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COMMISSION STAFF WORKING DOCUMENT

Third 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 third yearly summary report on the implementation of the Action Plan². It outlines, per each main strategic objective, the activities that were carried out in 2021.

2. OVERVIEW

Given the remaining constraints and the interruption of missions due to the COVID-19 pandemic, and thus the impossibility to carry out the operational activities with China and Hong Kong, the efforts in 2021 mainly focussed on:

- replacing the planned support visits missions to Member States, by virtual support visits;
- strengthening the cooperation with the European Observatory on infringements of IPR and law enforcement authorities;
- pursuing the work of the Project group for the development of a “common risk management-based control strategy targeted at detection of IPR infringements” to strengthen the EU Customs Risk Management on IPR;
- ensuring that the EU IPR border measures as provided for in Regulation (EU) No 608/2013³ 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. The second yearly report was sent to the Council early 2021 and presented to the Council CUG of 10/03/2021.

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. Enhancement of the anti-Counterfeiting and anti-Piracy Information System (COPIS) and exploitation of its full functionalities

- The Intellectual Property Enforcement Portal (IPEP), developed by the European Union Intellectual Property Office (EUIPO) now enables the electronic submission and management of Applications For Actions (AFAs)⁴ from right-holders. It went into production in Q4-2021 as expected. Various virtual training seminars have been jointly organised by the Commission services and the EUIPO in order to prepare both customs administrations as well as private stakeholders for the new e-AFA functionality via IPEP.
- A new release of the anti-Counterfeiting and anti-Piracy Information System (COPIS) has been put into production in December 2021, to notably adapt COPIS to the new E-AFA functionality. The Commission services organised three virtual training sessions for all Member States in June, July and September 2021 explaining this and the other new functionalities introduced. 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.
- On 9 July 2021, the Commission proposed to revise Implementing Regulation (EU) 2021/414⁵(IRTA) in order to legally specify all technical arrangements for developing, maintaining and using electronic system for the purpose of receiving and processing AFAs, as well as related attachments to the AFAs, including the mandatory use and exchange of information between IPEP and COPIS. IRTA would also specify the purpose for national COPIS systems and related national portals in the Member States. The adoption of the amended Implementing Regulation (IRTA) is expected for Q4-2022.

3.2. Engaging right-holders & stakeholders

The Commission services organised the yearly meeting between representatives of right-holders and other parties and customs authorities in the form of a “virtual meeting” which was conducted in July 2021. Following various questions and comments received from the private stakeholders, the Commission services provided information and explanations about, amongst other:

- the application of several provisions of Regulation (EU) No 608/2013,
- customs enforcement of IPR in post Brexit situation,

³ Regulation (EU) No 608/2013 of the European Parliament and the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003. OJ L 181, 29.6.2013, p. 15.

⁴ Cf. Article 5 paragraph 6 of Regulation (EU) No 608/2013, which refers to computerised systems for the purpose of receiving and processing applications for actions.

⁵ Commission Implementing Regulation (EU) 2021/414 of 8 March 2021 on technical arrangements for developing, maintaining and employing electronic systems for the exchange and storage of information under Regulation (EU) No 952/2013 of the European Parliament and of the Council. OJ L 81, 9.3.2021, p.37.

- cooperation with the European Anti-Fraud Office (OLAF) as well as with the EUIPO on IPR enforcement,
- the use of the IPEP by right holders,
- new risk identified for goods arriving from North Africa,
- the detentions of possible IPRs infringing goods under different procedures and in different means of transport.

3.3. Annual publication of statistics

For the first time in 2021, the Commission services and the EUIPO jointly prepared a report on the 2020 yearly result of EU enforcement of intellectual property rights at the EU external border and in the internal market. It was published on 30 November 2021⁶.

One Member State also provided the Commission services with its published national yearly report on statistics on customs enforcement of IPR. The report has been distributed to all other Member States.

4. TACKLING MAJOR TRENDS IN TRADE OF IPR INFRINGING GOODS

In 2021, the focus remained mainly on two actions related to Specific objective 2.2 of the Action Plan (Strengthening Customs Risk Management), namely action 2.2.1 (development of a common risk management strategy) and action 2.2.2 (regular provisions of appropriate IPR risk information)). The Project Group for the development of a “common risk management-based control strategy targeted at detection of IPR infringements” reviewed the risk information exchanged: 1) between Member States (in the Customs Risk Management System (CRMS) and Customs Information System (CIS)); 2) between Member States and China customs authorities (under the framework of the Action Plan with China on customs cooperation on IPR); 3) between Member States and Hong Kong customs authorities (under the framework of the Action Plans with Hong Kong on customs cooperation on IPR).

In parallel, 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), the EUIPO and international agencies, like AMERIPOL and INTERPOL.

A new Administrative Cooperation Arrangement (ACA) between OLAF and the World Customs Organization (WCO) was signed in July 2021 enhancing the cooperation on anti-fraud matters including on IPR. The ACA will allow to strengthen the information exchange between the Customs Information System (CIS) from OLAF and WCO’s Customs Enforcement Network (CEN), extending the principle “one seizure one report” to data on counterfeit seizures reported by EU Member States.

An automated connection between COPIS and the OLAF’s Customs Information System (CIS), a part of OLAF’s Anti-Fraud Information System (AFIS), is available since 2019. This connection is meant to minimize Member States efforts when reporting data on seizures of counterfeit products which need to be reported both in COPIS and CIS. The CIS has been progressively adapted and improved to accommodate Member States needs

⁶ https://ec.europa.eu/taxation_customs/customs-4/intellectual-property-rights-facts-and-figures_en

in respect of IPR reporting data. In 2021 new tableau reports on data coming from COPIS have been developed in CIS.

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, pesticides, alcoholic beverages⁸, medicines⁹, mechanical parts such as bearings and spare car 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, which still is the main source country of IPR infringing goods, remains challenging. The last signed Action Plan with China Customs on customs enforcement of IPR ran until the end of 2020. A new Action Plan for the years 2021-2024 was prepared and agreed at technical level between the Commission and China Customs, 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. However, the signing of both the Strategic Framework and the Action Plan was delayed and finally did not take place in 2021.

5.2. Cooperation with Hong-Kong, China

The cooperation with Hong Kong (HK) Customs authorities, which had until now always been smooth and fruitful, was in 2021 impacted by the COVID-19 pandemic and changes in HK Customs’ IPR team. Recently, the cooperation and especially the exchange of risk information showed a drastic drop, both from the Member States side as from HK Customs one. Efforts will be needed to get the cooperation back on track in 2022.

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, Canada, Georgia, Japan and Switzerland.

In addition, the Commission services continued their cooperation with the EU Observatory on infringements of Intellectual Property Rights¹⁰ (the Observatory) and its stakeholders and experts to improve the protection and enforcement of IPR in third countries in the framework of the IP KEYS project¹¹ (China, South East Asia and Latin America).

⁷ https://ec.europa.eu/anti-fraud/media-corner/news/olaf-warns-against-fraudsters-offering-covid-19-vaccines-2021-02-15_en

⁸ https://ec.europa.eu/anti-fraud/media-corner/news/over-1-million-litres-wine-and-alcoholic-beverages-seized-under-olaf-led-operation-2021-07-22_en

⁹ https://ec.europa.eu/anti-fraud/media-corner/news/olaf-helps-smash-fake-medicine-network-poland-2022-02-16_en

¹⁰ The Observatory is managed by EUIPO.

¹¹ <https://ipkey.eu/en>

In the context of the negotiations of Free Trade Agreements (FTA) with third countries, the Commission services sought the inclusion of IPR border measures in the Intellectual Property chapters of those agreements, so as to ensure compliance with the EU standards. The negotiations with the following third countries took place in 2021: Australia, New Zealand, Chile.

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

The Commission services provided Ukraine with technical assistance concerning the harmonisation and alignment of their respective IPR border enforcement rules 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 2021, the Commission services, Member States' experts and the Observatory have continued their close cooperation.

The Commission services and national customs experts participated in various groups organised by the Observatory as detailed here below.

The Commission services and several Member States customs representatives attended the Observatory Public Sector meeting in February 2021. The main issues addressed were how to reintroduce IPR on the European multidisciplinary platform against criminal threats (EMPACT), an overview of COVID-19 related initiatives, presentation of an initiative between customs and market surveillance authorities in relation to work on unsafe goods and examples given by Member States of interagency cooperation in IPR enforcement.

The Commission services and many customs authorities (together with right holders and other private and public sector representatives) also attended the Observatory plenary in September 2021 that provided an opportunity to present and discuss the Observatory's ongoing work. It also provided an opportunity for stakeholders to agree on future activities and deliverables. The focus was on COVID-19 impact on IPR-intensive industries and on how to best support the implementation of the EMPACT priority tackling IP crime and counterfeiting of goods and currencies.

The Commission services, several Member States' law enforcement authorities and a large number of rights holders attended also in March and October 2021 the Observatory Working Group meetings on Enforcement, which were the occasion for enforcement authorities to discuss common issues of interest with stakeholders' representatives.

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

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

7. LOOKING AHEAD

Several activities are foreseen for 2022, namely:

- to finalise the virtual support visits to Member States on the implementation of Regulation (EU) No 608/2013;
- to launch an external study to assess customs enforcement of intellectual property rights, with particular focus on the handling of small consignments (linked to e-commerce ordering) as well as on the cost of destructions of the goods detained;
- to consider revising the thresholds of the small consignment definition, via delegated act as foreseen in Regulation (EU) No 608/2013, in order to enable the destruction of a higher amount of goods for each detention made under the small consignment procedure;
- to continue developing a common risk management-based control strategy targeted on the detection of IPR infringements, in cooperation with the Member States;
- to address, among other with the above mentioned activities, the recommendations on customs enforcement of IPR made by the European Court of auditors (ECA) in its Special report 06/2022 “*EU intellectual property rights – Protection not fully waterproof*”;
- to publish the annual report on the EU enforcement of IPR at the border and in the internal market, in cooperation with the EUIPO;
- to pursue the ongoing technical cooperation with Hong-Kong, China;
- to assess, after the EU/China summit of April 2022, the Commission position concerning the customs cooperation with China, which includes the cooperation on IPR;
- to continue the cooperation with the Observatory including the continuous development of possible further integration projects between IPEP and COPIS;
- to participate to the various working groups organised by the Observatory and Europol;
- to contribute to the elaboration of the EU Toolbox against counterfeiting, which will aim to set out coherent, effective and coordinated action against counterfeiting, both online and offline, as announced in the Commission’s IP Action Plan¹². Key areas of focus will be increased cooperation and information 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 part of the consultation activities¹³, the Commission services have organised, together with the Observatory, a series of targeted workshops on social media (September 2021), on domain names (October 2021), on payments (December 2021) and on transport/logistics (April 2022). The last upcoming targeted workshop will be dedicated to information sharing (31st May);
- to develop an automated mechanism for the transfer of data on counterfeit seizures reported by Member States in the OLAF Customs Information System (CIS) to the WCO Customs Enforcement Network (CEN);

¹² [COM\(2020\) 760](#).

¹³ A Call for Evidence was published on 3 February 2022 to receive stakeholders’ feedback (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12915-EU-toolbox-against-counterfeiting_en).

- to enhance the cooperation for anti-fraud between OLAF and the EUIPO through the signature of a Service Level Agreement.