

**THE IMPORTANCE OF EUROPEAN UNION INTELLECTUAL PROPERTY
POLICY MAKING AND MONITORING IN THE CONTEXT OF
ECONOMIC DEVELOPMENT, GROWTH AND INTEGRATION
(IMPORTANȚA CREĂRII ȘI MONITORIZĂRII POLITICII PROPRIETĂȚII
INTELLECTUALE A UNIUNII EUROPENE ÎN CONTEXTUL INTEGRĂRII,
DEZVOLTĂRII ȘI CREȘTERII ECONOMICE)**

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***Rezumat.** La baza unei dezvoltări ai inovației, productivității și competiției ar sta o politică de promovare a protecției proprietății intelectuale ca un catalizator indirect creșterilor economice, diversității și calității. Printr-un studiu bazat pe analiza și sinteza statică a situației curente și a dinamicii viziunii Uniunii Europene în acest sens, acest articol ilustrează importanța susținerii politicilor stimulente care au impact asupra economiilor statelor ce cooperează, industriile din această sferă adăugând valoare Produsului Intern Brut Statelor susținătoare a unei astfel de politici, iar baza lor fiind reflectată asupra țărilor asociate precum Ucraina în procesul implementării Acordului de Asociere.*

***Cuvinte cheie:** Proprietate Intelectuală, Drepturile Proprietății Intelectuale, Uniunea Europeană, Creștere Economică, Inovație, Cooperare*

JEL CLASSIFICATION: O32, O34

Well-balanced, efficient and effectively enforced Intellectual Property (IP) systems are ones of the most important triggers in promoting and boosting the investment in innovation and growth. At this moment of time, Intellectual Property Rights (IPRs) are ones of the principal means according to which entities, creators, investors, designers and entrepreneurs generate their return on their investments in research and development, innovation and creativity.

For creating such an environment where everybody will fight for uniqueness, variety and unique value proposition, there is a need for the legal layout. Therefore, this report is a part of the efforts of the European Commission to strengthen the protection and enforcement of IPR within the European Union Member States and the third countries. The main objective of this report is to identify the actions and tools which were built by the EU for the economic development, innovation and growth and cooperation with the world.

Therefore, for tackling them, there were traced out some objectives of this article:

- To determine which are the goals of the European Union Intellectual Property policy making, including the tools and institutional strategies for building a functional system;
- To asses the results of the existing policy for the economic sector in terms of economic growth along with its value added to the economies of the Member States after innovation creation;
- To identify the negative consequences towards EU economy that appear while infringing the policy;
- To determine the necessity of policy obedience monitoring along with the gradual implementation of it in the process of cooperation, trade relations creating and integration related to the third countries by analyzing the case of Ukraine.

For the regulatory and monitoring process of EU Intellectual Property, there was formed the European Union Intellectual Property Office (EUIPO), originally founded as the Office for Harmonization in the Internal Market (OHIM) in 1994. The Office's mission is to manage the EU trade mark (EUTM), created by Council Regulation (EU) 2017/1001 [1,(27)] , and the Community design (RCD), created by Council Regulation (EC) No 6/2002 [2,(5)].

In order to do so, the Office carries out examination, registration, opposition and cancellation procedures for EUTMs and examination, registration and invalidity procedures for RCDs. All

decisions adversely affecting a party to proceedings can be appealed to the Boards of Appeal of the Office. In 2012, Regulation (EU) No 386/2012 [3] entrusted additional tasks related to the enforcement of IP rights to the Office (the European Observatory on Infringement of Intellectual Property Rights).

The Office focuses on achieving the following strategic goals as Improving Operational Effectiveness, Enhancing Access to the IP System and IP Knowledge and Building Network Convergence with a Global Impact, following the Strategic Plan 2020 and the mandate from its stakeholders. These goals are built upon the twin principles of a ‘Collaborative Organization’ and ‘International Cooperation’ and are made operational in six Lines of Action, each comprising a number of individual projects [4, p. 12-14].

Behind the EU’s ability to stimulate innovation and stay competitive at the global level stays namely this IPR protection and enforcement policy. A study of the European Commission made in January 2020 [5, p.4] based on an analysis made by the EUIPO, 2019 [6, p. 9-14] shows that around 84 million or 38.9% of all jobs in the EU during the period 2014-2016 were offered by the IPR-intensive industries.

Table 1: Contribution of IPR-intensive industries to EU employment and GDP (2014-2016 average)

IP right	Direct Employment	Share of total direct employment (%)	Direct & Indirect employment	Share of total direct and indirect employment (%)	Value added / EU GDP (million eur)	Share of total EU GDP (%)
All-IPR industries	62,962,766	29.2	83,807,505	38.9	6,551,768	44.8
Copyright-intensive industry	11,821,456	5.5	15,358,044	7.1	1,008,383	6.9
Patent-intensive industries	23,571,234	10.9	34,740,674	16.1	2,353,560	16.1
Plant-variety intensive industries	1,736,407	0.8	2,618,502	1.2	181,570	1.2
Trademark-intensive industry	46,700,950	21.7	65,047,936	30.2	5,447,857	37.3
GI-intensive industry	n/a	n/a	399,324	0.2	20,155	0.1
Design-intensive industry	30,711,322	14.2	45,073,288	20.9	2,371,282	16.2

Source: European Commission Report on the protection and enforcement of intellectual property rights in third countries, January 2020, [5, p.4]

The economic importance of IPR is reflected in the total value added to EU GDP which consisted in average (2014 – 2016) 6,551.7 bn EUR according to the table, while the total GDP of the EU in 2016 was 14 800 bn EUR, thus having a share of more than 44.8%. This importance is also reflected in the contribution of IPR-intensive industries to the EU’s external trade. In 2016, taking both goods and services into account, 80% of EU imports and 82% of EU exports were generated by the IPR-intensive industries, which translates into a trade surplus of around 182 billion EUR.

According to a recent EUIPO study on *IPR Infringement(2019)* [8, p. 17-22] , counterfeit and pirated goods were estimated to be about 3.3% of the world trade and € 121 billion in absolute value or almost 6,8% of total EU imports from the other countries. Considering the previous study of these two bodies, these estimations appear to be alarming, as the portion of fakes in EU imports between 2013 and 2016 increased by up to 42.3% while in the world trade it increased by up to 10.4%.

As shown in Table 2, according to this study [8,p. 22-23] sales of the legitimate sectors are lowered by an average of 7.4% across the EU due to the presence of counterfeits. This average reflects a range of 3.6% for recorded music to 10.5% for cosmetics and personal care products. These direct

lost sales amount to €56 billion per year, corresponding to an employment loss of almost 468,000 jobs. Adding in knock-on effects on other sectors, total sales losses amount to €92 billion. Finally, governments across the EU lose more than €16 billion in taxes and social security contributions.

Table 2: Quantification of IPR infringement by sector in the EU
(average annual figures, 2012- 2016)

Sector	% of Sales	Direct Sales Lost (bn EUR)	Total Sales Lost (bn EUR)	Direct Employment Lost	Total Employment Lost	Government Revenue Lost
Cosmetics & Personal Care	10,5 %	€ 7.1 bn	€ 4.1 bn	71 984	118 654	€ 2.6 bn
Clothing, Accessories and Footwear	9,7 %	€ 28.4 bn	€ 17.5 bn	335 053	473 031	€ 8.6 bn
Sports Goods	4,1 %	€ 300 mn	€ 300 mn	1 756	3 625	€ 100 mn
Toys and Games	7,4 %	€ 1.0 bn	€ 600 mn	3 679	8 158	€ 300 mn
Jewelry & Watches	6,2 %	€ 900 mn	€ 800 mn	5 683	11 882	€ 300 mn
Hand Bags & Luggage	7,4 %	€ 1.0 bn	€ 1.1 bn	8 169	16 550	€ 400 mn
Recorded Music	3,6 %	€ 100 mn	€ 200 mn	580	1 343	€ 100 mn
Spirits & Wine	5,9 %	€ 2.4 bn	€ 6.1 bn	6 049	38 885	€ 2.1 bn
Pharmaceuticals	3,9 %	€ 9.6 bn	€ 16.5 bn	33 133	80 459	€ 1.7 bn
Total all sectors	7.4 % (avg)	€ 56 bn	€ 92.3 bn	467,835	760,579	€ 16.3 mn

Source: EUIPO, 2019 Status Report on IPR Infringement , [8, p.23]

According to the *European Commission Report on the protection and enforcement of intellectual property rights in third countries* [5, p. 8-10;] the countries with which the EU builds cooperation were divided into 3 Priority Groups. Therefore, India, Indonesia, Russia, Turkey and Ukraine were grouped into Priority 2 countries group as serious systemic problems have been identified in the area of IP protection and enforcement in these countries, causing significant harm to EU businesses.

Although **Ukraine** committed major regulatory approximation in the EU-Ukraine Association Agreement, which entered into force in 2016, only limited progress can be noted in the last two years. [5, p. 30-32];

There are some concerns in the fields of patents, trade marks and copyrights. In the terms of **patents**, according to the European Commission Report, three draft laws have been submitted to the Verkhovna Rada (the Parliament) regarding introducing restrictive patentability criteria and deny protection for certain substances (salts, ethers, combinations, polymorphs, metabolites, etc.) and other new uses of medicines of known medicinal product. However, these draft laws are not in line with international standards and the European Patent Convention because by doing such exclusions there would be a limitation in incentives to innovate in order to find more stable forms of compounds with longer shelf lives and dosages, which are safer or reduce side-effects.

As regards **trade marks**, stakeholders report that under the current trade mark law it is not possible to rely on the opposition procedure. It means that there is no protection against bad faith registration as the current trademark act still does not provide for the legal possibility to invalidate a trademark registered in bad faith

In the area of **copyrights**, there are registered serious misobedience and faith usage of the copyrights in terms of cable retransmission and tariff setting. Performers are not paid royalties by the public broadcasting organisations for their performances and phonograms despite the legal obligation imposed by the Ukrainian copyright law, according to EU stakeholders.

According to an EUIPO-OECD 2018 study on *Trends in Trade in Counterfeit and Pirated Goods (2019)* [7, p. 14-17;40;75;79], Ukraine still continue to remain one of the four main entry points for counterfeit goods to the EU market especially in the following sectors: foodstuff; watches and jewellery; toys and games; clothing; optical, photographic and medical equipment. That because

there are still major problems with the efficiency of customs authorities because there are no adequate facilities to destroy certain types of counterfeit products.

Nevertheless, the level of IP enforcement and protection is required to be improved by the **EU-Ukraine Association Agreement**. The EU funded a Twinning Project to assist Ukraine in the implementation of the DCFTA and assists Ukraine in the elaboration of new draft laws on IPR. The EU has also financed a technical assistance programme to support the development of a geographical indications system in Ukraine. A draft law has already been prepared in the framework of this programme, which will run until 31 August 2020.

CONCLUSIONS

Considering the impact of the well-formed and defined IPR policy, the economy of the EU and other countries of cooperation and association has nothing else to do than showing signs of betterness and improvement. The regulation of IP policy within the borders of EU and beyond them has been changed during the years and that not because other reasons than the change of the needs of the entrepreneurs, businesses and economic agents for their economic activities.

This policy lays as a background for the businesses on the market arena and for daily business operating activity giving protection for everyone in their initiated activities, as also showed by the impact of the contribution of IPR-intensive industries to the EU employment, added value to GDP and trade, by providing with a trade surplus of around € 182 billion for EU exports of IPR-intensive industries.

If not treated and amended accordingly, the impact of the policy infringement could be very significant, seen at the macro level in the frames of revenue losses, job losses and government revenue losses.

As regarding the third countries, EU is acting with the same principles for IP protection and usage aligned with the international standards and this importance is shown in the impact of demanding amendments and imposing requirements for the IP policy in associate countries in order to make sure that both the parties – the EU, on one side, and associate countries, on the other side, would benefit in terms of economic growth, diversification, integration, development and innovation.

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