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BUDGETARY TRANSFERS (WIPO FINANCIAL REGULATION 4.1) IN THE LIGHT OF RECOMMENDATION 4 OF THE REPORT OF THE JOINT INSPECTION UNIT (JIU)

Document prepared by the Secretariat

I. INTRODUCTION

1. The current text of WIPO's Financial Regulations, applicable as of January 1, 1992, contains a provision on budgetary transfers (Financial Regulation 4.1) which reads:

> "The Director General may make transfers from one heading of the budget to another for any given financial period up to a limit of 5% (five per cent) of the total funds credited for that period, when such transfers are necessary to ensure the proper functioning of the services."

2. In its report entitled "Review of Management and Administration in WIPO: Budget, Oversight and Related Issues" dated February 2005 (JIU/2005/REP/1), the Joint Inspection Unit (JIU) recommended that "The General Assembly should limit transfers between programs to five per cent of the smaller amount of the two biennial appropriations of the programs concerned" (Recommendation 4).

3. In its preliminary response to the JIU Report in February 2005, the Secretariat of WIPO stated that the implication of JIU Recommendation 4 was to reduce the flexibility which had been built into the budget system of WIPO for more than two decades (document WO/PBC/8/INF/2, paragraph 13).

4. In the document submitted to the 2005 General Assemblies on agenda item 23 (Report of the Joint Inspection Unit (JIU) (JIU/REP/2005/1)), the Secretariat suggested that, insofar as this Recommendation of the JIU touched on an interpretation of a Financial Regulation, it should be submitted for consideration to the Program and Budget Committee for an extensive technical analysis of its implications (document A/41/12, paragraphs 16 and 17).

5. In presenting its Report to the Assemblies, the JIU stated that in its view the Director General should not have the ability to transfer up to five per cent of the entire budget from one section of the budget to another, commented that it believed such transfers were tantamount to changing political priorities among major programs of the Organization, and stated that this should remain the sole prerogative of WIPO's Member States (document A/41/17 Prov., paragraph 218).

6. The General Assembly called upon the Director General and relevant bodies of WIPO to consider, in consultation with Member States, appropriate actions that could be taken on JIU recommendations and to report to the General Assemblies in 2006. Following adoption of the above decision, one delegation welcomed further in-depth discussion of JIU Recommendation 4 at the next meeting of the Program and Budget Committee (PBC) as, in its opinion, any deviation from UN system practice needed special justification (document A/41/17 Prov., paragraphs 279 and 282).

7. The purpose of the present document is to follow up on the decision of the General Assemblies of Member States and to assist the PBC in analyzing the implications of JIU Recommendation 4, and in recommending further action in that respect. The document is organized as follows: Part II reviews the utilization of Financial Regulation 4.1 in the three financial biennia since the introduction of a program-based budget at WIPO. Part III analyzes possible implications of the Recommendation of the JIU in the current financial and budgetary context of WIPO. Conclusions are presented in Part IV.

II. THE UTILIZATION OF FINANCIAL REGULATION 4.1 IN THE 1998-1999, 2000-2001 AND 2002-2003 BIENNIA

8. With the introduction of a program-based budget at WIPO, starting with the Program and Budget for 1998-1999, the Secretariat obtained confirmation from the External Auditor that the notion of "budget heading" contained in the text of Financial Regulation 4.1 could henceforth be understood as applying, *mutatis mutandis*, also to the notion of "program".

9. The subsequent utilization by the Secretariat of such flexibility was reported to Member States through the Financial Management Reports for the 1998-1999, 2000-2001 and 2002-2003 biennia, respectively. The relevant extracts of these Reports are reproduced in Annexes I, II and III of this document.

10. The Terms of Reference of the External Auditor of WIPO provide that, in respect of any given financial period, the External Auditor shall bring to the attention of Member States "expenditure not in accordance with the intention of the Governing Bodies concerned of WIPO and all interested Unions after making allowance for duly authorized transfers within the budget" and "expenditure in excess of appropriations as amended by duly authorized transfers within the budget" (Annex to the WIPO Financial Regulations entitled Terms of Reference Governing Audit, Article 6(c), subparagraphs (v) and (vi), respectively).

11. The Reports presented by the External Auditor to the Assemblies of the Member States in respect of the 1998-1999, 2000-2001 and 2002-2003 biennia, respectively, contain the following statement:

> "Under Financial Regulation 4.1 the Director General may make transfers from one heading of the budget to another up to a limit of five per cent when such transfers are necessary to ensure the proper functioning of the services. The Financial Management Report for [...] contains, on pages [...], a summary of actual and budgeted expenditure and, on pages […], a summary of present and budgeted expenditure by sub-program. In view of the fact that the five per cent flexibility is based on the total amount of budgeted expenditure, that means that budgets by program and subprogram, as approved by the Members, may be exceeded."[1]

12. Having taken note of the Report of the External Auditor, including the above statement, Member States approved the accounts of each of these three biennia.[2]

13. In the course of a given biennium the main reason for over-expenditure, and related under-expenditure, on a program basis, is the transfer of posts from one or several programs to another, or several other, programs, in response to emerging needs or the development of new activities. As shown in Annex II, this applies, for instance, in the 2000/01 biennium, to the creation of the Small and Medium-Sized Enterprises Division, the reassignment of audit services from the Office of the Controller to the Internal Audit and Oversight Division, and the opening of an office in Washington, D.C. and preparations for the opening of an office in Brussels, which all resulted in a higher-than-budgeted expenditure for Main Program 02. In the same biennium, the transfer of resources to Program 03 enabled the covering of the costs of the emerging priorities of electronic commerce and set-up costs of the Arbitration and Mediation Center. With respect to Program 06, the resource transfer enabled increased activities linked to the promotion and development of the use of the intellectual property system in developing countries. Also, the transfer of resources to Program 09 enabled an increased number of WIPO-financed participants to the Standing Committees on Patents and Trademarks. As shown in Annex III, in the 2002-2003 biennium, transfer of resources to Program 13 enabled additional staff support for the implementation of cooperation activities with certain countries in Europe and Asia. In the same biennium, transfer of resources to Program 17 enabled insourcing of the production of a number of publications (which, if outsourced, would have been charged to the respective program).

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[1] Reports on the Auditing of the Accounts of the World Intellectual Property Organization (WIPO) for the 1998-1999, 2000-2001 and 2002-2003 biennia, paragraph 15, in each instance.

[2] This was done under the item entitled "Accounts for the 1998-99 Biennium; Interim Financial Statement for 2000; Arrears in Contributions" (document A/36/15, paragraph 132), "Accounts for the 2000-2001 Biennium; Interim Financial Statement for 2002; Arrears in Contributions" (document A/39/15, paragraph 141), and "Accounts for the 2002-2003 Biennium; Interim Financial Statement for 2004; Arrears in Contributions" (document A/41/17 Prov., paragraph 152, subparagraph (ii)), in the 2001, 2003 and 2005 sessions of the General Assemblies, respectively.

14. The JIU has questioned the interpretation of Financial Regulation 4.1 as given thus far by the Secretariat and the External Auditor (with the concurrence of the Member States), insofar as it would potentially allow the transfer of up to five per cent of the entire budget from one section of the budget to another.

15. Annexes IV, V and VI show, for each of these biennia, the budgetary transfers which were made under Financial Regulation 4.1 expressed in terms of percentage of the total budget.

16. The (revised) budget for a given biennium is shown in Column A. Column B shows the actual expenditure at the end of the said biennium on a program basis. Column C shows the difference between the (revised) budget and the actual expenditure on a program basis. This figure is then shown as a percentage of the (revised) budget, on a program basis (Column D). Finally, Column E shows the difference between the (revised) budget and the actual expenditure by program, as a percentage of the total (revised) budget for the biennium.

17. The data contained in Annexes IV, V and VI show that in the past three biennia every individual transfer which was made under Financial Regulation 4.1, when expressed as a percentage of the total budget (Column E), was well below the five per cent threshold.

18. In fact, the <u>total</u> amount in each biennium of all these transfers was contained under the five per cent threshold. As shown in the subtotal (bold) line, the <u>total</u> amount of these transfers represented 4.5 per cent, 3.7 per cent, and 1.1 per cent of the total budgets for the 1998-1999, 2000-2001 and 2002-2003 biennia, respectively.

19. As already stated, these transfers were approved by Member States after being specifically addressed by the Secretariat in the Financial Management Report and by the External Auditor in his Reports. In fact, through Financial Regulation 4.1, the Director General was able to respond flexibly and speedily to new developments in the course of budget implementation. The Secretariat wishes to draw the attention of Member States to the fact that if the JIU Recommendation is to be understood as limiting the flexibility provided for under Financial Regulation 4.1 to the total effect of multiple transfers, then many of these transfers would not have been feasible if what is recommended by the JIU had been in force. It is not certain that this would have been in the interest of the Organization and the Member States.

III. POSSIBLE IMPLICATIONS OF THE JIU RECOMMENDATION IN THE CURRENT FINANCIAL AND BUDGETARY CONTEXT

20. The Program and Budget for 2006/07 includes a desk-to-desk review of the human and financial resources of WIPO. As indicated in paragraph 9 of document A/41/12, the post structure of the Secretariat may need to be readjusted as a result of the desk-to-desk exercise. When posts are redeployed from one program to another, the corresponding cost is charged to the receiving program. This means that the actual expenditure of the receiving program will be higher than the budget originally approved for it. The opposite applies of course to the releasing program(s). The Secretariat wishes to point out that in a situation where transfers would be limited to five per cent, as recommended by the JIU, the possibility for WIPO management to carry out such internal redeployment could be significantly reduced. In this

sense, the implementation of JIU Recommendation 4 could limit the possibility of carrying out the readjustments required by the desk-to-desk review.

21. In approving the Program and Budget for 2006/07, the Assemblies decided that "adjustments to the Program and Budget for 2006/07 shall be carried out in order to take into account any programmatic and budgetary implications resulting from ongoing discussions on the WIPO Development Agenda and other issues" (document A/41/17 Prov., paragraph 192, subparagraph (v)). In this context it is important to re-emphasize that these adjustments could be incompatible with the implementation of JIU Recommendation 4. In fact, if implemented, the JIU Recommendation would be tantamount to reducing the ability of the Secretariat to transfer resources which may have become available under other Programs (due to under-expenditure, rescheduling of planned activities, savings, or other reasons), to, *inter alia*, the Development Agenda or other areas/issues.

22. Finally, it should be recalled that the Secretariat of WIPO has implemented a freeze on recruitment since the beginning of 2005, and that, with the exception of the 20 new posts approved by Member States for the PCT and Madrid sectors, is committd to continuing this policy in the 2006/07 biennium pending the outcome of the desk-to-desk review. To do so, however, the Secretariat needs to have the necessary managerial flexibility to respond effectively to emerging operational requirements. It should also be noted that the Program and Budget for 2006/07 is composed of 31 programs, as compared to 13 programs in the 2004/05 biennium. Of these 31 programs, 18 have a budget of less than two per cent of the total budget (i.e., less than 10.6 million Swiss francs). For these smaller programs, the implementation of JIU Recommendation 4 could place limitations on managerial flexibility. For instance, the reallocation, in the course of budget implementation, of staff to any of these smaller programs could become unfeasible should the JIU Recommendation be implemented.

IV. CONCLUSIONS

23. WIPO Financial Regulation 4.1 attempts to strike a balance between the decisions approved by Member States in the context of the Program and Budget process and the need to respond swiftly to emerging operational requirements and policy adjustments in the course of Program and Budget implementation. The Secretariat's utilization of this provision has been certified by the External Auditor and approved by the Member States for three consecutive biennia. The provision has been utilized only in exceptional cases, with the aim of ensuring the proper functioning of all of the services rendered by the Organization, and without changing the political priorities established by the Member States among major programs of the Program and Budget.

24. The Secretariat of WIPO supports the rationale of the JIU Recommendation to the extent to which it aims at re-emphasizing the prerogatives of Member States in the Program and Budget process. However, the Secretariat believes that this Recommendation needs to be placed into context and that a correction factor needs to be introduced therein for smaller programs. The Secretariat is also of the view that, if implemented before the conclusion of the desk-to-desk exercise, such a Recommendation could prejudice the ability of the Secretariat to effectively take stock of the outcome of this exercise by, if need be, readjusting the post structure of the Organization.

25. In conclusion, and in order to follow up on the JIU Recommendation, the Secretariat suggests that the PBC may wish to recommend the following interpretation of Financial Regulation 4.1 to the 2006 General Assembly:

> "Transfers from one program to another program shall be limited, for each given biennial period, to five per cent of the amount corresponding to the biennial appropriation of the receiving program or to one per cent of the total budget, whichever is higher, on the understanding, however, that this interpretation of Financial Regulation 4.1 would not be applied before the conclusion of the desk-to-desk exercise and also, that it would not prejudice the decision of the 2005 Assemblies on budget adjustments."

26. The WIPO Program and Budget Committee is invited to:

(i) take note of the information contained in the present document;

(ii) express its views on the proposal made in paragraph 25, above.

[Annex I follows]