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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy**

{SEC(2011) 612 final}

{SEC(2011) 613 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

Creativity, knowledge and innovation are drivers of our future growth. The Europe 2020 Strategy<sup>1</sup> has therefore identified smart growth as one of three priorities for the Commission's future policymaking. It also stresses the need to boost the EU's research performance, promote innovation and knowledge transfer and ensure that innovative ideas can be turned into new products and services that create growth and quality jobs.

The Commission has committed itself to supporting these objectives by creating a high-standard intellectual property (IP) culture<sup>2</sup>. One threat to a successful IP policy, and therefore to growth and competitiveness, lies in the increase of intellectual property infringements observed in recent years. For instance, in 2009, the OECD estimated that international trade in counterfeit and pirated goods accounted for USD 250 billion in 2007, which is larger than the national GDPs of 150 economies<sup>3</sup>. Also, figures published by EU customs authorities reflect a clear increase in customs activity, with a rise in registered cases from 26,704 in 2005 to 43,572 in 2009, i.e. up by about 60% in five years<sup>4</sup>. Concerning piracy (or online copyright infringements), the economic impact is less clear at this stage, due to the very recent nature of this phenomenon. However, the most recent industry study carried out in 2010, by Paris-based TERA Consultants and commissioned by the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative, indicates that EUR 10 billion and more than 185,000 jobs were lost due to piracy in the music, movie, TV, and software industries in the EU in 2008<sup>5</sup>.

Various studies published by industry and international organisations confirm the steady growth of trade in counterfeit and pirated goods and conclude that it:

- significantly reduces investment in innovation and destroys jobs<sup>6</sup>;
- threatens the health and safety of European consumers<sup>7</sup>;
- creates serious problems for European SMEs<sup>8</sup>;
- results in tax loss revenues due to reductions in declared sales<sup>9</sup>;

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<sup>1</sup> Communication from the Commission: 'Europe 2020: A strategy for smart, sustainable and inclusive growth' of 3 March 2010 - COM(2010) 2020.

<sup>2</sup> See in particular Commission Communication of 16 July 2008: 'An industrial property rights strategy for Europe' - COM(2008) 465.

<sup>3</sup> OECD, Magnitude of counterfeiting and piracy of tangible products – November 2009 update, <http://www.oecd.org/document/23/0,3343>.

<sup>4</sup> European Commission, Taxation and Customs Union Directorate General, 'Report on EU Customs enforcement of intellectual property rights - 2009', [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm).

<sup>5</sup> <http://www.iccwbo.org/bascap/id35360/index.html>.

<sup>6</sup> TERA Consultants, 'Building a Digital Economy: March 2010', <http://www.iccwbo.org/bascap/id35360/index.html>.

<sup>7</sup> 'Report on EU Customs enforcement of intellectual property rights - 2009', see footnote 4.

<sup>8</sup> Technopolis (2007), 'Effects of counterfeiting on EU SMEs', [http://ec.europa.eu/enterprise/enterprise\\_policy/industry/doc/Counterfeiting\\_Main%20Report\\_Final.pdf](http://ec.europa.eu/enterprise/enterprise_policy/industry/doc/Counterfeiting_Main%20Report_Final.pdf)

– is attractive to organised crime<sup>10</sup>.

One of the main initiatives to address this threat launched by the Council<sup>11</sup> and the Commission in 2009<sup>12</sup> was to set up a European Observatory on Counterfeiting and Piracy to improve understanding on intellectual property rights (IPR) infringements ('the Observatory').

In line with the Council's request of 2008, the Observatory in its current form is a centre of expertise with no legal personality managed by the Commission services. Its role is twofold: (i) becoming the central resource for gathering, monitoring and reporting information and data related to all IPR infringements and (ii) be used as a platform for cooperation between representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, to develop joint enforcement strategies and to make recommendations to policy-makers. The management of the Observatory encompasses a series of tasks and activities under the responsibility of Commission services.

The Observatory is currently run by three Commission civil servants (two administrators and one assistant) who, in addition also carry out all policy work related to the Observatory.

The latest Council Resolution relating to the Observatory added further responsibilities, by inviting it to assess the needs for implementation of EU-level training programmes for those involved in combating counterfeiting and piracy<sup>13</sup>. A September 2010 European Parliament Resolution additionally called for the Observatory to compile scientific research data on counterfeiting and IPR regulation<sup>14</sup>. Finally, a recently published study commissioned by the Commission's Directorate General for Trade recommends that the Observatory should become a single point of contact within the Commission, for external parties, and an international point for the creation and dissemination of best practice<sup>15</sup>.

Whereas the current circumstances of the Observatory were appropriate for the launch phase of the project, with its institutional framework being established through consultations and meetings, there is no scope for expanding the Observatory's remit and developing its operational activities, both of which require a sustainable infrastructure in terms of human resources, financing and IT equipment as well as access to the necessary expertise.

- **Consistency with the EU's other policies and objectives**

The proposal's objectives are in line with existing EU policies and strategies, such as Europe 2020<sup>16</sup>. They also fit in with the Commission's main priorities and proposals concerning its IPR strategy for Europe<sup>17</sup>.

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<sup>9</sup> Frontier Economics, (May 2009), 'The impact of counterfeiting on Governments and Consumers': <http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Impact%20of%20Counterfeiting%20on%20Governments%20and%20Consumers%20-%20Final%20doc.pdf>.

<sup>10</sup> UNICRI, 'Counterfeiting: a global spread', 2008, <http://counterfeiting.unicri.it/report2008.php>.

<sup>11</sup> Council Resolution of 25.9.2008 (OJ C 253, 4.10.2008, p. 1).

<sup>12</sup> Commission Communication of 11 September 2009: 'Enhancing the enforcement of intellectual property rights in the internal market' - COM(2009) 467.

<sup>13</sup> Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market (OJ C56, 6.3.2010, p. 1).

<sup>14</sup> European Parliament Resolution of 22 September 2010, 2009/2178(INI).

<sup>15</sup> ADE, 'Evaluation of the Intellectual Property Rights Enforcement Strategy in Third Countries', November 2010, [http://trade.ec.europa.eu/doclib/cfm/doclib\\_section.cfm?sec=180&langId=en](http://trade.ec.europa.eu/doclib/cfm/doclib_section.cfm?sec=180&langId=en).

<sup>16</sup> COM(2010) 2020.

## 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

### • Consultation of interested parties

Since its inception, the structure and financing of the Observatory have been discussed regularly, both at the four Observatory meetings<sup>18</sup> held so far and in specialist sub-group meetings which have brought together, since September 2009, representatives from a number of private sector organisations within the Observatory.

Members of the European Parliament are kept informed about the work and developments of the Observatory and, on two separate occasions in 2010, the European Parliament Forum on counterfeiting, contraband and organised crime openly discussed the future of the Observatory and, in particular, a possible transfer of the Observatory to the Office for Harmonisation in the Internal Market (OHIM).

Also at the political level, the Council, in response to the two Commission Communications concerning the Observatory<sup>19</sup>, adopted two Resolutions<sup>20</sup> welcoming the creation of the Observatory and asking the Commission to elaborate on its role and its tasks. Furthermore, on 22 September 2010 the European Parliament adopted a report on the Commission's 2009 Communication, advocating greater involvement of the OHIM in enforcement-related matters<sup>21</sup>.

The idea of entrusting some enforcement-related activities to the OHIM has been favourably received by users of the European trade mark system, who were consulted as part of a comprehensive evaluation of the trade mark system in Europe<sup>22</sup>. During further discussion in a specific workshop at the Pan-European IP summit 2010, held in Brussels on 2 and 3 December 2010<sup>23</sup>, the idea received broad support. Equally, the proposal was viewed positively by the OHIM governing bodies, the Administrative Board and the Budget Committee<sup>24</sup>, at their meetings in November 2010.

In view of this specific, targeted and continuous consultation process, it was considered that there was no need to organise a supplementary, standard consultation exercise.

### • Impact Assessment

The Impact Assessment looked at three different options, each with a number of sub-options.

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<sup>17</sup> COM(2008) 465; see also Commission Communication of 27 October 2010: 'Towards a Single Market Act – for a highly competitive social market economy' - COM(2010) 608.

<sup>18</sup> These meetings took place on 4 September 2009, 14 December 2009, 16 February 2010 and 10 June 2010.

<sup>19</sup> Commission Communication of 16 July 2008: 'An industrial property rights strategy for Europe' - COM(2008) 465 and COM(2009) 467.

<sup>20</sup> Council Resolutions of 25 September 2008 and of 1 March 2010.

<sup>21</sup> Resolution of 22 September 2010 on the enforcement of intellectual property rights in the internal market (2009/2178(INI)), A7-0175/2010.

<sup>22</sup> For details refer to the text of the study prepared the Max Planck Institute for Intellectual Property, Competition and Tax Law and available at [http://ec.europa.eu/internal\\_market/indprop/tm/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/tm/index_en.htm).

<sup>23</sup> <http://www.premiercercle.com/sites/ip2010/overview.php>.

<sup>24</sup> Both bodies are composed of representatives of Member States and of the Commission.

Under option 1, the Commission services would continue administering the Observatory but their resources would be increased considerably. Under sub-option 1a, the work would entirely or to a very large extent be done in-house, whereas it would be largely outsourced under option 1b. The second option that was examined would entail entrusting the Observatory to an initiative led by the private sector that should be financed either entirely by the private sector (sub-option 2a), through a Commission grant (sub-option 2b), or through a public-private partnership (PPP, sub-option 2c). The third option analysed in the Impact Assessment consisted in entrusting the Observatory either to an EU agency to be newly created (sub-option 3a) or to an already existing agency, more particularly the Office for Harmonisation in the Internal Market (OHIM) in Alicante.

Option 1a (more staff in DG MARKT) was considered to be not feasible under the current ‘no growth’ policy of the Commission<sup>25</sup>. Also option 2a was not considered realistic as there are no indications that the private sector would be prepared to take on such a commitment. Options 1b (outsourcing on a commercial basis) and 2b (tasks delivered by industry led initiative) were considered feasible, but not suitable solutions since they would probably not allow access to data that are considered as sensitive by Member States’ authorities and private stakeholders and, in the case of option 2b, the risk of uneven positions (or even exclusion) for different stakeholders would pose considerable problems in reaching the Observatory’s overall objectives. These disadvantages could be partially avoided in option 2c (PPP), which however would impose on the EU budget annual costs of between EUR 2.41 million and EUR 2.98 million in the first two years, and between EUR 2.61 million and EUR 3.07 million from the third year, depending on the design of the IT systems to be created.

Option 3a (a new EU agency), according to the Impact Assessment, would offer a suitable solution to render the Observatory operational. However, this option would bring substantial costs for the EU budget – between EUR 4.33 million and EUR 5.33 million in the first two years, and between EUR 5.5 million and EUR 6.28 million as of year three – plus a significant time delay in getting the agency up and running.

Option 3b (entrusting the tasks to an existing EU agency, preferably OHIM) would allow the Observatory to have access to expertise, resources and financing and to become quickly operational. In budgetary terms it would offer a cost-efficient solution (with total costs of between EUR 3.3 million and 4.3 million in the first two years and between EUR 4.74 million and 5.52 million as of year three) and allow costs to be covered by financial resources outside of the EU budget.

The Impact Assessment therefore concluded that transferring the Observatory to the OHIM would be the preferred option, given that the latter has appropriate financing and structures and will be capable of delivering on the Observatory’s aims as soon as its basic Regulation has been amended.

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<sup>25</sup> See SEC(2007) 530.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **• Summary of the proposed action**

It is proposed to entrust the Office for Harmonisation in the Internal Market with the tasks and activities relating to the management of the European Observatory on Counterfeiting and Piracy, including those concerning copyright, rights related to copyright and patents.

These tasks should, in future, encompass:

- delivering independent data and assessments on the scope and scale of counterfeiting and piracy in the internal market;
- exchanging and promoting best practices in relation to public authorities;
- spreading of best private sector strategies;
- raising public awareness;
- evaluating the need for and designing European training programmes for authorities involved in the protection of intellectual property rights, in cooperation with other international and European institutions and agencies;
- carrying out research on technical tools to prevent counterfeiting and piracy; and
- fostering international cooperation and providing technical assistance to third-country authorities.

The activities to achieve these tasks should encompass the following:

- organising meetings of the representatives assembled as the Observatory and of its working groups;
- organising meetings of other experts;
- cataloguing and organising seminars and training sessions on IPR infringements and methods to combat such infringements;
- carrying out studies on the scope and impact of counterfeiting and piracy and drawing up of annual reports on developments and trends and of sectoral reports analysing the situation in the different industry and product sectors;
- researching on technical tools to prevent counterfeiting and piracy;
- developing databases to store and analyse data on the scope and impact of IPR infringements, national case law on such infringements and existing training measures, and systems to enhance access of public authorities and private stakeholders to information and allowing for rapid exchange of information between them.

- **Legal basis**

Article 114 of the Treaty on the Functioning of the European Union (TFEU) is the specific basis for the establishment and functioning of the internal market. The tasks the OHIM is entrusted with under this Regulation relate to the enforcement also of intellectual property rights provided for by the national laws of the Member States and may be regarded as supporting Union legislation in this area. Article 118(1) TFEU provides powers to adopt measures for the creation of European intellectual property rights, to provide uniform protection of intellectual property rights throughout the EU and for the setting up of centralised EU-wide authorisation, coordination and supervision arrangements. Therefore, Article 114 and Article 118(1) combined constitute the appropriate legal base for this proposal.

- **Subsidiarity principle**

Many of the activities assigned to the European Observatory on Counterfeiting and Piracy are of a cross-border nature, involving all 27 Member States, and therefore they cannot be effectively delivered by individual Member States. As far as there is a need for bilateral cooperation between two Member States, in individual cases procedures could theoretically be improved at this level. However, given that the tools and methods needed in such a context would be similar for all Member States, it seems more efficient to develop them at EU level. This will ensure that solutions are not tailored to individual Member States' requirements but are beneficial to all Member States. Furthermore, as far as relations with third countries are concerned, coordination within the Commission services and with other EU and international agencies must take place at the EU level.

Finally, as demonstrated in the Impact Assessment, assigning these tasks to an existing EU agency and more concretely, the OHIM, allows for synergies with already ongoing activities. It also allows for benefitting from the expertise that already exists in OHIM with a view to trademarks and design rights, and from the working relations that OHIM has established with national IP offices. These working relations will enable the OHIM to bring together the experts it needs to carry out its new tasks successfully.

#### **4. BUDGETARY IMPLICATIONS**

The proposal does not create any costs for the EU budget. Instead, it would allow for savings of around EUR 40,000 as certain costs that are currently borne by the EU budget would in future be borne by the OHIM's budget.

#### **5. EXPLANATION OF THE ARTICLES**

##### **Article 1**

This Article describes the subject of the proposal, which is to enlarge the sphere of competence of the Office for Harmonisation in the Internal Market (OHIM) by entrusting it with the operation of the European Observatory on Counterfeiting and Piracy as a centre of expertise in relation to specific tasks and activities.

## **Article 2**

This Article defines the tasks and activities which the Office should be carrying out in relation to the Observatory and which can be grouped in six main categories:

- Improve the understanding on the scope and impact of infringements of intellectual property rights and on the value of intellectual property and enhance the knowledge on best public and private sector practices to combat infringements of intellectual property rights;
- raise public awareness of the impact of infringements of intellectual property rights;
- enhance the expertise of persons involved in the enforcement of intellectual property rights;
- enhance the knowledge on technical tools to prevent and combat counterfeiting and piracy, including tracking and tracing systems;
- improve the online exchange, between Member States' authorities involved in the protection of intellectual property rights, of information related to the protection of intellectual property rights, and foster cooperation with and between the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property;
- foster international cooperation.

## **Article 3**

This Article clarifies that the Office shall carry out the activities to fulfil the tasks set out in Article 2 by making use of its own budgetary means.

## **Article 4**

This Article covers the participation in and the organisation of the meetings of the Observatory. It provides that the Office is to invite experts from public administrations, bodies and organisations dealing with the protection of intellectual property rights, from the private sector, the European Parliament and the Commission. The representatives from the private sector should cover economic sectors most concerned by counterfeiting. They should therefore include representatives from different industry sectors. Thus, right holders, Internet service providers and telecommunication companies should be represented. In addition, representatives of consumers should also be included. The article, furthermore, provides for the possibility to organise working group meetings of the Observatory.

## **Article 5**

The Article places an obligation on the Member States' and private sector representatives to share, within the applicable laws on data protection, statistical and case-law information with the Office in relation to the work of the Observatory, in line with the Council Conclusions of 1 March 2010, and to inform it about their own policies in that area.



## **Article 6**

This Article sets out the Office's obligation to adopt the Observatory's internal administrative instructions and the publication of notices that are necessary in order to ensure the fulfilment of all the tasks entrusted in this Regulation to the Office.

## **Article 7**

This Article provides that the Office's annual management report shall include a report on the Office's activities under this Regulation. It sets out the main information that needs to be included in the report, in particular a review of the main activities carried out throughout the year, the results achieved, an overall assessment of the Office's work under the Regulation, information of the planned future work of the Observatory and recommendations on future policies in the area of protection of intellectual property rights.

## **Article 8**

This Article lays down the rules for evaluation of the Regulation, to be carried out by the Commission, on the performance of the Office in implementing the Regulation in practice, i.e. in particular in fulfilling the tasks set out in Article 2, and on the impact of this work on the protection of intellectual property rights in the EU. The Commission is to consult the Observatory as part of the evaluation process and will send the final evaluation report to the European Parliament and to the Council. The Commission should then launch a broad consultation among stakeholders on the evaluation report, which could be followed by proposals to modify the Regulation, where appropriate.

## **Article 9**

This Article deals with the entry into force and the effects of the proposed Regulation.

Proposal for a

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and 118(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>26</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The economic well-being of the European Union (hereinafter referred to as "the Union") relies on sustained creativity and innovation. Therefore measures for their effective protection are indispensable in ensuring its future prosperity.
- (2) Intellectual property rights are vital business assets that help to ensure that innovators and creators get a fair return for their work and that their investment in research and new ideas is protected.
- (3) A sound, harmonised and progressive approach to intellectual property rights is fundamental in the endeavour to fulfil the ambitions of the Europe 2020 Strategy<sup>27</sup>.
- (4) The constant rise of infringements of intellectual property rights constitutes a genuine threat not only to the Union economy, but also to the health and safety of Union consumers. Therefore, effective, immediate and coordinated actions at European and global levels are needed to successfully combat this phenomenon.

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<sup>26</sup> OJ C , , p. .

<sup>27</sup> Communication from the Commission of 3 March 2010: 'Europe 2020: A strategy for smart, sustainable and inclusive growth' - COM(2010) 2020.

- (5) In the context of the overall intellectual property rights strategy foreseen by the Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan<sup>28</sup>, the Council called on the Commission to launch a European Observatory on Counterfeiting and Piracy (hereinafter referred to as "the Observatory"). The Commission therefore formed a network of experts from the public and the private sectors and described its tasks in the Communication "Enhancing the enforcement of intellectual property rights in the internal market"<sup>29</sup>.
- (6) The Communication set out that the Observatory should become the central resource for gathering, monitoring and reporting information and data related to all intellectual property rights infringements. It should be used as a platform for cooperation between representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, to develop joint enforcement strategies and to make recommendations to policy-makers. The Communication specified that the Observatory would be hosted and managed by the services of the Commission.
- (7) In its Resolution on the enforcement of intellectual property rights in the internal market of 1 March 2010<sup>30</sup>, the Council invited the Commission, the Member States and industry to provide the Observatory with available reliable and comparable data on counterfeiting and piracy and to jointly develop and agree, in the context of the Observatory, on plans to collect further information. The Council also invited the Observatory to publish each year a comprehensive annual report covering the scope, scale and principal characteristics of counterfeiting and piracy as well as its impact on the internal market. That annual report should be prepared with the information provided by the authorities of the Member States, the Commission and the private sector, within the limits of data protection law, on the scope, scale and principal characteristics of counterfeiting and piracy as well as its impact on the internal market.
- (8) In its Conclusions of 25 May 2010<sup>31</sup>, the Council invited the Commission to establish a legal basis for the involvement of the Office for Harmonization in the Internal Market (hereinafter referred to as 'the Office') in enforcement related activities, including the fight against counterfeiting, in particular through fostering its cooperation with the national trade mark offices and the Observatory.
- (9) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>32</sup> provides inter alia for measures to promote cooperation, including the exchange of information, among Member States and between Member States and the Commission.
- (10) The European Parliament, in its Resolution of 22 September 2010 on enforcement of intellectual property rights in the internal market<sup>33</sup>, called on the Member States and the

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<sup>28</sup> OJ C 253, 4.10.2008, p. 1.

<sup>29</sup> COM(2009) 467, 14.9.2009.

<sup>30</sup> Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market (OJ C 56, 6.3.2010, p. 1).

<sup>31</sup> Council Conclusions of 25 May 2010 on the future revision of the Trade Mark system in the European Union (OJ C 140, 29.5.2010, p. 22).

<sup>32</sup> OJ L 195, 2.6.2004, p. 16.

<sup>33</sup> European Parliament Resolution of 22 September 2010, 2009/2178(INI).

Commission to extend the cooperation between the Office and national intellectual property offices to also include the fight against infringements of intellectual property rights.

- (11) In view of the range of tasks assigned to the Observatory, a solution is needed to ensure an adequate and sustainable infrastructure for the fulfilment of the tasks of the Observatory.
- (12) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark<sup>34</sup> provides for administrative cooperation between the Office and the courts or authorities of the Member States, and the exchange of publications between the Office and the central industrial property offices of the Member States. On that basis, the Office has set up cooperation with national offices that are active in the field of protection of intellectual property rights. Consequently the Office already possesses, to a considerable extent, the necessary experience and expertise to provide an adequate and sustainable infrastructure in the field of the Observatory's tasks.
- (13) The Office is therefore well placed to be entrusted with carrying out those tasks.
- (14) Those tasks should relate to all intellectual property rights covered by Union law or the national law of the Member State concerned in this field since in many cases, infringing acts affect a bundle of intellectual property rights. Furthermore, data and the exchange of best practices are needed on the entire range of intellectual property rights, in order to obtain a complete picture of the situation and allow designing comprehensive strategies to reduce intellectual property rights infringements. In the context of those tasks, the Office's mandate should therefore be extended to cover also the protection of patents, copyright and related rights as well as geographical indications.
- (15) The tasks that the Office should carry out can be linked to the enforcement and reporting measures laid down by Directive 2004/48/EC. Thus, the Office should provide services to national authorities or operators which affect, in particular, the homogenous implementation of the Directive and which are likely to facilitate its application. The Office's tasks should therefore be considered as closely linked to the subject-matter of acts approximating the laws, regulations and administrative provisions of the Member States.
- (16) Assembled by the Office, the Observatory should become a centre of excellence on information and data related to infringements of intellectual property rights, by benefiting from the Office's expertise, experience and resources.
- (17) The Office should offer a forum that brings together public authorities and the private sector, ensuring the collection, analysis and dissemination of relevant objective, comparable and reliable data regarding the value of intellectual property rights and the infringements of those rights, the development of best practices and strategies to protect intellectual property rights, and raising public awareness of the impacts of intellectual property rights infringements. Furthermore, the Office should fulfil additional tasks, such as to improve the understanding of the value of intellectual property rights, enhance the expertise of persons involved in the enforcement of intellectual property rights by appropriate training measures, increase

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<sup>34</sup> OJ L 78, 24.3.2009, p. 1.

knowledge on techniques to prevent counterfeiting, and improve cooperation with third countries and international organisations.

- (18) With regard to representatives of the private sector, the Office should involve, when assembling the Observatory in the context of its activities, a representative selection of the economic sectors most concerned by and most experienced in the fight against infringements of intellectual property rights, in particular representatives of right holders and Internet service providers. Also, a proper representation of consumers and of small and medium sized enterprises should be ensured.
- (19) The Office should implement the tasks and activities related to the protection of intellectual property rights by making use of its own budgetary means,

HAVE ADOPTED THIS REGULATION

*Article 1*  
*Subject matter*

This Regulation entrusts the Office for Harmonization in the Internal Market (hereinafter referred to as "the Office") with certain tasks related to the protection of intellectual property rights. In carrying out these tasks the Office shall regularly invite experts, authorities and stakeholders which will assemble under the name "European Observatory on Counterfeiting and Piracy"(hereinafter referred to as "the Observatory").

*Article 2*  
*Tasks and activities*

1. The Office shall have the following tasks:
  - (a) improving the understanding on the scope and impact of infringements of intellectual property rights, protected under European Union law or the national laws of the Member States, including industrial property rights, copyright and rights related to copyright;
  - (b) improving the understanding on the value of intellectual property;
  - (c) enhancing the knowledge on best public and private sector practices to protect intellectual property rights;
  - (d) raising citizens' awareness of the impact of infringements of intellectual property rights;
  - (e) enhancing the expertise of persons involved in the enforcement of intellectual property rights;
  - (f) enhancing the knowledge on technical tools to prevent and combat counterfeiting and piracy, including tracking and tracing systems;
  - (g) improving the online exchange, between Member States' authorities involved in the protection of intellectual property rights, of information related to the protection of

intellectual property rights, and fostering cooperation with and between the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property;

- (h) fostering international cooperation with intellectual property offices in third countries to build strategies and developing techniques for the protection of intellectual property rights, skills and tools.
2. In the fulfilment of the tasks set out in paragraph 1, the Office shall carry out the following activities:
- (a) assembling, in accordance with Article 4, the Observatory at regular intervals;
  - (b) establishing a methodology for the collection, analysis and reporting of independent, objective, comparable and reliable data related to infringements of intellectual property rights;
  - (c) collecting, analysing and disseminating relevant objective, comparable and reliable data regarding infringements of intellectual property rights;
  - (d) collecting, analysing and disseminating relevant objective, comparable and reliable data regarding the economic value of intellectual property and its contribution to economic growth, welfare, innovation, creativity, cultural diversity, the creation of high quality jobs and the development of high quality products and services within the Union;
  - (e) providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of intellectual property rights infringements on society, economy, health, environment, safety and security, and the relation of such infringements with organized crime and terrorism;
  - (f) collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory, and developing strategies based on such practices;
  - (g) drawing up reports and publications to raise awareness of the Union's citizens of the impact of infringements of intellectual property rights, and organising conferences, on-line and off-line campaigns, events and meetings at European and international levels;
  - (h) developing and organising on-line and other forms of training for national officials involved in the protection of intellectual property rights;
  - (i) organising ad hoc meetings of experts to support its work under this Regulation;
  - (j) researching, evaluating and promoting technical tools for professionals and benchmark techniques, including tracking and tracing systems which help to distinguish genuine from counterfeit products;
  - (k) working with national authorities to develop an on-line network to exchange information related to the protection of intellectual property rights, including real-time alerts and

information on infringements of intellectual property rights between administrations, bodies and organisations in the Member States dealing with the protection of intellectual property rights;

- (l) building strategies in cooperation with the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, and developing techniques, skills and tools related to the protection of intellectual property rights, including training programmes and awareness campaigns;
- (m) developing programmes on technical assistance for third countries as well as developing and delivering specific training programmes and events for officials from third countries involved in the protection of intellectual property rights;
- (n) making recommendations to the Commission on issues falling within the scope of this Regulation, including on the basis of a request from the Commission;
- (o) drawing up an annual work programme for the meetings referred to in point (a) in line with the Union's policies and priorities in the field of protection of intellectual property rights;
- (p) carrying out similar activities necessary for the Office to fulfil the tasks set out in paragraph 1.

### *Article 3 Financing*

The Office shall at all times ensure that the activities entrusted to it by this Regulation are carried out by making use of its own budgetary means.

### *Article 4 Meetings of the Observatory*

1. The Office shall invite to the meetings referred to in point (a) of Article 2(2) representatives from public administrations, bodies and organisations dealing with the protection of intellectual property rights and representatives from the private sector.
2. Representatives meeting as the Observatory invited from the private sector shall include a broad and representative range of Union and national bodies representing the different economic sectors most concerned by and most experienced in the fight against infringements of intellectual property rights.

Consumer organisations and small and medium sized enterprises shall be properly represented.

3. The Office shall invite one national representative from each Member State, and five representatives each from the European Parliament and the Commission.
4. The names of the representatives, the agenda and the minutes of the meetings shall be published on the Office's website.

5. The meetings referred to in point (a) of Article 2(2) may also be organised in working groups within the Observatory. Up to two representatives from the European Parliament and up to two representatives from the Commission shall be invited to the meetings of the working groups as observers.

*Article 5*  
*Information obligations*

Without prejudice to law governing the processing of personal data, Member States and private sector representatives meeting as the Observatory shall:

- (a) inform the Office of their policies and strategies on the protection of intellectual property rights and any changes thereto;
- (b) provide statistical data on infringements of intellectual property rights;
- (c) inform the Office of any relevant case law.

*Article 6*  
*Internal administrative instructions and notices*

Using the powers conferred on it by Article 124 of Regulation (EC) No 207/2009, the President of the Office shall adopt the internal administrative instructions and shall publish the notices that are necessary for the fulfilment of all the tasks entrusted to the Office in this Regulation.

*Article 7*  
*Content of the management report*

The management report foreseen in point (d) of Article 124(2) of Regulation (EC) No 207/2009 shall contain at least the following information on the Office's tasks and activities under this Regulation:

- (a) a review of the main activities carried out during the preceding calendar year;
- (b) the results achieved during the preceding calendar year, accompanied, where appropriate, by sectoral reports analysing the situation in the different industry and product sectors;
- (c) an overall assessment of the fulfilment of the Office's tasks as provided for in this Regulation;
- (d) an overview of the activities that the Office intends to undertake in the future;
- (e) recommendations on the future policies in the area of the protection of intellectual property rights, including on how to enhance an effective cooperation between Member States.

*Article 8*  
*Evaluation*

1. Within 5 years after entry into force of this Regulation, the Commission shall adopt a report evaluating the application of this Regulation.



2. The evaluation report shall assess the performance of the Office in the operation of this Regulation, in particular as regards its impact on the protection of intellectual property rights in the internal market.
3. The Commission shall, when preparing the evaluation report, consult the representatives meeting as the Observatory on the issues set out in paragraph 2.
4. The Commission shall transmit the evaluation report to the European Parliament and the Council and undertake a broad consultation among stakeholders on the evaluation report.

*Article 9*  
*Entry into force*

This Regulation shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## **LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative: Legislative proposal
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management method(s) envisaged

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on operational appropriations*
  - 3.2.3. *Estimated impact on appropriations of an administrative nature*
  - 3.2.4. *Compatibility with the current multiannual financial framework*
  - 3.2.5. *Third-party participation in financing*
- 3.3. Estimated impact on revenue

## LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>35</sup>

Internal Market – knowledge based economy – the enforcement of intellectual property rights

#### 1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>36</sup>
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objectives

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The general objective is to enhance effective enforcement of IPR, in order to avoid significant harm being caused by counterfeiting and piracy to the European economy and to the health and safety of European citizens. This Objective concurs with existing EU policies and strategies, such as Europe 2020<sup>37</sup>. They also fit with the Commission's main priorities and proposals concerning its IPR strategy for Europe<sup>38</sup>.

Over the last ten years IPR infringements have increased significantly. In 2009, the OECD estimated that international trade in counterfeit and pirated goods was up to USD 250 billion in 2007, which is larger than the national GDPs of 150 economies<sup>39</sup>. Figures published by EU customs authorities reflect a clear increase in customs activity, with a rise in registered cases from 4,694 in 1999 to 43,572 in 2009, i.e. by about 920% in ten years. Concerning Internet piracy, the most recent industry study carried, out in 2010, by Paris-based TERA Consultants

<sup>35</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

<sup>36</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

<sup>37</sup> COM(2010) 2020.

<sup>38</sup> COM(2008) 465.

<sup>39</sup> OECD, Magnitude of counterfeiting and piracy of tangible products – November 2009 update, <http://www.oecd.org/document/23/0,3343>.

and commissioned by the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative, indicates that EUR 10 billion and more than 185,000 jobs were lost due to piracy in the music, movie, TV, and software industries in the EU in 2008<sup>40</sup>.

At EU level, the primary initiative in combating the problem is the European Observatory on Counterfeiting and Piracy ('the Observatory'), which is administered by the Commission's DG Internal Market and Services (DG MARKT).

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective:

Over the last two years, the Observatory's institutional framework has been set up. This setting up phase of the Observatory having been concluded it shows that, due to a lack of funding, human resources, IT and meeting capacities and necessary expertise, with its current infrastructure it will not be able to meet its objectives in the future and that the taking on of additional tasks under the current setting would be excluded.

The specific objective therefore is to ensure that the Observatory has the necessary infrastructure to deliver its tasks effectively, as quickly as possible and without any costs for the EU budget. The tasks include enhancing knowledge among public authorities and private stakeholders about the scope, impact and trends related to counterfeiting and piracy and about effective techniques to fight the problem, improving day-to-day enforcement related cooperation; and informing consumers of the economic impact and dangers related to counterfeiting and piracy and improving the coordination of actions directed towards third countries.

In this initiative the Observatory would be run by an existing agency the Office for Harmonisation in the Internal market (OHIM). This would allow the Observatory to profit from existing administrative structures (such as human resources and finance). The OHIM is the EU agency responsible for registering Community trade marks and designs, valid in all 27 EU Member States. Given the clear relationship between the protection of IP rights and their enforcement, the expertise already available within the OHIM appears particularly pertinent to taking over the Observatory's tasks.

ABM/ABB activity(ies) concerned:

Internal Market policy.

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<sup>40</sup> <http://www.iccwbo.org/bascap/id35360/index.html>.

#### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Unless more coordinated and sustainable action is taken to combat infringements of IPR, the EU faces a damaging trend that will have a real impact on its economic recovery, wealth and jobs. This trend includes a rise in products that can potentially cause serious harm to consumers, such as fake medicines, food products, cosmetics, and fake household equipment.

The Observatory would significantly enhance enforcement by providing reliable, objective data in order to identify trends and threats, greater coordination and exchange between responsible authorities in the Member States on best practice, and real-time exchanges of information between stakeholders on specific counterfeit products, exchanges on successful public and private sector strategies; training for enforcement authorities, greater consumer awareness training for authorities in vulnerable third countries to combat counterfeiting and piracy.

Apart from the cost savings compared to the current situation that are demonstrated in the Impact Assessment, this initiative would also have the advantage of allowing the Observatory to become quickly operational. The Office for Harmonisation in the Internal Market (OHIM) is the single EU agency dealing with trade marks and designs and would be a suitable host for the Observatory. It has already established a basis of expertise in the area of enforcement of trademarks and designs, through its training seminars and activities, and is planning to develop further enforcement projects, such as an IT information system on registered trade marks and designs. Moreover, synergies between the tasks of the Observatory and those already carried out by the OHIM would significantly limit the number of additional staff required.

#### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

Timeliness of the collation and publication of reports on counterfeiting and piracy by the Office, research on best practices, the development and delivery of tool kits on awareness raising, and the development, delivery and maintenance of databases; Quality of reports and research (accuracy and usefulness), quality and impact of strategies that will be developed in the fields of public awareness, research and training, including the number, impact and influence of campaigns carried out successfully, the number of persons trained and the accessibility of data.

### **1.5. Grounds for the proposal/initiative**

#### 1.5.1. *Requirement(s) to be met in the short or long term*

Given the need to expand the Observatory's activities quickly, in the short term, the Commission has decided that the Observatory will focus on data collection, public awareness measures and training, the identification and exchange of best public and private practices, and improving day-to-day cooperation, research on technical tools to prevent counterfeiting and piracy and international technical assistance.

### 1.5.2. *Added value of EU involvement*

Many of the activities required to fight counterfeiting and piracy are of a cross-border nature, based on cooperation and coordination. To be fully effective, they require the engagement and involvement of all 27 Member States. Therefore, it is essential to develop EU level tools and structures which would allow all Member States to benefit from the results.

### 1.5.3. *Lessons learned from similar experiences in the past*

In 2009, the OECD and other organisations outlined key issues that had failed to prevent the growth of counterfeiting and piracy; this led to a significant reduction in investment and the destruction of jobs<sup>41</sup>; a growing threat to the health and safety of European consumers<sup>42</sup>; serious problems for EU SMEs<sup>43</sup>, tax losses due to reductions in declared sales and the involvement of organised crime.

### 1.5.4. *Coherence and possible synergy with other relevant instruments*

The proposal builds on the Commission Communication of 2009<sup>44</sup> defining the tasks of the European Observatory on Counterfeiting and Piracy. Its objectives are in line with existing EU policies and strategies, such as Europe 2020<sup>45</sup>. They also fit with the Commission's main priorities and proposals concerning its IPR strategy for Europe<sup>46</sup>.

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<sup>41</sup> TERA Consultants, 'Building a Digital Economy: March 2010, <http://www.iccwbo.org/bascap/id35360/index.html>.  
<sup>42</sup> European Commission, Taxation and Customs Union Directorate General, 'Report on EU Customs enforcement of intellectual property rights - 2009',  
[http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm).  
<sup>43</sup> Technopolis (2007), 'Effects of counterfeiting on EU SMEs',  
[http://ec.europa.eu/enterprise/enterprise\\_policy/industry/doc/Counterfeiting\\_Main%20Report\\_Final.pdf](http://ec.europa.eu/enterprise/enterprise_policy/industry/doc/Counterfeiting_Main%20Report_Final.pdf).  
<sup>44</sup> COM(2009) 467.  
<sup>45</sup> COM(2010) 2020.  
<sup>46</sup> COM(2008) 465; see also Commission Communication of 27 October 2010: 'Towards a Single market Act – for a highly competitive social market economy' - COM(2010) 608.

## 1.6. Duration and financial impact

Proposal/initiative of **limited duration**

–  Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

–  Financial impact from YYYY to YYYY

✓ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from 2012 to 2013 (assuming that the Regulation would enter into force in the course of 2012),

– followed by full-scale operation.

## 1.7. Management mode(s) envisaged<sup>47</sup>

**Centralised direct management** by the Commission

✓ **Centralised indirect management** with the delegation of implementation tasks to:

–  executive agencies

– ✓ bodies set up by the Communities<sup>48</sup>

–  national public-sector bodies/bodies with public-service mission

–  persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

**Shared management** with the Member States

**Decentralised management** with third countries

**Joint management** with international organisations (*to be specified*)

*If more than one management mode is indicated, please provide details in the "Comments" section.*

### Comments

It is proposed to delegate the tasks to an already existing body, i.e. the Office for Harmonisation in the Internal Market (OHIM).
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<sup>47</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

<sup>48</sup> As referred to in Article 185 of the Financial Regulation.

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

Specify frequency and conditions.

The proposed Regulation provides that, within five years after its entry into force, the Commission shall evaluate the performance of the Office in the operation of that Regulation, in particular as regards its impact on the protection of intellectual property rights.

The Commission's evaluation report of the Office on the activities carried out under the proposed Regulation will include:

- (1) An assessment of the results that will be published by the Observatory in quarterly highlight reports and in its annual report, based on comprehensive, objective data;
- (2) Any audit reports carried out by the OHIM on the work of the Observatory;
- (3) A survey of public and private stakeholders on their perceptions of the Office's work, in terms of comprehensiveness, reliability, accuracy, usefulness, objectivity and independence of its results.

The criteria that will be used in order to assess the effect and impact of the measure will be, in particular:

- Progress made in the development of the Observatory's activities;
- The success of the Observatory's strategy;
- The efficient use of resources;
- Impact and implications for public and private stakeholders.

The following will act as the **main monitoring indices**:

- Timeliness of the collation and publication of reports, of research on best practices, the development and delivery of tool kits on awareness raising, and the development, delivery and maintenance of databases.
- Quality of reports and research (accuracy and usefulness), quality and impact of strategies that will be developed in the fields of public awareness, research and training, including the number of campaigns carried out successfully and the number of persons trained, accessibility of data



## **2.2. Management and control system**

### *2.2.1. Risk(s) identified*

- The new tasks of the Office should also serve to assess, at Commission level, whether any additional activities are needed at EU level and what these activities should be. It therefore needs to be ensured that the work programme and the priorities set by the Office are in line with the information needs of the Commission. The delegation to the agency creates a risk that such alignment is not respected in practice.

- The current emphasis of the Office on trademarks and designs creates a risk that copyright and other intellectual property titles will not be treated with the same priority as the former.

A full risk assessment will be created based on the above criteria.

### *2.2.2. Control method(s) envisaged*

Regular risk assessments will be made and review reports completed, on the basis of the annual reports of the Office and the evaluation to be carried out by the Commission.

## **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

The OHIM already has stringent policies and procedures in this area.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	DA/NDA <sup>(49)</sup>	from EFTA <sup>50</sup> countries	from candidate countries <sup>51</sup>	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	<i>12 01 01 Expenditure related to staff in active employment of 'Internal market' policy area</i>	DNA	NO	NO	NO	NO
	<i>12 01 03 Expenditure related to equipment, furniture and services of 'Internal market' policy area</i>	DNA	NO	NO	NO	NO

- The proposed initiative would lead to **savings** on these budget lines.
- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]		YES/ O	YES/ O	YES/ O	YES/NO

<sup>49</sup> DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations.

<sup>50</sup> EFTA: European Free Trade Association.

<sup>51</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

<b>Heading of multiannual financial framework:</b>	Number	Internal Market policies
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DG: MARKET			Year N <sup>52</sup>	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelop of specific programs <sup>53</sup>										
Number of budget line		(3)								
<b>TOTAL appropriations for DG &lt;.....&gt;</b>	Commitments	=1+1a+3	0	0	0	0	0	0	<b>0</b>	<b>0</b>
	Payments	=2+2a+3	0	0	0	0	0	0	<b>0</b>	<b>0</b>

<sup>52</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>53</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)								
<b>TOTAL appropriations under HEADING &lt;....&gt; of the multiannual financial framework</b>	Commitments	=4+ 6	0	0	0	0	0	0	<b>0</b>	<b>0</b>
	Payments	=5+ 6	0	0	0	0	0	0	<b>0</b>	<b>0</b>

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelop of specific programs		(6)								
<b>TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)</b>	Commitments	=4+ 6	0	0	0	0	0	0	<b>0</b>	<b>0</b>
	Payments	=5+ 6	0	0	0	0	0	0	<b>0</b>	<b>0</b>

<b>Heading of multiannual financial framework:</b>	<b>5</b>	" Administrative expenditure "
--	----------	--------------------------------

EUR million (to 3 decimal places)

		Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <.....>									
• Human resources									
• Other administrative expenditure									
<b>TOTAL DG &lt;.....&gt;</b>	Appropriations								

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)								
--	--------------------------------------	--	--	--	--	--	--	--	--

EUR million (to 3 decimal places)

		Year N <sup>54</sup>	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	0	0	0	0	0	0	0	0
	Payments	0	0	0	0	0	0	0	0

<sup>54</sup> Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

- ✓ The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs  ↓			Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)										TOTAL			
	OUTPUTS																			
	Type of output <sup>55</sup>	Average cost of the output	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
SPECIFIC OBJECTIVE No 1 <sup>56</sup> ...																				
- Output																				
- Output																				
- Output																				
Sub-total for specific objective N°1																				
SPECIFIC OBJECTIVE No 2...																				
- Output																				
Sub-total for specific objective N°2																				
<b>TOTAL COST</b>				0		0		0		0		0		0		0		0		0

<sup>55</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>56</sup> As described in Section 1.4.2. "Specific objective(s)...".

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of administrative appropriations
- The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year N <sup>57</sup>	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
--	-------------------------	-------------	-------------	-------------	---	-------

<b>HEADING 5 of the multiannual financial framework</b>								
Human resources								
Other administrative expenditure								
<b>Subtotal HEADING 5 of the multiannual financial framework</b>								

<b>Outside HEADING 5<sup>58</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>								

<b>TOTAL</b>								
--------------	--	--	--	--	--	--	--	--

<sup>57</sup>

Year N is the year in which implementation of the proposal/initiative starts.

<sup>58</sup>

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

### 3.2.3.2. Other expenditure of an administrative nature freed

(in Mio€)

Type of expenditure	Other expenditure of an administrative nature freed
---------------------	---

	from 2013
12 01 02 11 02 - Conferences and meetings	0.040
<b>TOTAL administrative expenditure freed</b>	<b>0.040</b>

The costs of the meetings of the Observatory would not have to be borne by the EU budget anymore as these costs would be financed from the separate budget of the OHIM.

On the basis of 2010 expenditure, EUR 40,000 will be freed.



### 3.2.3.3. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary agents)</b>							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External personnel (in Full Time Equivalent unit: FTE)<sup>59</sup></b>							
XX 01 02 01 (CA, INT, SNE from the "global envelope")							
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)							
<b>XX 01 04 yy<sup>60</sup></b>	- at Headquarters <sup>61</sup>						
	- in delegations						
XX 01 05 02 (CA, INT, SNE - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>							

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to the management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	
External personnel	

<sup>59</sup> CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert;

<sup>60</sup> Under the ceiling for external personnel from operational appropriations (former "BA" lines).

<sup>61</sup> Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

3.2.3.4. Number and type of human resources freed

<b>Type of post</b>	<b>Human resources freed and to be assigned to other priorities (by redeployment to other Commission services)</b>
---------------------	--

		<b>2013</b>
Officials and temporary agents	AD	0
	AST	0
Total posts		0
External personnel	Contract agents	0
	Seconded National Experts	
Total external personnel		0
<b>TOTAL Full Time Equivalent (FTE) units</b>		<b>0</b>

One current AST staff member currently occupied with the organisation of the Observatory is on secondment from the OHIM. Its assistance will in future no longer be required in the Commission and the post will be returned to the Office.

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>62</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
<i>Specify the co-financing body</i>								
TOTAL appropriations cofinanced								

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<sup>62</sup> See points 19 and 24 of the Interinstitutional Agreement.

### 3.3. Estimated impact on revenue

- ✓ Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget exercise	Impact of the proposal/initiative <sup>63</sup>						
		Year N	Year N+1	Year N+2	Year N+3	... insert as many columns as necessary in order to reflect the duration of the impact (see point 1.6)		
Article .....								

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

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<sup>63</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.