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#### NOTE

From:	Presidency
To:	Delegations
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Subject:	Council conclusions on the European Court of Auditors' Special Report No 6/2022: 'EU intellectual property rights - Protection not fully waterproof' - Revised Presidency text

Delegations will find in the annex a revised draft of Council Conclusions on the above-mentioned subject, with a view to final considerations of the draft text by the Council Working Party on Intellectual Property on 29 June 2022.

Changes compared to the initial draft (doc. 8860/22) are indicated in **bold underlined** or ~~strikethrough~~.

**COUNCIL CONCLUSIONS****European Court of Auditors' Special Report No 6/2022:  
'EU intellectual property rights – Protection not fully waterproof'**

THE COUNCIL OF THE EUROPEAN UNION:

1. THANKS the European Court of Auditors for the Special Report No 6/2022: 'EU intellectual property rights - Protection not fully waterproof';
2. TAKES GOOD NOTE of the observations and recommendations in the Special Report, which address the effectiveness of the intellectual property rights (IPR) regulatory framework on EU trademarks, designs and geographical indications and of its implementation, as well as of IPR enforcement controls in the Member States, for the period from January 2017 to April 2021;
3. CONSIDERS the Special Report to be a useful contribution to the reflections of Member States and the Commission on how to further enhance the IPR system, its implementation and enforcement, and the support of the European Union Intellectual Property Office (EUIPO) in this endeavour;
4. RECOGNISES, in that respect, the importance of completing and updating the EU IPR regulatory framework and, in particular, regarding the following subjects:

***Geographical indications***

5. RECALLS the accession of the Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (GIs), which contributed to the improvement, modernisation and reciprocity of GI protection systems at global level ~~and the public consultation of 29 April 2021;~~
6. RECALLS its conclusions of 18 June 2021, where the Council reiterated that it stood ready to consider the introduction of a system for *sui generis* protection of non-agricultural products at EU level and the public consultation of 29 April 2021;

7. RECOGNISES the **importance of completing and updating the EU IPR regulatory framework and, in that context, the need-wish** to extend the EU geographical indication protection system to non-agricultural products to provide efficient protection **online and offline** for these products across the territory of the Union, the current lack of harmonisation between Member States resulting in a fragmentation of the internal market and thus ~~WELCOMES the presentation~~ **TAKES GOOD NOTE** of the Commission proposal of 13 April 2022 on geographical indication protection for craft and industrial products, to which it is giving active consideration;
8. TAKES GOOD NOTE of the observations and recommendations regarding the existing geographical indication protection regime for agricultural products in the Special Report, REFERS TO Member States' calls at the Agriculture and Fisheries Council on 7 April and 13 June 2022 to further consolidate and strengthen this regime, and thus, IS COMMITTED to examining the Commission proposal of 31 March 2022 in this context;

### ***Industrial designs***

9. RECALLS its conclusions of 10 November 2020 on intellectual property policy and the revision of the industrial designs system in the Union, **which already emphasised the need to modernise the protection system for industrial designs in the EU in order to further harmonise the legislation of Member States;**
10. TAKING GOOD NOTE of the public consultation of 29 April 2021 and the different contributions received;
11. ~~RECOGNISES the need to modernise the protection system for industrial designs in the EU in order to further harmonise the legislation of Member States, in particular with respect to the availability of invalidity proceedings within national offices or the admissibility of new design formats;~~
12. CALLS ON the Commission to present the corresponding legislative proposals without further delay, to make design protection more accessible and attractive for creators and businesses, and especially for SMEs;

13. INVITES the Commission to use this opportunity to ~~ascertain~~ **implement a control of goods in transit, as already established for trademarks, and to consider** the protection of component parts of complex products used for repair purposes ~~and implement a control of goods in transit as already established for trademarks, thereby contributing~~, **with a view** to completing the single market;

### ***Trademarks***

14. RECALLS that a comprehensive reform of the EU trademark system, launched in 2009, was completed in 2017 through the adoption of Regulation (EU) 2017/1001;
15. LOOKS FORWARD TO the Commission's evaluation and review of the implementation of this Regulation, as provided for in Article 210;
16. INVITES the Commission, in its evaluation, to take into account the observations of the European Court of Auditors;

### ***Enforcement***

17. RECALLS the minimum harmonisation character of the IPR Enforcement Directive (IPRED), the Commission's evaluation of IPRED in 2017, and the Council conclusions on IP enforcement of 1 March 2018, 10 November 2020 and 18 June 2021;
18. COUNSCIOUS of the harm caused by counterfeiting, as emphasised by the European Court of Auditors, estimated to amount to 6.8% of the EU's total annual imports, EUR 83 billion euro in lost revenue to the economy, as well as 400,000 lost jobs;

19. TAKES GOOD NOTE of the Commission's ~~public consultation~~ **call for evidence** of 3 February 2022; ~~and~~ LOOKS FORWARD TO the presentation of the EU Toolbox against counterfeiting in the upcoming months of this year, which should aim to ~~establish~~ **set out coherent, effective and coordinated action against counterfeiting, both online and offline, in particular through increased** information **sharing** and ~~communication tools to ensure effective cooperation among Member States~~ **between right holders, intermediaries and public authorities at national and EU institutions level**; ~~in particular~~ **STRESSES the importance** ~~to ensure~~ **of ensuring** consistency between initiatives and networks, ~~facilitate~~ **facilitating** cross-border investigations, ~~improve~~ **and improving** inter-agency cooperation and ensure that Member States harmonise their IP enforcement strategies;

#### **Governance and accountability**

20. TAKES GOOD NOTE of the observations made in the Special Report regarding the EUIPO's governance and accountability framework as well as the answers already provided by the Office and the Commission in reply to these observations;
21. INVITES the European Court of Auditors to keep the Council informed of future audit reports on the intellectual property.
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