

# SINGLE MARKET

## NEWS

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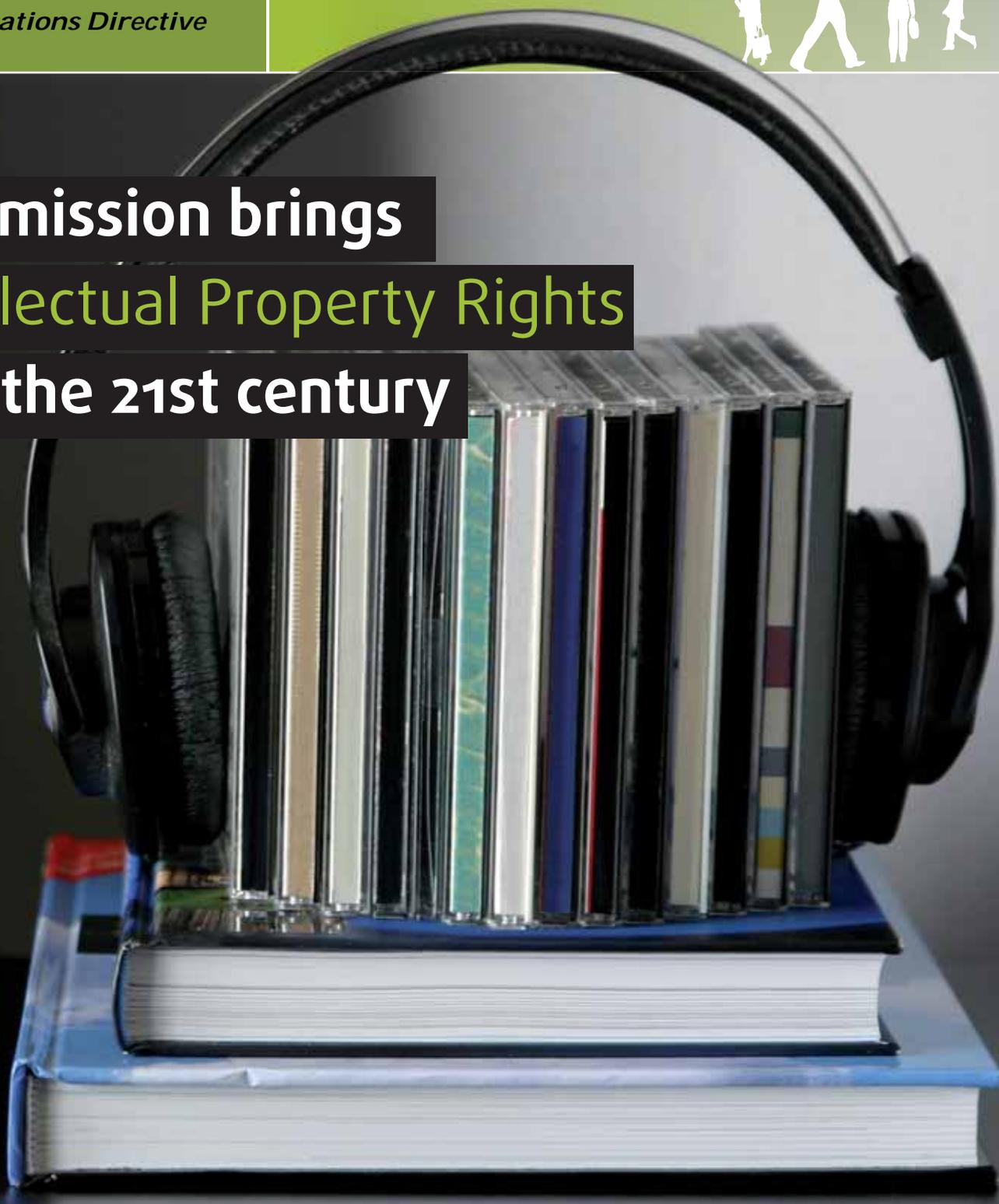
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**Commission brings  
Intellectual Property Rights  
into the 21st century**



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# Editorial



Since the adoption of the Single Market Act in April, the Commission has made progress on a wide variety of issues. In this edition of Single Market News, we put the spotlight on new developments in the fields of intellectual property rights (IPR), social enterprise and free movement of professionals in the EU.

On 24 May, the Commission adopted a comprehensive strategy to revamp the legal framework for IPR. Although IPR play an important role in trade, the EU does not yet have a completely unified market for intellectual property. IPR are important for business, innovation and creativity, yet too many IPR-related rules at Member State level impede free movement in Europe.

The Commission's strategy, 'A Single Market for Intellectual Property Rights' addresses these issues and outlines a blueprint on trademarks, patents, copyright and enforcement. This Single Market News takes you through the strategy in full detail on page 6, followed by an interview with Belgian pop-artist Stromae to give you a sense of what IPR, downloading, and the music industry mean to people of his generation.

On 25, 26 May, the Commission organised a successful workshop on "Social Business" – one of the 12 key actions in the Single Market Act. Social entrepreneurs joined the Commission for this two-day workshop to discuss the sector's definition, legal context, access to finance and participation under public procurement rules. Read about the results of this first workshop on page 19.

We also report on the second high-level conference on financial integration and stability, which like last year's brought together a large number of international policy-makers, representatives of industry and academics see page 24.

On page 12, we present background details on the recent (22 June) Green Paper on the modernisation of the Professional Qualifications Directive. We want to improve the free movement of professionals in the EU. A number of new ideas, including a "European professional card", are detailed in the green paper, along with possible options to modernise the automatic recognition of qualifications.

Finally, I hope you like this first edition of our revamped Single Market News. In line with the results of our readership survey earlier this year, this issue provides more in-depth coverage and detail on news related to the single market. You will also have received our "Single Market Monthly" e-newsletter in your inboxes, designed to complement the Single Market News, with more up-to-date news on the single market, a calendar for conferences and other events with links to audio-visual material.

If you haven't yet subscribed to the Single Market Monthly, please sign up at:

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A handwritten signature in black ink, reading "Jonathan Faull". The signature is fluid and cursive, written on a white background.

Jonathan Faull  
Director General for Internal Market and Services

# News In Brief

## Commission report highlights Europe's innovation emergency

The Commission's 2011 Innovation Union Competitiveness Report, released in June, concludes that the EU's innovation performance needs major improvements in many areas if the Europe 2020 strategy is to deliver smart sustainable growth. It suggests that Europe needs more and "smarter" investment in both public and private research and development – not only does this boost growth in the medium-term but it also has a positive effect in times of crisis. More research cooperation within the EU and internationally is needed, along with better use of research results, including through a stronger intellectual property regime. Education systems need to be adapted to business innovation needs. Innovative and fast-growing SME's need more encouragement. A concerted effort is necessary to build on Europe's promising record in innovation by tackling global challenges such as climate change. The gender gap in science and research must be closed.



## Record number of students receive EU grants for study and training abroad

The EU announced in June that more than 213 000 students received 'Erasmus' grants to study or train abroad during the 2009-10 academic year – a new record and 7.4% increase on the previous year's figure. Erasmus is the world's most successful student exchange programme and, on current trends, the EU will reach its target of supporting 3 million European students by 2012/13 since the programme's launch in 1987. The three most popular destinations for students in 2009/10 were Spain, France and the United Kingdom. The EU invested € 415 million in Erasmus in 2009/10. Learning mobility is a key objective of the Europe 2020 strategy for growth and jobs and the focus of the Commission's 'Youth on the Move' initiative which builds on the success of Erasmus. Research has shown that studying or training abroad helps young people to develop skills which employers value – from language learning and greater inter-cultural awareness to leadership and adaptability.



### Directive to prohibit 'surreptitious advertising' regardless of payment

The 'Television without Frontiers' Directive prohibits 'surreptitious advertising', which it defines as 'the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature'. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration. Payment, however, is not necessary to show the intentional nature of surreptitious advertising. The Court of Justice delivered a decision in June that said that surreptitious advertising occurs whenever a specific form of media is intended to advertise some product or service, regardless of whether explicit payment is made or not.



### EU27 population is expected to peak by around 2040

The EU27 population is projected to increase from 501 million on 1 January 2010 to 525 million in 2035, to peak at 526 million around 2040, and thereafter gradually decline to 517 million in 2060. The EU27 population is also projected to continue to grow older, with the share of the population aged 65 years and over rising from 17% in 2010 to 30% in 2060, and those aged 80 and over rising from 5% to 12% over the same. While the strongest population growth is expected in Ireland (+46%), Luxembourg (+45%), Cyprus (+41%) and the United Kingdom (+27%), the countries with the sharpest expected declines in population are Bulgaria (-27%), Latvia (-26%), Lithuania (-20%), Romania and Germany (both -19%). These projections were prepared by Eurostat, the EU's statistical office, and aim to provide information about the possible future size and structure of the population.

### Competition for commemorative euro coin design

All citizens and residents of the 17 euro-area Member States will be able to vote on the design of a new 2 euro coin via the internet. The new 2 euro coin will be issued by all euro-area Member States at the beginning of 2012 to mark the first 10 years since euro banknotes and coins were introduced and the euro became part of people's daily lives. The public will be able to vote between five designs preselected by a professional jury from a competition open to citizens of euro-area countries. Over 330 million people in 17 EU countries now share one currency – the euro. A common currency makes many things easier, such as comparing prices between countries, travelling and trade, since fees for exchanging money and exchange rate fluctuations having been eliminated. It also reinforces the need for sound economic and financial policies. Judging by past experience, it can be expected that Member States will together mint some 90 million pieces of this commemorative coin.



# Commission brings Intellectual Property Rights into the 21st century

*On 24 May, the Commission adopted a comprehensive strategy to revamp the legal framework in which intellectual property rights (IPR) operate. Intellectual property rights cover a vast area of products and creative works that we all come across in everyday life. Think for instance of films, music, books, cars, mobile phones, food, and industrial equipment; the list is endless. How we use, reproduce, lease, buy or sell these licensed "products" is governed by IPR. As the list is varied and long, IPR divide into many different categories: patents, trademarks, designs and geographical indications, as well as copyright, authors' rights, and rights related to copyright for performers, producers and broadcasters.*



## Why a strategy?

IPR is important for business, innovation and creativity. For many industries and sectors, well-managed intellectual property rights are a core element of their business strategy and a key factor for their European and global competitiveness. Intellectual property rights give incentives for more innovation and protect investment.

Despite the important role IPR play in trade, the EU cannot yet stand over a completed internal market for IPR. Too many IPR-related rules still exist at Member State level impeding the free movement of goods and services. The inevitable result is that intellectual property rights have only been partially harmonised at EU level.

The Commission's strategy aims to match up the IPR to the world we live in now.

It looks at enhancing rather than shunning rapid technological change in order to open up the vast array of business opportunities brought on by the internet.

## What is in the Commission's proposal on IPR?

The Commission's strategy – 'A Single Market for Intellectual Property Rights' sets a blueprint to shape the future for IPRs in Europe. It covers action on trademarks, patents, copyright and enforcement, so that on the one hand businesses and individuals can generate income from their work and on the other hand consumers and commercial users have wide access to information and knowledge-based products. It also sets out a more effective enforcement strategy for intellectual property rights within the EU, at the EU's borders and in conjunction with non-EU countries.

## Actions planned for four IPR categories:

### *Industrial property*

#### **Patents**

It is very costly and complex to obtain and enforce patent protection in Europe. Therefore, the Commission has launched in April proposals for the creation of unitary patent protection in the framework of enhanced cooperation. In addition, after the opinion of the EU Court of Justice in March, work also resumed on the establishment of a unified and specialised patent court for classical European patents and future European patents with unitary effect. A unified patent court will increase legal certainty for business and avoid the same patent cases being dealt with in courts of different Member States, potentially resulting in contradictory judgements. It would also considerably reduce litigation costs and the time it takes to resolve patent disputes.

#### **Trade marks**

While trade mark registration in the EU has been harmonised in Member States for almost 20 years and the Community trade mark was established 15 years ago, there is an increasing demand for more streamlined, effective and consistent registration systems. The Commission intends to present proposals in the fourth quarter of 2011 to modernise the trade mark system both at EU and national levels and adapt it to the internet era. There will be increased cooperation between the OHIM (the Office of Harmonisation for the Internal Market, based in Alicante) and national trade mark offices.

#### **Geographical indications (GIs)**

GIs secure a link between a product's quality and its geographical origin. Under EU law, agricultural products such as champagne, Feta cheese and Parma ham already enjoy the protection of such a link. However, apart from legislation that exists in some Member States, there are no EU-wide rules ensuring name protection for GIs for non-agricultural products such as Carrara marble, Solingen knives, Herend porcelain or Calais lace. This fragmentation and absence of protection in the legal framework in a number of Member States may negatively affect the functioning of the internal market. It means that



there is no level playing field in the European Union. The Commission is about to launch a feasibility study that will consider an EU-wide protection of GIs for non-agricultural products.

## Copyright

### Collective management of copyright

In 2012, the Commission will present a legislative proposal to simplify the collective management of copyright in the EU. The Commission's focus will be two-fold. Firstly, common rules will be set for collecting societies to enhance the governance and transparency of all collectively-managed revenue streams.

This will ensure a level playing field for rights holders, commercial users and collecting societies. Secondly, the creation of a clear legal framework for multi-territorial licensing of musical works for online services will encourage new business models for the provision of online services to EU consumers.

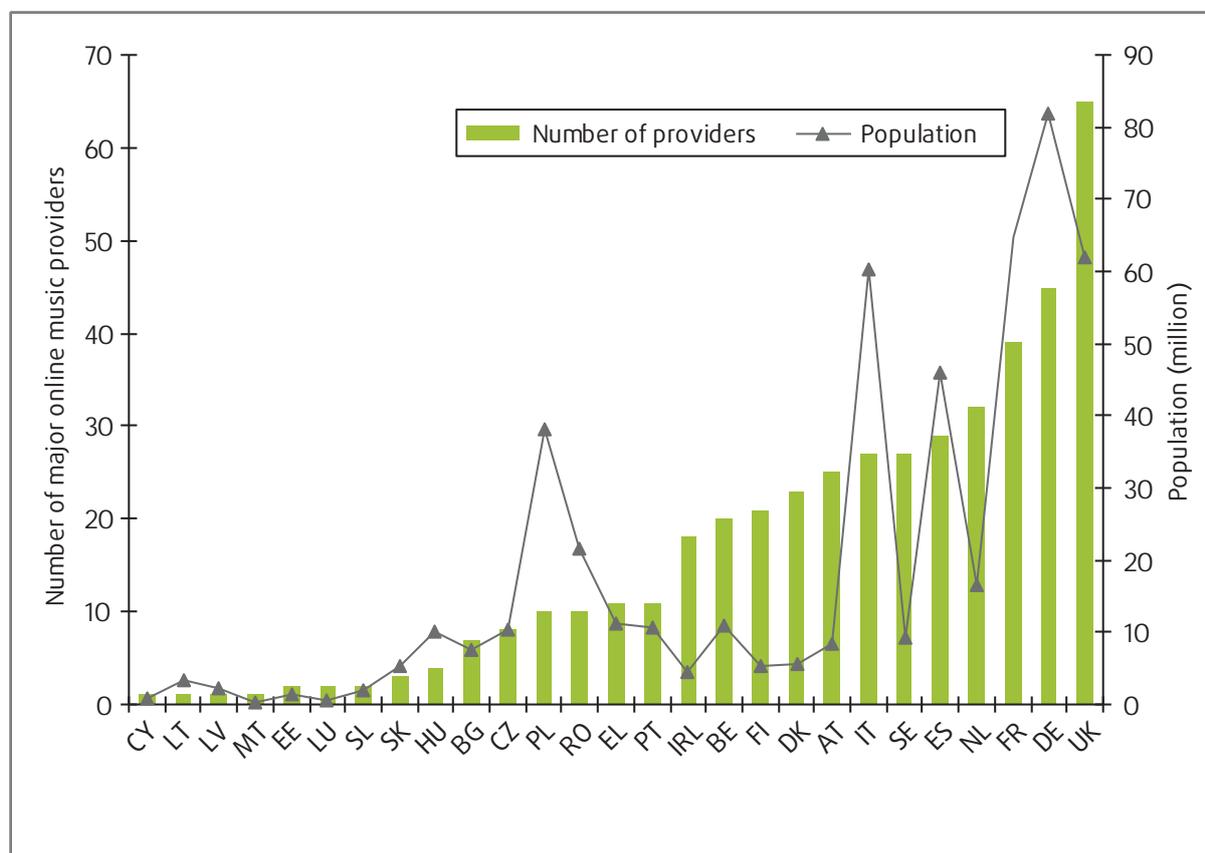
### Orphan works protected by copyright

In order to promote the distribution of Europe's intellectual and cultural heritage, the Commission tabled a legislative proposal to facilitate the digitisation and making available of "orphan works". Orphan works are those that are still protected by copyright but whose copyright holders are not known or traceable. Consequently, no one can be contacted to give permission to libraries and archives to digitize works and make them available online. The absence of a common EU framework on orphan works is impeding the development of large-scale digital libraries and the functioning of the Europeana portal<sup>1</sup>.

### Online licensing: different countries – different rules

Because of the complexities of licensing, online service providers tend to establish themselves in markets where they are confident of high demand.

**Table: Availability of major online music providers serving EU countries and population**



	7 digital	Amazon MP3	eMusic	iTunes	Last FM	Ovi Nokia	Spotify	YouTube	Vodafone	Napster	Zune
AT	●	●	●	●		●					●
BG			●								
BE	●		●	●							●
CY			●								
CZ			●					●	●		
DE	●	●	●	●	●	●		●	●	●	●
DK			●	●							●
EE			●								
ES	●		●	●		●	●	●	●		●
EL			●	●					●		
FR	●	●	●	●		●	●	●			●
FI	●		●	●		●	●				●
HU			●						●		
IT	●		●	●		●		●	●		●
IRL	●		●	●		●		●	●		●
LT			●								
LU			●	●							
LV			●								
MT			●						●		
NL	●		●	●		●	●	●	●		●
PL			●			●		●			
PT	●		●	●		●			●		
RO			●						●		
SE	●		●	●		●	●	●			●
SK			●								
SL			●								
UK	●	●	●	●	●	●	●	●	●	●	●
MS	12	4	27	15	2	12	6	10	12	2	12

Online service providers' presence in EU Member States, as of May 2011

Copyright is split between authors, music publishers, and record producers, so online music service providers are required to engage in a costly and complex rights clearing process in order to be available across several countries in the EU. Many online markets still run along national lines, despite the internal market. Citizens are therefore often unable to buy copyright protected works or services electronically across the digital single market.

#### **Out-of-commerce books in-copyright**

As part of its efforts to create digital libraries, the Commission is also supporting efforts to broker

an agreement between authors, publishers, libraries and collecting societies to enable online access to out-of-commerce books through licensing models. The agreement is expected to be adopted in mid-2011. Out-of-commerce books are works that are in-copyright but that are no longer commercially available in traditional or new electronic formats. They differ from orphan works in that their rights holders (authors and publishers) are known and traceable.

#### **Copying levies for copyright-protected works**

Remuneration for private copying of copyright-protected works is collected in the form of



## Memorandum of Understanding



*"We welcome this initiative from the European Commission. As we have said in the past, we are convinced that a collaborative effort at the European level is best. eBay believes that the Memorandum of Understanding will also help make it easier for brand owners to partner with eBay to sell authentic items online."*

Stefan Krawczyk, Senior Director & Counsel  
Government Relations Europe, eBay

*"Lacoste is grateful to the Commission for this fruitful dialogue between leading online market places and brand owners which resulted in the signing of a Memorandum of Understanding on May 4th, 2011. This set of practices should contribute to prevent online sales of counterfeit in the European Market for the benefit of consumers.*

*I strongly believe that significant progress against underground counterfeiting networks can be made through such combined and proactive efforts between economic actors, and call for more partnerships of this kind with intermediaries such as search engines, payment facilities and carriers."*

Nathalie Moullé-Berteaux, Executive VP, Public & Legal Affairs,  
Lacoste



*"The Memorandum of Understanding confirms the commitment of internet platforms and Right Holders to work together to tackle the sale of counterfeit goods online. We look forward to seeing whether the Memorandum of Understanding and the proposed ongoing stakeholder engagement process will efficiently and effectively contribute to the reduction of what is a very serious problem of sales of counterfeit products and goods through the internet. However, if within twelve months it has not achieved real and measurable results, a different approach will be required and either the Memorandum of Understanding will need to be reviewed and revised or it will need to be replaced by other enforcement mechanisms."*

Rory Macmillan, Government & Public Affairs Director, Nike EMEA and  
President, FESI IPR Committee

levies on recording media or recording equipment (photocopiers, printers, Mp3 players, CDs and DVDs etc.). However, different rules and tariffs apply across Member States, impeding the smooth cross-border flow of goods that are subject to levies. For artists, there are no set rates for music sampling, i.e. using the music or lyrics of another artist and re-recording it under your own name. Rates are usually negotiated based on the popularity of the song being sampled. However, at present the industry standard stands at approximately €11,400, but practise varies across the world. The Commission will appoint a high-level mediator, tasked with resolving differences among stakeholders, to find workable solutions to improve the administration of levies.

### **Audiovisual works**

The Commission will launch a public consultation on the online distribution of audiovisual works. A consultative Green Paper is due for adoption in July 2011. On the basis of its results, the Commission will determine whether any follow-up action needs to be taken in order to stimulate the European audiovisual sector for video-on-demand (VoD) services and cross-border broadcast services.

### **Artists' Resale Right**

In October 2011, the Commission will present its report on the application of the Artists' Resale Right Directive. One aspect of the report is to quantify the impact that the resale right has had on the sale of works whose authors have deceased ("hereditary resale right").

### **European Copyright Code**

As part of its long-term strategy on copyright, the Commission will assess the feasibility of creating a European Copyright Code. A future Code could comprehensively codify EU copyright directives and provide the opportunity to assess the feasibility of an optional "unitary" copyright title, which would provide right holders the flexibility to choose whether to license and enforce their copyrights nationally or on a multi-territory basis. Given its far-reaching implications, the creation of a European Copyright Code requires further study and analysis.

### **IPR violations: Counterfeiting and Piracy**

Counterfeiting and piracy are a growing threat for the economy. Between 2005 and 2009, the number of registered cases at the EU borders of goods suspected of infringing IPR increased from 26 704 to 43 572. Meanwhile, the European creative industry estimates that piracy cost approximately €10 billion and more than 185 000 jobs in 2008 alone. As such, the Commission is poised to intensify efforts to tackle this growing problem.

### **Memorandum of Understanding signed on the sale of counterfeit goods over the internet**

The Commission is examining what extent the sale of counterfeit goods over the internet can be reduced through voluntary measures involving the stakeholders most affected (right holders and internet platforms). To this end, a Memorandum of Understanding was signed by major internet platforms and right holders on 4 May 2011. Over the next year, these stakeholders will review and measure progress, under the auspices of the Commission services.

### **IPR enforcement by customs**

Customs supervise all trade crossing EU external borders: they carry out controls and have an essential role in combating the proliferation of IPR infringing goods. In 2009 alone, customs intercepted over 40 000 suspect shipments involving 118 million such articles.

### **What is the timeline?**

The Commission will continue to work in coming months to ensure timely and rapid delivery of the various policy proposals outlined in the Strategy. The Strategy outlines the policies that the European Commission intends to adopt during its current mandate, i.e. until 2014. Certain legislative initiatives will only come to fruition after agreement is reached between the Council and the European Parliament.

The Commission will monitor and assess IPR policies on an ongoing basis, so that they can be updated as and when necessary. ■

<sup>1</sup> (see IP/09/1544).

# Modernisation of the Professional Qualifications Directive

*On 22 June 2011, the Commission published a Green paper<sup>1</sup> on the modernisation of the Professional Qualifications Directive, one of the 12 key actions in the Single Market Act. The Directive facilitates free movement of EU-professionals within the European Union, regardless of where in the EU they have acquired their professional qualifications.*

## Modernisation of the Professional Qualifications Directive: next steps

The Green Paper invites public comment until 20 September. It presents new ideas for facilitating free movement of citizens in the single market, such as the European Professional Card. It explores ways to build on achievements under the Directive, captured in an evaluation conducted between March 2010 and May 2011 (see the evaluation report<sup>2</sup> published at the end of June), but also sets out options for modernising automatic recognition. A broad consultation on these ideas will help the Commission assess the political options for the modernisation of the Professional Qualifications Directive. A legislative proposal to amend the existing Directive is planned for the end of 2011.

## Key themes in the green paper

The following main issues are in particular addressed in the Green paper.

### 1. New approaches Professional Card

A European professional card can significantly improve mobility of professionals with relevant qualifications. The card would be issued by a competent authority in the Member State where the qualification is acquired, and could provide initial verification of all the conditions for recognition in other Member States. This could thus accelerate recognition processes for professionals wishing to work in another Member State. A formerly three-month-long decision could perhaps be made in two weeks.



Such a card could also provide consumers with proof that the professional is competent to exercise in a particular profession. The professional card could moreover substitute for all the administrative documents (including insurance) supporting a prior declaration in cases of temporary mobility. A steering group is examining the potential of such a professional card through early October 2011.

### **Principle of partial access**

A regulated profession in a Member State may encompass not a single but a whole bundle of different economic activities. Take for example the profession of 'engineer': a hydraulic engineer who travels to a Member State where the professional activities he or she pursues are performed by engineers also qualified to work on roads, channels and ports, might be able to gain partial access to the profession there. He or she would, however, only be authorised to perform activities relating to hydraulics.

### **Reshaping Common Platforms**

Common platforms for professional qualifications can facilitate automatic recognition for professions which do not yet have such a rule in place. Whilst the Directive provided for such a common platform, none has been introduced yet. New solutions should

be looked at. A new common platform could consist of one-thirds of all Member States instead of two-thirds (any non-participating Member States would be free to join). A common platform should also not become an obstacle to the mobility of professionals from non-participating Member States and should accordingly be subject to an internal market test.

### **Number of regulated professions**

Today, the 27 Member States regulate around 4700 professions, grouped into around 800 different categories, on the basis of a professional qualification. The current mutual recognition regulation on the basis of the Directive offers in many cases a way forward, notably if a professional comes from a country where such a profession is not regulated. Professional experience helps in most cases. Sometimes, such a professional needs to undergo a test or a "stage" (a period of work practice). However, in some cases, a professional might actually be compelled to follow the complete national or regional training of the host Member State. The public is invited to give examples.

### **Alert mechanism for health professions**

The current Directive does not foresee an alert in case a doctor who is subject to professional malpractice and no longer authorised to practise in a Member State



*The Green Paper invites public comment until 20 September. It presents new ideas for facilitating free movement of citizens in the single market, such as the European Professional Card.*



moves to another Member State with the intention of practising there. An alert mechanism could stop such a doctor from practising in another Member State. To this end, the Green Paper suggests two options to consider: either extending the existing obligation under the Services Directive (from which health professions are excluded) so that Member States judge on a case-by-case basis which other Member State should be informed or sending an immediate alert to all Member States via the IMI system.

## **2. Building on achievements**

### **Access to central information points and e-government**

Many stakeholders have signalled difficulties when trying to find out which authority in a Member State is in charge of recognising their professional qualifications and which documents they should submit. A central online access point in each Member State could rectify this problem.

### **Professionals accompanying consumers (temporary mobility)**

If a professional has come from a Member State where the profession is not regulated, the host Member State can currently require a prior declaration and two years of professional experience in order to protect consumers. But when consumers of a particular professional move to another Member State accompanied by the professional from their home Member State, consumers have already decided and their choice could in future prevail against further conditions, including the two years of professional experience.

### **Regulated education and training**

Currently, professionals who have completed “regulated education or training” in their home Member State are exempted from the two year professional experience requirement when coming from countries where their profession is not regulated. According to the Directive, regulated education and training is a very narrow concept. Professionals nowadays are not only trained for one specific profession but are trained in general subjects (in order to acquire transferable skills). The notion of regulated education and training could thus be widened. This way, suitably educated professionals could move in a easier way due to a sound education offering.

### **Partially qualified professionals**

At present, the Directive facilitates mobility of fully qualified professionals. The procedural safeguards of the Directive could be extended to graduates with academic training who want to complete a period of remunerated supervised practical experience abroad, provided that this supervised practice is also offered to nationals of the host Member State. At the same time, the Directive could make clear that the country of origin cannot refuse, as a matter of principle, to recognise a traineeship on the grounds that it was conducted abroad.

### **Language requirements**

Today, professionals should possess language skills necessary to pursue their profession in a host Member State. For health professionals who treat patients and benefit from automatic recognition, language controls could be increased in order to safeguard the interests of patients. This could be clarified in the already existing Code of Conduct<sup>3</sup>. Another option would be to amend the Directive to better accommodate patients’ concerns towards to health professionals.

## **3. Modernising automatic recognition**

The Directive provides for a set of harmonised minimum conditions for the training of doctors, dentists, general care nurses, midwives, pharmacists, veterinary surgeons and architects. Modernisation should work in different steps. First the Directive itself could be amended to clarify and adapt the foundations of the training requirements, for example by clarifying minimum training periods. In 2013/2014, the framework of acts could be used to update, if necessary, the existing training subjects for all professions concerned, and also to develop sets of competences. From 2014, the harmonisation of training requirements could be further optimised, such as introducing European Credit Transfer Points (ECTS).

One example is that today, a person only needs a minimum of ten years of general education to start training as a general care nurse. However, most Member States have already moved towards a minimum of twelve years of general education. This could be required to make the profession more attractive. Another example relates to architects where currently automatic recognition is only based on

academic training but not on any supervised practical experience.

#### 4. Third country qualifications

Currently, EU citizens who obtained a qualification in a third country (i.e. a country outside of the EU) and whose qualifications have been recognized in a Member State, can only benefit from the Directive if they can prove three years of lawful professional experience in this Member State. This so-called first recognition falls under the national law of the Member State concerned. The second recognition would then fall under the Directive.

Considering the overall shortage of skilled workforce in the EU, the Directive could facilitate enhanced recognition of third country qualifications in Member States other than the one where the qualifications were first recognised. The three years' experience rule could, for example, be shortened. This would benefit EU citizens but could also benefit third country nationals who benefit from an equal treatment clause under relevant European legislation. Overall this would benefit mobility within the EU. ■

For more information please visit the following website: [http://ec.europa.eu/internal\\_market/qualifications/index\\_en.htm](http://ec.europa.eu/internal_market/qualifications/index_en.htm)

[http://ec.europa.eu/internal\\_market/consultations/docs/2011/professional\\_qualifications\\_directive/COM267\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/professional_qualifications_directive/COM267_en.pdf)

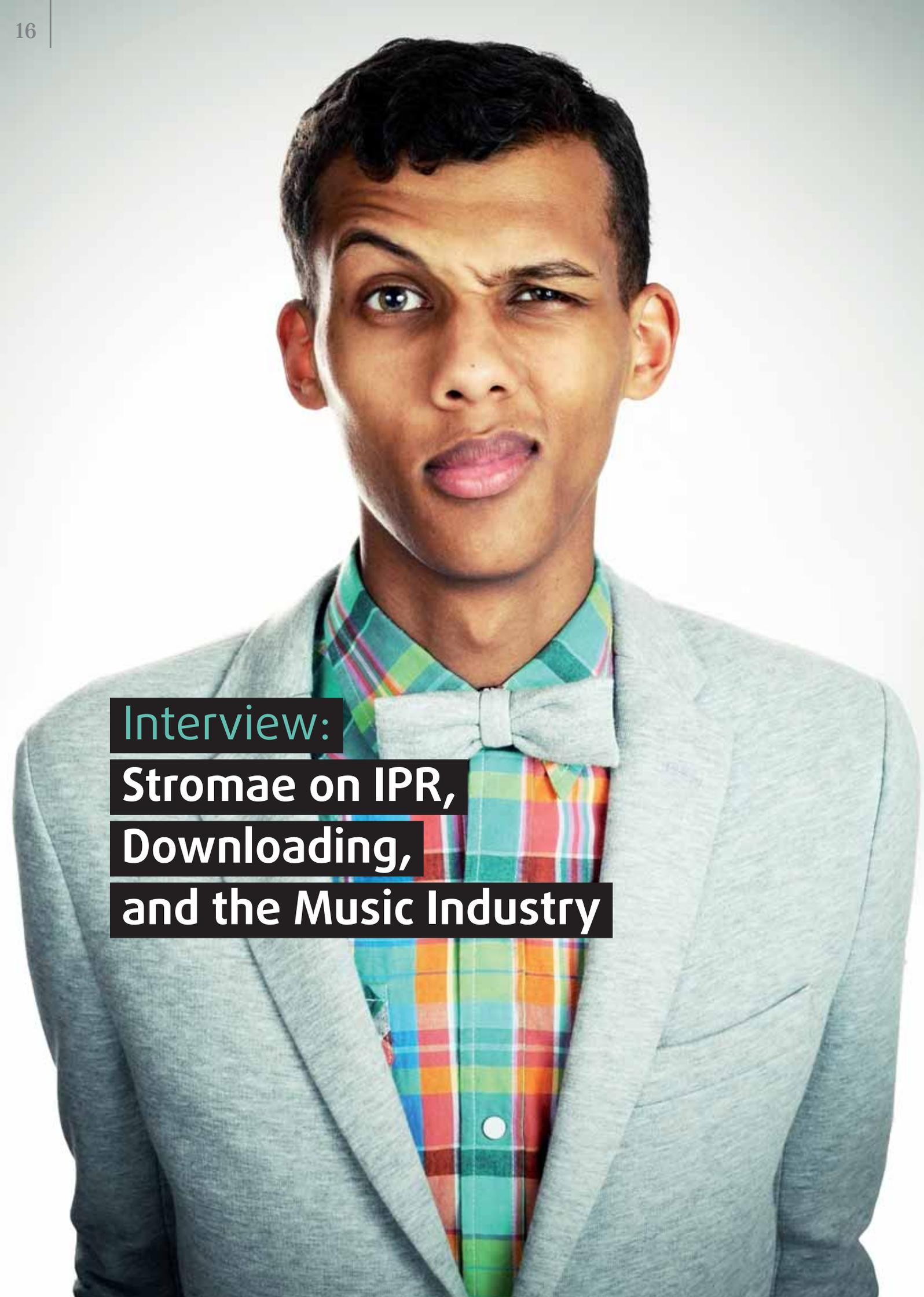
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<sup>1</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255/22, 30.09.2005.

<sup>2</sup> [http://ec.europa.eu/internal\\_market/qualifications/policy\\_developments/evaluation\\_en.htm](http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation_en.htm)

<sup>3</sup> Currently, Member States can control that professionals have the language knowledge necessary for performing their activities, but they must do it in a proportionate way. This means that they cannot subject systematically foreign professionals to language tests. Professionals should be able to prove their language knowledge by other means (e.g. diploma acquired in the relevant language, professional experience in the country, language certificate etc.). This means also that the level of language knowledge required varies according to the type of activity and the framework in which it will be conducted. Also the language control can only take place after the end of the recognition procedure and cannot be a reason for refusing recognition of professional qualifications as such.





Interview:

**Stromae on IPR,  
Downloading,  
and the Music Industry**

*Paul Van Haver, better known to fans as Stromae, is a Belgian-Rwandan singer-songwriter known for his hip-hop and electronic music. His first hit, "Alors on danse", ascended to number one on the charts in over 10 countries around the world, including Belgium, France, the Netherlands, Greece, Germany, Austria, Turkey, Switzerland, Italy, Denmark, Romania and the Czech Republic. He was one of ten recipients of the European Border Breakers Award in 2011. Single Market News met Stromae and discussed his views on copyright, illegal downloading, and the music industry.*

*What is the significance of intellectual property protection for musicians?*

I think it's essential, especially because the music industry is not going so well at the moment. It's important for everybody involved in the industry, from composers to performers to writers. It's important for us to receive the payment due to us for use of our property.

Nowadays, there is a generation of people who download music and are not in the habit of legally purchasing music. Because of that, it's hard to say that everybody is thieving.

*What do you think of downloading of music? How has it affected you?*

To be honest, I don't think my music would have had the success it has, if the Internet didn't exist and there hadn't initially been illegal downloading of my music

those who are just in it for the money from the market. The artists left in the industry are those who are really into it, those who really care about what they produce and are passionate about it. In the past, there was such easy money in the music industry. It's become more purified nowadays.

*Have you had any problems protecting your music in Belgium and other European countries?*

I don't think so. I don't actually think that piracy has taken off here.

However, I had always believed that as soon as I put my music in the collecting society, I would be protected, but in fact the collecting society just provides a bit of support.

Actually, if I can make a comparison, it's a bit like sending registered post. You register your music, your work of art, and then it's as if you are sending a registered letter to your own address. You never open the letter, but it's there as a bit of security.

In terms of proof of authenticity, I don't think there are any companies that help with protecting this. It's a little complicated to deal with, but I've always followed the rules because I've always been afraid that I might be caught out. You always dread that moment when something bad might happen if you do something wrong, so I'm always wary, just in case one day there is litigation.

But there aren't really any organizations that focus on that, or who would defend you. It's up to you to take the right measures; in case of trouble, you have →

*"Concerts are playing a more important role, (...)selling physical discs is near enough finished."*

As a result, it's difficult for me to say the current situation is good or bad. Although the current state of illegal downloading provides a service to culture by increasing the distribution of art, it doesn't serve the music industry well.

And another advantage, even if we earn less in the music industry, is that the current paradigm eliminates

to look for a solicitor yourself. I always thought that the collecting societies would defend you, but that's not in fact the case. It's a real pity they don't do more.

*What do you think is a fair remuneration mechanism for an artist?*

It's very difficult to say, to be honest. In Belgium, there is a statute for artists that reward them with a salary, which is a good thing. But the pay is based on calculating licensing fees, and I wonder whether the organization that does this is correct and not cheating artists. They certainly don't have a good reputation for treating artists well, particularly where Walloon artists are concerned, because the collecting society is predominantly Flemish.

I am fortunate enough to be recognized by both the Flemish and French communities. But others have not got the exposure to the Flemish side, and as a result they may not be treated as well.

In addition, it's the big artists that get paid well for their licensing fees. They get paid a lot, while the smaller artists lose out. Even if a smaller artist's piece is played 10 times a month on the radio, their remuneration pales in significance compared to big artists like Madonna, Beyonce, or 50 Cent.

And if you don't chase up the money yourself, whether by going to the radio stations directly or to the collecting society, you lose out. The collecting society does ask for money to register and it's a lot of bureaucracy for artists to wade through, so it can be very complicated for little gain.

*How do you see the future of the music industry?*

There are now artists who just perform at concerts and have their tracks played on the radio, because they figure it's hard to earn a lot of money selling records. Licensing fees are becoming less prominent because there's a lot more that contribute to artists' salaries nowadays. For instance, concerts are playing a more important role, especially when connected to radio play and TV appearances. But selling physical discs is near enough finished.

It's funny because we are heading back to where we started in music. With all the great artists in the past, they always performed first at concerts here and there, and then they produced an album.

Personally, I'm a bit different, because I first work in the studio and then go live. But the trend is certainly that live performances are preceding albums, because that's how artists can make money.

*What do you think politicians should do in this domain?*

I certainly think artists could be helped more. In terms of intellectual property, we need to identify the people who are really to blame for illegal downloading. The internet service providers are equally responsible. Also, it's thanks to Microsoft and Apple that we can illegally download music, but it's also thanks to them we can legally buy music. They are certainly a bit more responsible than the ordinary consumer. But in the end, I suppose it's everybody's fault.

*"Nowadays, there is a generation of people who download music and are not in the habit of legally purchasing music. Because of that, it's hard to say that everybody is thieving."*

I'm not really into politics. It's more about communication between artists and the infrastructure. The money is there, everybody knows it. The artists are also there, and the communication between the two has to be improved, and I don't think that has much to do with the rules set by politicians. ■



## The Commission's Social Business Initiative

*One of the 12 key actions to boost the single market in Commissioner Barnier's Single Market Act concerns promoting social business. As the internal market is based on a "highly competitive social market economy", the Commission considers the time has come to include actions that will gear towards a more inclusive, socially fairer and a more environmentally sustainable growth. At a time when Europe sees an increase in new business models that allow societal concerns to take precedence over the objective of financial profit, the Commission is taking steps to create a more conducive environment for social entrepreneurship.*

### **25, 26 May: DG MARKT's Workshop**

As part of the preparation work for this Social Business Initiative, Commissioner Barnier together with DG MARKT invited forty European social economy experts as well as social entrepreneurs to exchange views with Commission officials from many DGs, on topics such as problems with existing legal frameworks, access to funding, visibility and capacity building.

In his keynote speech, Michel Barnier stressed his desire to test the Commission's ideas with the expertise of those working on the ground, in order to draft a text that meets the expectations of the social business community in Europe. He stressed the need for the workshop to go beyond theoretical

questions and identify Europe's actual potential in adding value for social business, and the concrete measures that should be taken to support its development.

### **What are social enterprises?**

The definition was part of copious debates. Interestingly, many social entrepreneurs, when asked to define their activity, do not identify themselves as social entrepreneurs. To launch the debate, participants at the workshop were provided with the following definition of social enterprise as a starting point:

"Social Enterprises are not-for-profit private enterprises with social aims and participatory governance" →

## *Variety of Social Enterprises (1/2)*

<p><b>Social mission and impact (examples of criteria)</b>          Social or ecological needs not satisfied. General interest. People empowerment. Etc.          Cost avoided for welfare system          Social by:          - the clients (ex.: elderly people)          - the employees : (ex.: WISE)          - the products (marks like Fair Trade)          Social innovation, Social R&amp;D          Tools/indicators exist to demonstrate social value</p>	<p><b>Not for profit (examples of criteria)</b>          ROI cap          Surplus mainly reinvested in the project          Salaries scale 1 to 10, depending on number of employees          Adoption of a social economy legal form          On dissolution, remaining assets are distributed for social/environmental purposes</p>
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## *Social Enterprises are not-for-profit private enterprises with social aims and participatory governance*

<p><b>Viable and independent business model (examples of criteria)</b>          Self-governance (not a part of a larger entity)          Independency from public authorities          Enterprise in a European definition (Annex I regulation (CE) n°800/2008).          Production of goods and services          % of market resources          Job creation</p>	<p><b>Participatory governance (examples of criteria)</b>          Partnerships with local actors          Community development          % of local employees          Governance involve stakeholders different from investors          Involvement of users/recipients in governance          Adoption of social economy legal form</p>
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*Diagram with examples of criteria for social entrepreneurship*

Some agreement was found on the definition, but a true consensus was expressed only on two criteria: the social impact and the existence of a viable and independent business model.

Some participants insisted on the need for innovative aspects. However, the "not-for-profit" issue and the participatory governance, even if relevant and sometimes useful to define social enterprises, were not considered as essential elements.

In short, social enterprises and social entrepreneurs hate boxes. Whatever the European Commission comes up with should accommodate this diversity. One participant suggested that the Commission should be strong and self-confident enough to set up its own definition, matching its political goals.

## **What could be the added value of Europe for social entrepreneurs or social business?**

Many ideas were produced during the workshop, and listed below are some of them:

- ▶ Europe could help to set the "mood music" right to better communicate what social business is and where potential successes lie. Success stories are an important tool and could help to improve access to finance, and possibly also to EU public funding. Social investment can produce stable returns and people need to become aware of this.
- ▶ The Social Business Initiative, as well as the large conference on social business, planned on 18 November could be the start of a

*“At a time when Europe sees an increase in new business models that allow societal concerns to take precedence over the objective of financial profit, the Commission is taking steps to create a more conducive environment for social entrepreneurship.”*

**Michel Barnier**

permanent network or platform on EU level facilitating exchange between stakeholders in this sector.

- ▶ A programme of “EU ambassadors for social enterprise” devoted to raising awareness could be set up.
- ▶ EU level work could enhance “clusters of social enterprises”, or “social innovation parks”, such as ones already in Madrid and Munich.
- ▶ A Europe-wide public database or web portal containing fair business quality schemes or labels could be set up to improve transparency for consumers and consumer organisations. Such a database could eventually lead to a periodic ranking of the best fair business labels or schemes in the EU. It would also be useful for the establishment of business networks and business to business activities.

### What could be the role of the Commission?

Participants proposed a number of actions for EU level support, clustering around four main types of intervention. For each of them, some examples are given:

#### 1. *Communicate the role of a social enterprise to achieving the Europe 2020 objectives*

Social enterprises generate a social, environmental and or community impact, and are thus drivers and change-makers that contribute to achieving the Europe 2020 objectives.

In this context, the Commission, in its role as agenda setter, can mobilise support for social enterprise and social entrepreneurship through:

- ▶ Creating an ISO label or another certification model to inspire social enterprise starters, mobilise individual investors, corporate investment and seniors alike to contribute to social entrepreneurship. →



- ▶ Organising special awareness raising campaigns in the new member states.

## 2. Exchange of good practice across EU member states

The Commission could also take advantage of the opportunities of the single market by providing assistance to intensify and speed up diffusion of business models and business practices, and to scale-up proven businesses and business models across the EU.

Some specific actions suggested include:

- ▶ Spreading methods for measuring and reporting on social and environmental impact;
- ▶ Collecting good practices: “do’s, don’ts and how’s”;
- ▶ Participating in the financing of the initial costs of replication in other countries, e.g. through supporting successful social businesses in organising dissemination seminars, combined with training in other countries (example: Seminar organised by Specialisterne);
- ▶ To piggy back on or expand mobility schemes and schemes for voluntary action for social entrepreneurs, e.g. by following the model of the Erasmus for young entrepreneurs scheme.

*“Social Enterprises are not-for-profit private enterprises with social aims and participatory governance”*

## 3. Improve the regulatory environment

The European legislation for establishing and completing the internal market aims at creating a level playing field for all economic actors.

Participants suggested to simplify rules, as compliance often involves onerous efforts for social enterprises, and to seek linking rules to awarding a label.

## 4. Improving access to funding

Participants have experienced high administrative costs in their attempts to access public support, both for national and EU schemes. Participants proposed a simplification of the application requirements and procedures, or to base selection of social businesses worth funding on a different, more business-friendly procedure, for example by using panels of selection.

In addition, publicly-funded starting capital would indicate to traditional lenders that they can trust social businesses. This is part of an overall effort to better communicate the benefits of social entrepreneurship.

Microfinance initiatives may also play a part in supporting social businesses. While communication is one aspect of improving the contribution of microfinance initiatives, participants also stressed the importance of maintaining and enhancing the industry’s reputation, catering for diversity among different initiatives, and ensuring future sustainability in terms of funding and expertise.

Public funding might also be made more accessible by cutting red tape in public procurement procedure, which would allow civil servants to go beyond simply picking the lowest bidder, to looking for socially-oriented procurement.

## Specialisterne (Specialist people), Denmark

*The founder of Specialisterne, Thorkil Sonne, realized through his personal experience how excluded from society autistic people are. Society simply is not adapted to the specific needs of autistic people. And yet, beyond their handicap, autistic people have extraordinary abilities that most people are not aware of: highly analytic skills, great mathematical abilities and amazing concentration.*

*These skills make them excellent software specialists, and therefore Specialisterne’s objective is to employ them, so that they can both integrate into the work market and feel good by contributing to society and the economy, which helps their self-esteem.*

Furthermore, although participants appreciated the possibilities existing under the General Block Exemption Regulation (the GBER), they emphasized the need to further adapt the State aid framework to the specificities of social businesses. In particular, the specific non-profit nature of cooperatives should be taken into account by the Commission.

## Conclusions

Director General Jonathan Faull wrapped up the workshop with concluding remarks.

The three main elements he took out of the debate were that social businesses are businesses to start with: they have an economic activity and operate in a market, with the aim at making money out of their activity. Secondly, profit-making is not their main objective, but rather a tool to achieve their core corporate objective, which is to provide social value to the community. Therefore, when they do make profits, these surpluses are meant to be reinvested in the company's corporate objective, not redistributed as dividends to shareholders.

Jonathan Faull furthermore concluded that a line should be drawn with Corporate Social Responsibility. And that the Commission should avoid creating a regulatory straitjacket; that stakeholders expect the Commission to make choices, not wait until a consensual definition emerges.

*"The core corporate objective of social businesses is to provide social value to the community"*

*Jonathan Faull*

On access to finance, he detected a mismatch between supply and demand and felt more transparency was needed to develop trust in social business. He also heard the complaints linked to hurdles related to the financial sector regulation. He took note of the call for a stronger follow-up to the 2007 Communication on microfinance institutions.

## EXAMPLES OF SOCIAL ENTERPRISE

### Websourd, France

*Websourd is a French social enterprise catering to the needs of the 500,000 or so deaf people in France. Its mission is to help deaf and hearing impaired individuals to live an independent life and overcome barriers preventing them to attend school, work, access public services etc.*

*The company develops and provides products and services (largely ICT-based). Examples illustrated during the workshop include a system involving a video Internet connection with a sign language interpreter allowing deaf people to interact normally with public administration, or web services providing news in sign language.*

*Current issues faced by the company are the lack of availability of sign language interpreters, which signals at the same time the job-creation potential of the company (some 3,000-4,000 more are needed).*

He heard the request to waive some of the public procurement, state aid rules and tax to disproportionately affect the operation of social businesses and welcomed the various suggestions as to how to improve visibility and awareness (labelling, clusters of social businesses, training and education).

He finally urged all participants to react to the Social Business Initiative, once it is published, and take part in the conference, due to take place in Brussels on 18 November.

The event was a great success and an important milestone for furthering the development of the social business sector. The Commission was particularly pleased with the excellent feedback from participants, both in preparatory phases and during the conference itself. ■

# Successful second conference on financial integration and stability



*On 2 May in Brussels, around 400 people attended the second conference on financial integration and stability jointly organised by the European Commission and the European Central Bank. A number of top-level financial market participants from all over the world, regulators, academics and political leaders discussed the future of European financial markets under the new supervisory architecture.*

Nadia Calviño, deputy director general for the Internal Market and Services, in her introductory welcome address set the scene for this one day event by reiterating that all EU institutions are working hard and in the best spirit of cooperation to enhance the stability of the EU and its financial markets in particular. The results of this work are already visible:

- ▶ The European Central Bank Governing Council has adopted several measures to support the smooth transmission of monetary policy and restore market confidence, with beneficial effects also for market integration. The European Systemic Risk Board (ESRB) has been operating since 1 January.
- ▶ The new supervisory architecture has been operational since January 1, including – in addition to the ESRB – the three new European Supervisory Authorities for banking, insurance and pensions, and securities markets. The progressive development of the new regulatory framework for financial services

is well underway and will soon be complemented with a review of the Capital Requirements Directive and the new Crisis Management framework.

- ▶ Finally, the creation of the European Financial Stability Mechanism has provided a very much needed instrument for macroeconomic stabilisation and for the smooth functioning of the Economic and Monetary Union.

These are all remarkable developments that have been achieved in a very short period of time thanks to the political initiative of European institutions. But the job is far from finished. We cannot be complacent and we cannot relax in our regulatory efforts, thinking that the pressure is off. This would be the worst mistake.

This conference was not about acknowledging what we have already achieved; it was first and foremost a call to keep pressing ahead in the months ahead.

Two reports on Financial Stability and Integration, conducted by the European Central Bank and the European Commission, were presented. They demonstrated that cooperation between European Institutions is not only a fundamental principle but also a living reality. Both institutions share the view that the crisis made apparent the links between financial integration and stability. Despite facing strong stress, the main cross-border markets remained in place during the financial crisis; the integration process slowed down but was not put into question.

### **The regulatory and supervisory reform of EU financial institutions: what next?**

The morning discussion on the EU's new financial regulatory architecture highlighted the need for cultural change in financial supervision. Both Commissioner Michel Barnier and Commissioner Olli Rehn expressed a wish for the new supervisory authorities to bring on the necessary cultural changes: to learn to look beyond individual financial institutions but also to look beyond the national borders of the EU. Vice-President of the European Central Bank, Vitor Constâncio, reinforced that view by declaring that the establishment of the European Systemic Risk Board and the European Supervisory Authorities were an important milestone. They should provide the appropriate incentives to avoid excessive risk taking and contribute to creating a level playing field, benefiting financial integration within the monetary union. An important complementary element of the new supervisory framework will be the establishment of an EU framework for crisis management.

MEP Sharon Bowles, Chair of the Economic and Monetary Affairs Committee of the European Parliament, reiterated that the European Parliament has strong ambitions for the European Supervisory Authorities and cooperation between these authorities is vital.

The President of the Financial Stability Board, Mario Draghi, emphasised the need for international consistency in order to build a stronger, more resilient financial system. As Chair of the European Banking Authority, Andrea Enria explained that the one-size-fits-all model of supervision failed in some ways and

now supervision needs to be more effective, more intrusive and more resource-intensive. At the European Banking Authority they are building a truly European supervisory framework.

### **The hot topic of macroprudential policy**

In his key note address, José Viñals, Director for Monetary and Capital Markets at the IMF, considered what we have learnt from the last financial crisis about macro prudential policy. Risks cannot be addressed through the traditional mix of macroeconomic policies and "microprudential" measures aimed at individual financial institutions. By focusing on the health of the financial system as a whole, macroprudential policy can improve the authorities' grasp of the intricate web of connections between financial institutions, financial markets, and the macro-economy. However, macroprudential policy is necessary but is not a magic bullet. Macroprudential policy has to be supported by other policies relating to the financial sector and the macro-economy.

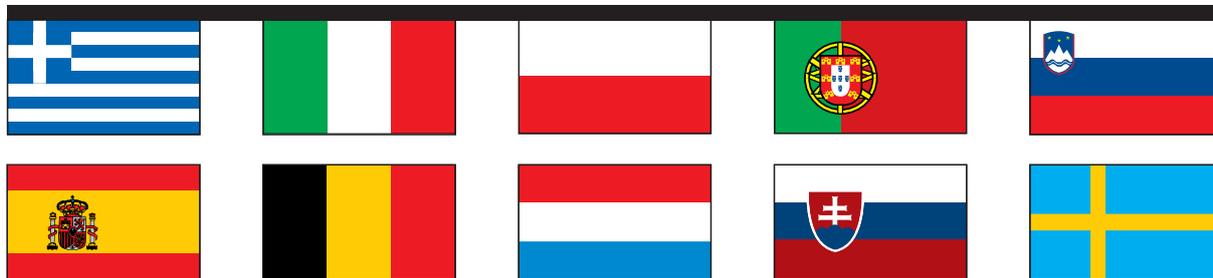
The afternoon discussion was dedicated to the issue "What kind of financial markets do we want?" Panellists agreed that EU needs financial markets that meet the need of the real economy. The ultimate goal is to foster the operation of real economy in order to increase the welfare of all citizens. The banks' role should be to allocate resources in an efficient way. More attention should be paid to the overall impact of regulatory reform on economic growth and to the effect on long term investments.

The conference on financial integration and stability is organised on a yearly basis alternatively in Brussels and Frankfurt. The 3<sup>rd</sup> – 2012 – conference will therefore be held in Frankfurt. ■

Full programme, video, pictures, reports presented and speeches can be found here:

[http://ec.europa.eu/internal\\_market/economic\\_analysis/conference20110502\\_en.htm](http://ec.europa.eu/internal_market/economic_analysis/conference20110502_en.htm)

# Infringements



## Capital Requirements Directive: Greece, Italy, Poland, Portugal, Slovenia, Spain, Belgium, Luxembourg, Slovakia and Sweden - Reasoned Opinion

The EU's amended Capital Requirements Directives aim to ensure the financial soundness of banks and investment firms by stipulating minimum levels of capital required to cover risks and protect depositors. Furthermore, the new Directive tackles perverse pay incentives by requiring banks and investment firms to have sound remuneration policies that do not encourage or reward excessive risk-taking. Banking supervisors have the power to sanction banks with remuneration policies that do not comply with the new requirements. The Commission has requested Greece, Italy, Poland, Portugal, Slovenia and Spain to articulate within two months how they will go about implementing the new capital adequacy and remuneration policy rules laid down in the third Capital Requirement Directive passed last year. The deadline for implementing those rules was 1 January 2011. In addition, the Commission has requested Belgium, Luxembourg, Slovakia and Sweden to implement those parts of the Directive that they have thus far failed to. Prompt and correct implementation of the Directive is imperative to address concerns about the excessive and imprudent risk-taking in the banking sector and the improperly designed remuneration practices of the past. If the national authorities do not respond with two months, the Commission may opt to refer the Member States concerned to the Court of Justice.



### Public Procurement: Bulgaria – Reasoned Opinion

Under the EU's rules on public procurement, tender procedures must be open, transparent, and subject to equal treatment and non-discrimination. The Commission thus called on Bulgaria to ensure full compliance with respect to a security contract with Elektroenergien Sistemen Operator EAD. In this tender, two of the selection criteria used gave an unfair advantage to Bulgarian nationals, and the criteria for selection changed during the procedure, both of which contravene the EU's rules for public procurement. Consequently, the tender was contrary to the principles of equal treatment and non-discrimination, and did not adequately meet the principles of transparency to bidders. Bulgaria has two months to give a satisfactory response; otherwise, the Commission may refer the case to the Court of Justice.



### Free movement of services: Spain – Letter of Formal Notice

The European Commission decided to send Spain a formal request for information about its requirement that 50% of film copies distributed in Catalonia be in Catalan. The request was prompted by concerns that such an obligation would raise costs of distribution. If so it would not be compatible with the principle of free movement of services, which is part of a broader goal of better understanding between European citizens. While the Court of Justice has recognized that Member States can legitimately pursue an objective of language promotion, it should not discriminate against other people. Spain is invited to respond within two months.



### Occupational Pension Funds: Poland and Estonia – Referred Court of Justice and Reasoned Opinion

The Occupation Pensions Directive allows pension funds to manage occupational pension schemes for companies which are also established in another Member State. It also allows a pan-European company to have only one pension fund for all its subsidiaries Europe-wide. Because Poland has yet to fully transpose a number of the Directives into its national law and after having been referred to the Court in March 2010 for failing to meet the original September 2005 deadline, the Commission decided to once again refer the case to the Court of Justice. Estonia has likewise yet to fully integrate provisions of the Directive into national law, and for that reason the Commission has issued a reasoned opinion on the case. If Estonia fails to adequately address the concerns raised, the Commission may also refer it to the Court of Justice in due course.



### Public Procurement: Netherlands – Closed Infringement Cases

Following the initiation of two infringement cases, the Commission welcomed the Netherlands' compliance with EU public procurement rules in both cases. The first concerned real estate development in the municipality of Ede and the other concerned Dutch authorities' practices when awarding public contracts for fire insurance. Now, public contracts are awarded in a fair and transparent manner and are open to all interested companies in the EU. Meanwhile, Dutch taxpayers can now be assured that these contracts will be awarded on the basis of best value for money. The Commission has therefore closed the infringement cases in question.

## For Your Diary

### 2-4 October, Krakow: Single Market Forum

The Single Market Forum forms part of the Single Market Act, which was adopted in April, and gathers together stakeholders and market participants such as businesses, social partners, non-governmental organisations, and public authorities at various levels of government and parliaments. It will examine the state of the Single Market, the transposition and application of directives, and exchange best practice. The Forum will contribute to policy evaluations and will play its part in monitoring the implementation of the Single Market Act and its impact at grassroots level.

Organised jointly by the European Parliament, the Polish Government (holding the Presidency of the EU Council of Ministers in the second half of 2011) and the European Commission, this year's conference is expected to have over 1,000 participants. All participants are warmly invited to share their experiences and ideas on the functioning of the Single Market. The two-day forum will mark the starting point of a debate among EU institutions and stakeholders on the development of the Single Market.

More info: [http://ec.europa.eu/internal\\_market/top\\_layer/single\\_market\\_forum\\_en.htm](http://ec.europa.eu/internal_market/top_layer/single_market_forum_en.htm)

Register at: [https://simfo2011.regware.be/internal\\_market/top\\_layer/](https://simfo2011.regware.be/internal_market/top_layer/)

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