



European Economic and Social Committee

REX/416
Strategy for the protection
and enforcement of
intellectual property rights in
third countries
(Communication)

Brussels, 10 December 2014

OPINION

of the
European Economic and Social Committee
on the
Strategy for the protection and enforcement of intellectual property rights in third countries
(Communication)
COM(2014) 389 final

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Rapporteur: **Jacques Lemercier**
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On 16 July 2014, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Trade, growth and intellectual property – Strategy for the protection and enforcement of intellectual property rights in third countries

COM(2014) 389 final.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 November 2014.

At its 503rd plenary session, held on 10 and 11 December 2014 (meeting of 10 December 2014), the European Economic and Social Committee adopted the following opinion by 127 votes, with no votes against and four abstentions.

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1. Conclusions and recommendations

- 1.1 The EESC endorses the communication aimed at enhancing the protection and enforcement of intellectual property rights in third countries.
- 1.2 In particular, the Committee supports the Commission's approach to combating counterfeiting in third countries, which it sees as a priority.
- 1.3 The EESC considers that the new approach towards third countries strikes a balance between maintaining European aid and making provision for sanctions in cases of proven fraud.
- 1.4 The EESC notes that under no circumstances must local populations suffer from any reduction in particular forms of EU funding.
- 1.5 The EESC stresses the need to raise awareness among civil society both in Europe and in third countries and ensure it is better informed about the consequences of IPR infringements. The luxury goods sector is not the only one to have been hit by counterfeiting. Counterfeiting affects a variety of sectors, including the automobile, aviation, medicinal, phytosanitary and hygiene products sectors, not to mention numerous mass-marketed consumer goods such as toys and electrical appliances.

- 1.6 The EESC is convinced that, alongside international agreements on the protection of intellectual property rights, the signature of bilateral trade agreements, combined with technical assistance for third countries, remains the best instrument for upholding the rights of the various parties.
- 1.7 The EESC is in favour of the "follow the money" approach to IPR taken by the Commission at EU level, whilst wondering how effective it really is, beyond the exemplary voluntary steps taken by the key intermediaries on the internet economy value chain.
- 1.8 Lastly, the EESC believes that, having failed to raise public awareness of the importance of upholding intellectual property rights, the Commission should take new measures to put this right.

2. **Gist of the Commission communication**

- 2.1 This communication is intended to revise the strategy introduced by the European Commission in 2004 by proposing a new strategy "for the protection of intellectual property rights in third countries". The Commission considers that not only has there been significant technological change but also the challenges and risks to European companies' intellectual property (IP) have evolved considerably in the last 10 years, as has the relationship between society and IPR. The text sets out more specific and effective methods for protecting intellectual property rights in third countries and for combating counterfeiting.
- 2.2 **The findings are harsh: misappropriation of intellectual property rights impedes growth.**
- 2.2.1 IPR-intensive sectors account for around 39% of EU GDP (worth some EUR 4.7 trillion annually) and, taking indirect jobs into account, up to 35% of all jobs.
- 2.2.2 Some estimates cited by the Commission suggest that the EU loses about EUR 8 billion of its GDP a year to counterfeiting and piracy. Global costs could reach as high as EUR 1 300 billion by 2015.
- 2.2.3 Given that the share of the BRIC countries¹ in world trade increased from 8% in 2000 to 18.2% in 2010 and it is estimated that developing countries will account for nearly 60% of global GDP by 2030, there is a risk that counterfeiting, piracy, theft and other forms of IP misappropriation will develop further.
- 2.2.4 The internet is vital in many sectors, with the internet economy estimated to have generated more than 20% of the growth in GDP in the G8 countries between 2006 and 2011. The rise in

¹ Brazil, Russia, India, China and South Africa.

digital technology, however, has caused damage to IPR on an unprecedented scale, with counterfeit and pirated products estimated to have accounted for 2% of world trade in 2008.

2.2.5 This involves not only cultural digital goods, but also physical goods, traded increasingly on e-commerce platforms.

2.3 **This why proper IP "infrastructure" is a necessity.**

2.3.1 There have been significant IP regulatory reforms in many third countries as a result of the WTO's Trade-Related Intellectual Property Rights (TRIPS) agreement. Enforcement efforts have however been hindered by a lack of political will, local officials lacking training, overly lengthy judicial proceedings and court sanctions having insufficient clout. Furthermore, the fact that the internet knows no boundaries (in contrast to intellectual property laws) complicates the framing of balanced policies and raises the issue of the responsibility of intermediaries, such as internet service providers when they host sites that disregard IPR, particularly when they are based in third countries where there is an absence of appropriate legislation or a lack of willingness to act.

2.3.2 With regard to the specific issue of access to affordable, safe and effective medicines, the EU applies policies intended to reduce obstacles to trade in both innovative and generic medicines. At the same time, one of its objectives is to curb trade in counterfeit and falsified medicines that can be dangerous for patients.

2.3.3 The communication notes that the EU has a range of "tools" available to combat these abuses, but that their effectiveness all too often depends on the willingness of third countries to enforce rights.

2.4 **Improving communication with stakeholders**

2.4.1 It is worth noting that respect for fundamental rights and "internet freedoms" led to the rejection of the proposal for an Anti-Counterfeiting Trade Agreement (ACTA) in Europe and of the Stop On-line Piracy Act (SOPA) and the Protect IP Act (PIPA) proposals in the USA. These failures demonstrate how difficult it is to reconcile the need to uphold IPR with public opinion. Indeed some sections of the European public do not consider counterfeiting and piracy to be crimes and are unaware of the economic consequences of IPR infringements.

A better explanation of the EU's goals, the impact of IPR infringements and the EU's efforts to enhance IPR enforcement must therefore be provided in third countries so as to create an environment conducive to the defence of inventors' rights there.

2.5 **Providing better data**

2.5.1 Some data, for example on the scale and impact of IPR infringements, is still difficult to obtain.

2.5.2 The establishment of a European Observatory on Infringements of Intellectual Property Rights is an important measure. It produces information on the IPR situation in non-EU countries in order to establish priorities and inform stakeholders.

2.6 **Harmonising European legislation, for a bigger influence in third countries**

There is evidence that harmonised EU-level IPR legislation facilitates negotiations with third countries because it provides a clear basis for establishing the EU's negotiating position.

2.7 **Enhancing cooperation within the EU**

The scope for further improving cooperation between the Commission and Member States (on information sharing, for instance) should be explored, building on the partnership that has, for example, been established between the Commission, Member States and business to implement the market access strategy and thus to be more resource-efficient.

2.8 **Improving protection and enforcement of IPRs in third countries**

As the 2010 evaluation study noted, "The Commission was an active contributor to IP enforcement at multilateral level, in particular at the WTO TRIPS Council, but it reaped only limited rewards owing mainly to third country opposition."

2.9 **Dispute settlement and other remedies**

2.9.1 WTO dispute settlement procedures can be resorted to for breaches of the TRIPS Agreement.

2.9.2 The Commission could consider restricting participation in or funding under specific EU-funded technical assistance programmes for countries that persistently break international commitments on IP rules.

2.9.3 To improve dialogue and ensure that they have expertise on the ground, several Member States have "IP attachés"² within their delegations in key countries. The aim is to provide EU right holders in third countries with assistance.

²

Intellectual Property attachés.

2.10 **Establishing geographical priorities**

Every two years, the EU will update its list of priority countries where IPR are flouted.

3. **Key issues**

3.1 A recent study carried out by the European Observatory on Infringements of Intellectual Property Rights and the European Patent Office examines intellectual property rights intensive industries. The study evaluates their contribution to economic performance and trade at EU level and conducts an analysis at Member State level for the 2008-2010 period.

3.2 During that period intellectual property rights intensive industries accounted for the greater share of EU trade with the rest of the world and generated a trade surplus. 88% of EU imports consisted of the products of IPR-intensive industries. The share for EU exports was 90%. IPR-intensive industries clearly make a positive contribution to the EU's trade position.

3.3 According to the study, IPR-intensive industries account for 26% of total employment in the EU, i.e. 56 million direct jobs, not to mention a further 20 million indirect jobs. A total of one in three jobs in the EU is based on IPR-intensive sectors.

3.4 The economic and social difficulties currently facing the European Union would make it worth measuring the economic and social impact of the failure to uphold IPR in the EU Member States and in third countries.

3.5 **Certain sectors remain highly sensitive, and access to medicinal products is one of them**

3.5.1 The EESC would draw attention to the specific case of compulsory licences in the context of international trade. The licences are defined by Article 31 of the TRIPS agreement and are a mechanism that enables patents to be used without the authorisation of the right holder, in the interests of public health for instance.

3.5.2 In general, the holder of a patent can either use the protected inventions him or herself or authorise someone else to do so. However, when it is justifiable for reasons of general interest, national public authorities can authorise the exploitation of a patent by a third party without the owner's consent.

3.5.3 This provision can be applied in any third country that has signed the TRIPS agreement and by EU Member States when molecules that could improve public health are marketed at a prohibitive price by companies based in a third country.

4. **Specific comments**

- 4.1 The EESC endorses the communication aimed at enhancing the protection and enforcement of intellectual property rights in third countries.
- 4.2 The EESC welcomes the fact that the new approach towards third countries strikes a balance between the need to maintain European aid while also providing for sanctions in cases of IPR infringement.
- 4.3 The EESC notes that under no circumstances must local populations suffer from any reduction in particular forms of EU funding.
- 4.4 The EESC endorses the March 2014 European Council statement that intellectual property (IP) constitutes a key driver for growth and innovation.
- 4.5 The Committee therefore supports the Commission's approach to combating counterfeiting, which it sees as a priority.
- 4.6 The EESC notes that it is not only the luxury goods sectors (clothing, perfumes, leather goods, etc.) that are affected. The counterfeiting of mechanical parts for the automotive sector, of pesticides with highly dangerous ingredients, and of everyday consumer goods for personal hygiene is growing at an alarming rate, with immediate implications for health and safety.
- 4.7 The EESC would point out that 90% of EU exports are carried out by IPR-intensive sectors and that the consequences for the economy and jobs are far from negligible.
- 4.8 The EESC takes note of the new measures for combating international trade law infringements.
- 4.9 The EESC is in favour of the principle of systematic periodical investigations to identify the companies or countries responsible for this sort of behaviour.
- 4.10 The EESC would welcome appropriate measures to sanction offenders who are not inclined to abide by the rules.
- 4.11 The EESC would therefore welcome any policy whose priority was to target offenders who operate on a commercial scale, with the aim of depriving them of revenue gained by means of illegal trade, in total violation of IPR, with the accompanying effect on growth, innovation and jobs.

- 4.12 The EESC hopes to this end that the notion of "commercial scale" will be given as precise a definition as possible in order to prevent the sanctions planned from being too limited in their scope, and avoid a considerable increase in implementation times.
- 4.13 The EESC stresses the need for solid cooperation with the Member States and notes in particular that certain Member States have taken action to protect and uphold IPR in third countries.
- 4.14 Lastly, the EESC believes that, having failed to raise public awareness of the importance of upholding intellectual property rights, the Commission should take new measures to put this right.

Brussels, 10 December 2014.

The President
of the
European Economic and Social Committee

Henri Malosse
