



INT/927
Action plan on intellectual property

OPINION

European Economic and Social Committee

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions
Making the most of the EU's innovative potential -
An intellectual property action plan to support the EU's recovery and resilience
[COM(2020) 760 final]

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1. **Conclusions and recommendations**

- 1.1 The EESC fully supports the European Commission's action plan on intellectual property (IP) as a very good and holistic approach to modernising the EU IP system.
- 1.2 The EESC strongly believes that launching the Unitary Patent System needs to be a main priority and will considerably enhance the competitiveness of EU companies. Given the obvious difficulties in implementing the system, the EESC is convinced that transferring the UPS to the EU legislative system needs to become the (long-term) goal.
- 1.3 The EESC stresses the importance of SME support measures in all areas of intellectual property rights (IPR) protection. In addition to financial support measures, there must be a special focus on increasing IPR know-how and on tailor-made consulting and advice services.
- 1.4 The EESC would like to launch a discussion on how to boost knowledge of IPR and IPR management at all levels of the EU's education systems.
- 1.5 The EESC encourages the European Commission to implement a unitary supplementary protection certificate (SPC) title and examine the possibility of applying the SPC system to new sectors.
- 1.6 The EESC believes that harmonising the copyright framework and copyright data management would boost the use of IPR in the creative sector.
- 1.7 The EESC calls for a social dialogue process that, in addition to legal rules, clarifies and defines fair IPR through collective bargaining in order to offer authors and producers incentives in the form of recognition of their creations as well as fair economic compensation.
- 1.8 The EESC considers geographical indications (GI) to be an important tool for enhancing the competitiveness of local producers and emphasises the potential of adding a harmonised system for GI protection of non-agricultural products.
- 1.9 The EESC recognises the economic potential and the public interest of fostering the flow of data across the EU, but stresses the problems arising from unbalanced regulations.
- 1.10 The EESC welcomes all measures to enforce the fight against IPR infringement, and the strengthening of the role of the European Anti-Fraud Office in the fight against counterfeiting.
- 1.11 The EESC advocates further enhancing direct support tools for EU businesses operating in non-EU countries and the strict enforcement of IP laws and EU trade agreement provisions to protect these businesses against IPR infringements.
- 1.12 The current health crisis has made evident the need for access to systemically relevant IP in critical situations. IPRs should not hinder the accessibility and availability of pandemic vaccines or treatments: effective compulsory licensing systems provide a safety net for society in emergency situations and fair compensation for businesses.

2. **General comments**

- 2.1 The EESC welcomes the European Commission's action plan on intellectual property (IP) as an important approach to modernising the EU IP system and enhancing the huge innovation potential of EU companies, especially SMEs and microenterprises. As the great economic importance of intellectual property products such as inventions, artistic and cultural creations, brands, software, know-how, business processes and data within the EU continues to increase, the EESC regards an optimised easy-to-access legal and political framework as essential.
- 2.2 Many companies, especially SMEs, which represent 99% of all businesses in the EU, do not make (full) use of IP protection opportunities. Boosting the use of IP protection in EU companies – with a special focus on SMEs and microenterprises – needs to be the core aspect of the IP action plan. The measures required are manifold, ranging from the need to reduce costs, simplify procedures, raise awareness and knowledge, provide tailored advice and support and modernise the education system in relation to IPR know-how.
- 2.3 IP is a key economic factor – with IP-related industries accounting for almost 45% of Europe's GDP and 30% of jobs – but also a key factor in meeting the most important challenges facing our society. The COVID-19 crisis has very clearly illustrated the EU's dependence on professional excellence, combined with effective IP rules and tools to secure the fast deployment of critical IP. Success in combating climate change will also depend to a large extent on the rapid development and adoption of cutting-edge technologies and effective tools for fair approaches to the exchange of critical intangibles and data.
- 2.4 The technological revolution is a driving force for IPRs but also a challenge that requires a well-balanced approach to innovation-driven tools. Digitalisation and AI technologies raise many IP issues requiring consideration, such as transparency, data origin and copyright, the degree of human intervention, ethical principles, etc. The EESC supports the European Commission's view that AI systems should not be treated as authors or inventors. In general, the EESC believes that – with well-balanced amendments and updates – the European IP framework is fit to address the challenges of digitalisation and AI. As the EU still lags significantly behind other regions in terms of the number of patents for digital products and technologies, special attention needs to be paid to measures to improve this important market.

3. **Specific comments**

3.1 *Protection of Intellectual Property*

- 3.1.1 The Unitary Patent System (UPS), as a one-stop shop for businesses, is crucial to significantly reducing the costs of patents, facilitating licensing, improving transparency and overcoming the barriers to accessibility for SMEs. Launching the UPS and making the Unified Patent Court (UPC) operational will considerably improve IP protection and must be a priority for the Action Plan. Facilitating the procedures will also speed up the overall process and thus increase the competitiveness of European patent holders. The UPC agreement provides an important basis for an efficient, specialised and technically competent patent litigation system that will be able

to improve legal certainty, simplicity and efficiency. However, as the difficulties in implementation show, the aim should be to transfer the system into the EU legislative system. In the meantime, further delays caused by proceedings in Member States and/or the UK's withdrawal from the agreement urgently need to be addressed. The fact that the EU's share of global patents fell dramatically from 17.4% in 2009 to 11.3% in 2019 also clearly shows that further action is needed.

- 3.1.2 A supplementary protection certificate (SPC) can extend the protection granted by a patent for a medicinal product or plant protection product for which the corresponding marketing authorisation applies. It is therefore an important tool to offset the loss of effective patent protection due to the required length of tests, clinical/field trials and regulatory processes. The EESC considers SPCs to be essential to efficiently promoting innovation in new active substances and attracting R&D centres in the EU, while balanced exemptions from SPC rights must ensure affordability and sufficient supplies of medicines. Although the SPC system is a straightforward and innovation-stimulating system, it is still fragmented and requires the filing of an SPC application in each of the EU Member States where SPC protection is sought. Establishing, through a new separate EU regulation, a unitary SPC title and a single authority as one-stop shop for granting UP-SPCs would make SPC more attractive to patent holders, offer better protection for innovators and create legal certainty for third parties. The EESC also supports the approach of examining the applicability of an optimised SPC system to new sectors for which products are likely to require marketing authorisation.
- 3.1.3 Based on the experience of the revision of EU trademark legislation, the EESC is convinced that the updating of EU legislation on design protection will be implemented successfully. The positive experience of regulating these issues through EU legislation should be a motivation for the Commission to initiate a proposal for a new separate UP-SPC regulation and, in the long term, to incorporate the UPS into the EU legal system.
- 3.1.4 The EESC notes that geographical indications (GI) represent a unique and valuable resource for EU producers in an increasingly liberalised and competitive global market. The EU GI protection system has major economic value in the agricultural sector. In general, the system works very well, but the protection of GI has yet to be enforced, by means of a harmonised control system of the authorities and a common definition of food fraud, for example. Trade agreements should also focus on such specific protection measures. The EESC emphasises the potential of adding a harmonised system for GI protection of non-agricultural products, which are an important part of local identity. This would help local producers to present their quality products more successfully and have an additional positive impact on less developed regions. Furthermore, simplification of the registration procedure would benefit producers.
- 3.1.5 The Community Plant Variety Rights system is another positive example of a harmonised approach to IP protection based on an EU Regulation. It can also provide a safe base for small and medium-sized breeders and contains important exceptions for agriculture and breeders. In terms of its stated aims, the system forms a good basis on which breeders can efficiently contribute to green transition targets.

- 3.1.6 The EESC stresses that the protection of copyright, design and related rights is essential for the cultural and creative professions, which generate significant economic wealth and contribute considerably to European identity, culture and values – such as architectural and other cultural works – but often do not have sufficient know-how or financial means to protect IP and transform innovations into products. Harmonising the copyright framework and copyright data management is important and needs to be accompanied by additional support measures.
- 3.1.7 Employees who carry out creative work, and inventions in particular, are possible holders of rights. It is crucial to set up a social dialogue process at European, national, sectoral or company level that, in addition to legal rules, clarifies and defines fair IPR through collective bargaining in order to offer authors and producers incentives in the form of recognition of their creations as well as fair economic compensation. Agreements on the assignment of copyright should not be considered an obligation to transfer all IP to the employer without appropriate compensation.
- 3.1.8 The Biotech Directive offers an important framework for the legal protection of biotechnological inventions. It deals with politically and ethically sensitive topics and is therefore the result of a careful weighing-up of very controversial interests. However, the rapid development of biotechnology is also necessary in the areas of health and fighting major epidemics and combating hunger in the world. It is therefore important to promote research and innovation in these areas to a large extent, but also to disseminate and licence it efficiently.
- 3.1.9 Trade secrets are intangible assets that complement intellectual property rights (IPR). They are widely used in the creative process that leads to innovation and the creation of intellectual property rights, and ensuring their effective protection is therefore extremely important. The EESC therefore considers that clarifying the basis laid down in Directive (EU) 2016/943 is an important objective.

3.2 *Use and deployment of IP – with a special focus on SME*

- 3.2.1 The EESC considers increasing the use of the potential of intellectual property protection by SMEs to be one of the main objectives of the action plan, which affects all the different systems of intellectual property protection. While there is great potential for innovation in EU SMEs and micro-enterprises, the vast majority cannot add value to their intangible assets.
- 3.2.2 The cost factor is one reason why only 9% of EU SMEs have registered IP rights. The costs of obtaining a patent in the EU are currently significantly higher than in the USA or Japan, for example, and represent an enormous financial burden for SMEs and micro-enterprises. Therefore, in order to improve SMEs' access to IP protection, costs need to be reduced. The rapid implementation of the UPS, which will significantly reduce patent registration costs, will be a game-changer for innovative SMEs and micro-enterprises such as liberal professional engineering companies. The EESC also stresses the importance of all the different approaches to financial and know-how support for SMEs, the EUIPO IP vouchers, the approach of helping SMEs benefit from their IP in order to gain access to finance and the IPA4SME programme, which provides up to EUR 15 000 to co-finance IP diagnostics and protection measures, etc. It also notes the important role of patent attorneys in this support system.

3.2.3 The EESC believes that a major problem is the enormous lack of knowledge of IPR management strategies in EU companies, especially but not only in SMEs and micro-enterprises. The provision of easily accessible general and tailored information, support and advice to SMEs and micro-enterprises, as provided through a variety of programmes and initiatives such as the European IP Helpdesk and through different channels and networks, is therefore of great importance in addressing this challenge and should be further extended. Awareness of the potential of IPR for entrepreneurs needs to be raised and combined with various low-barrier training programmes. The EESC suggests exploring ways of increasing the number of qualified IPR managers in EU companies.

3.2.4 The EESC would also like to launch a discussion on how to boost knowledge of IPR and IPR management in the EU education system: Basic knowledge and awareness of IPR management should be incorporated into secondary and higher education, with in-depth knowledge of IPR studies ranging from business and technical studies to many others included in curricula. IPR management should also be offered as a stand-alone subject in higher education. The EESC is convinced that boosting available know-how can increase the use of IP protection.

3.2.5 The importance of turning research results into innovation is obvious, and the EESC therefore welcomes any activities that promote knowledge-transfer and better IP management in the R&I community. SMEs and micro-enterprises are often small partners in a project consortium and in this role need better support to turn IPR into products and to protect their rights within such consortia. This should be a particular focus of support programmes that provide tailored advice and support.

3.3 *Access to and sharing of IP-protected assets*

3.3.1 The current health crisis has made the need for access to systemically relevant IP in critical situations obvious. IPR must not hinder the accessibility and availability of pandemic vaccines or treatments. The impact of research carried out with European public funds should be maximised by ensuring that the resulting knowledge and IP are shared. On the other hand, effective systems for issuing compulsory licencing are a safety net for society in emergency situations. Their procedures need to be based on a careful weighing-up of the different interests concerned, while ensuring that they are rapid and coordinated at European level in order to meet public health requirements effectively as possible. In this context, the EESC would also like to stress the importance of Regulation (EC) No 816/2006 concerning the compulsory licencing of patents for the manufacture of pharmaceutical products for export to countries with public health problems¹.

3.3.2 Enhancing transparency of ownership and management of IP is a prerequisite for facilitating the licencing and distribution of IP. In this context, the EESC would also like to highlight the need for rapid implementation of the UPS and the importance of improving copyright infrastructure in terms of information on rights-holders, terms and conditions and licencing options, also with regard to blockchain technology.

¹ OJ L 157, 9.6.2006, p. 1.

3.3.3 Since standardisation is a process with many different stakeholder interests, Standard Essential Patents (SEPs) require a particularly high level of transparency and fair licencing rules. The EESC therefore supports approaches for an independent system of third-party essentiality checks and measures to reduce infringements and points of friction.

3.3.4 The EESC recognises the economic potential of fostering data-sharing and the flow of data across the EU in all sectors, but stresses that enabling the flow and widespread use of data must be based on a balanced approach securing privacy, security, safety, ethical standards and legitimate IP protection interests. This needs to be secured in the revision of the Database Directive in 2021².

3.4 *IPR Infringements*

3.4.1 Effective enforcement and judicial redress are the main criteria for a successful IP protection system and thus need to be substantially strengthened. The EESC stresses that the implementation of the UPC for patents will give an enormous boost to the enforcement of patent rights and that the enforcement of IPR in other IPR systems (e.g. insurance) must also be considerably strengthened through practical and/or legal measures. SMEs and micro-enterprises in particular often do not have the means to enforce their IPR.

3.4.2 Digitalisation has led to new forms of IP infringements such as the cyber-theft of trade secrets, illegal streaming etc. The EESC welcomes binding regulations, such as the Digital Services Act³, ensuring a better legal framework.

3.4.3 Counterfeiting and piracy cause huge losses in EU sales, but they also pose health, safety and security threats to consumers. The EESC welcomes the cooperation of all stakeholders, the establishment of an EU toolbox and the strengthening of the role of the European Anti-Fraud Office in the fight against counterfeiting.

3.5 *Fair play at global level*

3.5.1 The EU is not a leader in global IPR competition. In patent applications, Asia increased its share of all global patent applications to 65% in 2019, while the EU's share fell dramatically from 17.4% (2009) to 11.3%. Enhancing the EU's position is therefore extremely important.

3.5.2 IPR protection and enforcement is an additional challenge for EU businesses that are operating in non-EU countries. Therefore, the EESC encourages all Commission measures to improve this situation. Negotiating IP chapters with a high level of protection in Free Trade Agreements and IP dialogues with trading partners are important long-term approaches, as well as cooperation in worldwide organisations such as the WIPO and the WTO and participation in global IP agreements.

² OJ L 77, 27.3.1996, p. 20.

³ COM(2020) 825 final.

3.5.3 The EESC stresses the importance of direct support tools providing information to EU businesses operating in non-EU countries, such as foreign investment screening, the Counterfeit and Piracy Watchlist and the Third Country report. Measures such as IP SME helpdesks to support SMEs and micro-enterprises are particularly important and should be further developed.

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The president of the European Economic and Social Committee
