

ΕΒΡΟΠΕΪΣΚΑ ΣΜΕΤΗΑ ΠΑΛΑΤΑ
TRIBUNAL DE CUENTAS EUROPEO
EVROPSKÝ ÚČETNÍ DVŮR
DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



CORTE DEI CONTI EUROPEA
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EUROPEISKA REVISIONSRÄTTEN

Report
on the annual accounts of the Community Plant Variety Office
for the financial year 2008

together with the Office's replies

CONTENTS

	Paragraph
Introduction	1 - 2
Statement of Assurance	3 - 12
Comments on the budgetary and financial management	13 - 16
Table	
The Office's replies	

INTRODUCTION

1. The Community Plant Variety Office (hereinafter the Office), located in Angers, was created by Council Regulation (EC) No 2100/94 of 27 July 1994¹. Its main task is to register and examine applications for the grant of Community industrial property rights for plant varieties and to ensure that the necessary technical examinations are carried out by the competent offices in the Member States².
2. The Office's 2008 budget amounted to 12,5 million euro compared with 13,4 million euro the previous year. The number of staff employed by the Office at the end of the year was 44 as compared with 44,5 the previous year.

STATEMENT OF ASSURANCE

3. Pursuant to the provisions of Article 248 of the Treaty the Court has audited the annual accounts³ of the Office, which comprise the "financial statements"⁴ and the "reports on implementation of the budget"⁵ for the financial year ended 31 December 2008 and the legality and regularity of the transactions underlying those accounts.

¹ OJ L 227, 1.9.1994, p. 27.

² The **Table** summarises the Office's competences and activities. It is presented for information purposes.

³ These accounts are accompanied by a report on the budgetary and financial management during the year which gives inter alia an account of the rate of implementation of the appropriations with summary information on the transfers of appropriations among the various budget items.

⁴ The financial statements include the balance sheet and the economic outturn account, the cash-flow table, the statement of changes in capital and the annex to the financial statements which includes the description of the significant accounting policies and other explanatory information.

⁵ The budget implementation reports comprise the budget outturn account and its annex.

4. This Statement is addressed to the Administrative Council of the Office in accordance with Article 111 of Council Regulation (EC) No 2100/94.

The Management's responsibility

5. As authorising officer, the President implements the revenue and expenditure of the budget in accordance with the financial rules of the Office under his own responsibility and within the limits of authorised appropriations⁶. The President is responsible for putting in place⁷ the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts⁸ that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

The Court's responsibility

6. The Court's responsibility is to provide, on the basis of its audit, a statement of assurance as to the reliability of the annual accounts of the Office and the legality and regularity of the transactions underlying them.

7. The Court conducted its audit in accordance with the IFAC and ISSAI⁹ International Auditing Standards and Codes of Ethics. Those standards require

⁶ Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 (OJ L 357, 31.12.2002, p. 80).

⁷ Article 38 of Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 (OJ L 357, 31.12.2002, p. 80).

⁸ The rules concerning the presentation of the accounts and accounting by the Agencies are laid down in chapter 1 of Title VII of Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 (OJ L 357, 31.12.2002, p. 87) as last amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 (OJ L 181, 10.07.2008, p. 23) and are integrated as such in the Financial Regulation of the Office.

⁹ International Federation of Accountants (IFAC) and International Standards of Supreme Audit Institutions (ISSAI).

that the Court complies with ethical requirements and plans and performs the audit to obtain reasonable assurance about whether the accounts are free from material misstatement and whether the underlying transactions are legal and regular.

8. The Court's audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and about the legality and regularity of the transactions underlying them. The procedures selected depend on its audit judgement including the assessment of the risks of material misstatement of the accounts or of illegal or irregular transactions, whether due to fraud or error. In making those risk assessments internal control relevant to the entity's preparation and presentation of accounts is considered in order to design audit procedures that are appropriate in the circumstances. The Court's audit also includes evaluating the appropriateness of accounting policies used and, the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the accounts.

9. The Court believes that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

Opinion on the reliability of the accounts

10. In the Court's opinion, the Office's Annual Accounts¹⁰ present fairly, in all material respects, its financial position as of 31 December 2008 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation.

¹⁰ The Final Annual Accounts were drawn up on 26 June 2009 and received by the Court on 7 July 2009. The Final Annual Accounts, consolidated with those of the Commission are published in the Official Journal of the European Union by 15 November of the following year. These can be found on the following website <http://eca.europa.eu> or <http://www.cpvo.europa.eu/main/en/home/about-the-cpvo/financing>.

Opinion on the legality and the regularity of the transactions underlying the accounts

11. In the Court's opinion, the transactions underlying the annual accounts of the Office for the financial year ended 31 December 2008 are, in all material respects, legal and regular.

12. The comments which follow do not call the Court's opinions into question.

COMMENTS ON THE BUDGETARY AND FINANCIAL MANAGEMENT

13. Administrative appropriations were committed in 2007, carried forward to 2008, de-committed and cancelled, then re-committed and finally carried forward to 2009¹¹. Considering the principle of annuality and the non-differentiated nature of administrative appropriations, the corresponding amounts should have been reinstated through an amending budget.

14. The Office's Accounting Officer did not validate the budgetary module of the new IT accounting system. Weaknesses in the system were identified during the 2008 closure of accounts process and required accounting adjustments. These weaknesses must be addressed in order to allow the validation of this module.

15. For two full cost grant agreements¹², indirect costs incurred by the contractors and exceeding the flate-rate ceiling of 7 % were considered eligible.

¹¹ Mainly covering renovation work of a building and a new accounting IT system (total value 248 000 euro).

¹² Total amount of 670 000 euro (50 % financed by the Office).

According to the contracts¹³, the Office should have asked for justification of the considerable amounts involved¹⁴.

16. For the provision of furniture¹⁵, the Office directly awarded the contract to a specific supplier, without being able to provide relevant documentation or evidence as to the award criteria, or the evaluation conducted amongst the different alternatives presented by a technical advisor selected by the Office for this purpose. This practice hampered the transparency of the procedure.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 8 October 2009.

For the Court of Auditors

Vítor Manuel da Silva Caldeira
President

¹³ Article I.9 of the special conditions stipulates that overhead costs are eligible provided they can be supported by accounting evidence.

¹⁴ In one case the overall amount for indirect costs paid over the threshold was more than 40 000 euro).

¹⁵ Negotiated procedure for the provision of office furniture for the new Office's premises (80 000 euro).

Table- Community Plant Variety Office (Angers)

Areas of Community competence deriving from the Treaty	Competences of the Office as defined in Council Regulation (EC) No 2100/94		Governance	Resources made available to the Office in 2008 (Data for 2007)	Products and services supplied in 2008 (Data for 2007)
<p><u>Free movement of goods</u></p> <p>Prohibitions or restrictions justified on grounds of the protection of industrial and commercial property shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Member States.</p> <p><i>(Extract from Article 30 of the Treaty)</i></p>	<p><u>Objectives</u></p> <p>- To apply the system of Community plant variety rights as the sole and exclusive form of Community industrial property rights for plant varieties.</p>	<p><u>Tasks</u></p> <p>- To decide whether to refuse or grant applications for Community plant variety rights.</p> <p>- To decide on objections.</p> <p>- To decide on appeals.</p> <p>- To decide on the revocation or cancellation of a Community plant variety right.</p>	<p><u>1 - The President</u> Directs the Office. He is appointed by the Council from a list of candidates proposed by the Commission after obtaining the opinion of the Administrative Council.</p> <p><u>2 - The Administrative Council</u> Oversees the Office's work programme and draws up rules governing the Office's working methods. It is composed of one representative of each Member State and one representative of the Commission, plus their alternates.</p> <p><u>3 -</u> Decisions regarding the grant of Community plant variety rights are adopted by <u>Committees</u> composed of three members of staff of the Office and by <u>the Board of Appeal</u> in appeal proceedings.</p> <p><u>4 - Control of the legality of the Office's acts</u> Review by the Commission of the legality of the acts of the Office's President in respect of which Community law does not provide for any control on legality by another body and of the acts of the Administrative Council relating to the Office's budget.</p> <p><u>5 - External audit</u> Court of Auditors.</p> <p><u>6 - Discharge authority</u> Administrative Council.</p>	<p><u>Budget</u></p> <p>12,5 (13,4) million euro</p> <p><u>Staff numbers as 31 December 2008</u></p> <p>Number of posts in establishment plan: 43 (42)</p> <p>Posts occupied: 43 (42)</p> <p>+ 1 (2,5) other posts (national experts on secondment, local staff, employment agency staff)</p> <p>Total staff: 44 (44,5)</p> <p>Assigned to the following duties:</p> <p>Operational: 17 Administrative: 21 Mixed: 6</p>	<p>Applications received: 3 012 (2 977)</p> <p>Rights granted: 2 162 (2 616)</p> <p>Community rights in force at 31 December 2008: 15 599 (14 598)</p>

Source: Information supplied by the Office.

THE OFFICE'S REPLIES

13. Due to unexpected delays, the works could not be completed within the lifespan of their budgetary commitments. For the Office to honour its legal obligations without distorting artificially the budget accounts, the outstanding amounts were therefore recommitted on the 2008 rather than on the 2009 budget. By doing so, in the opinion of the Office, budget rules were not breached.

14. The Accounting Officer has ensured that the weaknesses identified during the closure were corrected by the software supplier and, on the basis of extensive testing, has fully validated the budgetary module of the new IT accounting software. The validation was sent to the Court on 25 June 2009.

15. The grant agreements provide that audits may take place until 5 years after the payment of the balance and that if an audit establishes overpaid amounts these shall be claimed back. In view of the remarks of the Court the Office will organise such an audit in the coming months.

16. The Office would, of course, have followed a competitive procedure if this had not been made impossible by the exclusive distribution system for the type of furniture chosen. For this reason and in line with article 126.1b of the implementing rules of the financial regulation the Office considered the negotiated procedure fully justified. This justification was duly documented.