# COUNCIL REGULATION (EC) No 1653/2003

## of 18 June 2003

## amending Regulation (EC) No 40/94 on the Community trade mark

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Court of Auditors [3],

Whereas:

(1) With the entry into force of Council Regulation (EC, Euratom) No 1605/02 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [4], the concept of centralised *ex ante* financial control was replaced by more modern control and audit systems.

(2) The Office for Harmonization in the Internal Market should have control and audit systems comparable with those of the Community institutions.

(3) The general principles and limits governing right of access to the documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [5].

(4) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules conforming to those of that Regulation.

(5) Appropriate provisions should therefore be included in Regulation (EC) No 40/94 of 20 December 1994 on the Community trade mark [6] to make Regulation (EC) No 1049/2001 applicable to the Office for Harmonization in the Internal Market, as should a provision relating to appeals against a refusal of access to documents.

(6) Regulation (EC) No 40/94 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 40/94 is hereby amended as follows:

1. the following Article shall be inserted:

'*Article 118a*

**Access to documents**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents (*) shall apply to documents held by the Office.

2. The Administrative Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of Regulation (EC) No 1653/2003 of 18 June 2003 amending Regulation (EC) No 40/94 on the Community trade mark (**).

3. Decisions taken by the Office pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.
(**) OJ L 245, 29.9.2003, p. 36.';

2. Article 136 shall be replaced by the following:

'*Article 136*

**Audit and control**

1. An internal audit function shall be set up within the Office, to be performed in compliance with the relevant international standards. The internal auditor, appointed by

[1] OJ C 331 E, 31.12.2002, p. 75.
[2] Opinion delivered on 27.3.2003 (not yet published in the Official Journal).
[3] OJ C 285, 21.11.2002, p. 4.
[4] OJ L 248, 16.9.2002, p. 1, with Corrigendum in OJ L 25, 30.1.2003, p. 43.
[5] OJ L 145, 31.5.2001, p. 43.
[6] OJ L 11, 14.1.1994, p. 1. Regulation as last amended by Council Regulation (EC) No 3288/94 (OJ L 349, 31.12.1994, p. 83).