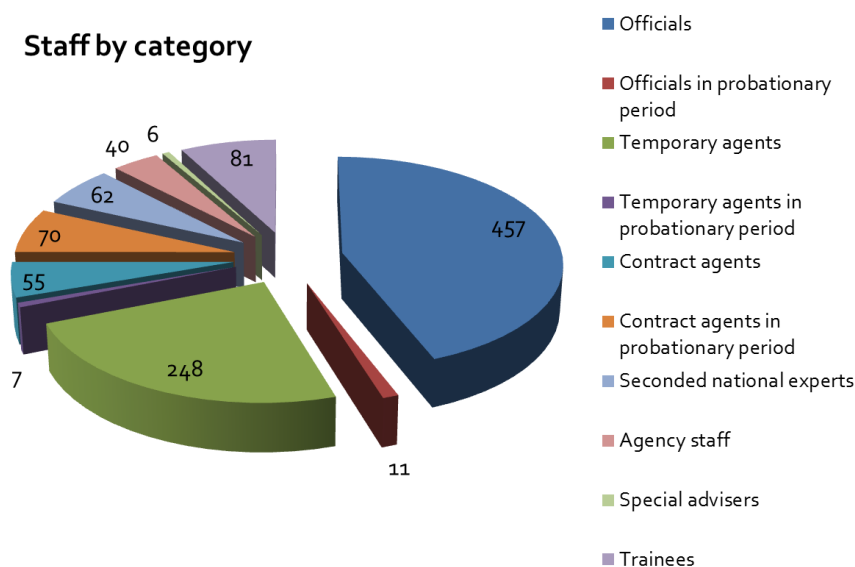
At the same time, the Office's workload has continued to grow though demand has fluctuated due to external circumstances and remains very volatile. The overall growth in trade marks in 2016 was 3.7 %, but direct filings were 7.3% higher and this was accompanied by an 11 % increase in oppositions filed and 8 % more design applications.

In recent years, most of the increases in workload volume were absorbed through internal productivity improvements. However, the Office is no longer able to compensate the growth in business by efficiency gains and by demanding additional efforts from staff. In 2016, the recruitment of contract agents became necessary in order to cope with the increase in applications and the additional activities brought about by the change in the regulations, such as international cooperation and the Observatory.

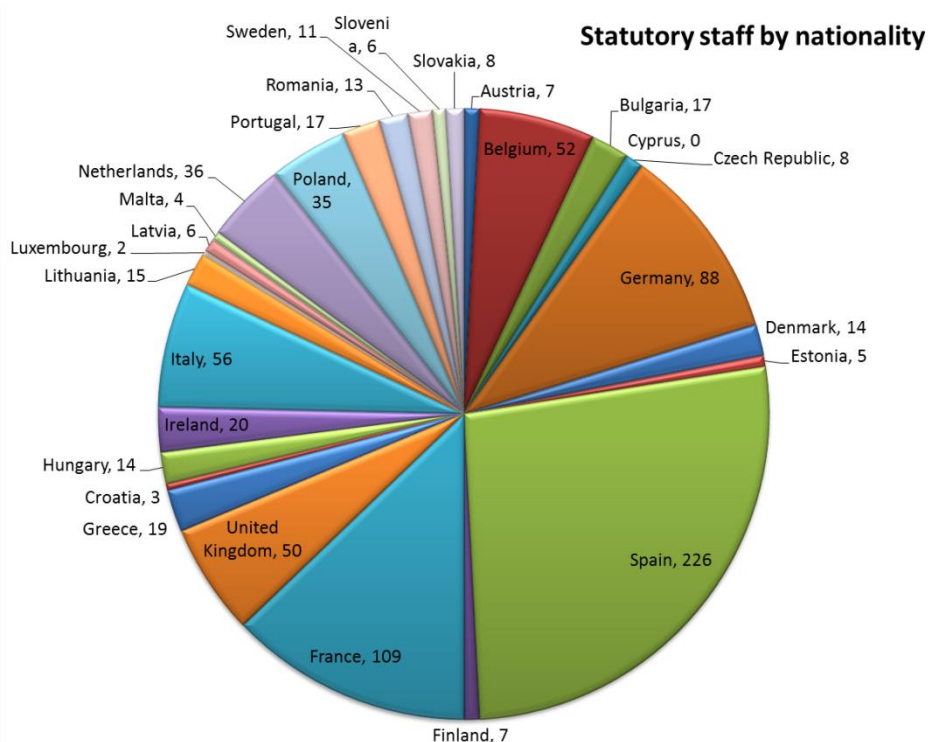
1.2.2 Staff composition

At the end of 2016, 854 statutory staff members composed the workforce of the Office: 468 were officials (FT) of the European Union (of whom 11 were on probation), while of the remaining 386 staff, 255 were temporary agents (TA) (7 on probation) and 125 contract agents (CA) (70 on probation), as well as 6 special advisers (SA). In addition to the statutory members of staff, 62 seconded national experts (SNE) from IP National Offices, 81 trainees and 40 interims (agency staff) contributed to the activity of the Office.

Staff by category



Regarding the distribution of staff by Member State origin, by the end of 2016, all the Member States except Cyprus were represented. Compared with 2015, the percentage of Spanish and Italian nationals increased, mainly due to the recruitment of new contract agents.



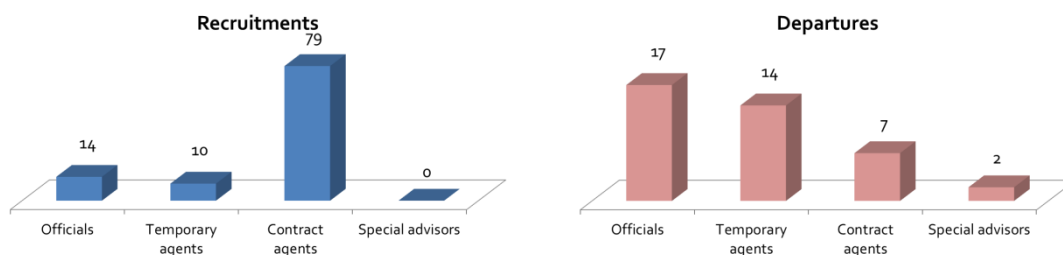
The majority of the Office's statutory staff⁴ is female (59.7 %) with a total of 506 women; compared with 342 men. The same ratio applies to officials working in the Office, most of them recruited in the AST function group. In the AD function group (FT and TA) there are more men (57.5%) than women (42.5%). Regarding the number of the Office's managers, the proportion of female managers has increased from 28% to 31%.

The average age of statutory staff was 45.5 at the end of 2016, which is slightly lower than in 2015, due to the recruitment of contract agents. The average age of FT, TA and CA staff was respectively 47.9, 43.8 and 39.6.

1.2.3 Recruitment and departures over the year

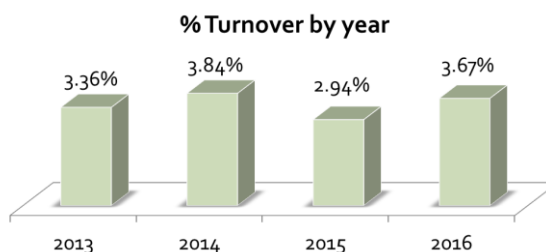
The recruitment and retention of highly qualified staff (talent retention) is linked to the first Line of Action of the SP2020: Build a dynamic and knowledgeable organisation. The number of staff recruited over the last few years has grown steadily to cope with the Office's past additional tasks and increasing workload. A total of 103 staff were recruited in 2016, the majority of whom were new CAs.

⁴ Special advisers not included in these figures.



The year 2016 also saw a total of 40 departures of staff from the Office. The majority were officials who went into retirement or invalidity (17); followed by temporary agents (14), most of whom reached the end of their contract; contract agents (7); and two special advisers.

Although higher than in 2015, the Office's turnover rate was in line with the historic average and remains very low.



1.2.4 Internal mobility

In 2016 there were 105 internal mobility positions published, of which 40 were covered by internal candidates (38 %).

The Office also offered 6 permanent positions to temporary and contract agents working at the Office (4 confirmed and 2 undergoing the administrative process), either by means of a transfer from another institution or, in the case of laureates of an EPSO competition, by establishing them as officials.

1.2.5 Working conditions

In order to support an improved work-life balance, the Office allows various working-time arrangements, as provided for in the Staff Regulations (part-time work, parental or family leave, and leave on personal grounds). The use of these arrangements has tended to increase in recent years. A flexitime scheme allows staff to organise their working time.

In 2016, a total of 480 staff members benefited from teleworking agreements: 346 occasional teleworking agreements with a limited number of days during the year and 134 regular teleworkers. The majority of teleworkers work on the Office's core activities, together with the Finance and Digital Transformation Departments. The majority of both regular and occasional teleworkers are female.

1.2.6 Job-screening benchmarking

The Framework Financial Regulation (FFR), on which the Office's Financial Regulation is based, sets out the obligation for the agencies to carry out a benchmarking exercise. This exercise generates figures on administrative support and coordination, operational and neutral job types in all organisational entities. The definition of each of these three categories was agreed in a working group composed of representatives of the Agencies and the European Commission.

The effective workforce distribution at the Office in 2016 in full-time equivalents (FTEs) for officials and temporary agents is shown in the table below. In summary, 65.3 % of the FTEs were dedicated to operational tasks, 20 % to administrative support and coordination (ASC), and 14.7 % to neutral tasks.

| | ADMINISTRATIVE SUPPORT & COORDINATION | | NEUTRAL | | OPERATIONAL |
|---|---------------------------------------|--------------|---------------------|------------------|-------------|
| | Administrative support | Coordination | Finance and control | Linguistic tasks | |
| FTEs | 126 | 26 | 95 | 16 | 481 |
| Percentage of total | 16.9% | 3.5% | 12.8% | 2.2% | 64.7% |
| SUBTOTAL FTEs | 152 | | 111 | | 481 |
| SUBTOTAL percentage of total | 20.4% | | 14.9% | | 64.7% |
| <i>Average % of job screening 2014 (replies from 23 agencies)</i> | 21.4% | | 13.9% | | 64.7% |

1.3 Assessment by management

Assessment by management has to meet the requirements established in the Financial Regulation concerning internal control of Budget implementation. It is based on the results of the control procedures performed by Office staff and also refers to aspects of the legality and regularity of the underlying transactions carried out. This chapter explains and provides the results of the various tools and control procedures put in place by the Office.

1.3.1 Office internal management bodies

The Management and Advisory Committee (MAC) is composed of the Executive Director, the Deputy Executive Director, the President of the Boards of Appeal, the Head of Cabinet, the Directors, the Chief Economist, as well as the Heads of Services of Internal Audit, the Corporate Governance Service and the Communication Service. The MAC meets on a regular basis to discuss and give advice on important issues concerning the operations of the Office.

The Enlarged Management and Advisory Committee (EMAC) is composed of the Executive Director, the Deputy Executive Director, the Head of Cabinet, the President of the Boards of Appeal, the Chairperson of the Boards of Appeal, the Directors, the Deputy Directors, all the Heads of Service and the Accounting Officer. Team leaders may also be invited to participate. The EMAC meets on a regular basis to look at the performance of Office activities, follow up on the Strategic Plan and review the achievement of the goals established in the annual Work Programme.

1.3.2 Office management systems

The Office has implemented several interrelated management systems to ensure the proper implementation and follow-up of the quality, performance and risks aspects of all its operations. These systems are managed by the Corporate Governance Service to support sound and effective management practices throughout the Office. Quality, Performance and Risk Officers in the various departments ensure adequate liaison with the CGS.

- The Performance Management System provides management with effective statistical and performance reports to support the decision-making process. Two main tools are used for this:
 - a Balanced Scorecard, which translates the Office's mission and strategy into a comprehensive set of performance measures that provide the framework for a strategic measurement and management system;
 - the Office's Service Charter, which defines what the users of our services can expect from us. It sets measurable standards in three areas: timeliness, accessibility and quality of decisions. It measures the Office's performance against the standards on a quarterly basis and the results are published on the EUIPO website.
- The Risk Management System is a continuous, proactive and systematic process of identifying, assessing, and managing risks in line with the accepted risk levels,

carried out at every level of the Office to provide reasonable assurance regarding the achievement of its objectives.

- The Quality Management System is a framework that systematically documents and monitors process effectiveness to facilitate and ensure continual improvement. It is applied to all activities and to everyone at the Office in accordance with all the requirements of the ISO 9001 standard. In 2016, this system was updated to the 2015 version of the standard, which focuses more on risks and stakeholder management.

The Office's commitment to information security started in 2004, with the first ISO 27001 certification; this was followed, in 2008, by the environmental management system certification (EMAS); in 2013 by quality management for all Office activities (ISO 9001); health and safety (OHSAS 18001); and universal accessibility (UNE 170001). In 2016, many efforts were made towards the integration of these five management systems in order to avoid repetition, to optimise and improve the alignment of objectives, planning and practices, streamline documentation, and integrate both internal and external audits, which will in turn lead to lower costs and fewer work interruptions. In 2016, the most important deliverable was the quarterly Integrated Management System Review, which included the management review of the five systems.

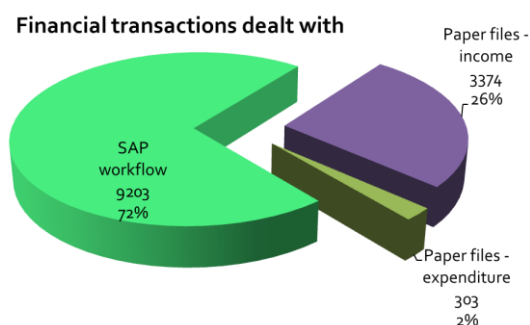
1.3.3 *Ex ante* verification

Ex ante verification is an essential element of the Office's internal control system. In line with the 'four-eyes' principle, the *ex ante* function verifies the legality and regularity of all financial transactions and ensures that all other tasks have been carried out correctly, in conformity with the requirements of the Office's Financial Regulation and its implementing rules, Staff Regulations and any other applicable legislation in force.

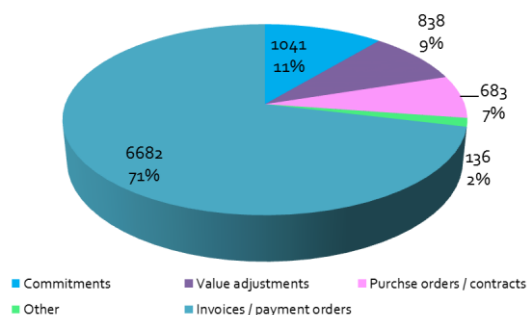
The Office has opted for a so-called decentralised model with counterweight. On the one hand, financial *ex ante* verification is carried out centrally within the Finance Department, focusing on the legality, regularity and compliance with the legal framework. On the other hand, the operational *ex ante* verification, including compliance with the principle of sound financial management is carried out by the responsible authorising officer when authorising an operation.

Financial transactions dealt with in 2016 by volume and %

During 2016, a total of 12 880 files were subject to *ex ante* verification; 44 exceptions were registered (see next chapter). The files included transactions processed in SAP and paper files that resulted in a payment via SAP.



Files verified directly using the SAP system



The Office internal service standard of financially verifying a file within 3 working days was largely complied with: the average time taken was 1.06 calendar days or 0.74 working days.

The files verified directly using the SAP system relate to Budget commitments, value adjustments (supplementary commitments and decommitments), purchase orders, invoices and payments.

Recovery orders, fee income and certain payments are dealt with using paper files. Other verification tasks dealt with include personnel decisions, monthly payroll, and delegations of authority, together with contracts and grant agreements.

1.3.4 Ex post onsite evaluation visits related to cooperation agreements

Ex post evaluation is foreseen in Article 27 of the Office's Financial Regulation for the purpose of improving decision-making. Four ex post onsite visits related to cooperation agreements have been conducted in 2014 and 2015 (Sweden, Spain, Benelux and Poland) during the pilot phase and additional three visits have been made in the context of the 2016 ex post evaluation program (Estonia, Italy and Ireland).

These visits are made with a view to contribute to the improvement of the participating offices' performance and provided an opportunity to identify ideas for improving procedures for EUIPO and the visited National Office and to assist the National Office to better understand the rules and procedures applicable to the aforementioned agreements. The main objectives of these visits consisted in:

- Perform an on-site inspection of the documents provided by the National Office in the end-of-year reports, which have been assessed, approved and paid for by EUIPO.
- Inspect the procedures in place concerning the documents in question.
- Inspect the results obtained and the effort made with regard to the aforementioned agreements.

Based on the experiences gathered, it can be considered that these visits have a very positive effect on the quality of the reporting received from the national offices visited and a better understanding of the financial aspects of the cooperation agreements.

1.3.5 Register of Exceptions

The Internal Control Standards for the Office, adopted by the Budget Committee as required by the Financial Regulation, call for the Office to implement a method to ensure that all instances of controls being overridden and all deviations from established processes and procedures are documented, justified and duly approved at the appropriate level before action is taken and logged centrally.

An exception is an instance of controls being overridden or a deviation from established procedures and processes. It includes any case where the established rules are not

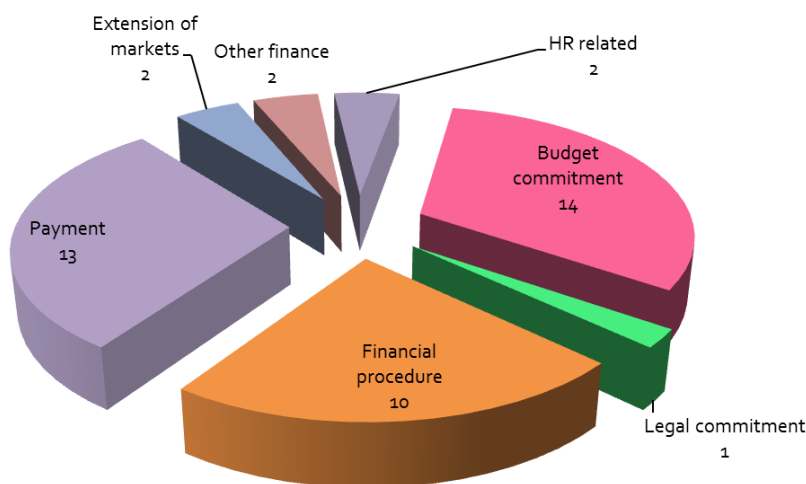
respected. 'Overriding of controls' means any action that goes against the results of previous controls. 'Deviations from processes or procedures' mean replacing one or more steps of a process or procedure with others or none at all.

The Register of Exceptions came into force on 1 October 2012 and the initial limitation to financial transactions was removed on 15 January 2014. Exceptions are notified and communicated so that weaknesses and areas for improvement can be identified and taken into account for the future. Exceptions are followed up and corrective and preventative measures implemented (such as coaching and training sessions, bilateral meetings, assistance in better planning of procurement procedures, to name but a few).

During 2016, 45 exceptions (out of a total of 12 880 files) were identified and notifications were sent to the relevant departments. Of these, 44 exceptions were registered and recorded, representing just over 0.34 % of the total number of files dealt with. The one exception that was not recorded was deemed a non-exception by the responsible authorising officer.

The number of exceptions registered has decreased significantly, from 165 in 2013 to 104 in 2014, 56 in 2015, and 43 in 2016. Of the 43 exceptions registered, the majority (31.8 %) were related to Budget commitments, 29.5 % to late payments and 22.7 % to incorrect financial procedures.

Number and type of exceptions in 2016



The remaining exceptions were linked to other issues, such as market extensions, HR-related issues and other categories that do not fall within any of the above.

1.3.6 Instructions in accordance with Article 52(3) of the Office's Financial Regulation

Article 52(3) of the Office's Financial Regulation states:

An authorising officer by delegation or subdelegation who considers that a decision, which is his or her responsibility to take, is irregular or contrary to the principle of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take that decision, that authorising officer shall not be held liable.

Pursuant to Article 46 of the Implementing Rules, 'any instructions confirmed in the circumstances described in Article 52(3) of the Financial Regulation shall be recorded by the authorising officer and mentioned in the consolidated annual activity report'.

No instructions falling under Article 52(3) of the Financial Regulation were given in 2016.

1.3.7 Authorising officer delegation embedded in the financial management system

The Office has established a clearly defined system for the delegation of the powers of the authorising officer to authorising officers by delegation and subdelegation. This system is based on the following elements:

- Decision of the Executive Director of the Office, which includes a comprehensive charter of the tasks and responsibilities of authorising officers by delegation and subdelegation;
- implementation of these delegations in the Office's financial management system SAP, which guarantees that only authorised persons can accept financial transactions in the electronic workflow.

1.3.8 Network of administrative and financial officers and training in financial matters

Authorising officers by delegation and subdelegation are supported by administrative and financial officers, who ensure proper knowledge transfer in financial matters and form a network to share best practice. In 2016, the network met on 12 occasions.

1.3.9 External resources management system (ERMS)

The ERMS is a system to support and promote optimal use of external resources in the Office and to provide valuable input for the Office's decision-making processes on sourcing.

The main objective of the ERMS is to establish regular and systematic documentation of information on the Office's externalised resources and its correct storage as part of the Office's knowledge bank, thereby ensuring its availability to promote continual improvement of the use of external resources. The ERMS assists decision-making regarding sourcing options and their impact, in particular, before the possible renewal of external contracts or the launch of a new procedure for external resources.

Use of the ERMS is compulsory for all contracts with private-sector companies, whether for goods, services, works, etc. for every contract over EUR 15 000. Contracts with non-private sector bodies, such as the Commission services, other EU bodies, National Offices, other national/international authorities, do not fall within the scope of the ERMS. However, it is recommended that the Office departments and services concerned also follow the ERMS methodology as far as possible for such contracts.

Strategic vendor management (SVM) was implemented during 2016 to manage those vendors that are most critical to the organisation and to improve customer and supplier performance. This is achieved by the aggregation and consolidation of critical vendor information, increased discipline in vendor communications and decisions, and executive-level visibility in key vendor relationships.

In summary, the previous year's trend of decreasing the number of framework contracts and vendors continued, based mainly on the rationalisation of the framework and direct contract structures of the Infrastructures and Buildings Department and of the Academy.

The ERMS is 100 % compliant with the EUIPO's contract structure: all framework and direct contracts have been registered and evaluated. The regular annual evaluation of framework and direct contracts shows overall compliance with contractual conditions and satisfactory delivery of services and goods. Based on the categorisation of vendors carried out with Office departments, 12 vendors (with 13 framework contracts) have been identified as being strategic, based on the total spending, strategic alignment, dependency on and risk associated with the vendor.

As from 2016, the ERMS is managed in a common knowledge repository. All documentation relating to any direct or framework contract, request for offers, offers, CV checks, milestones and deliverables, incidents, and meeting minutes, are stored in a dedicated subfolder for each department. Within each department subfolder there are further subfolders per vendor/framework contract.

A monthly market consumption report which follows up closely and regularly the market situation is provided to the Executive Director. This information is introduced on a monthly basis in the ERMS as an update in each department's overall file to assist departments in their planning and to create timely tender documentation. This monitoring contributed greatly to minimising the need for market extensions in the second half of 2016.

Nearly 75 % of the Office's contracts are assigned to the Infrastructures and Buildings and Digital Transformation Departments, while their share in terms of contract numbers represents only about two thirds of the 143 ongoing contracts in 2016.

The overall contracted amount in 2016 was EUR 44 million higher than in 2015, due mainly to the higher volumes of framework contracts — replacing previous ones — in the fields of general consultancy, travel agency services and linguistic consultancy.

2. Management Assurance

2.1 Review of the elements supporting assurance

The review of the elements supporting assurance was based on a systematic analysis of the evidence available, as outlined in this report, in particular in the following parts:

- Chapter 1: Management of resources;
- Annex 4.1: Audit, internal control standards, anti-fraud strategy;
- Annex 4.4: Management of resources — specific annexes;
- Annex 4.5: Final Annual Accounts for the year.

This approach provides sufficient guarantees for the completeness and reliability of the information reported.

In the light of the measures in place to ensure legality and regularity, in particular the performance, quality and risk management systems; *ex ante* verification; the *ex post* evaluations, the systematic registration and follow-up of exceptions as well as the quantitative and qualitative nature of the exceptions; the system for the delegation of the powers of the authorising officer embedded in the Office's financial management system; the network of administrative and financial officers; the ERMS; risk assessment and the opinions expressed in the final reports by internal and external auditors; it can be concluded that the Office's internal control systems are adequate and provide reasonable assurance, and that compliance with and implementation of the internal control standards are both satisfactory.

2.2 Reservations (if applicable)

Not applicable.

2.3 Overall conclusions on assurance

The Executive Director and his authorising officers by delegation give reasonable assurance that, overall, suitable controls are in place and working as intended; risks are being appropriately monitored and mitigated and necessary improvements and reinforcement are being implemented. As a result, there was no reason to introduce any reservation for the year 2016.

3. Declaration of Assurance

I, the undersigned, Executive Director of the Office,

In my capacity as Authorising Officer,

Declare that the information contained in this report gives a true and fair view.

State that I have reasonable assurance that the resources assigned to the activities described in this report have been used for their intended purpose and in accordance with the principles of **sound financial management**, and that the control procedures put in place give the necessary **guarantees** concerning the **legality and regularity** of the underlying transactions.

This reasonable assurance is **based on my own judgement** and on the information at my disposal, such as the results of **ex ante controls**, the work of the **Internal Audit Service** and the **lessons learnt from the reports of the Court of Auditors** for the years prior to the year of this declaration.

Confirm that I am not aware of anything not reported here that could harm the interests of the Office.

Alicante, 24 April 2017



António Campinos,
Executive Director

4. Annexes

4.1 Audit, control standards and anti-fraud strategy

4.1.1 Internal audit

The Office's internal audit service (IA) assists management by providing independent, objective assurance and consulting services designed to add value and improve the organisation's operations. It helps the organisation accomplish its objectives by applying a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, control, and governance processes. The service currently consists of a team of four auditors managed by the Internal Auditor, who reports to the Executive Director of the Office, to its governing bodies (Management Board/Budget Committee) and to the European Court of Auditors.

Approved audit plan

Audit activities were based on the 2016 Audit Plan, the first and the last versions of which were approved in December 2015 and June 2016 respectively. The June version of the 2016 Audit Plan included 11 audits, which were composed of ISO 27001 audits; audits on Internal Control Standards (ICS); audits resulting from the Offices' Corporate Risk Register and from the analysis of the audit universe; audits to cover aspects of financial management, workflows and control systems throughout the Office; as well as audit requests from departments, some of which were combined with audits related to risks or ICS.

For the majority of the areas audited, IA is able to provide reasonable assurance on the adequacy and effectiveness of the Office's overall framework relating to risk management, governance processes and the internal controls covered in the audits. However, there are some areas where further improvement is required.

Additional activities

In addition to the audit engagements specified in the 2016 Audit Plan, IA continued with the task of overseeing the implementation of the Office's anti-fraud strategy, which was initially adopted by the Budget Committee in November 2014, and the renewal of which was adopted by the Budget Committee in November 2016. This task concerns in particular the follow-up of action points, its maintenance and eventual renewal.

IA provided internal audit services to the Community Plant Variety Office and the Single Resolution Board and attended, as an observer, the meetings of the Information Security Forum (ISF), the European Cooperation Service Risk Management Group and the Declassification Committee.

Improvements in IA methodology, processes and systems

As announced in early 2016, IA implemented a series of improvements in the execution of

the 2016 Audit Plan. These improvements concerned:

- separating the auditing activity from the subsequent definition and follow-up of the Action Plans;
- introducing a classification scheme for both audit reports and audit findings, which would help to prioritise and to focus effort on the essential issues;
- reviewing issues and their applied corrective actions in line with an agreed deadline;
- limiting the dissemination of audit findings to a specific audience;
- an overall review of IA methodology.

Other changes that were also implemented during this exercise stemmed from the new financial provisions applicable to the Office (Regulation No CB-1-15) and the rules for the implementation of Regulation No CB-1-15 (Regulation No CB-2-15), according to which, for example, IA reports are now made available to the Management Board (in practice, the Management Board/Budget Committee).

Quality Assurance: IA formalised a periodic quality assurance self-assessment to evaluate its conformity with professional standards. The self-assessment is performed annually. An independent evaluation of the internal audit function, which the Institute of Internal Auditors' professional standards require at least every five years, will take place in 2017.

Continuing Education: IA members continued their training programme. The most important training activities were on the new ISO 9001:2015 standard, data protection rights, integration of management systems and language courses.

ISO 9001 internal assessment programme

In 2016, 10 ISO 9001 internal audits were performed, involving more than 91 staff and 29 auditors, and with an output of 88 findings, which have been recorded in the Office's Action Log. In line with the ISO 9001 standard and the procedure established at the Office, the continual improvement activities of the Quality Management System are recorded and followed up using this tool, where quality performance and risk officers (QPROs) document and track each finding along with its corresponding root cause analysis, corrective action and related plans.

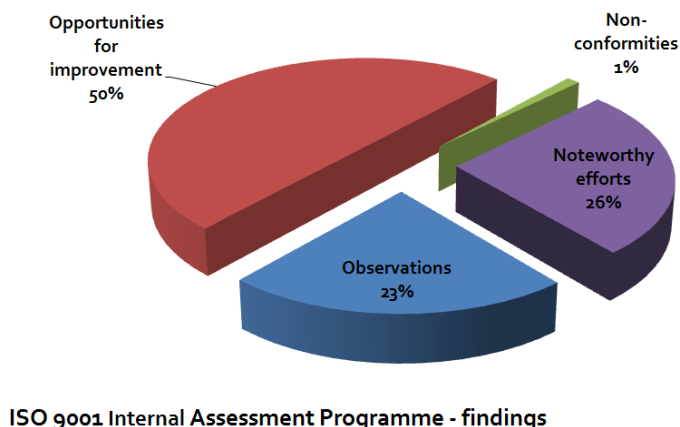
After the first three years of implementation of the new approach to the ISO 9001 internal audits, it can be observed that all areas maintained their positive attitude towards this audit process and all participated positively (QPROs, process owners and experts) in the exercise. The Corporate Governance Service (CGS) has implemented recommendations received from different sources, such as feedback from auditees and auditors. The main lessons learned from the 2016 ISO 9001 internal audits can be resumed as follows:

- As from 2017, CGS will simplify and expand the methodology applied in the ISO 9001 internal audits to the ISO 27001 audits. These certified ISO internal audits will be carried out by an internal pool of auditors coordinated by CGS.
- An EUIPO Audit Plan has been developed to coordinate planning with the internal audit service, ensuring that departments are not over audited and all processes/activities defined in the Office Management Systems are assessed within

a 3-year time frame aligned with the external audit cycle.

- Incorporate the risk-based approach: this Audit Plan has been developed after the evaluation of the corporate and the operational risk registers.

From the internal assessment undertaken in 2016, a total of 88 findings were issued and registered in the Office's Action Log. The documented findings showed the positive approach used by auditors when looking at internal processes. Most of the issues identified were categorised as observations (20), opportunities for improvement (44) and noteworthy efforts (23). During this exercise only one non-conformity was raised.



Follow-up of recommendations and action plans for internal audits

According to the Internal Audit methodology⁵ for evaluating the compliance level of implemented Action Plans, overall compliance⁶ reached 89.7 %, which is a very satisfactory result, above the target level of 80 %.

In terms of performance, this shows that the impact of audit recommendations has been high, as recommendations/Action Plans have been implemented with a high degree of compliance and within a reasonable period of time.

4.1.2 Compliance with and effectiveness of internal control standards

The ICS were adopted by the Office Budget Committee on 4 May 2011, and include 16 revised standards based on those adopted by the European Commission. They are designed to provide reasonable assurance regarding the achievement of objectives and are meant to provide:

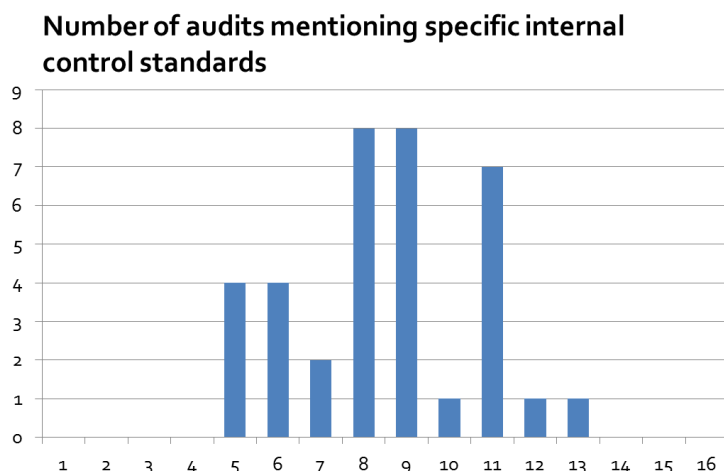
- reliability and integrity of information;
- compliance with policies, plans, procedures, laws, and regulations;
- safeguarding of assets;
- economical and efficient use of resources; and,
- accomplishment of established objectives and goals for operations or programmes.

Apart from the ICS explicitly addressed in specific audit engagements, the internal auditors

⁵ The methodology distinguishes between Action Plan implementations that are: fully compliant, partially compliant in an either initial or advanced status, non-compliant or no longer applicable.

⁶ Overall compliance is the percentage of Action Plans implemented (applying a weighting factor of 0.3 for initial implementation status, 0.7 for advanced implementation status and 1.0 for full implementation) in the total number of Action Plans closed, not counting 'not applicable' recommendations for accepted reasons.

examine applicable internal controls in each audit engagement, which allows the auditors to form a general opinion about their implementation.



Internal Audit can give reasonable assurance that internal controls checked in ICS audits and in the course of other audit engagements, in their majority, are properly managed. For some of them, improvements to their implementation have been proposed.

4.1.3 Anti-fraud strategy

The anti-fraud strategy (AFS) adopted in November 2014 was accompanied by an action plan specifying the different activities the Office would carry out to implement the AFS. All actions except three, which are ongoing, were successfully implemented.

The AFS was updated in order to reflect properly the EUTMR and the new Financial Regulation, and the text was revised to provide for continuity of the AFS and to separate the AFS from the nearly finalised action plan.

The Budget Committee adopted the revised AFS for 2017-2020.

The AFS will continue to be an essential tool for preventing, detecting and deterring fraud at the EUIPO, an Office commitment also reflected in Objective 2.3: 'Strengthen prevention and detection of fraud', of the SP2020.

Now, the task is to check that the actions executed and the procedures established have been well implemented and work as intended and to take action when areas for improvement are identified or additional actions are needed.

One of the objectives of the anti-fraud strategy is to enhance staff awareness and develop an anti-fraud culture among Office staff. For that purpose, a series of initiatives have been implemented, including an e-learning module entitled 'Anti-Fraud at the Office'. Staff awareness of the anti-fraud strategy is monitored using a BSC indicator.

4.1.4 European Court of Auditors

In its latest available report, for the year 2015, the Court of Auditors concluded that it had

obtained a reasonable basis for stating that ‘the Office’s annual accounts present fairly, in all material respects, its financial position as of 31 December 2015, and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the Accounting Rules adopted by the Commission’s Accounting Officer’ and that ‘the transactions underlying the annual accounts for the year ended 31 December 2014 are legal and regular in all material respects’.

However, the Court made a number of observations in its report on improvements for the future, which are reproduced below, together with the Office’s replies and the state of play at the end of February 2017.

1. The Office replied that specific internal steps were taken to reduce carry-overs across all titles of the Budget during the last quarter of the year, such as making a thorough analysis of all commitments above EUR 100 000 and mobilising staff to ensure payment of invoices until 31 December 2015. This enabled the Office to reduce the carry-overs in Title 2 from 21 % in 2014 to 16 % in 2015 and from 38 % in Title 3 in 2014 to 36 % in 2015. The Office informed the BC that it continued to introduce further measures to lower the high level of carry-overs in Title 3, which were mainly related to the structural characteristics of the cooperation activities with the National Offices (the majority should, therefore, be considered as planned carry-overs).

State of progress: The Office introduced further measures to lower the high level of carry-overs, which in 2016 amounted to 14.8 % in Title 2 (16 % in 2015) and 23 % in Title 3 (36 % in 2015) within the benchmarks established by the ECA. The main measures taken were close monitoring of the potential carry-overs and follow-up of the reception of invoices during the last quarter of the year. When it comes to the transactions related to Member States, the following measures were undertaken by the Office and the National Offices during 2016.

- In relation to TMview and DesignView ‘running costs’, the Office issued performance reports every three months. Upon verification by participating National Offices (NOs), the EUIPO proceeded with the evaluation and approval of the corresponding payments in 2016. In 2016, 20 NOs requested the payment of the running costs covering the first 9 months of 2016.
- Concerning bilateral agreements, as well as projects where the payment to the NOs consists entirely of reimbursement of Working Group costs during a particular year, 8 offices submitted interim execution reports by 30 October covering the period 1 January - 30 September of the same year. The Office subsequently proceeded with the evaluation and approval of the corresponding payments. In 2016, 18 NOs submitted an interim report, which amounted to 10 more than in 2015.
- Furthermore, for bilateral agreements, advance payments were accepted. For 2016, an advance payment of 20 % of the committed amount related to the bilateral agreement continued to be optional, although all participating NOs were encouraged to take advantage of this possibility. In 2016, the same number of offices as in 2015 requested such a payment (15 NOs). As from 2017, this advance payment has become mandatory and is made automatically to all participating offices following signature of the agreement.

As a consequence of all the measures introduced, the levels of carry-overs in all Budget titles at the year end of 2016 were below the threshold established by the ECA. This issue should, therefore, be considered as closed.

2. The Court stated that the procurement of services based on a **negotiated procedure** without publication of a contract notice limited competition to a single negotiating party and should therefore only be used in exceptional circumstances. The Office, following this procedure, in 2015 extended 6 framework contracts with a value of extended services of EUR 1.9 million (and in 2014, 12 framework contracts with a value of extended services of EUR 12.6 million). According to the ECA, the Office's use of this procedure cannot be considered as 'exceptional' **given the number, value and frequency of such contracts that did not fully comply with formal requirements**.

The Office confirmed that it had made frequent use of Article 134 RAP and was taking short-, mid- and long-term actions in order to improve the management and control of its procurement and contracting processes. These measures, which were widely described in the Budget Committee session of June 2016, include the proviso that the negotiated procedure without prior publication of a contract notice must only be used in duly justified cases.

State of progress: The Office has developed short-term measures to cope with this issue. These measures are based on the following principles:

- planning, launching, monitoring and reporting on the needed Call for Tender (CfT) in an improved manner;
- reduction in the consumption of irregularly extended contracts/markets as much as possible, limiting it to the necessary for ensuring the continuity of Office's operations;
- avoiding future extension of existing contracts/markets not fulfilling the criteria of regularity, unless the non-extension jeopardises the continuity of those operations;
- allowing for the extension of contracts/markets fulfilling the criteria for regularity in a restricted manner and when duly justified.

Moreover, the Office has developed a much more rigorous system of planning, monitoring, reporting and acting for its CfTs and stricter internal rules for prolonging/extending its contracts/markets for the future. The system contains in particular:

- formal compulsory rules, established by the Executive Director (ED) in the form of an Executive Director's Communication, related to the planning of CfTs and to the extensions of markets at the Office;
- centralised mechanisms for monitoring, control, reporting and escalation related to the consumption of markets and the duration of contracts and to the subsequent planning of CfTs;
- a forum (a specific session of the Management and Advisory Committee, MAC), chaired by the ED, where the launching of, in particular, critical CfTs will be discussed and deviations from the planning of these CfT will be discussed;

- enhanced awareness and training of EUIPO financial actors in CfT procedures.

The Office understands that these measures may lead the ECA to consider this issue as ongoing or closed.

3. The Court stated that the Office reimburses part or all of the gross salary of SNEs to their employers. According to the ECA, this deviates from the Commission's standard practice that SNEs' employers continue to pay their salaries. In 2015, these reimbursements amounted to EUR 1.9 million.

The Office replied that it understands there is no legal obligation to strictly align the EUIPO Decision on the use of SNEs with Commission Decision C(2008)6866 on the same issue. Therefore, considering the importance of the SNE scheme for cooperation and convergence activities within the European Union Intellectual Property Network, the Office proposes to continue to reimburse the full amount

State of progress: In this regard, Article 116 of Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (EUTMR) sets out that the Office's Management Board (MB) must adopt a decision laying down rules on the secondment of SNEs to the Office. On 31 May 2016, a decision was adopted by the Management Board of the Office in line with the EUTMR, acknowledging the existing practice. This was also included in the Office's reply in the ECA's report.

Following this, in May 2016, a draft decision was submitted for adoption during the Management Board meeting, proposing that the approach be confirmed. The Office **considers this observation closed**.

4. The Court referred to the fact that, as at 31 December 2015, nine Office staff members were seconded in the interest of the service to the EUIPO Boards of Appeal. However the EU Staff Regulations do not provide for such secondments.

The Office replied that it understands that the Staff Regulations do not give a clear answer about the administrative status that should apply to EUIPO officials and temporary agents appointed to the Boards of Appeal. Nevertheless, the Office took note of the ECA's observation and brought this issue to its Management Board on May 2016.

State of progress: The Office has taken the opportunity to analyse thoroughly the different types of administrative status available under the Staff Regulations applicable to the situation of staff members appointed to an independent body but within the same institution. This analysis was brought to the Management Board, who decided to acknowledge the existing practice in its meeting of 31 May 2016. Therefore, the Office considers this point to be closed.

Comments from previous years

When it comes to the state of progress of the previous years' comments, two comments related to expenditure on the Business Continuity were still considered as ongoing by the ECA. The Office provided the Budget Committee with the pertinent details on the amounts paid in the context of the amending budget 2016. Therefore, the Office understands that all points have been addressed and can be considered as closed. This should be confirmed in

the 2016 ECA report.

4.1.5 External audits of certified management systems

Every year the Office is externally audited on its certified management systems, namely, ISO 9001 (quality management), OHSAS 18001 (occupational health and safety), ISO 27001 (information security), EMAS (environmental management) and UNE 170001 (universal accessibility).

As defined in the integrated management systems manual, the Executive Director oversees all the certified management systems. The Management and Advisory Committee members (MAC) are responsible for the effectiveness of the processes implemented in their respective areas.

- The last EMAS external audit took place in June 2016. The audit's conclusion was that evolution of the environmental management system had been positive and was in line with continuous improvement and the relevant environmental aspects. The auditors highlighted that the Office had made a significant effort with regard to energy efficiency, waste management and internal communication on environmental awareness to all staff, with particular reference to the reduction of paper consumption and use of videoconferences to reduce business travel. Some opportunities for improvement were pointed out in areas, such as renewable energy and energy saving and performance indicators.
- In October 2016, the Office successfully completed the annual audit of all Office activities for ISO 9001, ISO 27001 and OHSAS. Only four non-conformities were observed and they concern areas where actions are already being taken. It was a key strategic achievement for ISO 9001 in particular, because the new 2015 version of the standard was planned to be implemented this year as part of the SP2020 project commitments. This was successfully done and can be considered as one of the first SP2020 achievements.
- More than 150 EUIPO staff were involved in the audit. The conclusions of the audit were positive overall, clearly illustrating the efforts and improvements that the Office had made during all these years. Auditors emphasised that they saw the Office's management systems as being more mature and that the Office was using those management systems to manage its work and priorities more efficiently. Some of the conclusions relate to how well the organisation has developed the new SP2020 by involving all its stakeholders in consultations to gather their input.
- The next audit is planned for April 2017 and will cover all 5 certified management systems: the objective is to align the periods and dates of external audits to make them more user-friendly and reduce their impact on staff involved.

4.2 EUIPO governing bodies

The governance structure of the EUIPO consists of a Management Board and a Budget Committee, each composed of one representative and one alternate from each Member State and the European Parliament and two from the European Commission. The EUIPO involves the EU National and Regional IP Offices, user associations and international organisations such as the World Intellectual Property Office (WIPO) and the European Patent Office (EPO) in its governing bodies.

During 2016, the two bodies met in May-June and November and decided on the following significant items.

The Management Board took the following decisions:

- to confirm the recommendation of the Office that the administrative status of Office officials appointed as Members, Chairpersons or the President of the Boards of Appeal will continue to be secondment by virtue of Article 37(a) first indent of the Staff Regulations and that the same status will also be applied to Office temporary agents appointed at the BoA;
- to adopt the decision laying down rules on the secondment of national experts to the EUIPO to replace Decision No ADM 10-10 Rev and Decision No ADM 12-106;
- to agree with the recommendation of the Office to allow Commission Decision C(2015)9720 on Article 55a of the Staff Regulations and Annex IVa thereto concerning part-time work to enter into force at the end of the 9-month period to be applied at the Office by analogy. The decision was taken by an absolute majority of the Members;
- to agree with the Office's recommendation to ask for a derogation from the application of Commission Decision C(2015)9151 on the implementation of teleworking in Commission Departments and to decide to empower the Executive Director to resubmit the draft rules for the Commission's agreement under Article 110 SR;
- to adopt an EUIPO Decision, based on a Commission model, laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f) of the Conditions of Employment of Other Servants of the European Union;
- to adopt an EUIPO Decision, based on a Commission model, on measures concerning leave on personal grounds for officials, and unpaid leave for temporary and contract staff of the European Union;
- to adopt an EUIPO Decision, based on a Commission model, laying down general implementing provisions regarding Article 45 of the Staff Regulations and Article 54 and Article 87(3) of the Conditions of Employment of Other Servants of the European Union;
- to agree with the recommendations of the Office aiming to improve the management of the procedure under Article 110 SR, notably by systematically derogating from Commission Decisions after notification if model implementing rules are under preparation and by making a more frequent use of the written procedure;
- to give a favourable opinion on the Guidelines for Examination in the European Union Intellectual Property Office;
- to determine the distribution key to be applied to the offsetting of costs within the meaning of Article 139(5) EUTMR, starting by distributing an initial 2 % of the total

amount to each of the Member States and then to distribute the remainder by giving the same weighting to each of the four indicators (25 % each). The decision was taken by an absolute majority of the Members;

- unanimous decision to revisit the distribution key after 3 years of effective application;
- favourable opinion on the Office's trade mark and design practice as reflected in the draft Guidelines, so that the Executive Director of the Office can formally adopt the Guidelines as required by Article 124(1)(l) EUTMR and Article 101(b) CDR;
- unanimous adoption of the Office's 2015 Annual Report and the 2015 Annual Report of the Observatory;
- decision to adopt the definition of European Cooperation projects and to authorise the launch of the proposed European Cooperation projects, by inviting the central industrial property offices of the Member States and the Benelux Office for Intellectual Property to participate in the projects;
- unanimous adoption of the multiannual Strategic Plan 2020 of the Office and the Amended Work Programme 2016;
- decision to adopt the Multiannual Staff Policy Plan;
- decision to adopt the Work Programme of the Office 2017 including the Observatory. The decision was taken by a two-thirds majority with 30 votes in favour and 1 abstention;
- favourable opinion on the contribution to the Budget of the European School of Alicante, based on the draft participation and financing agreements pursuant to Articles 28 and 25 of the Convention defining the Statute of the European Schools, respectively, following the signature of both agreements.

The Budget Committee took the following decisions:

- to give discharge to the Executive Director of the Office for the implementation of the Budget for the financial year 2014;
- to adopt the proposed decision to revise the mechanism for handling the reserve fund;
- to adopt the Supplementary and Amending Budget 2016 by nature for a total of EUR 421 272 023 and the corresponding revised Budget 2016;
- favourable opinion on the Office's revised Treasury Management Guidelines;
- to adopt the Budget for 2017 for a total amount of EUR 400 666 617. The decision was taken by a two-thirds majority of the Members;
- to adopt the revised anti-fraud strategy for the period 2017-2020. The decision was taken by an absolute majority of the Members;
- to approve the purchase of the stretch of road, *Avenida de Europa*, from the Alicante Town Council, at a price of EUR 250 000. The decision was taken by an absolute majority of the Members.

4.3 Establishment plan

| CUADRO DE EFECTIVOS STELLENPLAN ESTABLISHMENT PLAN TABLEAU DES EFFECTIFS TABELLA DELL'ORGANICO | | | | | Anexo 1 Anhang 1 Annex 1 Annexe 1 Allegato 1 |
|---|---|--|---|--|---|
| PRESUPUESTO HAUSHALT BUDGET BUDGET BILANCIO | 2015 | | 2016 | | |
| Categorías y grados Laufbahn- und Besoldungsgruppe Categories and grades Catégories et grades Categorie e gradi | Puestos permanentes Dauer planstellen Permanent posts Emplois permanents Posti permanenti | Puestos temporales Planstellen auf Zeit Temporary posts Emplois temporaires Posti temporanei | Puestos permanentes Dauer planstellen Permanent posts Emplois permanents Posti permanenti | Puestos temporales Planstellen auf Zeit Temporary posts Emplois temporaires Posti temporanei | |
| AD16 | - | 1 | - | 1 | |
| AD15 | - | 3 | - | 3 | |
| AD14 | 22 | 23 | 22 | 23 | |
| AD13 | 32 | 7 | 36 | 7 | |
| AD12 | 30 | 14 | 26 | 14 | |
| AD11 | 12 | 33 | 12 | 33 | |
| AD10 | 3 | 7 | 3 | 7 | |
| AD9 | 11 | 12 | 12 | 12 | |
| AD8 | 3 | 9 | 4 | 9 | |
| AD7 | - | 7 | 10 | 4 | |
| AD6 | 27 | - | 17 | - | |
| AD5 | - | - | - | - | |
| <i>Total Insgesamt Total Total Totale</i> | 140 | 116 | 142 | 113 | |
| AST11 | 27 | 7 | 29 | 7 | |
| AST10 | 32 | 7 | 31 | 7 | |
| AST9 | 38 | 22 | 43 | 22 | |
| AST8 | 70 | 20 | 64 | 20 | |
| AST7 | 41 | 17 | 45 | 17 | |
| AST6 | 100 | 43 | 94 | 49 | |
| AST5 | 33 | 66 | 33 | 60 | |
| AST4 | 3 | 22 | 3 | 22 | |
| AST3 | 26 | 6 | 26 | | |
| AST2 | - | - | - | - | |
| AST1 | - | - | - | - | |
| <i>Total Insgesamt Total Total Totale</i> | 370 | 210 | 368 | 204 | |
| <i>Total general Gesamtzahl Grand Total Total général Totale generale</i> | 510 | 326 | 510 | 317 | |

4.4 Management of resources — specific annexes

4.4.1 Waived recovery orders

According to Article 56 of the Implementing Rules for the Financial Regulation, recovery orders waived involving an amount equal to or greater than EUR 1 000 are to be annexed to this report.

| <u>Recovery orders waived 2016</u> | | | |
|------------------------------------|------------|------------|--|
| Doc. No. | Issue date | Amount | Reason |
| OR 3595 | 01/08/2012 | 1,635.53 € | Cancellation required by authorising service. It was considered that the costs involved in taking civil proceedings were not cost-effective. |
| OR 3650 | 13/08/2013 | 1,768.13 € | Cancellation required by authorising service. It was considered that the costs involved in taking civil proceedings were not cost-effective. |
| OR 3651 | 14/08/2013 | 1,228.73 € | Cancellation required by authorising service. It was considered that the costs involved in taking civil proceedings were not cost-effective. |
| OR 3665 | 23/08/2013 | 1,032.71 € | Cancellation required by authorising service. It was considered that the costs involved in taking civil proceedings were not cost-effective. |

| | |
|---------------------|--------------------------|
| <u>TOTAL</u> | <u>5,665.10 €</u> |
|---------------------|--------------------------|

4.4.2 Negotiated procedures according to Article 24 of the Office's Implementing Rules

Article 24 of the Office's Implementing Rules for the Financial Regulation, referring to the report on negotiated procedures, states that 'Authorising officers shall record, for each financial year, contracts concluded under the negotiated procedures referred to in Articles 134(1)(a) to (g) and 135(1)(a) to (d). If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer increases appreciably in relation to earlier years or if that proportion is distinctly higher than the average recorded for the Office, the authorising officer responsible shall report to the Office setting out any measures taken to reverse that trend.'

The following table shows the contracts concluded during the year, differentiated by procedure (for more information see Chapter 1.1.9 on procurement and grants).

| Summary of purchases used for procurement of goods and services in the year 2016 | | | | | | | | | |
|--|---|-------------------------------|---------------------|-------------------------------|---------------------|-------------------------------|----------------------|-------------------------------|----------------------|
| PROCEDURE | | PROPERTY TRANSACTIONS | | PURCHASE OF GOODS | | PURCHASE OF SERVICES | | TOTAL | |
| | | Number of contracts concluded | Value of contracts | Number of contracts concluded | Value of contracts | Number of contracts concluded | Value of contracts | Number of contracts concluded | Value of contracts |
| Method of award | Lowest priced tender | 2 | 19,149 | 0 | 0 | 0 | 0 | 2 | 19,149.28 |
| | Best value for money | 1 | 1,020,133 | 68 | 3,413,108 | 365 | 64,211,632 | 434 | 68,644,872.76 |
| | TOTAL | 3 | 1,039,282.54 | 68 | 3,413,107.68 | 365 | 64,211,631.82 | 436 | 68,664,022.04 |
| Negotiated procedure | 60 000 euro or less | 0 | 0 | 7 | 25,858 | 39 | 120,453 | 46 | 146,310.85 |
| | Above 60 000 euro | 3 | 306,399 | 0 | 0 | 13 | 625,804 | 16 | 932,202.27 |
| | Urgent need | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.00 |
| | Invitation to tender produced no results | 0 | 0 | 0 | 0 | 2 | 69,630 | 2 | 69,630.00 |
| | Additional contract tied by necessity to an original contract | 0 | 0 | 0 | 0 | 16 | 1,364,638 | 16 | 1,364,637.84 |
| | Other technical and/or legal reasons | 1 | 425 | 8 | 468,661 | 29 | 305,198 | 38 | 774,284.39 |
| | TOTAL | 4 | 306,823.70 | 15 | 494,519.32 | 99 | 2,485,722.33 | 118 | 3,287,065.35 |
| Frame work contracts (*) | Commission | 0 | 0.00 | 35 | 2,551,675.22 | 87 | 4,367,299.41 | 122 | 6,918,974.63 |
| | Other institutions/bodies | 0 | 0.00 | 0 | 0.00 | 1 | 21,774.50 | 1 | 21,774.50 |
| | TOTAL | 0 | 0.00 | 35 | 2,551,675.22 | 88 | 4,389,073.91 | 123 | 6,940,749.13 |
| | | | | | | | TOTAL | 677 | 78,891,836.52 |

(*) Only framework contracts that have been negotiated by institutions or organisations other than the Agency.

4.4.3 Statistics on payments

The table below shows the payment orders to third parties, in terms of number and volume for 2016 and 2015, including average payment time and late payments.

| TOTAL PAYMENT ORDERS (*) | | |
|--------------------------|-------------------|--------------|
| Year | Total Pmt. Orders | Total Amount |
| 2016 | 7,097 | 136,292,612 |
| 2015 | 6,748 | 153,855,737 |

| PAPER PAYMENT ORDERS (*) | | | In volume | | In Euros |
|--------------------------|-------------------|--------------|-----------|--------|----------|
| Year | Paper Pmt. Orders | Total Amount | % Paper | % WF | % Paper |
| 2016 | 298 | 645,573 | 4.20% | 95.80% | 0.47% |
| 2015 | 447 | 799,947 | 6.62% | 93.38% | 0.52% |

| WORKFLOW PAYMENT ORDERS AND E-INVOICES | | | | |
|--|----------------|--------------|---------------------------|------|
| Year | WF Pmt. Orders | Total Amount | Average Payment Time (**) | |
| 2016 | 6,799 | 135,647,039 | 10.25 | days |
| 2015 | 6,301 | 153,055,790 | 10.32 | days |

| Invoices Paid On Time | | | | |
|-----------------------|----------------|--------------|---------------------------|------|
| Year | WF Pmt. Orders | Total Amount | Average Payment Time (**) | |
| 2016 | 6,781 | 134,941,409 | 10.05 | days |
| | 99.74% | 99.48% | | |
| 2015 | 6,287 | 152,934,015 | 10.25 | days |
| | 99.78% | 99.92% | | |

| Invoices Paid Late | | | | |
|--------------------|----------------|--------------|---------------------------|-----------|
| Year | WF Pmt. Orders | Total Amount | Average Payment Time (**) | |
| 2016 | 18 | 705,630 | 33.50 | days (**) |
| | 0.26% | 0.52% | | |
| 2015 | 14 | 121,775 | 46.21 | days (**) |
| | 0.22% | 0.08% | | |

| Invoices with interest > 200 Euro | | | | |
|-----------------------------------|----------------|--------------|--------------------------|-----------------|
| Year | WF Pmt. Orders | Total Amount | Average Payment Time (*) | Total Interests |
| 2016 | 0 | 0 | n/a | 0 |
| 2015 | 1 | 63,348 | 56.00 | 327 |

(*) Salaries not included

(**) Average Payment Time = Payment date - Invoice Reception date

The average payment time does not factor in paper payment orders.

4.5 Final Annual Accounts for the year

All final Annual Accounts are published on the Office website. The final Annual Accounts for the reporting year can only be made available on 30 June of the following year, once the European Court of Auditors has issued its report.