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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	12235/20
Subject:	Draft Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union

Delegations will find attached draft ‘Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union’ as approved by the Working Party on Intellectual Property.

**Draft Council conclusions on intellectual property policy and
the revision of the industrial designs system in the Union**

THE COUNCIL OF THE EUROPEAN UNION:

1. RECALLING

- the European Council conclusions of March 2019¹ inviting the Commission to present a long-term vision for the EU's industrial future;
- the Council conclusions ‘An EU Industrial Policy Strategy: a Vision for 2030’ of May 2019² recognising that a well-functioning and effective intellectual property rights regime is key to continued development and growth and recalling that it is essential to continue developing, improving and updating the European intellectual property frameworks, so as to ensure that ideas and inventions can be effectively developed and brought to the market, in particular by and for SMEs, to the benefit of the European economy and society at large;
- the Commission Communication of 10 March 2020 ‘A New Industrial Strategy for Europe’ announcing an Intellectual Property (IP) action plan to assess the need to upgrade the legal framework, to ensure a smart use of IP, and to better fight IP theft, as smart IP policies are essential to help companies to grow, to create jobs and to protect and develop what makes them unique and competitive;

¹ Doc. EUCO 1/19.

² Doc. 9706/19.

- the Commission Communication of 10 March 2020 ‘An SME Strategy for a sustainable and digital Europe’ announcing that the upcoming IP action plan will propose measures to make the IP system more effective for SMEs, through actions to simplify IP registration procedures (e.g. reforming EU legislation on industrial designs), to improve access to strategic IP advice (e.g. by making such advice available in all EU-level R&D funding), and to facilitate the use of IP as a lever to gain access to finance;

An efficient and balanced IP protection system

2. WELCOMING the recent consultation on a roadmap for an IP action plan and TAKING NOTE of the results of this consultation;
3. RECOGNISING that the promotion of European innovation and creativity has become even more important in the context of the COVID-19 pandemic and is a key tool to rebuild the EU economy and to contribute to a more sustainable economy in the digital age;
4. CONSIDERS that the promotion of European innovation and creativity – and in particular the market uptake of research output – has become even more important on foot of the COVID-19 pandemic, and that, in this context IP rights and translating R&I results into the economy will have a major role to play in the reconstruction process and in improving the resilience of EU businesses; therefore NOTES with interest the Commission Communication of 30 September 2020 on a new European Research Area for Research and Innovation³;

³ Doc. 11400/20.

5. RECOGNISES the challenges and opportunities brought by the rise of the intangible economy and new technologies; STRESSES the importance of a strong, efficient, transparent and balanced system of IP and trade secrets protection and the need for a coherent overall strategy to ensure both protection of – and fair access to – innovation to ensure that all companies established in the EU, including small and medium-sized ones, can effectively capitalise on their IP and make use of new technologies such as artificial intelligence, 3D printing and blockchain; RECOGNISES the importance of ‘green’ patents for the further development of eco-sustainable technologies;
6. INVITES the Member States to join efforts in strengthening Europe’s innovative performance and to ensure that Europe makes the most both of its innovative and creative potential and of its excellent research;
7. ENCOURAGES the Commission to swiftly present the announced IP action plan, with initiatives to make IP protection more effective, including with regard to the supplementary protection certificate system, and more affordable, especially for small and medium-sized EU enterprises, and to promote effective sharing of IP, in particular critical assets such as standard-essential patents (SEPs), whilst ensuring adequate and fair compensation;

Biotechnology

8. RECALLING its conclusions of 20 February 2017 on the patentability of plants⁴ and in particular its call to the Member States, in their capacity as members of the European Patent Organisation, to advocate that the practice of the Organisation be aligned with those Council conclusions; WELCOMES opinion G 3/19 of the Enlarged Board of Appeal of the European Patent Office issued on 14 May 2020, concluding that the non-patentability of essentially biological processes for the production of plants or animals also extends to plant or animal products that are exclusively obtained by means of such processes;
9. WELCOMES the fruitful discussions between the European Commission and the Member States on Directive 98/44/EC of the European Parliament and of the Council regarding the patentability of essentially biological processes for the production of plants or animals and of the products obtained by such processes, with the intention of achieving a deepened understanding of the Directive and the corresponding provisions of the European Patent Convention;

Geographical indications

10. WELCOMING the entry into force, on 26 February 2020, of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (GIs); RECOGNISING the need to strengthen GI protection systems in the EU; TAKING NOTE of the resolution of the European Parliament of 6 October 2015⁵; STANDS READY TO CONSIDER the introduction of a system for *sui generis* protection of non-agricultural products, on the basis of a thorough impact assessment of its potential costs and benefits;

⁴ Doc. 5808/17.

⁵ 2015/2053(INI).

IP Enforcement

11. RECALLING its conclusions of 12 March 2018 on the enforcement of Intellectual Property Rights⁶, and TAKING NOTE of the results of the report on the functioning of the Memorandum of Understanding on the sale of counterfeit goods on the internet and the report on the functioning of the Memorandum of Understanding on online advertising and intellectual property rights, both of 14 August 2020;
12. NOTES WITH CONCERN that despite the voluntary cooperation of stakeholders, e.g. in the context of the Memorandum of Understanding on the sale of counterfeit goods on the internet, an unacceptably high number of counterfeit goods, including those that threaten consumer health and safety, is still offered on online marketplaces, illustrating the need for enhanced collaboration to fight counterfeiting in a digital EU;
13. ENCOURAGES the Commission:
 - to provide country-by-country data on levels of counterfeiting and piracy, in cooperation with the Member States and the European Observatory on infringements of IPRs, to thereby further enhance the effectiveness of initiatives to combat counterfeiting and piracy, including the MoUs,
 - to establish principles in order to further enhance tripartite collaboration between right owners, intermediaries and law enforcement authorities to develop effective anti-counterfeiting strategies, and
 - to propose measures requiring online platforms and other hosting providers to take proportionate measures with regard to counterfeits, in line with the Council's Conclusions on shaping Europe's digital future⁷;

⁶ Doc. 6681/18.

⁷ Doc. 8711/20.

Designs

14. WELCOMING the evaluation, launched in 2014, of EU legislation on design protection;
15. RECALLING the findings of the two studies conducted within the framework of that evaluation – namely the 2015 ‘Economic Review of Industrial Design in Europe’ and the 2016 ‘Legal Review of Industrial Design Protection in the EU’;
16. TAKING NOTE of the findings of the study on ‘The Intellectual Property Implications of the Development of Industrial 3D Printing’ of 12 February 2020;
17. WELCOMING the public consultation on the roadmap to evaluate the EU legislation on design protection of 3 July 2018 and the public consultation on the evaluation of EU legislation on design protection, conducted from December 2018 to April 2019, and TAKING NOTE of the results of these consultations and the outcome of the questionnaire for Intellectual Property Offices, as presented to the Commission Expert Group on Industrial Property Policy on 9 December 2019;
18. TAKING NOTE of the results of the evaluation of EU legislation on design protection;
19. ACKNOWLEDGING the fact that while most users of the Community design protection system are positive about the system, as well as about the principle of coexistence between Community, national and regional design protection, almost half of the respondents to the public consultation pointed to unintended consequences or shortcomings of EU legislation on design protection, and see the need to upgrade and fine-tune it through a future revision, taking into account the need for a balanced relationship between the Community, national and regional design protection systems;
20. RECOGNISING that national and regional design protection continues to meet the needs of large numbers of applicants and that, therefore, national and regional design protection remains an option for these applicants;

21. CALLS ON the Commission to present proposals for the revision of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs and of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs approximating the laws of the Member States relating to industrial designs accompanied by a comprehensive and in-depth impact assessment, to modernise the EU design protection systems and to make design protection more attractive for individual designers and businesses, especially for SMEs.

THIS REVISION SHOULD ADDRESS AND CONSIDER:

- amendments and other measures aimed at supporting and strengthening the complementary relationship between the Community, national and regional design protection systems,
- improvements to the accessibility of the design system by clarifying and evolving the subject matter and requirements of protection, ensuring greater legal certainty and a common understanding of the product definition and its elements, broadening the current product notion so as to allow for the protection of new emerging designs,
- the opportunities and implications of new technologies that provide new ways of generating, using and sharing designs, such as industrial 3D printing, and the potential need to adjust the framework with respect to new technologies,
- further efforts to reduce areas of divergence within the design protection system in the Union, for instance by unifying the right of prior use and clarifying the relevance of the product indication for the scope of design protection, including through further convergence of practices, as promoted by the European Union Intellectual Property Office (EUIPO),

- an adaptation to the requirement for the representation of designs in order to facilitate access to design protection and ensure legal certainty for the applicants, aiming to make them future-proof with regard to emerging technical advancements such as the development of special tools to conduct image searches to examine prior art,
- the strengthening of design protection and the more effective combating of counterfeiting, by allowing right holders to prevent third parties from transiting infringing design goods through the Union territory of goods not intended to be placed on the Union market,
- the options and possibilities of harmonising the rules on the protectability of component parts of complex products used for repair purposes, including the possibility of aligning national rules to the Community design regime, thereby contributing to completing the single market for repair spare parts in the EU, and
- measures to make Council Regulation (EC) No 6/2002 and Directive 98/71/EC coherent, to the extent appropriate, with the 2017 reform of Union legislation on trade marks, in particular to simplify and streamline procedures managed by the EUIPO, thereby also increasing predictability and reducing burdens for its user community, while maintaining the existing high quality of the work and decisions of the EUIPO.
