



## Press Release

Luxembourg, 26 April 2022

# Intellectual property not fully protected in the EU

**Intellectual property rights play a big role in a knowledge-based economy: they ensure that businesses and designers are able to profit from their creations. They also provide assurances to consumers in terms of quality and safety. But in a special report published today, the European Court of Auditors warns that the EU's legal framework for protecting intellectual property is not as effective as it could be. Although the framework in place gives some guarantees, a number of shortcomings remain, in particular in the EU Designs Directive and the EU fees mechanism. The auditors also highlight that EU and national systems would benefit from being better aligned.**

Intellectual property rights (IPR) are crucial to the EU's global competitiveness. IPR-intensive industries generate almost half (45 %) of the EU's economic activity, worth €6.6 trillion, and provide nearly a third (29 %) of total EU employment. Each year, counterfeit products are estimated to lead to €83 billion in lost sales in the legitimate economy. If the problem of counterfeit products were tackled effectively, the EU economy would gain 400 000 jobs according to a recent estimate of the EU Intellectual Property Office (EUIPO). Counterfeit products also have considerable safety risks, as was recently illustrated during the COVID-19 pandemic. For these reasons, the European Commission, other EU bodies such as the EUIPO, and Member State authorities make considerable effort to ensure that intellectual property rights are respected throughout the EU single market.

*"Intellectual property rights are vital for the EU economy: they encourage innovation and investment, and discourage counterfeiting and its harmful effects", said Ildikó Gáll-Pelcz, the ECA Member responsible for the audit. "But the current EU framework doesn't give all intellectual property rights the protection they need. We hope that our recommendations will help the EU to increase that level of protection to the level that the single market requires."*

The auditors note that legislative and support measures are in place to protect EU trademarks. But at the same time, they point out shortcomings in the EU Designs Directive, which should have equal effect throughout the EU. As it stands, the EU's regulatory framework for designs is incomplete and outdated. As a result, national and EU systems are not aligned, allowing divergent practices between Member States during the application, examination, publication and registration processes, leading to legal uncertainty. In addition, the auditors draw attention to the lack of an EU-wide protection regime for all products. The EU's geographical indication

*The purpose of this press release is to convey the main messages of the European Court of Auditors' special report. The full report is available at [eca.europa.eu](https://eca.europa.eu).*

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framework does not concern non-agricultural products, such as crafts and industrial designs, although some Member States have legislation in place to protect them.

The auditors also question the EU's fees mechanism, observing significant disparities between EU fees and those charged by the national authorities. They found that the EU's intellectual property rights fees structure does not reflect real costs. While criteria exist for fixing fees at EU level, the auditors consider that there is no clear method for determining their structure and amount, resulting in an excessive level of fees that produces accumulated surpluses (over €300 million in EUIPO's 2020 accounts). The auditors highlight that this is contrary to the principle of a balanced budget stipulated in EU law.

Although an EU intellectual property rights enforcement framework is in place and generally works well, the auditors highlight some shortcomings in its implementation. In particular, the Intellectual Property Rights Enforcement Directive is not uniformly applied throughout the EU, so it fails to ensure a consistently high level of intellectual property protection in the internal market. Weaknesses and inconsistencies in customs controls in the Member States also adversely affect enforcement and the fight against counterfeits. The protection of intellectual property rights in the EU therefore varies according to the place of importation. The auditors also note that different practices exist within the EU for destroying counterfeit goods, which may lead counterfeiters to import their wares into the EU in places with less stringent controls and sanctions, the auditors warn.

### **Background information**

The EU regulatory framework for intellectual property rights is based on EU regulations, directives and existing international intellectual property agreements. It is aimed at providing protection in all EU Member States by creating a single EU system consisting of EU and national intellectual property rights.

Special report 06/2022, *"EU intellectual property rights – Protection not fully waterproof"*, is available on the ECA website ([eca.europa.eu](https://eca.europa.eu)).

In 2019, the ECA also published an Opinion concerning the proposed financial regulation of the EUIPO's budget committee in which it called for a productive use of surplus money.

The ECA presents its special reports to the European Parliament and the Council of the EU, as well as to other interested parties such as national parliaments, industry stakeholders and representatives of civil society. The vast majority of the recommendations made in the reports are put into practice.

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