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COMMISSION STAFF WORKING DOCUMENT

Second yearly summary report on the state of implementation of the EU customs action plan to combat IPR infringements for the years 2018 to 2022

1. INTRODUCTION

In October 2018, the Council adopted the 4th EU Customs Action Plan to combat infringements of Intellectual Property Rights (IPR) for the years 2018 to 2022 (the Action Plan)¹. Recognising the economic and reputational damage of IPR infringements to EU businesses and creators and the risks that counterfeit goods may also create for the health and safety of consumers and to the environment, the Council stressed the need to strive for a high level of enforcement of IPR and to provide customs authorities with the necessary tools to address new trends in international trade of goods infringing those rights.

The Action Plan contains four strategic objectives:

- Ensuring effective customs enforcement of IPR throughout the Union;
- Tackling major trends in trade of IPR infringing goods;
- Tackling trade of IPR infringing goods throughout the international supply chain;
- Strengthening cooperation with the European Observatory on infringements of IPRs and law enforcement authorities.

The Action Plan is being implemented by the Commission and the Member States on the basis of a roadmap defining the actions, their timeframe and the tools to be deployed during the reference period. The roadmap was prepared by the Commission services, in coordination with Member State's experts.

The Action Plan foresees a review mechanism whereby the Commission is required to present yearly summary reports to the Council describing its state of implementation, on the basis of the roadmap. A more detailed report is due to be prepared in the final year.

The present document is the second yearly summary report on the implementation of the Action Plan². It outlines, per each main strategic objective, the activities that were carried out in 2020 (as envisaged in the roadmap).

2. OVERVIEW

Due to the interruption of missions and thus the impossibility to carry out the planned study visits in the Member States and the operational activities with China and Hong Kong, the efforts in 2020 mainly focussed on:

- strengthening the cooperation with the European Observatory on infringements of IPR and law enforcement authorities;
- setting up a new working group to strengthen the EU Customs Risk Management on IPR;
- customs cooperation and technical assistance on IPR with third countries;
- ensuring that the EU IPR border measures as provided by Regulation (EU) No 608/2013 are complied with while negotiating free trade agreements with third countries.

¹ <https://www.consilium.europa.eu/en/press/press-releases/2018/10/09/protecting-intellectual-property-rights-new-eu-customs-action-plan-adopted-by-the-council/>

² The first yearly report was sent to the Council early 2020 and presented to the Council CUG of 12/02/2020.

3. ENSURING EFFECTIVE CUSTOMS ENFORCEMENT OF IPR THROUGHOUT THE UNION

Several actions to ensure an effective customs enforcement of IPR were accomplished and are detailed here below under the respective specific objectives of the Action Plan.

3.1. Tools for proper and efficient implementation of the EU Regulation

- An implementing act³ has been adopted to modify the Application for Action (AFA) form to take into account the introduction of the EU Customs Trader Portal for the electronic submission of the forms. In order to provide a secure access to that portal, it is important that the applicants and their representatives are identified in a unique manner. The new Implementing Regulation, which entered into force on 15 September 2020, modified the AFA form notably to make the Economic Operators Registration and Identification (EORI) number field mandatory for right-holders and their representatives when submitting, amending or extending an AFA. The website of the European Commission's Directorate General for Taxation and Customs Union (DG TAXUD) on IPR was updated accordingly to keep right holders informed of this new requirement.

Further to the withdrawal of the United Kingdom from the European Union, the Commission adopted another implementing act⁴ to modify the AFA form accordingly. The changes entail that as of 1/1/2021 any reference to the United Kingdom is removed from the AFA form, a new reference to Northern Ireland ("XI") is added and that the EU right holders will be able to, in accordance with what provided by in the Protocol of IE/Ni of the EU-UK Withdrawal Agreement, submit a Union application for action in a Member State thereby asking also for protection in Northern Ireland of EU intellectual property rights which are, by virtue of the IE/Ni Protocol to the Withdrawal agreement, protected in Northern Ireland⁵.

3.2. Enhancement of COPIS and exploiting the full functionality of COPIS

- To make sure all functionalities of the anti-Counterfeiting and anti-Piracy Information System (COPIS) are fully used, DG TAXUD organised a virtual training for all Member States in September 2020 explaining the new functionalities introduced since the last training in 2017. Related training materials were also distributed to Member States. In addition the user guide of COPIS for customs authorities was updated in relation to new and changed functionalities introduced in new releases in COPIS.
- The EU Trader Portal, developed by the European Union Intellectual Property Office (EUIPO) will allow the electronic submission and management of AFAs from right-holders. It is scheduled to go into production in Q4-2021. A Customs 2020 COPIS eAFA MASP project group discussed the system specifications and process models documentation foreseen to develop COPIS in relation to the functionalities of the Trader Portal.

³ [Implementing Regulation \(EU\) No 2020/1209](#) of 13 August 2020 amending Implementing Regulation (EU) No 1352/2013 establishing the forms provided for in Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights

⁴ [Implementing Regulation \(EU\) No 2020/2035](#) of 7 December 2020 amending Implementing Regulation (EU) No 1352/2013 as regards the application for action form provided for in Regulation (EU) No 608/2013 of the European Parliament and of the Council

⁵ (i.e. the geographical indications protected by Regulation (EU) No 1151/2012, Regulation (EU) No 2019/787, Regulation (EU) No 251/2014 and Regulation (EU) No 1308/2013).

3.3. Engaging right-holders & stakeholders

Due to the Covid-19 pandemic, the Commission organised the yearly meeting between representatives of right-holders and other parties and customs authorities in the form of a “written questions and answers session” which was conducted in July 2020. Information were provided about the TAXUD cooperation with China, Olaf and EUIPO on IPR enforcement, the COPIS new IT releases, the Brexit possible effects on IPR border enforcement and the detentions of possible IPRs infringing goods during the first months of the Covid-19 pandemic (the infringements cases identified in relation with Personal Protective Equipment were more in breach of the safety and compliance rules than IPR).

3.4. Annual publication of statistics

The yearly report of statistics on the EU customs enforcement of IPR was published on 17 December 2020 (data from 2019)⁶. In 2019, fake goods with a retail value of over €760 million were seized at the EU’s external borders. This figure represents a €20 million increase in value from 2018. The number of detentions went up by over 30% in the same period. Overall, in 2019 Member State customs authorities made over 90,000 seizures of goods that infringed on intellectual property rights, consisting of almost 41 million individual items. Cigarettes accounted for 21.3% of the overall amount of detained articles, while a large number of seizures of counterfeit matches originating in Pakistan were responsible for 20%. Packaging material (13.6%), toys (9.6%) and clothing (3.9%) account for the large majority of remaining counterfeit products being imported into the EU that year. In 85% of customs seizures, the goods were eventually destroyed. China, Hong Kong, and Turkey were the main source countries for fake and counterfeit goods in 2019. Consignments of fake watches arriving into the EU from Morocco, clothing from Senegal and hookah tobacco from Serbia brought those countries into the top seven countries of provenance for goods infringing IPR.

Two Member States provided the Commission with their published national yearly reports on statistics on customs enforcement of IPR. They have been distributed to all other Member States via CIRCABC.

4. TACKLING MAJOR TRENDS IN TRADE OF IPR INFRINGING GOODS

In 2020, the focus was mainly on two actions related to Specific objective 2.2 of the Action Plan (Strengthening Customs Risk Management).

The Project Group for the development of a “common risk management-based control strategy targeted at detection of IPR infringements” started its work (via virtual meetings) in the second half of the year. The objective of this Project Group is to explore ways to enhance the effectiveness and efficiency of risk management to attain a better targeting of consignments of IPR infringing goods in the different modes of transport and to obtain more successful control results. The Commission, together with the 12 Member States voluntarily participating in the Project Group, has developed a work plan around 5 projects: 1) the exchange of risk information focused on targeting of specific consignments; 2) information and intelligence transfer from right holders and other stakeholders to customs; 3) the use of additional sources of information or databases to strengthen the risk management; 4) the analysis of the common risk criteria (CRC) and standards; and 5) the usefulness of a common priority action. Two projects have been defined as priority for 2021: the current exchange of risk information on IPR among

⁶ https://ec.europa.eu/taxation_customs/sites/taxation/files/ipr_report_2020.5464_en_04.pdf

Member States and the preparation of an IPR control strategy. Two subgroups will be created to that end.

The second action relates to the “Regular provision of appropriate IPR risk and customs control information via the Customs Risk Management System (CRMS)”. The customs risk management framework (CRMF) requires Member States to provide appropriate IPR risk and customs control information via CRMS. The roadmap foresees a yearly analysis of data provided in CRMS/RIF (risk information forms) by the Commission. In March 2020, DG TAXUD performed a preliminary assessment of the RIFs issued by Member States on IPR in 2019. As this assessment showed some differences between Member States both in terms of number of RIFs issued and in the quality of their content, a more systematic analysis is foreseen in 2021 by the aforementioned Project Group on IPR control strategy (in particular, the subgroup looking at the current exchange of risk information).

Over the last years, OLAF has significantly strengthened its activities in the fight against IPR infringement:

- more than doubling the number of on-going cases;
- launching key Joint Customs Operations (JCOs);
- strengthening its cooperation with strategic partners like EUROPOL (OLAF has been given the lead in several EUROPOL operations – OPSON, SHIELD, LUDUS, SILVER AXE...) or the EUIPO and international agencies like AMERIPOL or INTERPOL.

OLAF is focussing its investigations on counterfeit goods putting at risk the health and safety of EU consumers or the environment (COVID-19 related products⁷, pesticides⁸, alcoholic beverages⁹, medicines, mechanical parts...).

5. TACKLING TRADE OF IPR INFRINGING GOODS THROUGHOUT THE INTERNATIONAL SUPPLY CHAIN

5.1. Cooperation with China

Specific objective 3.1 of the Action Plan, “*Strengthening cooperation with key source, transit and destination countries*” aims at reinforcing customs cooperation on IPR with third countries, in particular China and Hong Kong, China. The cooperation with China, still the main source country of IPR infringing goods, remains challenging. The Action Plan with China customs on customs enforcement of IPR ran until the end of 2020. A new Action Plan is under preparation for the years 2021-2024, in line with the new Strategic Framework for Customs Cooperation 2021-2024 between the European Union and the Government of the People's Republic of China. The new Action Plan will take into account the results of the evaluation of the previous Action Plan, which was conducted in 2020. The IPR Working Group reports to the EU-China Joint Customs Cooperation Committee.

A coordination meeting with the participating Member States took place in June 2020, in which the Commission reported on the implementation of the key actions of the Action Plan with the Member States. The participants discussed, among others, the use of

⁷ OLAF press release 16/2020 of May 2020

⁸ OLAF press release 18/2020 of June 2020

⁹ OLAF press releases 05/2020 of February 2020 and 26/2020 of September 2020

detention statistics for trend analysis and the exchange of risk information over the secured network established with China customs. Two meetings of the Working Group with China Customs (GACC) took place at the end of 2020 to prepare the evaluation of the current Action Plan and prepare the Action Plan 2021-2024.

5.2. Cooperation with Hong-Kong, China

The cooperation with Hong Kong customs ran smoothly also in 2020, but some plans like joint operations were impacted by the Covid-19 pandemic (a large-scale operation had to be postponed, as the underlying activity could not take place because of the pandemic). In general however, the mutual exchange of risk information remains regular and of high quality.

5.3. Cooperation with other third countries

Within the framework of customs/trade committee meetings the EU exchanged statistics about the detentions of IPR infringing goods carried out at the EU external border and information about trends and general risk information with Algeria, Morocco, Tunisia, Georgia and Mexico.

In addition, DG TAXUD worked together with the Commission's Directorate General for trade (DG TRADE) and the EU Observatory on infringements of Intellectual Property Rights (the Observatory) and its stakeholders and experts to improve the protection and enforcement of IP rights in third countries in the framework of the IP KEYs project (China, South East Asia and Latin America).

DG TAXUD worked together with DG TRADE on the negotiations of Free Trade Agreements (FTA) with third countries to have IPR border measures inserted in the Intellectual Property chapters of the agreements under negotiation in order to ensure compliance with the EU standards. The negotiations with the following third countries took place in 2020: Australia, New Zealand, Chile, Uzbekistan, Kyrgyzstan and the United Kingdom.

5.4 Support capacity building in candidate and neighbouring countries on IPR enforcement.

The Commission provided Ukraine and Belarus with technical assistance concerning the harmonisation and alignment of their respective IPR border enforcement systems to the EU legal framework on customs enforcement of IPR (Regulation (EU) No 608/2013).

6. STRENGTHENING COOPERATION WITH THE EUROPEAN OBSERVATORY ON INFRINGEMENTS OF IPRs AND LAW ENFORCEMENT AUTHORITIES

In 2020, the Commission, Member States' experts and the Observatory have continued their close cooperation.

In addition to the abovementioned work between the Commission and the EUIPO on databases (see point 3.2), the Commission services and national customs experts participated in various groups organised by the Observatory as detailed here below.

The Commission and many customs authorities (together with right holder and private and public sector representatives) attended the Observatory plenary that provides an opportunity to present and discuss the Observatory's ongoing work. It also provides an opportunity for stakeholders to agree on future activities and deliverables. The focus this

year was on the Covid-19 crisis which highlighted the fact that IP infringement was not a victimless crime and that criminal organisations sought to take advantage of every weakness and lack of unity.

The Commission, several Member States' law enforcement authorities and a large number of rights holders attended also:

- the Observatory Working Group meeting on Enforcement (organised virtually in October), which is the occasion for enforcement authorities to discuss common issues of interest with stakeholders' representatives;
- the Intellectual Property Enforcement Portal (IPEP) Forum, which took place virtually in December 2020 and provided the opportunity for rights holders and enforcement authorities from all EU Member States, as well as representatives from the European Commission and Europol, to meet and exchange ideas and best practices on IPR enforcement.

The Commission also actively participated in the Observatory Technical Group on Analysis and Data exchange initiative. The mandate of this group aims at defining a vision of the possible links between existing databases at EU level related to IP infringements.

The Observatory also regularly attends the meetings of the Customs Expert Group - IPR enforcement section so that coherence is ensured between the activity developed by DG TAXUD and the activity developed by the EUIPO relating to customs enforcement of IPR.

The Commission and Member States together provided support to the Observatory for the development of the Customs IPR enforcement eLearning module. The module is designed for the Virtual Training Centre of the European Union Agency for Law Enforcement Training (CEPOL).

7. LOOKING AHEAD

Several activities are foreseen for 2021, namely:

- to find ways to resume the support visits to Member States on the implementation of Regulation (EU) No 608/2013 (if missions should continue not to be possible, via questionnaire or virtual meetings with voluntary Member States);
- to publish the annual report on the EU customs enforcement of IPR;
- to continue working in the Customs 2020 Project Group for the development of a common risk management-based control strategy targeted at the detection of IPR infringements;
- to continue the cooperation with China and Hong-Kong, China, which remain an essential element of the EU's external action in the field of customs enforcement of IPR;
- to continue the cooperation with the Observatory including the continuous development of the IPR Trader Portal;
- to participate to the various working groups organised by the Observatory and Europol;
- to organise a joint TAXUD - Observatory conference on cooperation on IPR enforcement in November or December 2021 with participants from customs, police and Market Surveillance Authorities (MSA);
- to participate to the elaboration of the EU Toolbox against counterfeiting, which will aim to increase cooperation, and information and data exchange between law enforcement authorities, rights holders and intermediaries (such as online

platforms, advertising intermediaries, payment services, domain name registries and registrars, transport and logistics services), as announced in the Commission's IP Action Plan¹⁰.

¹⁰ [COM\(2020\) 760](#) final.