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|  | **European Schools**  Office of the Secretary-General  General Secretariat |

**Ref.: 2016-12-D-6-en-1**

**Orig.: EN**

**Contribution/Participation Agreement between the European Schools and "the EUIPO”.**

**Board of Governors of the European Schools**

Meeting on 7-9 December 2016 – Brussels

INTRODUCTION

As shown in Annexes I, II and III of the present document, the European Union Intellectual Property Office, referred to as "EUIPO", has an interest in the operation of the European School of Alicante, which provides schooling for the children of their staff as Category I pupils.

As an expression of this interest, the EUIPO is willing to directly contribute to the budget of the School and therefore conclude a Contribution Agreement, as well as signing a Participation Agreement within the meaning of Article 28 of the Convention defining the Statute of the European Schools.

Article 28 stipulates that: “The Board of Governors, acting unanimously, may conclude participation Agreements concerning an existing School or one to be established in accordance with Article 2 with any organizations governed by public law which, by reason of their location, have an interest in the operation of the Schools. By concluding such an Agreement, any such organization may then have a set and a vote on the Board of Governors for all matters regarding the School in question if its financial contribution is such as to finance the bulk of the School's budget. It may also obtain a seat and a vote on the Administrative Board of the School in question”.

**PROPOSITIONS**

As a result, the Board of Governors is requested:

1. to give a mandate to the Secretary-General to sign a Contribution Agreement concerning the financing of the European School of Alicante  with the EUIPO represented by its Executive Director, Mr António Campinos, and the European Commission represented for the purpose of the present Agreement by its Vice-President, Ms Kristalina Georgieva.
2. to give a mandate to the Secretary-General to sign a Participation Agreement, based on Article 28 of the Convention defining the Statute of the European Schools of 21 June 1994,  with the EUIPO represented by its Executive Director, Mr António Campinos.

**ANNEX I**

JOINT DECLARATION

of

the European Commission

and

the European Union Intellectual Property Office (EUIPO)

Whereas the children of the EUIPO have been entitled by a decision of the Board of Governors of the European Schools to attend, as pupils of Category I, the European School of Alicante (ESA) under the same conditions that the children of other EU officials, being the purpose of the European Schools, according to Article 1 of the Convention defining the Statute of the European Schools of 21 June 1994 (the Convention), to educate together children of the staff of the European Union,

Whereas the ESA represent a fundamental role in the education of staff children and contribute to the integration and retention of their staff,

Whereas EUIPO believes that it is appropriate for them to contribute to the funding of the ESA,

Whereas pursuant to the Convention and in particular article 28 thereof, the Board of Governors of the European Schools, acting unanimously, may conclude Participation Agreements concerning an existing School with any organisations governed by public law, which have an interest in the operation of the Schools,

Whereas pursuant to the above mentioned article 28, the EUIPO may have a seat and a vote on the Board of Governors for all matters regarding the ESA and a seat and a vote on the Administrative Board of that School, if its financial contribution is such as to finance the bulk of the ESA's budget,

Whereas any decision of the Board of the Governors relating to the closure of a School shall require a favourable vote by the Member of the Commission according to article 9(1)(b) of the Convention,

Whereas the criteria to be taken into consideration for the setting up, closure or maintenance of European Schools, approved by decision of the Board of Governors in October 2000 and revised by Decision of the Board of Governors in April 2015, are detailed in Doc. 2014-12-D-5-en-3,

Whereas EUIPO requests to be associated within the relevant decision-making bodies, in case of any decision of closure of ESA,

In this context,

- the European Commission and the EUIPO agree that the European Commission will propose to the Board of Governors the conclusion of a temporary financing agreement and a temporary participation agreement, with the EUIPO,

- the European Commission engages to discuss and to consult EUIPO in writing in case of any decision submitted to the Board of Governors of the European Schools related to the closure of the ESA pursuant to the provisions laid down in article 9(1)( b) of the Convention, and the relevant decisions of the Board of Governors, in particular document 2014-12-D-5-en-3. In order to take into consideration the interest of EUIPO, the European Commission engages to support, within the European Schools decision-making bodies, the inclusion of a representative appointed by the EUIPO as observer in its delegation in the working group referred to in document 2014-12-D-5-en-3 ( in annex).

Ms Kristalina Georgieva Mr António Campinos

Vice-President of the European Commission Executive Director

ANNEX II

**Agreement concerning the financing of the European School of Alicante**

The European Union Intellectual Property Office (hereinafter the ‘EUIPO’), represented by its Executive Director, Mr António Campinos,

and

the European Commission (hereinafter the ‘Commission’), represented for the purpose of the present Agreement by its Vice-President, Ms Kristalina Georgieva,

and

the European Schools, represented by Mr Giancarlo Marcheggiano, the Secretary-General of the European Schools

Hereinafter collectively referred to as the ‘Parties’,

Whereas Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark, as amended by Regulation (EU) No 2015/2424 of the European Parliament and of the Council of 16 December 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 Harmonization in the Internal Market (Trade Marks and Designs), hereinafter the ‘EUTMR’, foresees in its Article 115 that the EUIPO shall have legal personality,

Whereas the EUIPO is a fully self-financed decentralised Agency of the European Union, not subsidised through the European Union budget;

Whereas Article 139(2) EUTMR foresees that the revenue and expenditure shown in the budget shall be in balance;

Whereas Article 139(10) EUTMR stipulates that EUIPO shall provide for a reserve fund covering one year of its operational expenditure to ensure the continuity of its operations and the execution of its tasks;

Whereas the Decision of the Budget Committee of the EUIPO No BC-16-06 sets the rules for management of the reserve fund, including its allocation;

Whereas the European School of Alicante (hereinafter, the ‘ESA’), attended by children of staff of the EUIPO as pupils of Category 1, plays a fundamental role in the education of EUIPO staff children, contributing to attract and retain the highly qualified staff employed by EUIPO;

Whereas pursuant to the Convention defining the Statute of the European Schools of 21 June 1994[[1]](#footnote-1) (hereinafter the ‘Convention’), and in particular Article 25 thereof, the European Commission pays, in the name of the European Union, a complementary contribution to the ESA;

Whereas the Commission and EUIPO also have concluded a joint declaration, related to the funding of ESA and the mutual cooperation in case of the application of the provisions laid down in Article 9(1)(b) of the Convention and the relevant criteria in case of closure of a school;

Whereas the Management Board and the Budget Committee of the EUIPO, at their joint meeting on [16 November 2016], have mandated the Executive Director to conclude an agreement with the Commission and the European Schools foreseeing the condition for the EUIPO’s payment of a prorata of the complementary contribution owed by the European Union for the functioning of the ESA in accordance with Article 25(2) of the Convention (hereinafter the ‘Financing Agreement’), as well as an agreement on the participation of EUIPO to the Board of Governors of the European Schools and to the Administrative Board of the ESA in accordance with Article 28 of the Convention (hereinafter the ‘Participation Agreement’);

Whereas the conclusion, validity and execution of the Financing Agreement and the Participation Agreement are conditional on one another;

The Parties have agreed as follows:

Article 1 - Scope

Without prejudice to the obligations falling on the Commission in accordance with Article 25(2) of the Convention, the present Agreement concerns the calculation of the complementary contribution to be paid to the ESA by EUIPO.

Article 2 - Designation of a central contact person

By exchange of notes between the Parties, each of them shall designate a central contact person for all questions related to the present Agreement. The designation shall be made by reference to the function occupied by the person concerned. The Parties may amend its designation at any time at its sole discretion and shall immediately inform the other Party.

Article 3 - Establishment of the amount to be paid

1. The basis for the calculation of the contribution by the EUIPO to the ESA in the year N is the complementary contribution (hereinafter, the ‘complementary contribution’) to this School.

The contribution by the EUIPO to the ESA shall correspond to the following calculation:

2. In case the safeguard clause laid down in Article 5 has been activated, the complementary contribution to be paid by the EUIPO shall be calculated accordingly.

3. If in the event of unavoidable, exceptional or unforeseen circumstances the complementary contribution to the ESA changes during the year of reference following the adoption of amending budgets by the Board of Governors, the contribution of the EUIPO and the Commission will be accordingly adapted.

**Article 4 – Cooperation and communication**

The Parties agree to inform one another at the earliest possible moment of any matters which could affect the proper implementation of this agreement.

The Parties shall have regular contacts, at least once a year, in order to discuss the implementation of the present Agreement.

By the end of the year N-2, the Administrative Board of ESA shall communicate the estimated amount of the complementary contribution to the Parties.

By the end of September of the year N-1, the Commission shall communicate to EUIPO and to the ESA the amount of the EUIPO contribution, as calculated according to the method laid down in article 3. The final amount, depending on the complementary contribution adopted by the EU Budgetary Authority, will be communicated by the end of the year N-1.

Article 5 – Safeguard clause

1. Should, exceptionally, the estimate of the EUIPO budget for the year N reveal that the reserve fund shall be used to balance Office’s budget and/or that the allocation to the reserve fund cannot be properly ensured, the EUIPO contribution to the ESA shall, by derogation from Article 3, be fully or partly decreased, up to the level necessary to avoid that any of the above situations arise. If such situation occurs, the EUIPO shall inform the Parties accordingly as soon as possible and at the latest by 31 January of the year N-1 and shall specify the amount of the decreased quota to be applied in the year N. Should the decreased quota be less than 50% of the amount to be paid, the conditions of the Participation Agreement shall be suspended for year N unless the Parties agree otherwise and without prejudice to paragraph 2.

2. If, following the activation of the safeguard clause, the EUIPO budgetary situation in the next year allows the Office to pay its normal contribution for the year N+1 as well as (part of) the unpaid contribution for the year N, the payment of the partly or fully decreased EUIPO contribution to the ESA shall be seen as (partially) postponed from the year N to the year N+1. EUIPO will inform promptly the ESA and the Commission accordingly (in principle before 31 January of the year N) and the corresponding part of it shall be reimbursed by EUIPO to the ESA. The amount paid in year N by the Commission in accordance with Article 25(2) of the Convention will be reimbursed by ESA to the Commission accordingly. Should the sum of decreased quota for year N resulting from the activation of the safeguard clause in year N-1 and the amount the Office will reimburse in year N+1 for year N be more than 50% of the normal amount to be paid, the conditions of the Participation Agreement shall be resumed for year N.

3.Unpaid contributions (or parts thereof) may be taken into account by EUIPO with a view to applying Article 139(8) EUTMR where a substantive surplus is generated over five consecutive years .

Article 6 - Direct payment to the School

The contribution to be paid by EUIPO to the ESA, as calculated according to the rule laid down in Article 3, will be transferred to the following bank account designated by the ESA:

IBAN: ………….

BIC: …………

The payments will be made in three instalments:

* by 15 January of the budgetary year N, the first instalment corresponding to 45% of the total amount,
* by 15 July of the budgetary year N, the second instalment corresponding to 40% of the total amount,
* - by 15 November of the budgetary year N, the remaining amount as adapted, if necessary, following the adoption of amending budgets affecting the ESA.

Article 7 - Communication of errors and anomalies

The Parties shall promptly notify any errors and/or anomalies concerning the data necessary for the implementation of the present Agreement through their respective contact persons. In reply to this notification the central contact person concerned shall indicate the reason for the error or anomaly as well as the proposed solution by the Party he or she represents and the date by which this solution will be implemented.

If this information cannot be provided promptly, the complaining Party will be kept informed about the timetable for the measures to be taken.

Article 8 - Dispute settlement

In the event of a dispute between the Parties to the present Agreement regarding its interpretation or implementation, the following applies:

a) The Parties shall first attempt to reach an amicable agreement in good faith, first on the level of the services, and then, if that is not possible, on the level of the Executive Director of the EUIPO, the Director-General of DG HR of the Commission and the Secretary-General of the European Schools. 45 calendar days shall be allowed for each stage of this procedure, from the date when one Party notifies the other of its request for the opening of this procedure.

b) In case the dispute cannot be solved amicably, by the means described in the preceding paragraph, the Parties shall bring it before the Court of Justice of the European Union.

Article 9 - Data protection

The Parties to the present Agreement ensure that personal data received from the ESA are processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council or, where applicable, the national law implementing Directive95/46/EC of the European Parliament and of the Council.

Article 10 – Transitional provision

1. An ad-hoc instalment corresponding to the period September 2017 – December 2017, calculated proportionally to the number of months covered (4 out of 12) on the basis of the annual payment calculated following article 3, will be paid in October 2017, notwithstanding the application of Article 3.3.

2. If the present Agreement is not renewed in accordance with Article 11(3), as ad-hoc instalment corresponding to the period January 2020 – August 2020, calculated proportionally to the number of months covered (8 out of 12) on the basis of the annual payment calculated following article 3, will be paid in February 2020, notwithstanding the application of Article 3.3.

Article 11 - Entry into force and duration

1. The present Agreement shall enter into force at the beginning of the school year 2017/2018.

2. The present Agreement is concluded for a period of three years and shall terminate by the end of school year 2019/2020. It may be renewed.

3. One year before its termination, the Parties will evaluate the implementation of the present agreement in order to assess the possibility to renew it.

4. Either Party may terminate the present Agreement by giving notice to the other Parties at the latest by 15 January of the year N. The Agreement will then cease to apply as from the beginning of the school year N+1/N+2.

Mr António Campinos, Executive Director of the EUIPO [Signature]

Done at

Date :

Mr Giancarlo Marcheggiano, Secretary-General of the European Schools [Signature]

Done at

Date:

Ms Kristalina Georgieva, Vice-President of the Commission [Signature]

Done at

Date:

**ANNEX III**

**Participation Agreement**

**based on Article 28 of the Convention defining the Statute of the European Schools of 21 June 1994**

**( hereinafter ‘the Convention’ )**

BETWEEN THE UNDERSIGNED:

The European Schools, whose seat is located at Rue Joseph II, 30, B-1049 Brussels, represented by the Board of Governors, itself represented, with a view to the signing of this participation agreement, by Mr Giancarlo Marcheggiano, Secretary-General (hereinafter ‘the European Schools’);

and

The European Union Intellectual Property Office, whose seat is located at Avenida de Europa 4, E-03008 Alicante, represented by Mr António CAMPINOS, Executive Director (hereinafter the ‘EUIPO’);

**PREAMBLE**

Whereas Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark, as amended by Regulation (EU) No 2015/2424 of the European Parliament and of the Council of 16 December 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 Harmonization in the Internal Market (Trade Marks and Designs), hereinafter the ‘EUTMR’, foresees in its Article 115 that the EUIPO shall have legal personality;

Whereas at its meeting of 24 and 25 October 2000, the Board of Governors of the European Schools decided on the opening of a School in Alicante, the main beneficiaries of which would be children of staff of the EUIPO, so-called Category I pupils;

Whereas the European School of Alicante, (hereinafter the ‘ESA’) plays a fundamental role in the education of EUIPO staff children, contributing to attract and retain the highly qualified staff employed by EUIPO;

Whereas this fundamental role played by the ESA and the EUIPO payment of the complementary contribution to the ESA entails that EUIPO shall benefit from the rights granted to the organisations referred to in Article 28 of the Convention;

Whereas the conditions and the calculation of the amount of the contribution to the budget of the ESA have been agreed in a tripartite agreement, hereinafter Financing Agreement, signed between the European Commission, the European Schools and the EUIPO;

Whereas the European Commission and EUIPO also have concluded a joint declaration, related to the funding of ESA and the mutual cooperation in case of the application of the provisions laid down in Article 9(1)(b) of the Convention and the relevant criteria in case of closure of a school;

Whereas the Management Board and the Budget Committee of EUIPO, at their joint meeting on [16 November 2016], have mandated the Executive Director to conclude the Financing Agreement with the European Commission and the European Schools foreseeing the condition for the EUIPO’s payment of the complementary contribution owed by the European Union for the functioning of the ESA in accordance with Article 25(2) of the Convention, as well as an agreement on the participation of EUIPO to the Board of Governors of the European Schools and to the Administrative Board of the ESA in accordance with Article 28 of the Convention (hereinafter the ‘Participation Agreement’);

Whereas the decision of the Board of Governors of [XXX] 2016, adopted unanimously by its members, giving a mandate to the Secretary-General for conclusion of the aforementioned tripartite agreement and of the present Participation Agreement;

Whereas the conclusion, validity and execution of this Participation Agreement and the Financing Agreement are conditional on one another:

**THE FOLLOWING HAS BEEN AGREED:**

***Article 1***

Throughout the period of execution of the Financing Agreement, the EUIPO shall obtain a seat and a vote on the Board of Governors for all matters regarding the ESA and a seat and a vote on the Administrative Board of that School.

The EUIPO above mentioned rights shall be suspended in the case provided for in Article 5.2 of the Financing Agreement

***Article 2***

In the event of disagreement between the Parties to this agreement as to its interpretation or implementation, the following shall apply:

1. The Parties will first endeavour to reach in good faith an amicable settlement, initially at the level of the departments and subsequently, should that not prove possible, at the level of the Executive Director of the EUIPO and of the Secretary-General of the European Schools. Each phase of this procedure shall not exceed 45 days, starting from the date on which one party notifies the other of its request to initiate the procedure.
2. In case the dispute cannot be solved amicably, by the means described in the preceding paragraph, the Parties shall bring it before the Court of Justice of the European Union.

***Article 3***

This agreement shall enter into force at the beginning of the school year 2017/2018.

This agreement will end on the same day as the Financing Agreement.

*Done in as many original copies as there are Parties, each acknowledging that it has obtained its copy*

Mr António Campinos, Executive Director of the EUIPO [Signature]

Done at

Date :

Mr Giancarlo Marcheggiano, Secretary-General of the European Schools [Signature]

Done at

Date:

1. *Official Journal L 212 , 17/08/1994 P. 0003 - 0014* [↑](#footnote-ref-1)