



Brussels, 7 July 2022  
(OR. en)

11110/22

PI 88

#### 'I/A' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	9562/22
Subject:	Council conclusions on the European Court of Auditors' Special Report No 6/2022: 'EU intellectual property rights - Protection not fully waterproof' - Approval

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1. On 24 April 2022, the European Court of Auditors published special report No 6/2022 entitled: 'EU intellectual property rights – Protection not fully waterproof'.
2. Pursuant to the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors<sup>1</sup>, the Permanent Representatives Committee, at its meeting 4 May 2022, instructed the Working Party on Intellectual Property to examine the special report in accordance with the rules laid down in the above-mentioned conclusions, and to draw up draft Council conclusions on the special report.
3. The Working Party on Intellectual Property examined the European Court of Auditors' special report No 6/2022 at its meeting on 25 May 2022 after a presentation of the report has been delivered to the Working Party by a representative of the Court at that meeting.

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<sup>1</sup> Doc. 7515/00 FIN 127 + COR 1.

4. The Presidency presented a proposal for draft Council conclusions on this special report to the Working Party on Intellectual Property for discussion on 21 June 2022. On the basis of a revised draft and further discussions, the Working Party at its meeting on 29 June 2022 agreed on the text of the draft conclusions as set out in the ANNEX to this note.
  5. The Permanent Representatives Committee is therefore invited to confirm the agreement on the draft Council conclusions as set out in the ANNEX to this note and submit them to the Council for approval as an ‘A’ item on the agenda of one of its next meetings.
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## 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;
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, of considering an extension of the EU geographical indication protection system to non-agricultural products to provide efficient protection 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 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. 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;
12. INVITES the Commission to use this opportunity to 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, with a view to completing the single market;

## *Trademarks*

13. 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;
14. LOOKS FORWARD TO the Commission's evaluation and review of the implementation of this Regulation, as provided for in Article 210;
15. INVITES the Commission, in its evaluation, to take into account the observations of the European Court of Auditors;

## *Enforcement*

16. 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;
17. COUNSCIOUS of the harm caused by counterfeiting, as emphasised by the European Court of Auditors, estimated by the EUIPO 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<sup>2</sup>;
18. TAKES GOOD NOTE of the Commission's call for evidence of 3 February 2022; LOOKS FORWARD TO the presentation of the EU Toolbox against counterfeiting in the upcoming months of this year, which should aim to set out coherent, effective and coordinated action against counterfeiting, both online and offline, in particular through increased information sharing and cooperation between right holders, intermediaries and public authorities at national and EU level; STRESSES the importance of ensuring consistency between initiatives and networks, facilitating cross-border investigations, and improving inter-agency cooperation;

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<sup>2</sup> EUIPO, *2020 Status Report on IPR Infringement*.

*Governance and accountability*

19. 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;
  20. INVITES the European Court of Auditors to keep the Council informed of future audit reports on the intellectual property.
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