



Council of the
European Union

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NOTE

From:	Presidency
To:	Delegations
Subject:	Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union

Delegations will find attached draft Council conclusions on the above-mentioned subject.

The Presidency will present the text at the informal videoconference of the members of the Working Party on Intellectual Property on 29 September 2020. Under the same agenda item, delegations will be invited to have a first exchange of views on the draft conclusions.

**Draft Council conclusions on intellectual property policy and
the future revision of the industrial designs system in the Union**

THE COUNCIL OF THE EUROPEAN UNION:

1. RECALLING

- the European Council conclusions of March 2019¹ inviting the Commission to present a long-term vision for the EU's industrial future;
- the Council conclusions ‘An EU Industrial Policy Strategy: a Vision for 2030’ of May 2019² recognising that a well-functioning and effective intellectual property rights regime is key to continued development and growth and recalling that it is essential to continue developing, improving and updating the European intellectual property frameworks, so as to ensure that ideas and inventions can be effectively developed and brought to the market, in particular by and for SMEs, to the benefit of the European economy and society at large;
- the Commission Communication of 10 March 2020 ‘A New Industrial Strategy for Europe’ announcing an Intellectual Property (IP) action plan to assess the need to upgrade the legal framework, to ensure a smart use of IP, and to better fight IP theft;
- the Commission Communication of 10 March 2020 ‘An SME Strategy for a sustainable and digital Europe’ announcing that the upcoming IP action plan will propose measures to make the IP system more effective for SMEs, through actions to simplify IP registration procedures (e.g. reforming EU legislation on industrial designs), to improve access to strategic IP advice (e.g. by making such advice standard in all EU-level R&D funding), and to facilitate the use of IP as a lever to gain access to finance;

¹ Doc. EUCO 1/19.

² Doc. 9706/19.

2. WELCOMING the recent consultation on a roadmap for an IP action plan and TAKING NOTE of the results of this consultation presented to the members of the Council Working Party on Intellectual Property on 15 September 2020;
3. RECOGNISING that the promotion of European innovation and creativity has become even more important in the context of the COVID-19 pandemic and is a key tool to rebuild the EU economy and to contribute to a more sustainable economy in the digital age;
4. RECOGNISES the challenges and opportunities brought by the rise of the intangible economy and the new technologies; STRESSES the importance of a strong, efficient, transparent and balanced system of IP protection and the need for a coherent overall strategy to ensure both protection of and fair access to innovation to ensure that EU companies, including small and medium-sized ones, can effectively capitalise on their IP, and make use of new technologies such as artificial intelligence, 3D printing and blockchain;
5. INVITES the Member States to join efforts in strengthening Europe's innovative performance and to ensure that Europe makes the most of its innovative and creative potential;
6. ENCOURAGES the Commission to swiftly present the announced IP action plan, with initiatives to make IP protection more effective and promote an effective sharing of IP, in particular critical assets such as standard-essential patents (SEPs), whilst ensuring a fair return on investment;
7. RECALLING its conclusions of 20 February 2017 on the patentability of plants³ and, in that context, WELCOMES the discussions between the European Commission and the Member States on Directive 98/44/EC of the European Parliament and of the Council regarding the patentability of essentially biological processes for the production of plants or animals and of the products obtained by such processes, with the intention of achieving a deepened understanding of the Directive and the corresponding provisions of the European Patent Convention;

³ Doc. 5808/17.

8. WELCOMING the entry into force, on 26 February 2020, of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (GIs); RECOGNISES the need to further improve and streamline GI protection systems in the EU, including the possible introduction of a system for *sui generis* protection of non-agricultural products at EU level;
9. RECALLING its conclusions of 12 March 2018 on the enforcement of Intellectual Property Rights⁴, and TAKING NOTE of the results of the report on the functioning of the Memorandum of Understanding on the sale of counterfeit goods on the internet and the report on the functioning of the Memorandum of Understanding on online advertising and intellectual property rights, both of 14 August 2020;
10. NOTES WITH CONCERN that despite the voluntary cooperation of stakeholders, e.g. in the context of the Memorandum of Understanding on the sale of counterfeit goods on the internet, an unacceptably high number of counterfeit goods, including those that threaten consumer health and safety, is still offered on online marketplaces;
11. ENCOURAGES the Commission:
 - to establish principles in order to further enhance tripartite collaboration between right owners, intermediaries and law enforcement authorities to develop effective anti-counterfeiting strategies, and
 - to propose measures to define obligations requiring online platforms and other hosting providers to take proportionate measures with regard to counterfeits, in line with the Council's Conclusions on Shaping Europe's Digital Future⁵;

⁴ Doc. 6681/18.

⁵ Doc. 8711/20.

12. WELCOMING the evaluation, launched in 2014, of EU legislation on design protection;
13. RECALLING the findings of the two studies conducted within the framework of that evaluation – namely the 2015 ‘Economic Review of Industrial Design in Europe’ and the 2016 ‘Legal Review of Industrial Design Protection in the EU’;
14. TAKING NOTE of the findings of the study on ‘The Intellectual Property Implications of the Development of Industrial 3D Printing’ of 12 February 2020;
15. WELCOMING the public consultation on the roadmap to evaluate the EU legislation on design protection of 3 July 2018 and the public consultation on the evaluation of EU legislation on design protection, conducted from December 2018 to April 2019, and TAKING NOTE of the results of these consultations and the outcome of the questionnaire for Intellectual Property Offices, as presented to the Commission Expert Group on Industrial Property on 9 December 2019;
16. TAKING NOTE of the results of the evaluation of EU legislation on design protection as presented to the members of the Council Working Party on Intellectual Property on 15 September 2020;
17. ENCOURAGES the Commission to promptly finalise the evaluation with the aim of building a solid foundation for its subsequent legislative initiatives;
18. ACKNOWLEDGING the fact that while most users of the Community design protection system are positive about the system, as well as about the principle of coexistence between Community and national design protection, almost half of the respondents to the public consultation pointed to unintended consequences or shortcomings of EU legislation on design protection, and see the need to upgrade and fine-tune it through a future revision, taking into account the need for a balanced relationship between the Community and national design protection systems;

19. RECOGNISING that national design protection continues to meet the needs of large numbers of applicants and that, therefore, national design protection should be maintained as an option for these applicants;
20. CALLS ON the Commission to present proposals for the revision of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs and of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs approximating the laws of the Member States relating to industrial designs, to modernise the EU design protection systems and to make design protection more attractive for individual designers and businesses.

THIS REVISION SHOULD INCLUDE:

- amendments and other measures, where appropriate, aimed at supporting the complementary relationship between the Community and national design protection systems,
- improvements to the accessibility of the design system by clarifying and evolving the subject matter of protection, ensuring greater legal certainty and a common understanding of the product definition and its elements, broadening the current product notion so as to allow for the protection of new emerging designs,
- the modernisation of EU legislation on industrial designs should take into consideration the opportunities and implications of new technologies that provide new ways of generating, using and sharing designs, such as industrial 3D printing, and should explore the potential need to adjust the framework with respect to new technologies,
- the introduction of efficient invalidity proceedings at national offices, as a means to ensure a harmonised application of invalidity grounds, to further concentrate design law expertise in the national offices and to provide legal certainty for users in a cost-effective and swift procedure,

- further efforts to reduce areas of divergence within the design protection system in the Union, for instance by unifying the right of prior use and clarifying the relevance of the product indication for the scope of design protection,
 - an adaptation to the requirement for the representation of designs in order to facilitate access to design protection and ensure legal certainty for the applicants, aiming to make them future-proof with regard to emerging technical advancements such as the development of special tools to conduct image searches to examine prior art,
 - the strengthening of design protection and the more effective combating of counterfeiting, by allowing right holders to prevent third parties from transiting infringing design goods through the Union territory of goods not intended to be placed on the Union market,
 - the further harmonisation of rules on the protectability of component parts of complex products used for repair purposes, to align national rules to the Community design regime, thereby allowing for fair and effective competition and contributing to completing the single market for repair spare parts in the EU, and
 - measures to make Council Regulation (EC) No 6/2002 and Directive 98/71/EC coherent with the 2017 reform of Union legislation on trade marks.
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