



EUROPEAN COMMISSION

*Brussels, 28.6.2021
C(2021) 4853 final*

*Mr Andreas Norlén
Speaker of the Riksdag
SE – 100 12 STOCKHOLM*

Dear Speaker,

The Commission would like to thank the Riksdag 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 Union’s creative and innovative industry to remain a global leader and at speeding up the 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 to promote a global level playing field.

The Commission is pleased that the Swedish Government and the Riksdag welcome the Action Plan, and looks forward to working with Sweden on its implementation¹.

The Commission acknowledges the positions expressed by the Swedish Government – in particular with regard to the launch of the Unitary Patent and Unified Patent Court, the Supplementary Protection Certificates system, the protection of design and plant variety rights.

The Commission takes seriously the concerns of the Riksdag – as regards the need to put forward concrete proposals, but also improve intellectual property rights enforcement.

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

The Commission has also taken due note of the Committee's opinion on the protection of non-agricultural geographical indications.

The Riksdag'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 the inter-institutional discussions on the Action Plan, the Commission works closely with the Council Working Party on Intellectual Property. A first meeting took place on 3 February and further exchanges of information are envisaged in 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 Riksdag is correctly noting that the Action Plan is a strategic document, which does not enter into the details of the follow up initiatives. These will be adopted upon thorough impact assessments and stakeholder dialogues in the months to come.

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 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 Riksdag and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Thierry Breton
Member of the Commission*

ANNEX

The Commission welcomes the Opinion that the Riksdag has prepared on this important subject.

As regards the points to which the Riksdag 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

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 EU 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.

Supplementary Protection Certificates

With respect to the optimisation of the Supplementary Protection Certificates system and in particular with the aim to reduce the cost and burden of obtaining and maintaining Supplementary Protection Certificates protection in the EU, and to increase legal certainty and transparency in the Supplementary Protection Certificates system, the Commission is preparing an inception impact assessment. It will explore different policy options and will submit them to public consultation. These will include the possibility to create a unitary Supplementary Protection Certificate and/or a unified procedure for the granting of national Supplementary Protection Certificates. The Commission is well aware of the challenges of creating a new unitary Supplementary Protection Certificate as long as the unitary patent system is not operational.

Intellectual property uptake by small and medium-sized enterprises (SMEs)

The Commission, the European Union Intellectual Property Office (EUIPO) and the European Patent Office (EPO) are taking new measures to support SMEs 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 will be interconnected with existing intellectual property support and linked with general business and Research and Innovation support.

In line with better regulation principles, the Commission takes into account the impact of new regulations and evaluates existing rules from the point of view of their impact on SMEs. This applies also to intellectual property related legislation.

Plant Variety Rights

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

Counterfeiting and service providers

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, including 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.

It will also aim at enhancing cooperation and data sharing by all the relevant actors, large and small, according to their role and capacity.

Copyright and broadcaster rights

The Commission believes that the high level of protection of copyright and related rights, as set out in the EU copyright law, is fundamental to intellectual creation and ensures the maintenance and development of creativity in the interest of all creators, cultural industry, consumers and society. This has been reaffirmed in the recent copyright reform as well.

As regards specifically the World Intellectual Property Organization (WIPO) negotiations on a future Broadcasting Treaty, the Commission will continue working for the negotiations to bring about a meaningful treaty updating the international protection of broadcasting organisations.

Design protection for spare parts

As shown by the evaluation of the EU legislation on industrial designs², the economically important spare parts market remains strongly fragmented, causing considerable legal uncertainty and severely distorting competition while adding costs for consumers. The Commission is thus assessing potential options and impacts of completing the single market in this area through further harmonisation of rules, and, in particular, the full liberalisation of that aftermarket through the introduction of a repair clause into the Design Directive³. In that context the Commission will also consider the outcome of the public consultation on the designs review launched on 29 April, and the results of specific studies on spare parts pricing and market structure. It will take also into account

² SWD(2020) 264 final

³ Directive 98/71/EC of 13 October 1998 on the legal protection of designs

latest developments at Member States' level, such as the recent introduction of a repair clause into German design law.

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 stakeholders.⁵ In addition, the Commission will soon launch a three-months public consultation with detailed questions on the possible scope, policy options and costs and benefits of an EU protection system for non-agricultural geographical indications. Finally, the Impact Assessment of the Commission 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.

Patents and access to COVID-19-related products

The current intellectual property system provides key incentives for innovation in technologies critical for tackling global crises, be it pandemics, or any other future crises. Intellectual property is also a key factor providing a clear legal framework and safe environment for transfer of technology and know-how and voluntary collaboration.

In the current COVID-19 pandemic, collaboration and licensing on a global level are already happening. We have numerous examples of licensing and manufacturing agreements between the different companies in the EU and in other countries. We are also looking how to further scale-up this collaboration.

Should voluntary solutions fail or not be available, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides the framework for sharing technology through the granting of compulsory licences, i.e. licences granted by governments without the patent owner's consent.

Compulsory licences can also be granted for export from the EU to countries with no or insufficient manufacturing capacity (cf. Regulation 816/2006).

Developing countries, technology transfer of green technologies (reservation)

Intellectual property rights are a catalyst and an important tool for sustainable development. Through their ability to create and sustain exclusivity in the marketplace, intellectual property rights are recognised as an important commercial asset and a driving force for technological innovation and progress.

Intellectual property rights protection is key for determining how technology can contribute to economic transformation in developing countries. One of the most

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>

important pre-conditions for economic transformation is to have a robust and, to the extent possible, harmonised intellectual property rights' protection and enforcement system in place. The high level of intellectual property rights protection and enforcement also constitutes an incentive for technology holders' to promote transfer and diffusion of knowledge.

Strengthening protection of intellectual property rights is therefore crucial to support developing countries in the process through more integrated global economy, while it is also conducive to further indigenous innovation and to encouraging technology transfer to/cooperation with more technologically advanced economies. At the same time, intellectual property rights policies with/in developing countries should take into account the need to ensure affordable medicines, facilitate the development and transfer of environment-friendly technologies, in line with the UN Sustainable Development Goals.