

DECISION No EX-21-5 of the Executive Director of the Office of 21 July 2021 concerning methods of payment of fees and charges and determining the insignificant amount of fees and charges

The Executive Director of the European Union Intellectual Property Office (the Office),

Having regard to Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark⁽¹⁾ (EUTMR),

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as amended⁽²⁾ (CDR), and to Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs, as amended⁽³⁾ (CDIR),

Having regard to Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office in respect of the registration of Community designs, as amended⁽⁴⁾ (CDFR),

Having regard to Decision No BC-17-11 of the Budget Committee, taken by written procedure, by which it gives its consent to the establishment of specific methods of payment, other than those made by payment or transfer to a bank account held by the Office, and on the amount below which an excessive sum paid to cover a fee or a charge will not be refunded,

Whereas:

- (1) Pursuant to Article 157(4)(a) EUTMR and Article 97 CDR, the Executive Director must take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office.
- (2) Pursuant to Article 178(1) EUTMR and Article 3(1) CDFR, the Executive Director will lay down the amount to be charged for any services rendered by the Office other than those set out in Annex I to the EUTMR and in the Annex to the CDFR.
- (3) Pursuant to Article 179(1) EUTMR, with the consent of the Budget Committee, and to Article 180(2) EUTMR and Articles 5(2) and 7(2) CDFR, the Executive Director may establish specific methods of payment, other than those made by payment or transfer to a bank account held by the Office, and will establish the date on which such payments are to be considered to have been made.

⁽¹⁾ OJ L 154, 16.6.2017, p. 1.

⁽²⁾ OJ L 386, 29.12.2006, p. 14.

⁽³⁾ OJ L 193, 25.7.2007, p. 13.

⁽⁴⁾ OJ L 193, 25.7.2007, p. 16.

- (4) Pursuant to Article 181(4) EUTMR, with the consent of the Budget Committee, and to Article 9(1) CDFR, the Executive Director may determine the insignificant amount below which an excessive sum paid to cover a fee or a charge will not be refunded, if the party concerned has not expressly requested a refund.
- (5) The rules concerning the creation of a system of current accounts and the rules concerning the use of credit or debit cards for electronic payments are already in place in the form of public decisions and communications, which have been amended and updated over the years.
- (6) For ease of reference and for legal certainty, it is deemed fitting to unify all of the rules and texts relating to methods of payment of fees and charges and insignificant amounts and charges, and to repeal any outdated sources.
- (7) It is necessary to adapt all the corresponding provisions in view of the recent legislative changes to the EUTMR, including updating legal references and terminology.
- (8) It is appropriate to revise the rules concerning current accounts and credit and debit cards so as to take account of practical experience and technological advances and with a view to further facilitating the use of these methods of payment.
- (9) Under the e-business initiative, rules must continue to allow users to settle fee payments in an easy, inexpensive and non-bureaucratic manner while also promoting alternative methods of payment to streamline filing procedures with the Office via the User Area of the Office's website.
- (10) It is pertinent to specify that, in limited and well-defined circumstances, use of a current account may be made for paying fees and charges for applications or requests made by persons other than the current account holder.
- (11) It is essential to maintain that the holders of current accounts should not be placed in a less favourable position than those paying by other means as concerns the point in time when the current account is to be debited.
- (12) It is appropriate to allow authorised persons within the meaning of Article 53(1) EUTMR or Article 13(1) CDR to hold a current account for the purposes of renewing EU trade marks or registered Community designs (RCDs).
- (13) It is necessary to establish the conditions for, and the consequences of, using current accounts or credit and debit cards as methods of payments, including the consequences of misuse of these payment methods,

HAS ADOPTED THE FOLLOWING DECISION:

General provisions on methods of payment referred to in this Decision

Article 1

Methods of payment

The specific methods of payment, other than payment or transfer to a bank account held by the Office, established by Article 179(1) EUTMR and Article 5(2) CDFR, of fees and charges due to the Office are those made through current accounts opened at the Office, or by credit and debit cards, under the terms and conditions and subject to the limitations of this Decision.

Article 2

Currency and amount

1. All provisions, deposits, transactions and payments referred to in this Decision are made exclusively in euro. The current accounts are held in euro and all credit or debit card transactions are effected in euro.
2. All fees as set out in Annex I EUTMR and Annex CDFR, and charges, will be effected for the amount of the fee which is due in euro.

Current accounts

Article 3

Holders of a current account

1. The following may hold current accounts:
 - (a) natural or legal persons who, in accordance with Article 5 EUTMR and Article 1(b) CDIR, may be proprietors of EU trade marks or holders of RCDs;
 - (b) persons who may act as representatives in accordance with Article 120 EUTMR and Article 78 CDR;
 - (c) associations of representatives;
 - (d) natural or legal persons authorised by proprietors of EU trade marks or holders of RCDs for the purposes of Article 53(1) EUTMR or Article 13(1) CDR.
2. The persons and associations specified in paragraph 1 may not hold more than one Office current account.

Article 4

Opening a current account

1. The application for opening a current account must be made in writing using the forms and means provided by the Office available in the User Area of the Office's website.

2. This application must be accompanied by a declaration signed by the applicant stating its acceptance of all the terms and conditions laid down in the present Decision and authorising the Executive Director of the Office or his or her representative to debit from the current account, by standing order, all the fees and charges due to the Office.
3. The standing order to debit all the fees and charges due is valid for paying all fees and charges that become due to the Office by the current account holder or by any person specifically appointed and authorised to use that account, except where Article 6 of this Decision applies.
4. The minimum initial deposit required to open a current account is EUR 1 000. There is no obligation to keep a minimum balance of EUR 1 000 in the account once it is operational.
5. After receiving the abovementioned payment, the Office will confirm the opening of the account to the interested party and provide it with an account number.
6. The current account will become operational only when the initial deposit is actually entered in a bank account held by the Office.

Article 5

Depositing funds into the current account

1. All provisions to replenish the current account must be made by bank transfer.
2. It falls to the account holder to ensure that there are sufficient provisions in the current account.
3. The account holder will bear all bank charges incurred in any deposit operation for the current account.

Article 6

Authorising a third party to use the current account

Where a party to a proceeding before the Office requests that a current account of which it is not the holder, and which it is not entitled to dispose of pursuant to Article 4(3) of this Decision, be debited with a particular fee, the Office will disregard the request, except where the party submits written evidence to the Office, before the date on which the fee is deemed to have been paid under Article 8 of this Decision, that the current account holder consents to the debit of that fee. Payment will be considered effective on the date on which the Office receives the authorisation.

Article 7

Debiting and refunding fees and charges from and to the current account

1. From the day on which the account is opened, the Office may debit, according to the development of the procedures concerned and insofar as there are sufficient funds in the account, all fees and charges due within the limits of the aforementioned procedures. Each time a payment date will be accorded, always respecting the time limits laid down in Article 8 of this Decision.

2. However, the Office will not debit the current account for a particular fee or charge if a specific indication is received in writing from the holder stating that the account may not be used for paying that fee or charge.
3. Refunds will be paid to the current account of the natural or legal person entitled to the refund or, where applicable, to the current account of the representative at the moment when the refund is paid.

Article 8

Date on which payment is deemed to have been made

With the carrying out of the debit of the current account the payment of the fee or charge will be deemed to have been made:

- (a) for the basic fee for the application of an EU trade mark and for the class fee for the second and subsequent classes of goods and services for the application of an EU trade mark: on the day the Office receives the application; or if the applicant expressly so requests, on another day until the last day of the one-month time limit provided for payment;
- (b) for the fees for renewing an EU trade mark (including class fees): on the day the Office receives the request; or if the proprietor or an authorised person expressly so requests, on another day until the date of expiry of the registration;
- (c) for the fees for renewing an EU trade mark (including class fees and the additional fee for late payment), where renewal is requested within the further period of six months following the expiry of the registration: on the day the Office receives the request; or if the proprietor or an authorised person expressly so requests, on another day until the last day of the six-month period;
- (d) for the registration fee, additional registration fee, publication fee and additional publication fee for an RCD application, if no deferment of publication is requested: on the day on which the application for an RCD was filed;
- (e) for the registration fee, additional registration fee, deferment fee and additional deferment fee for an RCD application, if deferment of publication is requested: on the day on which the application for an RCD was filed;
- (f) for the publication fee and additional publication fee for an RCD application, if deferment of publication is requested: on the day which is three months before the day on which the period for deferment expires, or on the day on which the holder requests the earlier publication pursuant to Article 15(1) CDIR, whichever is earlier;
- (g) for the fees for renewing an RCD: on the day the Office receives the request; or if the holder or an authorised person expressly so requests, on the last day of the six-month time limit provided for payment;
- (h) for the fees for renewing an RCD where renewal is requested within the further period of six months following the last day of the month in which protection ends: on the day the Office receives the request; or if the holder or an authorised person expressly so requests, on the last day of the six-month period and will include the additional fee for late payment;

- (i) for all other fees and charges: on the day the Office receives the request for which the fee or charge is due.

Article 9
Insufficient funds

1. If, at the point in time when the Office proceeds to debit the current account, the account lacks sufficient funds to cover the payment of the full amount of the fee(s) or charge(s) to be debited, the Office will notify the current account holder.
2. If the current account is replenished with sufficient funds within one month of receipt of the notification referred to in the preceding paragraph, thus allowing payment of the fees concerned and the administrative charges provided for in paragraph 3, the Office will automatically debit the corresponding amount from the account, and the payment will be considered to have been made on the day on which it was initially due.
3. The administrative charges referred to in paragraph 2 will come to 20 % of the total of the late fee but will in no case exceed the maximum of EUR 500 or be below the minimum of EUR 100.
4. The administrative charges referred to in paragraph 2 will not be payable if the current account holder submits evidence that the payment to provide the current account with sufficient funds was initiated, in the manner provided for in Article 180(3) EUTMR or Article 7(3)(a)(i), (ii) or (iii) CDFR, before the point in time when the Office proceeded to debit the current account.
5. Where the current account is replenished to cover only part of the amount due, the debit will be made, without exceptions, in the following order:
 - (i) the administrative charges referred to in paragraph 2 will be debited first;
 - (ii) if there are several fees or charges pending, the debit will be made in chronological order taking into account the date when the fees were due, and only where the complete fee can be debited.
6. When the current account is not replenished to cover all the administrative charges and the fees or charges concerned on time, the payment will be deemed not to have been made for those fees not covered and any rights depending on timely payment will be lost. No further communication regarding the lack of funds will be sent for any outstanding payments. In accordance with the Regulations governing the proceedings of the particular fee(s) not paid, the Office will issue a letter to inform the party of these deficiencies or loss of rights in the proceedings concerned.

Article 10
Current account statements

1. The current account holder can view, save or print account movements and pending debits online via the User Area of the Office's website.

2. If the current account holder identifies any irregularity or mistake in the operations carried out in the current account, they must notify the Office.

Article 11

Corrections of mistakes and errors

If the Office considers that an error has been made in the debiting of the standing order, it will make a reversing entry in the accounts backdated to the day on which the payment was made.

Article 12

Closure of a current account by the holder

1. A current account holder may close the account by sending a written notification to the Office.
2. The standing order will cease to have effect on the day the Office receives the notification. The Office will settle the account and any payments will be backdated to the day following the date of receipt of the aforementioned notification.
3. The current account holder must ensure the timely payment of any outstanding debits on the date of submitting the notification referred to in paragraph 1. Consequently, the payment of all debits due following the receipt of the notification will not be completed through the current account. If payment is not received for these debits by bank transfer or by any other means of payment available, the lack of payment may lead to a loss of rights. The Office will not inform the holder of these outstanding debits at the time of closing the account or suspending the standing order.

Article 13

Closure of a current account by the Office

1. The Office reserves the right to close a current account by sending the holder a written notification, in particular where the Office deems that the use made of the current account was not in accordance with the terms and conditions laid down in this Decision or where it is determined that there has been a misuse of the account. Misuse could be considered in situations such as systematic lack of funds, repeated misuse of third party authorisations or multiple accounts, non-payment of the administrative charges set out in Article 9 of this Decision, or situations where the account holder's actions have led to an excessive administrative burden on the Office.
2. The Office will inform the holder of its intention to close the current account stating the reasons for the closure, and the holder will be given a two-month time limit to submit observations in reply. Following the expiry of this time limit, and taking into account any observations filed, the Office will notify the current account holder of the outcome.
3. The closure of the account will enter into effect on the day when the Office's decision to close the current account becomes final. The balance of the current account will be refunded to the holder.

4. The Office's decision to close a current account will be taken by the Director of the Department entrusted with managing the Office's finances.

Credit and debit cards

Article 14

Credit and debit cards as a method of payment

Credit or debit card payments can only be made by electronic means: they are accepted only when they accompany an act performed via electronic systems and are permitted by those systems.

Article 15

Payments for which credit and debit cards may be used

1. Certain fees payable to the Office may be paid by credit or debit card, provided that payment is made in the context of an act performed via the User Area. The relevant online tool (e.g. e-filing) will indicate when a fee can be paid by credit or debit card.
2. Credit or debit cards may not be used:
 - (a) to pay charges, as referred to in Article 178(1) EUTMR;
 - (b) to replenish a current account.

Article 16

Date on which payment is deemed to have been made

Payment by credit or debit card is deemed to have been made on the date when the related electronic filing or request it refers to is successfully completed via the User Area and if the money actually reaches the Office's account as a consequence of the credit or debit card transaction, and is not withdrawn at a later date.

Article 17

Failure of acceptance

Where the terms and conditions laid down in this Decision are fulfilled, the Office will proceed with the transaction of debiting the credit or debit card. Where the transaction fails for whatever reason, the Office will consider the payment not to have been made. The Office may not be held responsible for the failure of a transaction, even when the failure was not the payer's responsibility.

Insignificant amounts

Article 18

Refunds of excessive amounts

The insignificant amount referred to in Article 181(4) EUTMR and Article 9(1) CDFR is EUR 15.

Final provisions

Article 19

Repeal of other provisions

Decision No EX-17-7 of the Executive Director of the Office of 18 September 2017 is hereby repealed.

Article 20

Entry into force

This Decision will enter into force on the day following its adoption and will be published in the Official Journal of the Office.

Done at Alicante, 21 July 2021



Christian Archambeau
Executive Director