



EUROPEAN COMMISSION

*Brussels, 19.07.2021
C(2021) 5524 final*

*Mr Ludovic ORBAN
President of the Camera Deputaților
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – 050563 BUCHAREST*

Dear President,

The Commission would like to thank the Camera Deputaților for its Opinion on the Communication “Making the most of the EU’s innovation potential – Intellectual property action plan to support recovery and resilience” {COM(2020) 760 final}.

The action plan aims at enabling the European creative and innovative industry to remain a global leader and at speeding up Europe's green and digital transitions. In particular, the action plan sets out key steps to improve the protection of intellectual property, to boost the uptake of intellectual property by small and medium-sized enterprises, and to facilitate the sharing of intellectual property, so as to increase the technological uptake in the industry. It also aims to fight counterfeiting, improve the enforcement of intellectual property rights, and promote a global level playing field.

The coronavirus crisis has also highlighted certain dependencies on critical innovation and technologies so the action plan addresses these challenges while making sure that critical intellectual property can be made available in time of crisis.

The Commission welcomes the Camera Deputaților’s support for the action plan, and looks forward to working with Romania on its implementation¹.

The Commission acknowledges the positions expressed by the Camera Deputaților – in particular with regard to the need for a joint and coordinated effort by the Member States to educate the younger generation about intellectual property rights.

The Commission takes seriously the concerns of the Camera Deputaților, also concerning the affordability of the unitary patent system, the socio-economic impact of internet platforms and the protection of fundamental rights in relation to the dissemination of video contents.

¹ https://ec.europa.eu/growth/industry/policy/intellectual-property-action-plan-implementation_en

The Camera Deputaților's Opinion has been made available to the Commission's services involved in the ongoing implementation of the initiatives envisaged in the action plan and will inform the follow-up discussions.

With regard to the timeline for inter-institutional exchanges on the action plan, the Commission works closely with the Intellectual Property Working Party of the Council. After regular meetings under the Portuguese Presidency of the Council in February, April and May 2021, including on intellectual property rights enforcement and intellectual property-related aspects in the context of the COVID-19 crisis and scale up of vaccine production, the Commission remains available to inform the Member States under the Slovenian Presidency.

In order to keep stakeholders informed, the Commission has created a dedicated webpage² where the implementation progress of the action plan can be consulted. Finally, several other Member States have informed the Commission that preparations are ongoing for the development of national intellectual property strategies and plans in line with the EU intellectual property action plan and the EU recovery plan.

In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Camera Deputaților and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Thierry Breton
Member of the Commission*

² https://ec.europa.eu/growth/industry/policy/intellectual-property-action-plan-implementation_en

ANNEX

The Commission welcomes the inquiry opinion that the Camera Deputaţilor has carried out into this important subject. As regards the points to which the Camera Deputaţilor has drawn the Commission's particular attention, the Commission would like to make the following comments grouped by topic.

Unitary patent and Unified Patent Court (UPC)

The Commission hopes that the constitutional challenges initiated before the German Constitutional Court are resolved quickly, allowing Germany to proceed with finalising its ratification of the Unified Patent Court Agreement.

The unitary patent will indeed be a reliable tool for European companies to protect their inventions on the EU market at a competitive price, and the new Unified Patent Court will offer them the possibility to enforce their patents at European level, thereby enhancing legal certainty and reducing litigation costs. This tool will further boost research and innovation in the EU, and has indeed been long expected by innovative companies and research organisations.

Lowering the cost of unitary patents as much as possible, in particular for SMEs, is indeed a valid objective. In this context, it is worth bearing in mind that the European Patent Convention provides language-related reductions of certain fees to European SMEs, non-profit organisations and individual applicants. In the context of the unitary patent system, such applicants will also benefit from compensation of translation costs for patent applications. The Commission will continue to engage with the responsible actors, including the European Patent Organisation and the Select Committee dealing with the unitary patent, on the matter of facilitating access to unitary patent protection by SMEs. The EU Member States are well represented in these fora, and we trust that in their capacity of members thereof they will make decisions that are as beneficial as possible to EU businesses and other applicants.

Intellectual property awareness

The Commission, with the European Union Intellectual Property Office (EUIPO) and the European Patent Office (EPO), are taking new measures to support SME's use of the intellectual property system. This includes better information and awareness of intellectual property, financial support to use intellectual property, wider availability of strategic assistance and access to finance through leveraging intellectual property. All these measures are interconnected with existing intellectual property support also from national authorities, and linked with general business and research and innovation support. The Commission is currently considering how to enhance intellectual support for SMEs, focusing on the need to improve intellectual property management.

The Commission works closely with the EUIPO Observatory on infringement of intellectual property rights, providing strategic inputs to its work programme, including on public awareness and education of young generations about respect of intellectual

property. For instance, as part of the annual pan-European media campaign, in June the EUIPO launched the 2021 awareness campaign on risks and damages posed by intellectual property rights infringement in Europe across all EU countries.

Plant Variety Rights

The Commission believes that the protection of plant variety rights remain key for moving towards a greener, more digital economy, through improving sustainable production systems and consumer qualities of agricultural and horticultural products.

As announced in the action plan, the Commission will continue to monitor the proper application of the system and seek to bring in further improvements, where needed. The 2011 evaluation of the Community plant variety rights legislation concluded that the system, which functions well overall, should be retained, albeit with some recently identified shortcomings, which could be tackled, after an evaluation. This may include a targeted revision of the legislation in the medium term.

Internet platforms and intellectual property protection

As regards intellectual property rights enforcement, and in particular the responsibility of service providers and intermediaries for online and offline intellectual property rights-infringing content, the Commission is working on an EU Toolbox against counterfeiting. Building on and complementing the Commission's proposal for a Digital Services Act and other existing legislation, this initiative will clarify roles and responsibilities of all interested parties in the fight against counterfeiting. This includes right holders, law enforcement authorities and intermediaries both online and offline, such as online platforms, the advertising industry, payment services, domain name registrars/registries, and transport and logistics companies.

Copyright and metadata

In relation to the use of new technologies to support intellectual property rights enforcement and sharing of relevant intellectual property rights information among stakeholders, the Commission is looking at the use of metadata in the cultural creative sector. The first part of the 'Study on Copyright and New technologies: Copyright Data Management and Artificial Intelligence'³ looks at issues related to metadata management of copyright data linked to protected content ('copyright infrastructure'), which have an impact on transparency and identification of rights owners. The results are expected in autumn 2021.

Video content and fundamental rights

The Commission agrees that the regulation of online platforms needs to be proportionate and balanced. This is why the respect of fundamental rights, and freedom of expression in particular, is at the heart of the Commission's proposal for a Digital Services Act. The

³ <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=5859>

Commission will urge the co-legislators during the negotiations to preserve the delicate balance between the fight against illegal content, including illegal audiovisual content, and the protection of users' freedom of expression.

Non-agricultural Geographical Indications

Further to the action plan as well as the Council Conclusions of November 2020⁴, the Commission is assessing the potential impacts of an EU protection system for non-agricultural geographical indications. In this context, the Commission takes notably into consideration the feedback received on the inception impact assessment from public authorities and private stakeholders⁵. In addition, the Commission is conducting a three-month public consultation with detailed questions on the possible scope, policy options, costs and benefits of an EU protection system for non-agricultural geographical indications. Finally, the impact assessment will take into consideration the results of an ongoing study on the control and enforcement rules for geographical indication protection for non-agricultural products in the EU.

⁴ Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union 2020/C 379 I/01, *OJ C 379I*, 10.11.2020, p. 1–4

⁵ See the summary of the feedback received from 30 November to 18 January 2021
<https://ec.europa.eu/docsroom/documents/45104>