REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF AUDITORS' SPECIAL REPORT

EU Intellectual property rights: protection not fully waterproof

Contents

This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 259 of the Financial Regulation and to be published together with the Special Report.

EXECUTIVE SUMMARY (Paragraphs I-X)

Commission replies:

II. The EU intellectual property legal framework and its effective implementation incentivises EU companies to invest in goods and services of high quality, innovation, design and creativity, ensuring that companies can scale-up globally. The Industrial Strategy, presented in March 2020 by the Commission sets out key drivers of Europe's industrial transformation and future actions to achieve a European industrial policy based on competition, open markets, world-leading research and technologies and a strong single market.

In addition, to assume leadership in key industrial areas, improve and support economic recovery and resilience in times of COVID-19 while making the transitions to a greener and more digital economy, the Commission adopted in November 2020 a comprehensive action plan on intellectual property (IP Action Plan). The Action Plan aims to strengthen the EU's Intellectual Property (IP) policy enabling companies to profit from their inventions and creations while ensuring that those also serve the wider economy, and benefit the society.

V. The Commission in its Action Plan has identified that the existing EU IP framework while solid and robust would benefit from modernisation and could be completed e.g. with new EU legislation on EU geographical indications for craft and industrial products.

VI. The Commission is currently in the process of revising the designs legislation with the aim of its modernisation and further harmonisation, and ensuring coherence with the reformed trademarks acquis.

In the context of the recent trade mark reform, the European Union Trade Mark Regulation (EUTMR) already established the criteria to be taken into account when fixing the level of EUTM fees (see Recital 39 EUTMR). While greater transparency as to cost coverage is of importance, other factors (such as the economic value of an EU-wide IP right granted) are to be taken into account as well.

As regards, geographical indications (GIs), the upcoming reform aims at strengthening the current system as intellectual property rights in line with the IP Action Plan and effectively protecting the names of traditional foods. This initiative contributes to the objectives pursued by the Common Agricultural Policy, in particular to improve the response of EU agriculture to societal demands on food and health and thus it addresses the European Green Deal and Farm to Fork Strategy.

VII. The structure and governance of the EUIPO are to a very large extent aligned with the 2012 Common Approach on Decentralised Agencies (CADA).

In addition, in the Commission's opinion the reformed EUTMR (see in particular Articles 153(1) (a) to (c), 157(4) (c) and (e), 172 (9) and 176 (1)) has strengthened the accountability framework.

However, the Commission will use the envisaged evaluation based on Article 210 EUTMR to gain additional insights and explore the possibility for further action in the area of accountability.

The upcoming GIs reform takes into account an evaluation support study on Geographical Indications and Traditional Specialities Guaranteed, which was carried out in 2020. The aim of the

reform is to find solutions to better protect GIs, empower producers, align and simplify procedures and make GI controls and enforcement efficient.

VIII. The Intellectual Property Rights Enforcement Directive (IPRED) provides only for minimum harmonisation and allows Member States to adopt measures more favourable to right holders. Also, some of its provisions are optional and national courts may provide different interpretations (within the limits of the flexibility that the Directive allows). In order to identify possible national discrepancies in the implementation of the IPRED, the Commission has created in particular the new group of experts on industrial property policy (GIPP) which foresees among other tasks the exchange on enforcement (Decision C(2022) 161 of 20.01.2022).

The Commission has actively worked with Member States to implement customs enforcement of intellectual property rights. However, some important work remains to be carried out, notably to ensure a better and more uniform customs risk management of IPR risk (see detailed reply under recommendation number 4).

IX. *First indent* - The Commission accepts the recommendation. With the IP Action Plan, the Commission has announced the actions that aim to review and update EU rules in the area of intellectual property law.

Second indent - The Commission accepts the recommendation. The structure and governance of the EUIPO are to a very large extent aligned with the 2012 Common Approach on Decentralised Agencies (CADA).

The review based on Article 210 EUTMR will include the assessment of the impact, effectiveness and efficiency of the Office and its working practices. The Commission will use the evaluation to gain additional insights and explore the possibility for further action in the area of accountability.

Third indent - The Commission accepts the recommendation. In implementing the IP Action Plan, the Commission works on strengthening the protection system for geographical indications for agricultural products to make it more effective and works on a proposal on an EU protection system for craft and industrial products (so-called non-agricultural) geographical indications.

Fourth indent - The Commission accepts the recommendation. The Commission already announced in the IP Action Plan that it would take necessary steps to reinforce IPR enforcement. In this regard, through the (proposed) Digital Services Act (horizontal framework), the Commission clarifies and upgrades the responsibilities of providers of digital services, in particular online platforms. The Commission is also working further on establishing an EU Toolbox against counterfeiting setting out principles for joint action, cooperation and data sharing among right holders, intermediaries and law enforcement authorities (sector-specific instrument).

The Commission is currently preparing a customs IPR risk management strategy and will also evaluate the implementation of Regulation on customs enforcement of IPR.

INTRODUCTION (Paragraphs 1-12)

Commission replies:

12. In certain Member States customs can also be empowered, based on national legislation, to act on the detection of goods already placed within the internal market and suspected of infringing an IPR.

AUDIT SCOPE AND APPROACH (Paragraphs 13-16)

No Commission replies.

OBSERVATIONS (Paragraphs 17-93)

Commission replies:

17. The recent trademark reform already brought very substantial further harmonisation of both substantive and (in particular) procedural national trademark law in alignment with the EU trade mark regime. It is generally recognised, that the Recast Trade Mark Directive reflects the desired (politically maximum possible) level of legislative harmonisation, taking also due account of the fundamental EU principle of subsidiarity. The achieved high degree of harmonisation is in line with the Union's competence for matters falling within the scope of the Singapore Treaty on the Protection of Trademarks.

18. On 19 and 20 March 2019 the Commission started infringement proceedings against Greece, France and Romania for failure to timely notify their transposition measures. These proceedings were closed after receipt of the notification of the respective measures. The preliminary assessment shows that some provisions of the national laws are not or only partially transposed. The Commission is currently assessing if this results in a violation of the Directive. It should be noted that not all provisions of the Directive need to be transposed or fully transposed for the national law to be compliant with the Directive.

20. Taking into account the ECA's observations and recommendations, the evaluation according to Article 210 EUTMR will serve as a basis for the Commission to evaluate and consider whether and if, to what extent, further action is necessary.

21. The upcoming evaluation according to Article 210 EUTMR will serve as a basis for the Commission to evaluate and consider whether and if, to what extent, further action is necessary.

22. Although the Office is not bound by the provisions of Article 70 of the EU Financial Regulation, Article 177 EUTMR provides that, as far as compatible with the particular nature of the Office, the EUIPO's financial provisions shall be based on the financial regulations for other bodies set up by the Union; the same legal basis provides for consultation of the Commission before the Budget Committee adopts the financial provisions.

In addition, the structure and governance of the EUIPO are generally aligned in that respect with the Common Approach on Decentralised Agencies.

However, the upcoming evaluation according to Article 210 EUTMR will serve as a basis for the Commission to evaluate and consider whether and if, to what extent, further action is necessary.

23. The responsibilities of each of the bodies are defined in the EUTMR.

24. The composition of the Management Board and Budget Committee complies with Articles 154(1) and 171(2) EUTMR, and is largely aligned with the Common Approach, which, for self-financing agencies does not provide that administrative and budgetary management be carried out by two different governing bodies . As knowledge of the functioning of the EU trade mark and design system is of advantage for representatives in performing their functions in both bodies, the Commission considers that it is difficult to require no overlap at all in their composition. The Commission has no influence over the nomination of the Member States representatives.

25. The evaluation according to Article 210 EUTMR will serve as a basis for the Commission whether and if, to what extent, further action might be considered.

26. The Commission is preparing the revision of the Designs legislation to modernise and further harmonise it, and ensure coherence with the reformed trade mark acquis.

27. Complementary to national design protection available at national level harmonised by the Design Directive, the Regulation establishes an autonomous unitary protection system for designs with uniform effect throughout the Union in order for the businesses in the EU to dispose and freely choose between or combine different rights according to individual business needs.

The Commission is preparing the revision of the Designs legislation to modernise and further harmonise it, and ensure coherence with the reformed trade mark acquis. Intended further harmonisation aims in particular at creating a better level playing field for businesses in the EU and strengthening the complementarity and interoperability between the EU and national design systems.

28. The design reform aims at enhancing the digitalisation of procedures, providing further clarity in terms of eligible subject matter, scope of rights conferred and their limitations. The reform also addresses the fees structure and further alignment of procedural rules at Union and national level, and rules for spare parts.

29. The Commission is preparing the revision of the designs legislation to update and modernise it, and ensure coherence with the reformed trade mark acquis.

30. The laws of the Member States providing for design protection at domestic level were partially harmonised by Directive 98/71/EC on the legal protection of designs ('the Directive'). The harmonisation concerned key aspects of substantive design law without covering procedures.

On the basis of a comprehensive evaluation, the Commission is preparing the revision of the designs legislation to modernise and further harmonise it, and ensure coherence with the reformed trade marks acquis. With a view to creating a better playing field for businesses in the EU and strengthening the complementarity and interoperability between the EU and national design systems, future further harmonisation should cover also main aspects of procedures as also included in the recent trade mark reform.

31. b) National offices are free to set their fees accordingly since they have financial sovereignty on this. Therefore, the potential for the setting of (mandatory) common principles for fee structures is very limited, as also the recent trade mark reform clearly showed.

33. Given that protection in the form of the unregistered Community design is available to all designers and businesses across the EU, there is no need seen for parallel unregistered design protection at national level.

37. A mechanism aiming to prevent the accumulation of a significant surplus has been introduced in 2016 in the context of the reform of the EUTMR (Article 172(8)). However, contrary to the proposal of the Commission which did not find support by the co-legislators, this mechanism does not implement the principle of automatic ('last resort') transfer of any substantial structural surplus to the EU budget, which in the view of the Commission would have been in line with the EUIPO's founding Regulation and with general principles of sound budgetary management.

As the Commission has also explained, the recent trade mark reform introduced in the EUTMR criteria to be taken into account when fixing the level of EUTM fees (see Recital 39 EUTMR). Cost coverage can constitute only one factor for the determination of fees for exclusive EU-wide IPR titles. While it is understood that greater transparency as to cost coverage is of importance for being able to assess the EUIPO's efficiency in its core operations, other factors (such as the economic value of the IP right granted) are to be taken into account as well. In fact, given "the essential importance of the amounts of fees payable to the EUIPO for the functioning of the EU trade mark system and its complementary relationship as regards national trade mark systems", the co-legislators considered it appropriate to have the fee amounts addressed in the basic EUTMR.

38. On 10 January 2022, the Commission and the EUIPO launched the new Small and Medium-sized enterprises Intellectual Property Rights Fund (SME IP Fund), which will have a budget of EUR 47 million for the period of 2022-24. The EUIPO's contribution will amount to EUR 45 million from the surplus. The Commission and the EUIPO are exploring also other financial vehicles to contribute to the SME IP Fund even more from the surplus from 2023.

39. To ensure a balanced and harmonious co-existence of trade mark systems within the EU, the respective level of fees need to reflect the economic importance of the relevant property rights involved and should therefore be such as not to encourage users to obtain trade mark rights beyond their actual scope of interests, i.e. without the intention and possibility of using them in the whole of the EU.

40. When reviewing the structure and amount of EU trade mark fees the Commission considered the need for the EUIPO budget to be balanced, including safe coverage of the Office's costs for rendering its services, as well as the average amount of fees payable at national level for domestic trade mark protection.

41. As explicitly recognised in the recent trade mark reform by the legislator, in the interest of sound financial management, the accumulation by the EUIPO of significant budgetary surpluses requires to be avoided (see Recital 38 EUTMR).

Therefore, when reforming the EUTMR, several amendments were effected with a view to reducing the potential for the generation of future surpluses.

The recent trade mark reform established the criteria to be taken into account when fixing the level of EUTM fees (see Recital 39 EUTMR).

As found by the preceding Max Planck Study, the level of fees is a matter, where the legislator actually has substantial discretion and may take into account various legitimate interests.

After significant reduction of EUTM fees already in 2005 and 2009, the 2015 reform of the EUTMR nevertheless led to another substantial reduction, making EU trade mark protection covering the territory of 27 Member States very attractive and competitive in terms of costs (850 € for an EUTM application).

42. As provided by the legislator in the EUTMR (Recital 36), the setting up of the EU trade mark system has resulted in increased financial burdens for the central industrial property offices and other authorities of the Member States. It was therefore considered appropriate to ensure that the EUIPO offset part of the costs incurred by Member States for the role they play in ensuring the smooth functioning of the EU trade mark system, without causing a budgetary deficit for the Office.

Common reply to paragraphs 43 and 44. The regime on offsetting was laid down by the legislator in Article 172(4) to (7) EUTMR. The KPI set out in Article 172(5) were considered to be fair, equitable and relevant by the legislator. The use of the offsetting amounts by the Member States falls under their national financial sovereignty.

However, the upcoming evaluation according to Article 210 EUTMR will serve as a basis for the Commission to evaluate and consider whether and if, to what extent, further action is necessary.

45. As follows from the wording of Article 172(4) EUTMR, the KPIs laid down in points (a) to (d) of that provision are considered by the legislator to be "fair, equitable and relevant indicators". Furthermore, the establishment and design of the offsetting mechanism in Article 172 had to take account of Member States' financial sovereignty which reflects that only a part of the central industrial property offices of the Member States are financially independent from their domestic general budget.

Reply to Box 2 – Assessment of KPIs for distributing the offsetting amounts are not SMART

(1) The annual number of EU trade mark applications in each Member State was considered relevant by the legislator as reflecting the "achievement" of the central industrial property offices of the Member States in promoting the uptake of EU trade mark protection by the provision of information as referred to in Article 172(4)(b) of the EUTMR.

(2) The annual number of national trade mark applications in each Member State was considered correlated by the legislator to the costs generated by the EU trade mark system as the national trade mark law of several central industrial property offices of the Member States obliges those offices to examine ex officio the existence of relative grounds for refusal in the form of conflicting prior earlier rights, including earlier EU trade mark applications and registrations.

(3) The annual number of cases brought before the EU trade mark courts designated by each Member State was considered relevant by the legislator as reflecting "the expense" involved by

national authorities in contributing to the enforcement of EU trade marks as referred to in Article 172(4)(c) EUTMR.

(4) The annual number of oppositions and applications for a declaration of invalidity submitted by proprietors of EU trade marks in each Member State was considered relevant by the legislator as reflecting the additional costs incurred by the central industrial property offices of the Member States for the role they play in ensuring the smooth functioning of the EU trade mark system.

47. In the upcoming Geographical Identification (GI) reform, the aim is to cover the full range of goods as listed under the Combined nomenclature Chapters 1 to 23 inclusive, established by Council Regulation (EEC) No 2658/87.

The Commission aims to preparing a proposal for the implementation of the EU-wide protection system for GIs of craft and industrial (non-agricultural) products in the second quarter of 2022.

51. The requirement for professional representatives to be entitled to represent natural or legal persons in trade mark or design matters before the central industrial property office of a Member State pursuant to Article 120(2)(c) EUTMR and Article 78(4)(c) CDR is the result of no uniform, clearly defined outline of profession existing in the Member States.

54. A specific framework was laid down in Article 152 EUTMR for the EUIPO (in fulfilment of its corresponding task pursuant to Article 151(1)(c) EUTMR) to promote convergence of practices and tools in the fields of trademarks and designs, in cooperation with the central IP offices in the Member States.

55. Furthermore, according to Article 152(5) EUTMR, EUIPO financial support to relevant cooperation projects shall not exceed 15% of the yearly revenue of the EUIPO.

62. The upcoming GI reform aims at aligning procedures for all existing GI sectors, including on the obligatory use of the EU's eAmbrosia for all applications.

65. The Commission is aware of the delays in the approval of GI applications due to the multiple factors identified by the ECA. The Commission intends to address this issue in the upcoming GI reform in order to improve overall responsiveness and timely treatment of the GI applications.

Common Commission reply to paragraphs 66 and 67. Certain detailed rules concerning GI enforcement, which address specificities of a given sectors are set forth in subsidiary legislation in the wine and spirit drinks sectors[1]. In the upcoming GI reform the Commission intends

1 Commission Implementing Regulation (EU) 2019/34, laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks, 17.10.2018

Commission Implementing Regulation (EU) 2021/1236, laying down rules for the application of Regulation (EU) 2019/787 of the European Parliament and of the Council concerning applications for registration of geographical indications of spirit drinks, the opposition procedure, amendments to product specifications, cancellation of the registration, use of symbol and control, 12.5.2021

to make GI controls and enforcement more effective, standardised and addressing specific needs of GIs.

68. Regulation (EU) 2017/625 entered into force on 14 December 2019. The Regulation was complemented in 2019 and in 2020 by a number of delegated and implementing acts specifying details for all aspects of the agri-food chain to which the Regulation applies. The focus of the first Better Training for Safer Food (BTSF) seminars in 2020 and in 2021 (with some interruptions due to the Covid-19 pandemic) was to spread knowledge on the new horizontal aspects in the Regulation.

71. The Commission agrees that the Union should have a sound EU IPR enforcement framework to meet these needs.

72. The IPRED succeeded in approximating national laws on enforcement of IPR[2]. The Directive provides only for minimum harmonisation and allows Member States to adopt measures more favourable to right holders. Also, some of its provisions are optional and national courts may provide different interpretations (within the limits of the flexibility that the Directive allows).

The 2017 Guidance on certain aspects of IPRED[3] aimed at promoting a more consistent and effective interpretation and application and has indeed led to an increased level playing field.

73. As indicated in the IP Action Plan, the Commission continues to closely monitor the application of the Directive on the enforcement of IPRs to ensure effective and balanced judicial redress. It works together with Members States and stakeholders to give effect to the 2017 Commission guidance. In addition, the Commission is planning a follow-up study on the application of IPRED.

74. It should be noted that, unlike the E-Commerce directive and the proposal for the Digital Services Act (DSA), IPRED does not provide for substantive provisions on the liability of infringers/intermediaries or exemptions thereto. IPRED harmonises administrative and civil procedures and remedies and has therefore an essentially different regulatory aim.

The (proposed) DSA associates the obligations of different online intermediary services providers with their role, size and impact in the online ecosystem. Certain substantive obligations are limited only to very large online platforms, which due to their reach have acquired a central, systemic role in facilitating the public debate and economic transactions.

The Commission is planning a follow-up study on the application of IPRED.

78. The Commission recognises that Regulation (EU) 608/2013 does not define "goods of a non-commercial nature", thus leaving its interpretation to Member States. IP substantive law on trademarks defines that an infringement is only possible when the protected mark is used in "the course of trade", which is not the case for items in travellers' personal luggage if destined only for private non-commercial use. There is no further interpretation in the IP substantive law on what is

2 SWD(2017) 431 final, Commission Staff Working Document, Evaluation, Accompanying the document, COM(2017) 708 final, Commission Communication on Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, 29.11.2017

3 COM(2017) 708 final, Communication from the Commission: Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, 29.11.2017

meant by a use "in the course of trade", nor it is defined at international level what can be considered as non-commercial use.

Nevertheless, Member States have not reported any specific difficulty in the interpretation of the notion "of non-commercial" use for goods contained in personal luggage, nor in the implementation of the quoted Article in the Regulation.

79. The Commission recognises that there is currently no formal EU IPR risk management framework or control strategy. However, risk information is already shared under the Common Risk Management Framework (CRMS).

The Commission agrees that the risk management and control strategy for customs IPR enforcement can be enhanced. The EU customs Action Plan to combat IPR Infringements for the years from 2018 to 2022 already contains a specific action which objective is to strengthen IPR risk management. In this context the Commission has started the development of a common risk management based control strategy.

81. The Commission agrees that the increased volumes of e-commerce is putting at stake the present definition of small consignment in Regulation 608/2013. The Commission is therefore considering revising the thresholds of the small consignment procedure (firstly via delegated act as foreseen in Regulation 608/2013). Destruction of a higher amount of goods could therefore be achieved for each detention made under the small consignment procedure.

82. The Commission recognises that one Member States uses a specific seizure procedure instead of the small consignment procedure defined in Regulation 608/2013. It is however equivalent to a criminal procedure based also on transaction power defined by the concerned national customs code and therefore specific to the national competences conferred to customs in that Member States. Would this competence be conferred to all customs authorities at Union level, the use of a similar procedure by all Member States could be explored.

83. The Commission recognizes that Regulation 608/2013 gives the national customs authorities the choice to request, or not, the right holder to reimburse the costs incurred by the detention and the destruction of the goods suspected of infringing an IPR. The Commission considers it a discretionary competence of the Member States to opt for the most efficient approach.

84. The Commission agrees that the destruction facilities to destroy certain goods are not necessarily available in all Member States, but Regulation 608/2013 (Article 25(2)) provides for the possibility to destroy goods in other Member States.

The Commission recognises that in the United States a budget for destruction and storage is generated by funding stemming from fines on perpetrators: the costs associated with storage and destruction of counterfeit goods are paid through the Department of the Treasury's Forfeiture Fund. In some cases, other parties such as the express carriers have agreed to bear responsibility for costs related to the destruction of suspected counterfeit goods. Introducing such a system in the EU, would not only require EU-wide fines on trade in IPR infringing goods, but also specificities like the asset forfeiture applicable under the US system. The possibility to introduce at EU level a comparable system would require a preliminary assessment.

87. As regards IP substantive laws, the Commission proposed twice – in 2003 and 2005 – to harmonise substantive IP-related criminal law, but no agreement on a text could be reached. In the

Council Conclusions on IP of 18 June 2021, the Council considered "it necessary to encourage reflections on the prevention of and fight against criminal violations of IP rights [...], and their connection with international economic and financial crime [...], including on the possible need to conduct a stocktaking exercise on existing legal differences between the Member States' criminal law frameworks, on possible criminal law and prosecution gaps and on legal and practical obstacles to cross border cooperation within the EU".

The Commission is currently discussing with Members States the customs penalties, which national customs laws provide for in case the holder of the goods or the declarant fail to comply with the customs legislation.

88. The Commission acknowledges the different practices of the Member States in reporting detentions in COPIS (EU wide anti-counterfeit and anti-piracy information system) (different deadlines). As COPIS is a database for statistical purposes, this divergence has no consequence in terms of risk management. However, the Commission understands that a more common approach would help for the preparation of the reporting at EU level. The Commission will therefore pursue its efforts with Member States so that a common reporting practice in terms of a deadline is followed. This may also be addressed in the context of the evaluation exercise of the implementation of Regulation 608/2013.

89. The Commission shares the observation of the ECA that Member States do not fully exploit the possibility offered by the shared interface between COPIS and AFIS (OLAF's Anti-Fraud Information System).

90. The Commission continues to pursue the inclusion of provisions on mutual administrative assistance, allowing for the possibility of exchanges of information, in the bilateral trade agreements it negotiates on behalf of the Union.

92. a) The Commission has made the same observation as the ECA. The issue of thresholds for customs intervention will be addressed in the evaluation of the implementation of Regulation 608/2013.

b) The Commission agrees that it is not in line with the requirements of Regulation 608/2013. The Commission intends to stress the Member States' obligations during the ongoing round of support visits on the implementation of Regulation 608/2013 in the 27 MS and in the framework of the customs experts group – IPR section.

c) The Commission notes with regret that some Member States do not enter the data in CIS+.

d) See Commission reply to paragraph 88.

93. The Commission is currently preparing a control strategy based on IPR risk management, which should contribute to enhance customs controls in all the Member States.

CONCLUSIONS AND RECOMMENDATIONS (Paragraphs 94-101)

Commission replies:

95. The Commission is preparing the revision of the designs legislation to modernise and further harmonise it. With a view to creating a better playing field for businesses in the EU and strengthening the complementarity and interoperability between the EU and national design systems, future further harmonisation should cover also main aspects of procedures as also included in the recent trade mark reform.

The Commission also works on a proposal on an EU protection system for craft and industrial products (so-called non-agricultural) geographical indications.

96. The Commission is planning an evaluation exercise of Regulation 608/2013 in which it will - among others - assess the need to revise certain elements of the Regulation such as the definition of small consignments and the introduction of intervention thresholds for customs enforcement of IPR. In addition, the Commission is currently preparing an IPR risk strategy.

Recommendation 1 – Complete and update the EU IPR regulatory frameworks

a) The Commission accepts the recommendations. The Commission aims to prepare a proposal for the implementation of the EU-wide protection system for GIs of craft and industrial (non-agricultural) products in the second quarter of 2022. However, the Commission cannot, at this stage, give commitments on the content of future legislative proposals.

b) The Commission accepts the recommendation. The upcoming revision of the EU legislation on design protection aims to align the scope of design rights to the EU trade mark reform so as to extend as well to counterfeit design goods transiting the EU. However, the Commission cannot, at this stage, give commitments on the content of future legislative proposals.

The Commission accepts the recommendation concerning the introduction of intervention threshold for customs enforcement of IPR. This will be addressed in the evaluation exercise of Regulation 608/2013, which will include consultation of the private stakeholders, which are in the end the primarily concerned with the definition of such thresholds.

The Commission accepts the recommendation concerning the enlargement of the definition of small consignment. The wide increase in the number of postal and express couriers' parcels may require an adaptation of the definition in order to facilitate an efficient customs enforcement. The Commission is first of all considering revising the thresholds of the small consignment procedure (via proposing a delegated act as foreseen in Regulation 608/2013). The evaluation exercise of Regulation 608/2013 will also address whether there is a need to revise more in depth the definition of the small consignment.

97. The Commission refers to its replies to paragraphs 37 and 42.

Recommendation 2 – Assess the governance arrangements and methodology for determining fees

The Commission accepts the recommendation.

The structure and governance of the EUIPO are to a very large extent aligned with the 2012 Common Approach on Decentralised Agencies (CADA).

The review based on Article 210 EUTMR will include the assessment of the impact, effectiveness and efficiency of the Office and its working practices. The Commission will use the evaluation to gain additional insights and explore the possibility for further action in the area of accountability.

99. The envisaged evaluation based on Article 210 EUTMR will review the legal framework for cooperation between the Office and the industrial property offices of the Member States.

Recommendation 3 – Improve financing, control and evaluation systems

The Commission takes note that this recommendation is addressed to the EUIPO.

100. In the upcoming Geographical Indication (GI) reform the Commission intends to focus on several essential elements of the functioning of the GI system, such as protection of GIs, also on internet; empowering producers; aligning and simplifying procedures to improve overall responsiveness and timely treatment of the GI applications; and making GI controls and enforcement more efficient.

Recommendation 4 – Improve the EU geographical indications systems

The Commission accepts the recommendation.

101. The Commission agrees that the Union should have a sound EU IPR enforcement framework.

The EU IPR enforcement framework concerns not only the Commission but also the Member States. Member States should not only be able to detain in case of suspected goods, but it should also be assessed if they could be given the competence to directly destroy goods they themselves consider to be infringing.

The destruction facilities to destroy certain goods are not necessarily available in all Member States, although Regulation 608/2013 (Article 25(2)) provides for the possibility to destroy goods in other Member States.

The issue of liability and responsibility for the detention and destruction of goods could be re-assessed.

Recommendation 5 – Improve the IPR enforcement framework

a) The Commission accepts the recommendation. The Commission is currently preparing such a strategy, which should be part of the New Customs Risk Management Strategy.

b) The Commission accepts the recommendation to better monitor IPRED.

Apart from the planned follow-up study on the application of IPRED and contribution to the EU Toolbox against counterfeiting, the Commission continues to closely monitor the application of IPRED to ensure effective and balanced judicial redress following the publication of the evaluation on the functioning of IPRED in 2017. It works together with Members States and stakeholders to better monitor IPRED and give effect to the Commission guidance, for instance with a view to ensuring that – where all conditions are met – injunctions are applied uniformly and efficiently across Member States.

The Commission and the EUIPO Observatory will explore the possibility to develop more targeted monitoring of IPRED related to national case law, building on the EUIPO's *eSearch* case law database.

The Commission accepts the recommendation to better monitor customs enforcement in the Member States. The Commission has already partially implemented it via a round of support visits on the implementation of Regulation 608/2013 in the 27 Member States, which will be finalised in 2022. On the basis of the results, the Commission may envisage further monitoring of specific Member States, which may be completed after 2023.

c) The Commission accepts the recommendation. The Commission has already requested Member States to report their detentions data in the COPIS database within a specific deadline (in the framework of the customs experts group – IPR section). This will also be addressed in the evaluation of Regulation 608/2013, to assess if this standardisation needs to be reflected in the legislation.