

Special report

# EU intellectual property rights

## Protection not fully waterproof



EUROPEAN  
COURT  
OF AUDITORS



# Contents

|  | Paragraph |
|--|-----------|
| <b>Executive summary</b>   | I-X       |
| <b>Introduction</b>  | 01-12     |
| <b>What are intellectual property rights?</b>  | 01-03     |
| <b>EU IPR regulatory framework</b>   | 04        |
| <b>EU IPR registration procedure</b>   | 05-06     |
| <b>EU IPR enforcement</b>  | 07-08     |
| <b>Main stakeholders protecting IPR in the EU</b>  | 09-12     |
| <b>Audit scope and approach</b>  | 13-16     |
| <b>Observations</b>  | 17-93     |
| <b>There are issues in the overall sound IPR regulatory frameworks</b>                                 | 17-47     |
| The EU trademark framework is in place but the Directive is not fully transposed                       | 17-25     |
| The EU designs framework is outdated and incomplete  | 26-35     |
| IPR fees structure does not reflect real costs   | 36-45     |
| The EU geographical indication framework is restricted to agricultural products                        | 46-47     |
| <b>IPR frameworks are well implemented although some shortcomings can be noted</b>                     | 48-70     |
| The EUIPO largely implements the frameworks for EU trademarks and designs correctly despite some flaws | 48-53     |
| The criteria for some financial support to Member States contain weaknesses                            | 54-59     |
| Shortcomings in the registration process for agricultural products                                     | 60-70     |
| <b>The enforcement of IPRs is not optimal</b>  | 71-93     |
| The IPR Enforcement Directive is not uniformly applied   | 72-74     |
| Key elements are lacking in the framework for IPR customs enforcement                                  | 75-90     |
| There are shortcomings in the Member State customs controls  | 91-93     |

## **Conclusions and recommendations**

94-101

## **Annexes**

**Annex I — IPR cornerstones**

**Annex II — National legislation transposing the Trademarks Directive.**

**Annex III — Trademarks: Member States administrative time-limits.**

**Annex IV — National legislation transposing the EU designs Directive**

**Annex V — Designs: Member States' administrative time-limits**

**Annex VI — Member States Designs – Fees and fees structure (on 1 January 2021)**

**Annex VII — Criteria used by EUIPO to calculate lump sums**

**Annex VIII — Geographical Indication Registrations Application Supporting Documents**

**Annex IX — Geographical Indication. Approval process at the Commission level**

**Annex X — Geographical Indication, applications 2017–2020**

## **Abbreviations**

## **Glossary**

## **Replies of the Commission**

## **Replies of the EUIPO**

## **Timeline**

## **Audit team**

## **COPYRIGHT**

## Executive summary

**I** Intellectual property rights (IPR) play a vital part in the EU's economy. IPR-intensive industries generate almost 45 % of the EU's gross domestic product, worth 6.6 trillion euros and 29 % of employment. The European Commission and other EU bodies work with Member State authorities to ensure IPR protection, a key factor in the success of the Single Market.

**II** The European Commission is responsible for making legislative proposals on the process and procedures for registering and enforcing EU intellectual property rights. It is also responsible for ensuring that these measures are properly implemented and providing guidance to the Member States. The European Union Intellectual Property Office registers EU trademarks and designs. Member State authorities are responsible for approving registration requests for EU geographical indications and for enforcement controls on EU intellectual property rights.

**III** This audit assessed the protection of EU trademarks, designs and geographical indications within the Single Market from 2017 to 2021. We carried out this audit because we had never audited the protection of intellectual property rights and the Commission's major initiatives in this area should have been completed by 2019. Poor IPR protection affects the EU's competitiveness in the global economy. We make recommendations to improve the IPR regulatory framework, its implementation and its enforcement.

**IV** We looked at whether the Commission provided the necessary legislative and support measures to protect the above-mentioned intellectual property rights. We visited the Commission, the European Union Intellectual Property Office and five Member States to assess how they implemented the EU regulatory framework for IPR and whether IPR enforcement controls were correctly implemented.

**V** Our overall conclusion is that the EU framework for the protection of intellectual property rights is generally solid and robust, though there are still shortcomings.

**VI** We found that the Commission has established appropriate legislative and support measures to protect EU trademarks. However, the legislation on EU designs is incomplete and outdated and there are shortcomings in the legislation on geographical indications. In addition, we concluded that there is no clear methodology to determine EU fees for trademarks and designs.

**VII** Although the European Union Intellectual Property Office's management of EU trademarks and designs is generally sound, we identified weaknesses in its accountability framework and in its financing, control and evaluation systems. Furthermore, in the Member States and the Commission there were weaknesses in the implementation of the EU's geographical indications framework.

**VIII** Member States did not uniformly implement the Intellectual Property Rights Enforcement Directive and there are weaknesses in the implementation of customs enforcement controls.

**IX** We recommend that the Commission should:

- complete and update the EU IPR regulatory frameworks;
- assess the governance arrangements and methodology for determining fees;
- develop initiatives to improve the EU geographical indications systems; and
- improve the IPR enforcement framework.

**X** We recommend that the European Union Intellectual Property Office should:

- improve financing, control and evaluation systems of the European Cooperation Projects.

# Introduction

## What are intellectual property rights?




**01** Intellectual property rights (IPR) are the rights relating to the creation of the mind, such as inventions; literary and artistic works, design and symbols, names and images used in commerce<sup>1</sup>. Protecting IPR allows creators to earn recognition and prevent unauthorised use of their works and the acquisition of benefits from them. It also provides guarantees to users and consumers regarding the quality and safety of the goods.

**02** Intellectual property consists of two categories: (1) copyright – *e.g.* on literary works, films and music, and (2) industrial property rights – that includes patents, trademarks, designs, geographical indications and trade secrets. The main features of trademarks, designs and geographical indications, which were the focus of this audit, are summarised in [Figure 1](#)

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<sup>1</sup> Definition of intellectual property rights, World Intellectual Property Organization.

**Figure 1 – Main characteristics of trademarks, designs and geographical indications**

|                               | <br><b>Trademarks</b> | <br><b>Industrial Designs</b> | <br><b>Geographical indications</b> |
|-------------------------------|--|--|--|
| <b>Subject</b>                | Distinctive signs  | Appearance of products   | Product from a particular location whose quality or reputation is linked to its geographical origin                    |
| <b>Rights acquired</b>        | Individual exclusive rights  | Individual exclusive rights  | Collective exclusive rights, belong to all producers   |
| <b>Control</b>                | Individual control by the owner of a trade mark  | Individual control by the owner of a industrial design   | Collective control by producers or independent agencies  |
| <b>Duration of protection</b> | 10 years, renewable indefinitely   | 5 years, renewable for a maximum of 25 years   | Indefinitely   |

Source: ECA, based on the EU regulatory frameworks.

**03** IPR protection is a key element enabling the EU to compete in a global economy. IPR-intensive industries generate almost 45 % of the total economic activity (GDP) of the EU, worth €6.6 trillion, and provide 29 % of total EU employment. However, counterfeit products are estimated to represent 6.8 % of total EU imports (€121 billion) annually, €83 billion in lost sales in the legitimate economy and 400 000 lost jobs<sup>2</sup>.

<sup>2</sup> Status Report on IPR Infringement, June 2020, European Union Intellectual Property Office (EUIPO).

## EU IPR regulatory framework

**04** The EU regulatory framework for IPR is based on EU regulations, directives and existing international intellectual property agreements. It provides protection in all EU Member States, thus creating a single EU system consisting of EU and national IPRs. The international and EU cornerstones of IPR protection are shown in [Figure 2](#) and [Annex I](#).

**Figure 2 – IPR cornerstones**

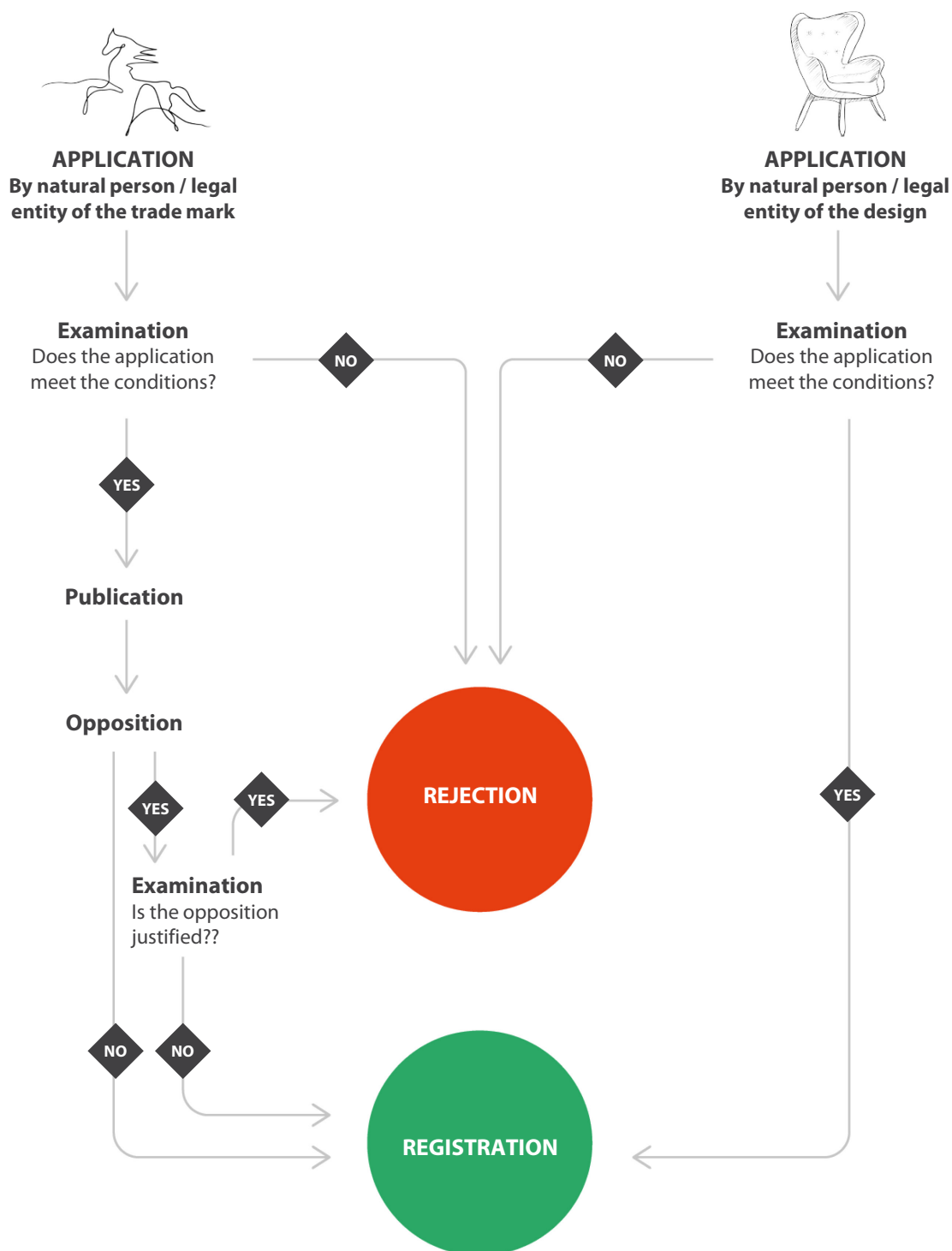


Source: ECA.

## EU IPR registration procedure

**05** The EU registration of intellectual property protects the owners' rights across all EU Member States. For copyright protection, no registration is needed. European patents can be registered with the European Patent Office. The registration of EU trademarks and designs is administered by the European Union Intellectual Property Office (EUIPO). Any individual or company from any country in the world can apply via a single application subject to the payment of fees. The various steps in the registration process are shown in *Figure 3*.

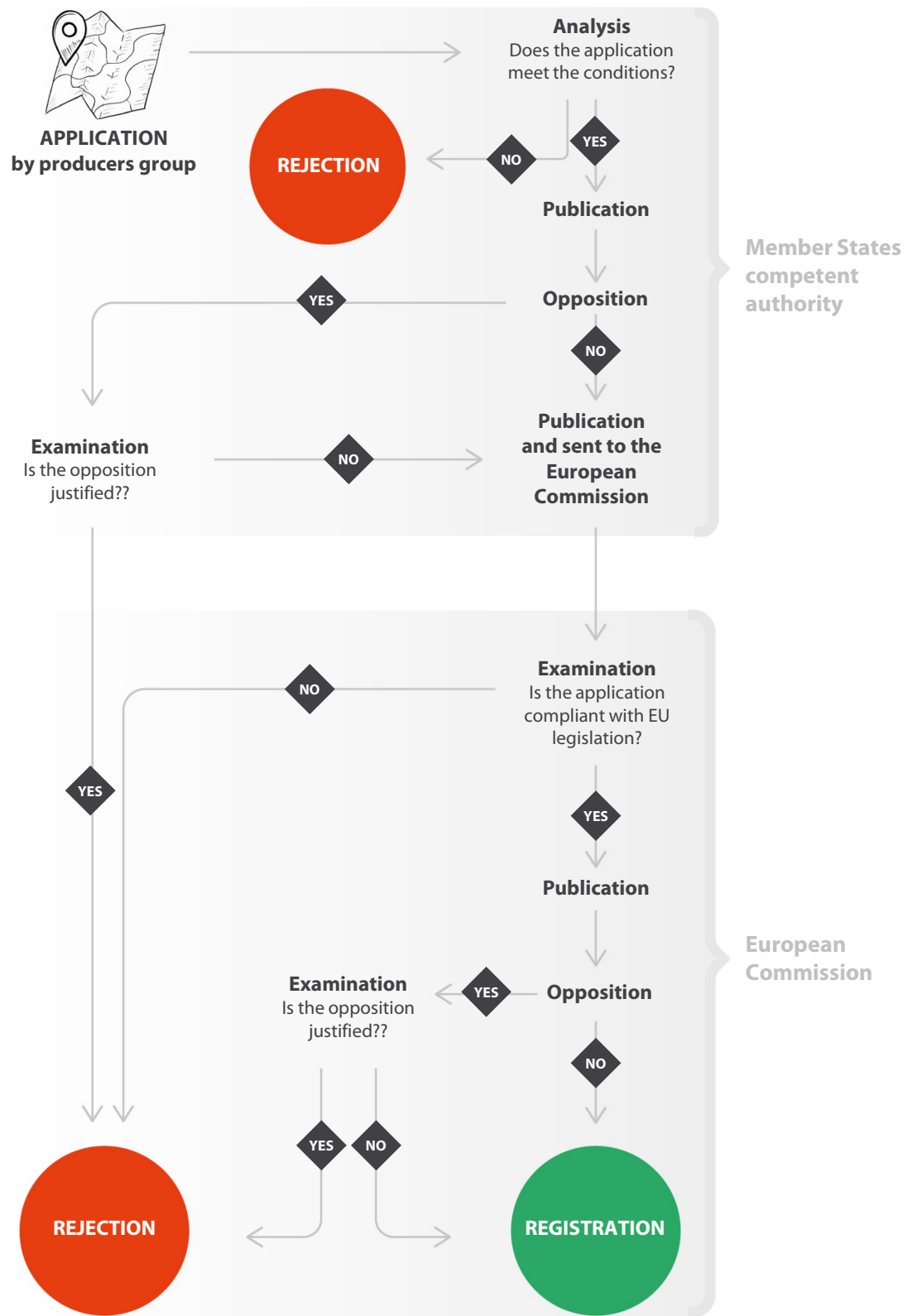
Figure 3 – Registration procedure for EU trademarks and EU designs



Source: ECA.

**06** The registration of EU geographical indications, currently limited to agricultural products and foodstuffs, wine and spirit drinks, differs from the registration of EU trademarks and designs. For geographical indications, the competent Member State authorities are involved in the application procedure and applications are filed by EU producers or producer groups (see [Figure 4](#)).

Figure 4 – Registration procedure for geographical indications



Source: ECA.

## EU IPR enforcement

**07** Effective IPR enforcement is necessary to promote innovation and investment and avoid counterfeiting. Counterfeiting is a complex and growing problem. In addition to luxury goods, counterfeiters are increasingly targeting a wide range of everyday products. Besides being economically damaging, criminals trading in counterfeit pharmaceutical and healthcare products were quick to exploit the COVID-19 pandemic<sup>3</sup>.

**08** The Commission has developed several instruments to combat counterfeiting and other IPR infringements. The IPR enforcement directive (IPRED)<sup>4</sup> aims to harmonise legislative systems to ensure a high, equivalent and homogeneous level of protection in the internal market. The customs enforcement regulation<sup>5</sup> provides procedural rules for customs authorities to enforce IPR regarding goods subject to customs supervision or customs control. In addition, the EU Customs Action Plan aims to combat IPR infringements at the external border for the years 2018 to 2022<sup>6</sup> and contains four strategic objectives (see *Figure 5*).

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<sup>3</sup> [Viral marketing - Counterfeits, substandard goods and intellectual property crime in the COVID-19 pandemic](#), 17 April 2020, Europol.

<sup>4</sup> [Directive 2004/48/EC](#) of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, pp. 45-86).

<sup>5</sup> [Regulation \(EU\) No 608/2013](#) of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights (OJ L 181, 29.6.2013, pp. 15-34).

<sup>6</sup> [Council Conclusions on the EU Customs Action Plan to combat IPR infringements for the years 2018 to 2022](#), (OJ C 24, 21.1.2019, p. 3).

Figure 5 – EU Customs Action plan: Strategic Objectives



Source: ECA.

## Main stakeholders protecting IPR in the EU

**09** The European Commission and other EU bodies cooperate with the Member States to ensure that IPR are properly protected in the EU.

**10** The Commission is responsible for (see [Box 1](#)):

- (a) initiating legislation for the creation of European property rights to provide uniform protection; developing proposals in an effort to harmonise and enhance laws relating to intellectual property rights in the EU;
- (b) verifying the correct transposition and implementation of EU IPR legislation by national authorities; and initiating infringement procedures against Member States;
- (c) overseeing effective IPR protection against infringements in the Single Market; supporting SMEs and their protection and facilitating exchange of information and cooperation among Member States; and
- (d) identifying any failures in the EU legal framework so that they can be resolved and ensure that a level playing field is available at global level.

**Box 1****IPR competences: Commission**

**DG GROW:** Policy on EU trademarks, EU designs and non-agricultural geographical indications; horizontal IPR enforcement and IP SME support.

**DG AGRI:** Agricultural geographical indications policy and geographical indication registration.

**DG TAXUD:** Customs administrative enforcement of IPR policy.

**OLAF:** Administrative investigations into IPR infringements.

**11** The **EUIPO** also plays an important role as the responsible EU Agency for managing the registration of EU trademarks and designs. It cooperates with the EU's national and regional intellectual property (IP) offices, which are responsible for registering national trademarks and designs. In addition, the European Observatory on Infringements of Intellectual Property Rights (the Observatory), which is under the aegis of the EUIPO, carries out a wide range of tasks concerning research, awareness raising dissemination of best practice, and support for the enforcement of all types of IPR. To support the fight against counterfeiting and piracy, Europol<sup>7</sup> and the EUIPO joined forces in 2016 to create the Intellectual Property Crime Coordinated Coalition, which operates within Europol.

**12** The Member States intellectual property authorities manage national trademarks and designs. The competent national bodies analyse the compliance of the EU geographical indication requests, before sending them to the Commission for approval. Customs authorities are responsible for border enforcement controls on IPR infringements, while other law enforcement services, in particular police, are responsible for detecting domestic IPR infringements. 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.

<sup>7</sup> The European Union Agency for Law Enforcement Cooperation.

## Audit scope and approach

**13** The audit assessed whether IPR concerning EU trademarks, EU designs and geographical indications are well protected within the Single Market. The scope of the audit did not cover copyright and patents. In particular, we focused on whether the EU regulatory framework for IPR provided sufficient protection, in accordance with the principles of sound financial management and public accountability and whether the above EU IPRs were sufficiently enforced. Our audit work covered the period January 2017 until April 2021.

**14** We carried out this audit because we had never audited the protection of intellectual property rights and the Commission's major initiatives in the EU trademark framework should have been completed by 2019. In addition, IPR protection is a key element for the EU's competitiveness in the global economy and for promoting innovation. The audit aimed to provide recommendations to improve the EU intellectual property framework and its enforcement.

**15** The audit addressed whether:

- (a) the Commission had provided the necessary IPR regulatory framework;
- (b) the Commission, the EUIPO and the Member States properly implemented the IPR regulatory framework on EU trademarks, designs and geographical indications; and
- (c) IPR enforcement controls were correctly implemented by Member States.

**16** Our audit work gathered evidence from a range of sources:

- (a) documentary desk reviews and analysis of relevant legislation, reports, data and statistics, sampling, as well as the examination of documents provided by auditees; and
- (b) interviews with relevant staff from the Commission (DGs GROW, TAXUD and AGRI), OLAF, EUIPO (including the Observatory), Europol and five Member States (Greece, France, Lithuania, Hungary and Romania), which we selected based on quantitative risk criteria.

# Observations

## There are issues in the overall sound IPR regulatory frameworks

### The EU trademark framework is in place but the Directive is not fully transposed

**17** The [trademarks directive](#) aims to align principal procedural rules within the national and EU trademark systems. The alignment of provisions on procedures is essential to make trademark registration easier to obtain and administer<sup>8</sup>. To achieve this objective, substantive protection requirements, such as the conditions for obtaining and continuing to hold a registered trademark must generally be identical in all Member States. Therefore, the legal framework for EU trademarks should be complete, up-to-date and aligned at EU level.

**18** Following our examination of documentary evidence and discussions with representatives of the Commission, we consider that two of the selected Member States (Hungary and Lithuania) transposed the trademarks directive ([Annex II](#)). While the principal transposition date was 14 January 2019, of the selected Member States the transposition was late<sup>9</sup> and is incomplete for Greece France, and Romania.

### Shortcomings in EUIPO's governance and accountability framework

**19** The discharge procedure by the European Parliament applies depending on the financing structure of agencies, as laid down in the EU Financial Regulation<sup>10</sup>. As a fully self-financed agency, the EUIPO is excluded from European Parliamentary discharge, which instead is granted by its Budget Committee<sup>11</sup>. The discharge procedure also takes into account our annual audit on the legality and regularity of the financial statements, which includes recommendations to address deficiencies in the operations of the organisation, where applicable. In addition, this discharge procedure relies on periodical external evaluations of EUIPO and the segregation of functions and responsibilities between three bodies: the Executive Director who is responsible for

<sup>8</sup> Recital 9, trademarks directive.

<sup>9</sup> The deadline was 14 January 2019.

<sup>10</sup> Article 70(4).

<sup>11</sup> Article 176(2) EUTMR.

managing EUIPO and implementing the budget, the Management Board that is responsible for adopting the annual work programme and the Budget Committee<sup>12</sup>.

**20** Under the accountability arrangements within the EUTMR, the EUIPO provides the European Parliament and the European Commission with the adopted annual work programme, annual report, Multiannual Strategic Programme (every five years) and the annual accounts of the Office. The EUIPO's Executive Director exchanges views with the JURI Committee of the European Parliament regarding the Multiannual Strategic Programme 2025. The Management Board consults the Commission on the EUIPO's annual work programme, and is obliged to take into account the Commission's opinion when adopting it<sup>13</sup>.

**21** The EU trademarks regulation provides for limited participation by the European Parliament and the Commission. Accordingly, the Commission's and the European Parliament's limited influence over EUIPO's decisions of the Management Board or the Budget Committee (MB/BC) derives from the concept of independence of regulatory agencies. Thus, neither the Commission nor the European Parliament has controlling influence on decisions of the Management Board or the Budget Committee, as illustrated by the adoption of EUIPO's Financial Regulation despite dissenting votes from the Commission's two representatives<sup>14</sup>.

**22** In our opinion 1/2019 on the financial regulation of EUIPO we expressed special concern about EUIPO's discharge procedure and reiterated our proposal that EUIPO should be subject to the general budgetary and discharge procedure before the European Parliament, rather than before the BC, on the basis that its revenue stands from the exercise of public authority based on EU law. We have consistently stated that the same principles of accountability should be applied to all EU-related bodies<sup>15</sup>. This concern is shared in a study of the European Parliament Research Service<sup>16</sup>, which found that due to the absence of a formal procedure to make recommendations to fully self-financed agencies, accountability remains challenging.

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<sup>12</sup> Articles 153, 157 and 171 EU trademarks regulation.

<sup>13</sup> See Articles 153, 157, 172 and 176 EUTMR.

<sup>14</sup> Decision BC-19-07.

<sup>15</sup> See ECA opinions [3/2015](#) and [2/2018](#), and the ECA's [2014 landscape review of EU accountability and public audit arrangements](#), inter alia.

<sup>16</sup> European Parliament Research Service (2018): "EU Agencies, Common Approach and Parliamentary Scrutiny". Study, page 8.

**23** To ensure proper accountability, which includes independent functioning, the division of responsibilities, in this case between the Management Board and Budget Committee, should be clearly delineated. In addition, members of a governing body should also be free from any other relationships that would materially interfere with their role<sup>17</sup>. EUIPO's Management Board and Budget Committee each comprise one representative of each Member State, one representative from the European Parliament and two representatives from the Commission with 30 votes in total.

**24** However, while composition of the Management Board and Budget Committee complies with the EUTMR, we noted that the representatives of both bodies largely overlap (26 of the 30 voting members or their subordinates), being members of both bodies. Therefore, we consider that this presents circumstances where an individual's ability to apply judgement or act in one role could be impaired or influenced by their secondary role. This situation, along with the absence of an external discharge procedure, creates a deficiency in the governance arrangements, as the same individuals (or their subordinates) take decisions on both the adoption of the budget and on the discharge procedure of its implementation.

**25** The EU trademarks regulation obliged the Commission to assess the impact, effectiveness and efficiency of EUIPO and its working practices for the first time by 24 March 2021. This evaluation is ongoing and the results are expected by the end of 2022.

### The EU designs framework is outdated and incomplete

**26** The [designs Directive](#) aimed to align the design protection laws of the Member States<sup>18</sup> to create an EU designs system. To achieve this objective, the legal framework for EU designs should be complete, up-to-date and aligned at EU level.

**27** An [EU design](#) has "unitary character", meaning that it has equal effect throughout the EU. It is crucial to align national and EU systems for registering designs because registered national designs have priority when applying for an EU registered design.

**28** The EU regulatory framework for designs is incomplete and outdated leading to many divergences in practice between the EU and national systems and among

<sup>17</sup> IFAC-CIPFA (2014): [International framework: good governance in the public sector](#), p. 24.

<sup>18</sup> Recitals 3 and 4.

Member States. This situation leads to legal uncertainty when registering designs in different Member States. The Commission has carried out an external evaluation and public consultation, an impact assessment and is in the process of updating the regulatory framework for designs. Deficiencies identified above, may be addressed through the drafting of a new legislative proposal.

**29** According to the evaluation, the transposition process by all Member States was completed on 1 June 2004. The evaluation revealed a number of important shortcomings, which need to be addressed to complete the alignment of national and EU registration systems. Our audit also identified several aspects that justify the revision of the EU design framework by the Commission.

**30** We found a lack of alignment between the national and EU design frameworks in the selected Member States, in that they implemented different procedures and time limits during the application, examination, publication and registration processes (see [Annex V](#)). We detected the following differences concerning the application procedures:

- (a) Applications may be submitted electronically or on paper. In 2020, most were submitted electronically (EUIPO 98.17 %, Lithuania 78 %, Hungary 50 %, Romania 23 %) and Greece and France only accepted electronic applications.
- (b) EUIPO offers registered EU design applicants the opportunity to select a “Fast Track” option under certain conditions (in 2020, 38.7 % of registered EU design applications used this option). France and Romania also offer a quicker registration procedure. However, the other selected Member States do not implement similar procedures.

**31** We also noted other differences between the national and EU design systems, namely:

- (a) there are different competent bodies for appeal procedures: national Courts in the Member States and Board of Appeals in EUIPO;
- (b) there is lack of alignment of fees and fee structure (see [Annex VI](#)); and
- (c) there is no obligation on National Intellectual Property Offices (NIPOs) to provide mediation and arbitration.

**32** We also found that the printed design description and representation are not standardised and the EU design regulation and the designs directive do not provide

that designs may be described or represented using common technologies such as 3D imaging or video.

**33** The EU design regulation protects unregistered EU designs for products that frequently have a short market life, for which protection without the burden of registration formalities is an advantage and the duration of protection is less important. Except for Romania, which has an “unregistered design database” (containing no entries to date), none of the selected Member States offer this protection.

**34** We noted that the design law extends protection to repair spare parts in four of the five selected Member States. The EU Design Regulation and Hungary exclude this protection (repair clause). [Table 1](#) illustrates the differences between the audited Member States and the EUIPO.

**Table 1 – Protection of spare parts**

|           | Protection by design law                          | Repair clause |
|-----------|---|---------------|
| EUIPO     | Not protected                                     | Yes           |
| EL (OBI)  | Protected for five years, remuneration afterwards | Yes           |
| FR (INPI) | Protected   | No (*)        |
| HU (HIPO) | Not protected                                     | Yes           |
| LT (SPB)  | Protected   | No            |
| RO (OSIM) | Protected   | No            |

(\*) Repair clause becoming effective on 1st January 2023, excluding only car glass and lighting from protection.

Source: ECA.

**35** We found that there are various options between the EU and national registration systems for deferring the publication of a design including differences in the possible period of deferral and fees ([Table 2](#)).

**Table 2 – Options for deferring publication (period and fees)**

|                 | Maximum period | Fees per design (in euros) |             |              |
|-----------------|----------------|----------------------------|-------------|--------------|
|                 |                | 1st design                 | 2nd to 10th | 11th onwards |
| EUIPO           | 30 months      | 40                         | 20          | 10           |
| Hungary (HIPO)  | Not possible   | Not applicable             |             |              |
| France (INPI)   | 3 years        | No additional fee          |             |              |
| Greece (OBI)    | 12 months      | 30                         | 10          | 10           |
| Romania (OSIM)  | 30 months      | 20                         |             |              |
| Lithuania (SPB) | 30 months      | No additional fee          |             |              |

Source: ECA.

## IPR fees structure does not reflect real costs

### Lack of clear *methodology* to determine EU fees

**36** The fees for EU trademark and designs are established by the [EU trademark](#) and the [designs fees](#) regulations. The criteria<sup>19</sup> for setting fees require that:

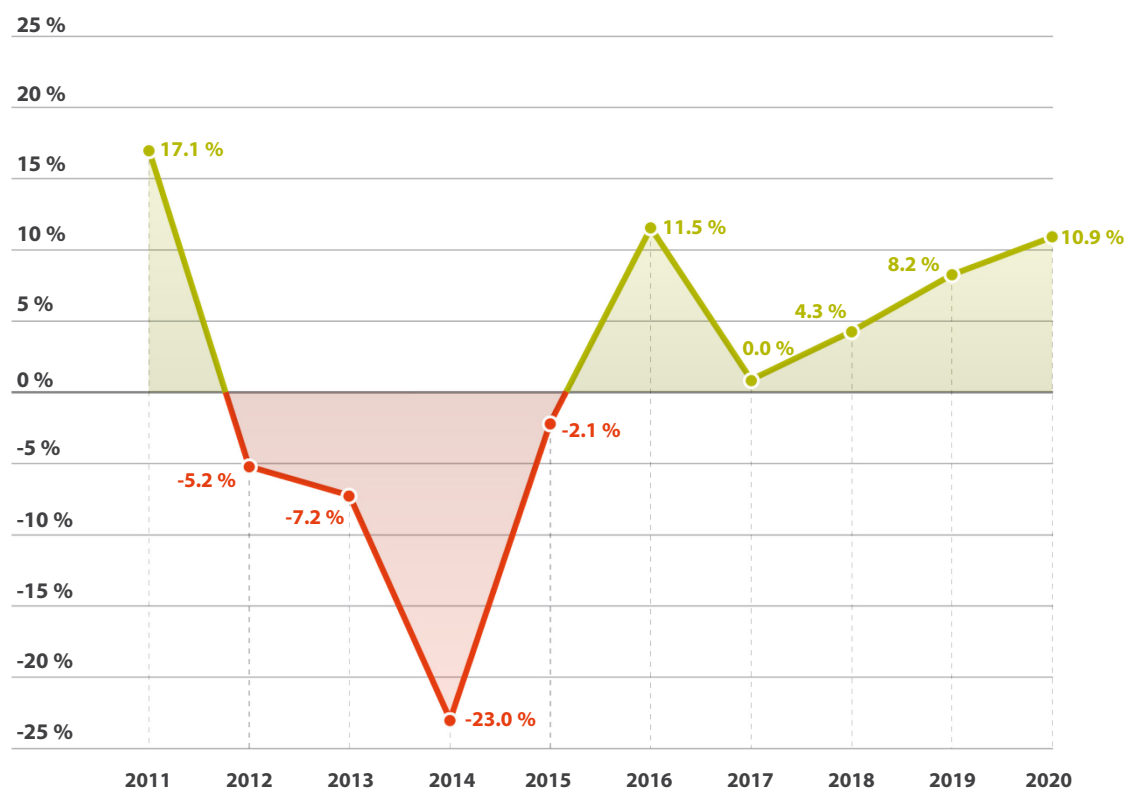
- (a) the revenue they produce is in principle sufficient for the budget of the Office (EUIPO) to be balanced;
- (b) there is coexistence and complementarity between the EU trademark and the national trademark systems; and
- (c) the rights of proprietors of an EU trademark are enforced efficiently in the Member States.

**37** As noted in our special report 22/2020, the European Aviation Safety Agency, the European Securities and Markets Agency and the Translation Centre for the Bodies of the European Union fully calculate the cost of the services underlying the fees they charge. We verified the application of the criteria for setting fees and found that the EUIPO has accumulated significant surpluses (€308.75 million) in 2020 as shown in their balance sheet (see [Figure 6](#)). We also noted that while the amount and structure of EUIPO's fees are based on social, financial, and economic criteria, they do not provide transparency on cost coverage, which is necessary to assess the EUIPO efficiency in its core operations. Accordingly, the unitary cost structure differs

<sup>19</sup> [Commission Regulation 2246/2002](#) only considers the first criterion.

considerably from the fees structure and the unitary cost differs considerably from the fees.

**Figure 6 – EUIPO’s surplus percentage (2011-2020)**



Source: ECA.

**38** In Opinion 1/2019, we considered<sup>20</sup> that EUIPO, together with the Commission, should explore the possibility of using budget surpluses to back up financial instruments supporting European enterprises research and innovation activities. An example of budget surplus use is the initiative “Ideas Powered for business SME Fund” (SME Fund), which provides a 20-million-euro grant scheme to help European SMEs access their intellectual property rights.

**39** In addition, our comparative analysis indicated significant disparities between EU fees and those charged by the national authorities of the five selected Member States ([Table 3](#)). For example, we found that EU fees for filing and renewal of property rights were at least three times the most expensive national fees (France).

<sup>20</sup> Opinion 1/2019.

**Table 3 – Comparative filing and renewal fees (*in euros*) as 1.1.2021**

|  | EUIPO | EL  | FR  | HU<br>(1) | LT  | RO<br>(2) |
|--|-------|-----|-----|-----------|-----|-----------|
| Application filing fee (in colour, e-filing) |       |     |     |           |     |           |
| For a class                                  | 850   | 100 | 190 | 166       | 180 | 110       |
| Second class                                 | 50    | 20  | 40  | 221       | 40  | 50        |
| Third class                                  | 150   | 20  | 40  | 304       | 40  | 50        |
| Renewal (e-renewal)                          |       |     |     |           |     |           |
| For a class                                  | 850   | 90  | 290 | 166       | 180 | 200       |
| Second class                                 | 50    | 20  | 40  | 221       | 40  | 50        |
| Third class                                  | 150   | 20  | 40  | 304       | 40  | 50        |

(1) 1 Euro = 361.462 HUF as 1.1.2021

(2) 1 Euro = 4.8698 LEI as 1.1.2021

Source: ECA.

**40** We analysed the information submitted by EUIPO to the European Commission, the 2013 Study by the European Parliament “The income of fully self-finance agencies and EU budget”, the 2010 INNO-tec Study, the 2011 Max Planck Study, the 2009 and 2013 impact assessments and the evaluation by the European Commission). We found no analysis within these documents of the relation between the level of fees, their criteria and the services offered by EUIPO, nor a determination of the minimum level of EU fees, which would be compatible with national trademarks systems.

**41** Based on the analysis, while there are established criteria for the fixing of fees, we consider that there is no clear methodology to determine the structure and amount of EU fees, resulting in a level of fees, which produce accumulated surpluses. The accumulation of significant surpluses is contrary to the principle of achieving sufficiency to achieve a balanced budget, set out in the regulation. The Max Planck Study indicated that user organisations criticised the lack of transparency with regard to fees.

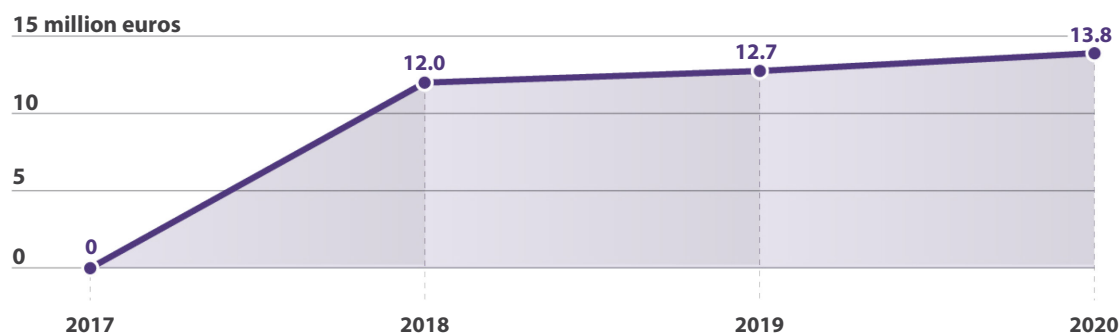
### **High fees lead to an inefficient offsetting mechanism**

**42** EUIPO is obliged<sup>21</sup> to compensate Member States by way of an offsetting mechanism, for the additional costs incurred by them in participating in the EU

<sup>21</sup> Article 172 (4) EU trademark regulation.

trademark system, to the extent that EUIPO incurs no budgetary deficit in that year. The offsetting mechanism was activated for years 2018, 2019 and 2020 (see [Figure 7](#)).

**Figure 7 – Amounts offsetting mechanism. Period 2017-2020**



Source: ECA.

**43** The application fee covers the registration cost for a national trademark. We noted that the amount compensated by the offsetting mechanism was similar to the application fee for Lithuania. For year 2020, the offsetting contribution was EUR 310 000 and the number of registered national trademarks were 1 771. Therefore, the offsetting contribution by registered national trademark was EUR 175, similar to the application fee for a Lithuanian trademark (EUR 180).

**44** The EU trademark regulation established annual key performance indicators (KPIs) to distribute the offsetting amount amongst the Member States. The results of these KPIs are recorded by the Member States on EUIPO's ePlatform tool together with a declaration by each NIPO. We found that EUIPO has not implemented controls to verify the accuracy of the data declared by the NIPOs which determines the distribution of the offsetting amount. EUIPO considers this declaration sufficient to justify the methodology, calculation, and accuracy of the statistics recorded by the Member States on ePlatform.

**45** We noted that the KPI on which the offsetting amounts are calculated are not SMART – Specific, Measurable, Achievable, Relevant and Time-bound (see [Box 2](#)). Moreover, the offsetting mechanism does not ensure that the relevant national authorities are properly compensated for the additional costs incurred, as the offsetting amounts are not transferred to their budgets but instead to national budgets.

**Box 2****Assessments of KPIs for distributing the offsetting amounts are not SMART**

- (1) Annual number of EU trademark applications in each Member State. We found that this KPI is not relevant as EU trademark applications are submitted electronically and do not create additional costs for Member States. Furthermore, the costs related to promotion and information activities are already financed by the European Cooperation Projects.
- (2) Annual number of national trademark applications in each Member State. We consider that there is no correlation between the number of national trademarks application and costs generated by the EU trademark system because the examination of the existence of relative grounds for refusal in the term of conflicting prior earlier rights, including earlier EU trademarks applications and registrations, is financed by the application and registration fees paid by the IP applicants.
- (3) Annual number of cases brought before the EU trademark courts designated by each Member State. There are no official statistics (difficult to measure).
- (4) Opposition and applications for declaration of invalidity by proprietors of EUTMs in the Member States. The opposition and invalidity procedures before the NIPOs are financed by the fees paid by the parties.

**The EU geographical indication framework is restricted to agricultural products**

**46** The geographical indication sectors are covered by three EU geographical indication schemes for (a) **agricultural products and foodstuffs**, (b) **wines** and (c) **spirit drinks**.

**47** We found that the basic rules and principles for registration are generally aligned. However, we noted that the geographical indication scheme for agricultural products and foodstuffs does not cover the full range of goods classed as agricultural products under the WTO Agriculture Agreement. Nor is there an EU system for registering non-agricultural products (crafts and industrial designs), although some Member States have national legislation to protect such products. The lack of an EU-wide protection regime for all products makes it difficult or impossible to ensure their protection, as national protection systems alone are insufficient.

## IPR frameworks are well implemented although some shortcomings can be noted

### The EUIPO largely implements the frameworks for EU trademarks and designs correctly despite some flaws

**48** Based on our assessment of the registration procedures and related activities, we consider that EUIPO has properly implemented the EU trademark and EU design regulations. The application, examination, publication and registration processes are certified by [ISO 9001](#) and [ISO 10002](#) and EUIPO has also implemented a quality control system that includes the definition of a set of KPIs and values for compliance.

**49** However, we detected the following shortcomings in the implementation of the EU trademarks regulation.

**50** The EU trademarks regulation provides the possibility for EUIPO to create a mediation centre for the friendly settlement of disputes over EU trademarks and registered EU designs. While EUIPO implemented the Alternative Dispute Resolution Service to provide free mediation services for appeals procedures this does not include observation and opposition procedures.

**51** Any representative of a natural person or legal entity dealing with the EUIPO must be legally authorised to act as a representative in national intellectual property matters. We noted that the conditions for becoming a representative differ between the audited Member States, thus creating unequal conditions for those wishing to act as representatives.

**52** The EU trademarks regulation and the EU design regulation created the EU trademark and registered EU design registers and made it compulsory to record trademarks and designs in the register. We made a risk-based selection and verified a sample of 20 EU trademarks and six registered EU designs, to check the registers' accuracy and completeness. For registered trademarks, we found examples of incorrect EU trademark status (six sampled trademarks), procedural error (one trademark) and omissions (five trademarks). For registered EU designs, the lack of completeness concerned the second language of the application in one sample item. As a result of the weaknesses we identified, the EUIPO found 522 entries with inconsistencies in the register, which are being examined individually and manually corrected. It also intends to introduce an internal control to ensure the necessary data consistency and accuracy.

**53** The outcome of the EUIPO [2019 survey](#) of users revealed increased user-dissatisfaction with the consistency of the Board of Appeals decisions (satisfaction rate below 53 %). The consistency of the decision-making is an important element to harmonise the EU trademark and registered EU design systems. Greater consistency in the decisions of the jurisdictional bodies would lead to more efficiency in the system by reducing the need for appeals and litigation before the General Court of the European Court of Justice.

### The criteria for some financial support to Member States contain weaknesses

**54** According to the EU trademarks regulation and in line with the principles of sound financial management, the EUIPO is responsible for implementing cooperation between the EU institutions and the NIPOs to promote convergence of practice and tools in the field of trademarks and designs.

**55** NIPOs mainly cooperate with the EUIPO through the European Cooperation Projects (ECPs), which are included in the annual Cooperation Agreements. Numerous important cooperation projects have been or are being carried out closely involving the EUIPO and the NIPOs. Since 2020, EUIPO has contributed to some ECPs by way of lump sums calculated separately for each beneficiary.

**56** The [EU Financial Regulation](#) establishes that lump sums should be based on a fair, equitable and verifiable calculation method, ensuring sound financial management. The EU financial regulation does not provide guidance on the methodology for calculating lump sums.

**57** We found that the methodology implemented by EUIPO to calculate the lump sums ([Annex VII](#)) contained the following weaknesses:

- (a) The verified historical data of individual beneficiaries covered just one year;
- (b) The classification of the activities does not sufficiently distinguish different types of project, so similar lump sums were awarded to dissimilar activities; and
- (c) In calculating the average daily rate, the NIPOs included the salaries of all internal staff profiles participating in the 2019 ECP projects. However, similar projects presented different staff profiles.

**58** Two of the ECPs included in the cooperation agreements concerned running costs for TMView and DesignView, which are public databases for trademarks and designs. We found that the running costs were unrelated to the real cost of maintaining NIPOs' databases and of providing data on national trademarks and designs.

**59** We also noted that the average running cost per design differed significantly in the selected Member States in 2020 (see [Table 4](#)), creating an unequal situation between audited Member States.

**Table 4 – Average DesignView running cost per registered design**

|  | EL      | FR      | HU      | LT      | RO     |
|--|---------|---------|---------|---------|--------|
| Designs registered                           | 77      | 4 619   | 68      | 26      | 47     |
| Designview running costs ( <i>in euros</i> ) | 127 552 | 129 896 | 125 027 | 130 000 | 83 744 |
| Average per design ( <i>in euros</i> )       | 1 657   | 28      | 1 839   | 5 000   | 1 782  |

Source: ECA.

### Shortcomings in the registration process for agricultural products

**60** EU legislation provides the framework for registering geographical indication products at EU level, but does not cover the national scrutiny phase. In line with the principle of subsidiarity, each Member State has its own scrutiny process, but must observe the criteria and conditions for substantial assessment established by the relevant scheme, as established by the geographical indication legislation (paragraph 46). Each Member State is also free to decide whether to charge fees for the registration and control processes.

### Inefficiencies in the Commission's registration processes

**61** Applications to register geographical indications are analysed and approved by the competent authorities of each Member State, and are then submitted to the Commission along with supporting documentation ([Annex VIII](#)). Member States submit this information either through the EU's eAmbrosia IT system or by e-mail. Submission through eAmbrosia is not mandatory for agricultural products and foodstuffs, and Member States with the largest number of applications usually use e-mail submissions.

**62** The eAmbrosia database includes all registered geographical indications, including those from non-EU countries registered following direct application to the Commission. All applications sent through the IT system are uploaded automatically to the public version of the platform. As all applications must be published in the public version of eAmbrosia, the Commission must upload e-mail applications manually. This entails additional work for Commission staff and errors may occur.

### **Protracted national and Commission processes for analysing and registering geographical indication applications**

**63** There should be no barriers to the registration processes for geographical indications in the Member States. The national and Commission scrutiny phases containing the requirements for application, publication, appeal and registration processes for geographical indications should therefore set clear deadlines and be transparent.

**64** To check the timeframe and processes for geographical indication approval in the selected Member States, we selected a number of registration applications for geographical indications and amendments to existing registrations ([Annex IX](#)). Although in the selected Member States clear requirements for the application, publication, appeal and registration processes were published, we found that the scrutiny deadlines adopted in national legislation were rarely observed, with approval processes lasting up to 60 months. The complex process to assure the quality and specific characteristics of agricultural products caused these long delays.

**65** For the same selected samples at Commission level, the approval process was also found to be lengthy ([Annex X](#)). The delays of up to 48 months noted were explained by complex analysis and translation of the files received and by long delays in receiving replies from Member States to the questions raised by the Commission.

### **Variations in Member States' geographical indication controls and a lack of Commission guidance**

**66** Geographical indication controls are carried out in accordance with [Regulation 2017/625 on official controls](#). The regulation is not specific to geographical indications and does not establish standardised EU control rules for geographical indications. No other subsidiary legislation on geographical indication controls has been proposed or adopted.

**67** Each Member State visited had its own control rules and procedures. Some Member States applied registration controls before approving the geographical indication application nationally, while others applied them afterwards (annually or at different intervals). We found that control procedures and their frequency were not standardised among the selected Member States and the control fees charged to operators varied significantly, from no charge to 300 euros per day.

**68** The Commission organises training under the “Better Training for Safer Food” initiative and annual discussion seminars with Member States on geographical indication controls. However, it has not provided official guidance on control procedures, risk analysis or the optimum frequency of checks. The differing treatment of geographical indication producers in various Member States results in some producers incurring higher compliance costs and obligations than others.

### **Cooperation on geographical indications within the EU generally running smoothly**

**69** EUIPO, in collaboration with the Commission, administers a portal ([Giview](#)) to facilitate communication with enforcement authorities. Giview contains registration data from eAmbrosia and non-EU geographical indications protected in the EU through international and bilateral agreements; data on the competent authorities, control bodies and producer groups; and information on products registered as geographical indications (photos, maps, descriptions and links to producer group websites).

**70** In relation to Member State management of geographical indication schemes, the Commission convenes expert groups three times a year to discuss challenges and good practices in the sector. In addition, between 2018 and 2020, the Commission held 17 mini-workshops with the Member States. We found that the authorities in the selected Member States appreciated these workshops and the opportunity to discuss and resolve problematic applications.

### **The enforcement of IPRs is not optimal**

**71** Intellectual property rights need to be effectively and adequately protected, while ensuring that enforcement measures and procedures do not become barriers to legitimate trade<sup>22</sup>. To achieve this, the legislative systems for enforcing IPRs in the Member States should ensure a high, equivalent and homogeneous level of IPR

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<sup>22</sup> Report from the Commission on the implementation of Council Regulation (EU) No 608/2013.

protection in the internal market<sup>23</sup>. Member State customs authorities should be able to detain goods suspected of infringing IPRs protected by EU and national laws. The Commission and the Member States should have a sound EU IPR enforcement framework to meet these needs.

### The IPR Enforcement Directive is not uniformly applied

**72** The Commission has the objective of ensuring that equivalent legislative systems exist across the EU, ensuring a high, equivalent and homogeneous level of IP protection in the internal market. As recognised by the Council Conclusions of 1 March 2018, the IPRED measures, procedures and remedies are not applied uniformly among Member States. Along with the Commission's [guidance](#)<sup>24</sup> for tackling the non-uniform level of IP protection in the internal market, the Commission has created a new group of experts on industrial property policy, which covers enforcement, and is preparing an EU Toolbox against counterfeiting.

**73** It is the Commission's responsibility to monitor the complete and correct transposition of IPRED into national laws by Member States. However, we found several weaknesses regarding the non or partial conformity of IPRED transposition in the audited Member States, as recognised in the [2017 IPRED evaluation](#) and the [2017 Support study](#). This situation of continuing delays constitutes weaknesses that have led to a divergence of IP protection in the Single Market.

**74** We found that IPRED does not address the needs of the digital age. In this regard, the Commission has proposed the [Digital Services Act \(DSA\)](#) that is expected to contribute to the fight against illegal content online, by clarifying the liability regime of the [E-commerce Directive](#) and by increasing the "due diligence" obligations of online platforms. However, the DSA proposal only provides increased liability for big platforms; other intermediaries will still enjoy liability exemption facilities. The Commission will set up an EU Toolbox against counterfeiting that will clarify the roles and responsibilities of the actors, including online platforms, building on the DSA provisions.

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<sup>23</sup> Recital 10 of IPRED.

<sup>24</sup> COM(2017) 708 final.

## Key elements are lacking in the framework for IPR customs enforcement

**75** The Commission's role is to support modern, harmonised approaches to customs controls and customs cooperation. It should strive for a high level of protection of the EU internal market, in particular to avoid trade diversion and counterfeiting within the EU. Sound customs enforcement of IPR should also take into account the liability and responsibility for the destruction of goods. We examined the EU IPR customs enforcement framework and how it was implemented in the five selected Member States.

### IPR protection is variable

**76** According to the [Customs Enforcement Regulation](#), customs action on goods suspected of infringing an IPR should relate to goods, which are or should have been under customs supervision and control, notably:

- (a) declared for release for free circulation, export or re-export;
- (b) entering or leaving the customs territory of the Union; and
- (c) placed under a special procedure.

**77** The Commission clarified in a notice<sup>25</sup> that customs IPR enforcement action is only allowed for goods coming from third countries intended to be put on sale in the European Union, except concerning EU and national trademarks. The trademarks package<sup>26</sup>, which entered into force in 2016, extended protection of the rights of the proprietor of an EU trademark or national trademark, even if the goods are not intended to be placed on the Single market. This means that the protection of IPRs provided for in the Customs Enforcement Regulation is not the same for all IP rights and for all goods under customs supervision and control. The Commission has not updated all EU IP substantive laws needed to ensure an equal treatment of all EU IPRs.

**78** The Customs Enforcement Regulation does not apply to goods of a non-commercial nature contained in travellers' personal luggage (Art. 1(4)). The interpretation of "goods of a non-commercial nature" is up to each Member State. We noted different interpretations in the selected Member States, resulting in uneven IPR protection.

<sup>25</sup> Commission notice 2016/C 244/03.

<sup>26</sup> Regulation (EU) 2015/2424 and Directive (EU) 2015/2436.

## No common IPR risk management and control strategy

**79** According to the [Union Customs Code](#), customs authorities may carry out any controls they find necessary on non-EU goods brought into the customs territory of the Union. These controls must be proportionate and carried out in accordance with risk analysis criteria. However, we noted that the Commission has not yet developed a common IPR risk management framework, an EU customs control strategy for IPR infringements, or IPR risk profiles. In addition, we found that out of the five selected Member States, only France had a national IPR risk management strategy or control strategy for IPR infringements.

## Different practices in the EU for the destruction of counterfeit goods

**80** Under the standard procedure, in accordance with the Regulation<sup>27</sup>, when a suspicion arises during a customs control that the goods might be counterfeit, a notification is sent to the holder of the decision (right holder) and the holder of the goods (or the declarant). Based on their responses, to be received within 10 working days, the conditions for destruction are checked. When all conditions are met, the decision on destruction is taken. When the suspicion is not justified (or the right holder does not want to take action), the goods are released. When the declarant or holder of the goods opposes destruction, the right holder must initiate proceedings to determine the infringement.

**81** The Customs Enforcement Regulation also provides for a simplified procedure for the destruction of small postal or express courier consignments. Upon request by the holder of the decision granting the application, the goods may be destroyed with the express or presumed agreement of the sole declarant or holder of the goods. During the audited period, 23 Member States used the small consignments procedure, which represents 85 % of the Member States. In addition, two other Member States did not use the small consignment procedure, but applied instead their national criminal procedure. Two Member States did not use the small consignment procedure or a comparable procedure over the audited period. According to some of the selected Member States, the definition of small consignments in the Customs Enforcement Regulation is too restrictive in the context of increased volumes of e-commerce, hindering customs enforcement of IPR.

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<sup>27</sup> Regulation (EU) No 608/2013 concerning customs enforcement of intellectual property rights.

**82** One selected Member State uses a specific seizure procedure, outside the scope of the Regulation, instead of the small consignments procedure. In the case of small consignments, the seizure procedure is a particularly efficient and rapid tool for withdrawing goods suspected of infringing an IPR from the market. The costs arising from the seizure procedure are not claimed from the right holders, but borne by the customs authorities.

**83** The Customs Enforcement Regulation provides optional provisions regarding destruction costs, which has created different practices in the EU. According to the [Commission's report](#) on the implementation of the above regulation, around 85 % of Member States ask the holder of the decision to bear the cost of destruction under the standard procedure. Around 46 % of Member States ask the holder of the decision to bear the cost of destruction under both the standard and small consignment procedures. Two Member States bear the costs incurred by their actions on the storage and destruction of goods under the Customs Enforcement Regulation for the standard procedure. Some Member States act on an ad hoc basis concerning destruction costs under the small consignment procedure.

**84** Destruction and storage costs can be very high, so right holders may hesitate to take action. In addition, the destruction of hazardous goods (e.g. refrigerant gas or pesticides) requires costly treatment and specific equipment, which is not available in all Member States, even if the right holder wishes to pay for it. In some non-EU countries, like the United States, destruction costs are paid by the federal government through a fund, financed by fines and asset forfeiture for IPR infringements. The variability of practices across Member States regarding destruction costs creates a situation of differential treatment for right holders.

#### **No harmonised framework for penalties and sanctions on IPR infringements**

**85** Customs authorities may introduce penalties for holders of the decision.

**86** National customs laws also provide for customs penalties for the declarant and for the holder of the goods and/or their representative. The sanctions regarding infringements of intellectual property substantive laws are not harmonised in the Member States.

**87** In some Member States, penalties for infringements of intellectual property substantive laws and national customs laws are not sufficiently dissuasive and could be an incentive for trade diversion.

## Different practices for reporting IPR infringements

**88** As the Customs Enforcement Regulation has no timeframe for reporting detentions in the EU-wide anti-Counterfeit and anti-Piracy information System (COPIS), Member States have different practices.

**89** A shared interface between COPIS and AFIS (OLAF's Anti-Fraud Information System) enables the automatic transfer of IPR infringement data from COPIS to OLAF's Customs Information System for IPR detentions (CIS+). However, the vast majority of Member States do not enter data in CIS+ (only nine Member States transferred information to CIS+, accounting for 9 % of COPIS cases). Therefore, while the mechanism is in place, Member States largely fail to use it.

**90** There is no specific horizontal tool for exchanging information on IPR enforcement with the relevant authorities in non-EU countries. The Commission has never adopted implementing acts setting the necessary practical arrangements concerning the exchange of data and information with non-EU countries.

## There are shortcomings in the Member State customs controls

**91** The Customs Enforcement Regulation requires that national customs authorities carry out IPR enforcement controls and report on the detentions of goods consistently.

**92** We examined the implementation of the Customs Enforcement Regulation in the five selected Member States by analysing, reviewing and testing the key components of the systems and procedures in place. This included a random sampling of applications for action (AFAs) and detentions reported in COPIS. Overall, the selected Member States had appropriate risk analysis tools and the processing of AFAs and the enforcement of customs actions on goods infringing IPR were satisfactory. However, we found the following limitations in the implementation of the customs controls:

- (a) four Member States accepted intervention thresholds entered in the AFAs by right holders that were not specified in the Customs Enforcement Regulation<sup>28</sup>;

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<sup>28</sup> Regulation (EU) No 608/2013 does not provide for the possibility to limit customs enforcement for a particular IPR, based on the quantity of infringing goods intercepted by customs.

- (b) there were compliance weaknesses regarding notification deadlines for holders of/applicants for decisions and declarants/holders of the goods in three Member States;
- (c) two Member States failed to use the COPIS-AFIS interface (CIS+); and
- (d) Member States had developed different practices and timeframes for reporting.

**93** The non-uniform implementation of the IPRED and limitations in the implementation of IPR customs enforcement controls in the Member States affect EU IPR enforcement and the fight against counterfeits. We consider that the protection of IPRs in the EU differs according to the place of importation. Therefore, there is a risk of trade diversion by fraudsters and counterfeiters to select places in the EU with less stringent controls and sanctions.

## Conclusions and recommendations

**94** Our overall conclusion is that the EU framework for the protection of intellectual property rights is generally solid and robust, though there are still shortcomings. We make recommendations to improve the IPR regulatory framework, its implementation and its enforcement.

**95** The [designs directive](#) aimed to align the design protection laws of the Member States to create an EU designs system. This requires a complete and up-to-date legal framework, which aligns the provisions of the regulation and directive for designs. However, we found divergences between the EU designs and national systems regarding the application, examination and publication processes. In addition, we found that there is no legal framework for the protection of non-agricultural products (see paragraphs [26-35](#) and [46-47](#)).

**96** An EU IPR enforcement framework is in place and working properly. However, we found that there are some shortcomings in this framework and its implementation, such as Member States acceptance of intervention thresholds not specified in the regulation and the restricted definition of small consignments (see paragraphs [76-78](#), [81](#) and [92](#)).

### Recommendation 1 – Complete and update the EU IPR regulatory frameworks

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The Commission should make legislative proposals to:

- (a) provide for the protection of geographical indications for non-agricultural products; and
- (b) extend EU trademark enforcement protection to all EU intellectual property rights, introduce intervention thresholds, and enlarge the definition of small consignments.

**Timeframe: end of 2025**

**97** We concluded that there is no clear methodology to determine EU fees, resulting in a level of fees, which produce accumulated surpluses. In addition, we found shortcomings in the legislation regarding EUIPO's governance and accountability framework (see paragraphs [19-25](#) and [36-41](#)).

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

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The Commission should, in the context of its evaluation (under Art. 210 EUTMR) of the impact, effectiveness and efficiency of EUIPO and its working practices, assess the governance arrangements and the lack of clear methodology for determining fees, as identified in this report.

**Timeframe: end of 2025**

**98** We consider that EUIPO has implemented its assigned tasks concerning the administration and promotion of EU trademarks and designs. It has therefore contributed well to protecting EU trademarks and designs (see paragraph [48](#)).

**99** EUIPO has developed a system of cooperation with Member States, to promote the convergence of practices and tools through the projects included in the Cooperation Agreements. However, we found that there is a lack of guidance on the methodology for calculating lump sums, the issue with running costs and variations between Member States (see paragraphs [54-59](#)).

## Recommendation 3 – Improve financing, control and evaluation systems

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The EUIPO should provide:

- (a) a sound methodology for calculating lump sums;
- (b) proper justification for running costs of EU public databases for EU trademarks and designs; and
- (c) improve evaluation systems of the European Cooperation Projects.

**Timeframe: end of 2023**

**100** There are still registration and control issues concerning the implementation of the geographical indications framework. We consider that the very lengthy process for approval of a geographical indication creates an unnecessary obstacle to producers wishing to register. Furthermore, the differing treatment of geographical indication producers in various Member States results in some producers incurring higher compliance costs and obligations than others (see paragraphs [60-68](#)).

## Recommendation 4 – Improve the EU geographical indications systems

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The Commission should analyse and register geographical indication applications in a timely manner and provide Member States with official guidelines on geographical indication controls.

**Timeframe: end of 2025**

**101** The non-uniform implementation of the IPRED and limitations of IPR customs enforcement controls in the Member States adversely affect enforcement and the fight against counterfeits. We consider that the protection of IPRs in the EU differs according to the place of importation and different practices exist within the EU for destroying counterfeit goods. This was the case for small consignments and hazardous products (see paragraphs [72](#), [74](#), [79-84](#) and [88-93](#)).

## Recommendation 5 – Improve the IPR enforcement framework

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The Commission should:

- (a) establish a control strategy based on IPR risk management;
- (b) better monitor IPRED and customs enforcement in the Member States; and
- (c) standardise reporting activities.

**Timeframe: end of 2023**

This report was adopted by Chamber IV, headed by Mr Mihails Kozlovs, Member of the European Court of Auditors, in Luxembourg on 15 March 2022

*For the Court of Auditors*

Klaus-Heiner Lehne  
*President*

# Annexes

## Annex I — IPR cornerstones

### International framework

- [The Paris Convention](#) for the protection of industrial property (1883)
- [The Berne Convention](#) for the protection of literary and artistic works (1886)
- [The Universal Declaration of Human Rights](#), Article 27(2)
- [The Agreement on Trade-Related Aspects of Intellectual Property Rights](#)

### European Union framework

- [The EU Charter of Fundamental Rights](#), Article 17(2).

### EU Regulatory framework for Trademarks

- [Regulation \(EU\) 2017/1001](#) of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark
- [Directive \(EU\) 2015/2436](#) of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks
- [Commission Delegated Regulation \(EU\) 2018/625](#) of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trademark, and repealing Delegated Regulation (EU) 2017/1430
- [Commission Implementing Regulation \(EU\) 2018/626](#) of 5 March 2018 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Implementing Regulation (EU) 2017/1431
- [Decision of the Presidium of the Boards of Appeal](#), of 27 February 2020, on the rules of procedures before the Boards of Appeal
- [Nice agreement](#) concerning the International classification of goods and services for the purposes of the registration of marks

### EU Regulatory framework for Designs

- [Council Regulation \(EC\) 6/2002](#) of 12 December 2001 on Community designs
- [Directive 98/71/EC](#) of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs
- [Commission Regulation \(EC\) No 2245/2002](#) of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs
- [Commission Regulation \(EC\) No 2246/2002](#) of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs

### EU Regulatory framework for Geographical indications

- [Regulation \(EU\) 1151/2012](#) of the European Parliament and of the Council of 21 November 2012 on quality schemes for Agricultural products and foodstuffs Regulation
- [Regulation \(EU\) 1308/2013](#) of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 992/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007
- [Regulation \(EU\) 2019/787](#) of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008
- [Regulation \(EU\) 251/2014](#) of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91
- [Commission Delegated Regulation \(EU\) 664/2014](#) of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules

- [Commission Implementing Regulation \(EU\) 668/2014](#) of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs
- [Commission Delegated Regulation \(EU\) 2019/33](#) of 17 October 2018 supplementing 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, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation
- [Commission Implementing Regulation \(EU\) 2019/34](#) of 17 October 2018 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
- [Commission Delegated Regulation \(EU\) 2021/1235](#) of 12 May 2021 supplementing Regulation (EU) 2019/787 of the European Parliament and of the Council with rules concerning applications for registration of geographical indications of spirit drinks, amendments to product specifications, cancellation of the registration and the register
- [Commission Implementing Regulation \(EU\) 2021/1236](#) of 12 May 2021 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
- [Commission Implementing Regulation \(EU\) 2020/198](#) of 13 February 2020 laying down rules for the application of Regulation (EU) No 251/2014 of the European Parliament and of the Council as regards the establishment of the register of geographical indications protected in the sector of aromatised wine products and the listing of the existing geographical designations in that register

## EU IPR Enforcement framework

- [Regulation \(EU\) No 608/2013](#) of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003
- [Commission Implementing Regulation \(EU\) No 1352/2013](#) of 4 December 2013 establishing the forms provided for in Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights
- [Regulation \(EU\) No 952/2013](#) of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast)
- [Directive 2004/48/EC](#) of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights
- [Regulation 1215/2012](#) of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast)
- [Regulation No. 593/2008](#) of the European Parliament and of the Council of 17 June 2008, on the law applicable to contractual obligations (Rome I)
- [Regulation No. 864/2007](#) of the European Parliament and of the Council of 11 July 2007, on the law applicable to non-contractual obligations (Rome II)
- [Directive 2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)
- [Regulation \(EU\) No 386/2012](#) of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights Text with EEA relevance
- [Regulation \(EU\) 2017/625](#) of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (Official Controls Regulation)

## Annex II — National legislation transposing the Trademarks Directive.

|           | National legislation   |
|-----------|--|
| France    | Law 92-597 Intellectual Property Code last amended by Order 2019-1169 of 13 November 2019 and by Decree 2019-1316, of 9 December 2019. The Order was ratified by Law 220-1558 of 3 December 2020 |
| Greece    | Law 4679/2020 on trademarks  |
| Hungary   | Act XI 1997 on the protection of trademarks and geographical indications, last amended with effect as of 1 January 2019  |
| Lithuania | Trademarks Law of the Republic of Lithuania, last amended with effect as of 1 January 2019   |
| Romania   | Law 84/1996 on trademarks and geographical indications republished in September 2020 by virtue of Article IV of the Law 112/2020   |

## Annex III — Trademarks: Member States administrative time-limits.

|                | Deadline (months) | Action   |
|----------------|-------------------|--|
| France (INPI)  | Immediately       | Payment of the application fee, from the date of filing of the application   |
|                | 4 weeks           | First publication, from the filing date (start of the date for observations and oppositions)   |
|                | 4                 | Examination on formalities and absolute grounds for refusal, from the filing date  |
|                | 4                 | Registration and second publication, after the first publication (if there is not rectifications, comments, observations or oppositions) |
|                | 6                 | INPI's notification, from the date of filing (requesting rectification or comments, if needed)   |
|                | 1-3               | Request for review of the INPI's decision, from its reception  |
|                | 45 days           | Rectification or comments, from the reception of the INPI's notification   |
| Greece (GDT)   | 30/60/90 days     | To file observation to the examiner's objections (60 for foreigners and 90 for international applications)                               |
|                | 60/90 days        | To appeal the examiner's final negative decision before the Administrative Trademark Committee (90 days for foreigners)                  |
|                | 3                 | From the publication of the examiner's final decision to registration (if there is no opposition to the examiner's final decision)       |
|                | 3                 | To file an opposition before the Administrative Trademark Committee after the publication of the approval decision.                      |
|                | 3                 | From publication of the examiner's final approval decision to registration (if there is no opposition to the examiner's final decision)  |
|                | No limit          | To appeal the publication of the registration of the trademark before the Administrative Trademark Committee                             |
|                | 60 days/ 90 days  | To appeal any Decision of the Administrative Trademarks Court before the Greek Courts (90 days for foreigners)                           |
| Hungary (HIPO) | 10 working days   | Accordance of a date of filing, from the arrival of the file to the examiner   |
|                | 1                 | Payment of the application fee, from the date of filing of the application   |
|                | 1                 | Request for accelerated procedure, from the date of filing of the application  |
|                | 1                 | Payment of the fee for accelerated procedure, from the date of request   |
|                | 2                 | Priority claim, from the date of filing of the application   |
|                | 4                 | List of goods or services drafted in Hungarian, from the date of filing of the application   |
|                | 30 days           | Examination of formalities, from the end of the deadline for the payment of the application fee  |
|                | 30 days           | Submission of missing documents or declaration, from the reception of the invitation by HIPO   |
|                | 30 days           | Examination of absolute grounds for refusal, from the end of the examination of formalities  |
|                | 5 working days    | Search for earlier rights (search report), from the end of the examination of absolute grounds   |

|                 | Deadline (months)   | Action  |
|-----------------|---|---|
|                 | Minimum 15 days   | Announcement, after the search report has been sent to the applicant                                    |
|                 | Minimum 3 months  | Registration, after the announcement (opposition period)  |
|                 | No limit  | Observation, at any time in the proceedings.  |
|                 | 3   | Opposition, from announcement   |
|                 | 30 days   | Application for amendment, from receipt of the decision   |
|                 | No limit  | Request for invalidity or establishing termination, at any time after the registration                  |
| Lithuania (SPB) | 1   | Formal examination for confirmation of the filing day   |
|                 | 1-3   | Reply to deficiency letter depending on the deficiencies type   |
|                 | 1   | Reply to observation  |
|                 | 2   | Request for re-examination from the decision to refuse application                                      |
|                 | 2   | Filing of appeal after the decision to refuse application   |
|                 | 3   | Filing of appeal against decision of the Appeals Division decision to the Vilnius regional court        |
|                 | 3   | Filing of opposition from the date of trademarks application publication                                |
|                 | 5 days  | Urgent examination of the application having request from the applicant                                 |
|                 | 2-12  | Period for peaceable settlement   |
| Romania (OSIM)  |   | Application to registration (until July 2020)   |
|                 | 6   | if the application has no opposition or notification of provisional refusal                             |
|                 | 13  | if the for the application was issued a notification of provisional refusal                             |
|                 | 24  | if for the application was filed an opposition  |
|                 | 24  | if for the application was filed an opposition and was issued a notification of provisional refusal     |
|                 |   | Application to registration (since July 2020)   |
|                 | 6   | if the application has no opposition, nor notification of provisional refusal                           |
|                 | 13  | if for the application was issued a notification of provisional refusal                                 |
|                 | 24  | if for the application was filed an opposition (and notification of provisional refusal was issued)     |
|                 |   | Appeals (until July 2020)   |
|                 | 30 days   | for filing the appeal from the publication/communication of the decision of rejection/partial admission |
|                 | No time limit   | for ending the procedure  |
|                 | 30 days   | Communication of the decision of the BoA (from the date of the pronouncement)                           |
|                 |   | Appeals (July 2020)   |
| 30 days         | for file the appeal from the publication/communication of the decision of rejection/partial admission |   |

|  | Deadline (months) | Action  |
|--|-------------------|---|
|  | No time limit     | for ending the procedure  |
|  | 3                 | Communication of the decision of the BoA (from the date of the pronouncement) |

## Annex IV — National legislation transposing the EU designs Directive

|           | National legislation  |
|-----------|---|
| France    | Intellectual Property Code  |
| Greece    | Presidential Decree 259/1997 amended by Presidential Decree 161/2002  |
| Hungary   | Act XLVIII of 2001 on the Legal Protection of Designs   |
|           | Decree 19/2001. (XI. 29.) IM (Minister of Justice) on the detailed formal requirements of applications for design protection. |
| Lithuania | Design Law (2002)   |
| Romania   | Law 129/1992 on the protection of designs and Government Decision 211/2008, Implementing Regulation for Law 129/1992          |

## Annex V — Designs: Member States' administrative time-limits

|                 | Time limits (months)                | Action  |
|-----------------|-------------------------------------|---|
| France (INPI)   | 6                                   | Decision about granting or refusal of protection from the filing date   |
|                 | 1-3                                 | Deadline to request for review of the decision, from the date of delivery   |
| Greece (OBI)    | 2-4                                 | Filing of the application to completing any deficiency or correcting any errors (letter of deficiencies)                                |
|                 | 6                                   | Filing of the application to publication of the application (in practice)   |
|                 | 6.5                                 | Filing of the application to registration and issue a certificate (in practice)   |
|                 | 7.5                                 | Filing of the application to publication of the registration (in practice)  |
|                 | In case of deferment of publication |   |
|                 | 2                                   | Filing of the application with the request for deferment to completing any deficiency or correcting any errors (letter of deficiencies) |
|                 | Up to 8                             | Filing of the application with the request for deferment to the full publication of the application                                     |
| Hungary (HIPO)  | 2                                   | Payment of the application fee, from the date of filing of the application  |
|                 | 30 days                             | Formal examination (from payment and entry in the accounts of the fee)  |
|                 | 2                                   | If necessary, correction of irregularities  |
|                 | No limit                            | Substantive examination and novelty search  |
|                 | 2                                   | If necessary, time limit for submitting a statement   |
|                 | No limit                            | Decision on whether to grant or refuse protection   |
|                 | 30 days                             | Time limit for submitting an application for amendment of the decision from the date of receipt   |
|                 | No limit                            | Registration of design, and sending of document and extract from the register for the design  |
| Lithuania (SPB) | 1                                   | Payment of application fee from the application filing day  |
|                 | 6                                   | Priority time limit from the first application filing date  |
|                 | 3                                   | Presentation of priority documents from the application filing date   |
|                 | 5                                   | Request for earlier publication from the application filing date  |
|                 | 30                                  | Request for deferment of publication from the application filing date   |
|                 | 1                                   | Reply to deficiency letter  |
|                 | 3                                   | Request for re-examination from decision to refuse registration   |
|                 | 6                                   | Publication of the design if earlier publication or deferment of publication was not requested  |

|                | Time limits (months) | Action   |
|----------------|----------------------|--|
|                | 3                    | Payment of design registration and publication fee   |
|                | 3                    | Filing of appeal after the decision to refuse registration                                       |
|                | 6                    | Filing of appeal against decision of the Appeals Division decision to the Vilnius regional court |
| Romania (OSIM) |                      | Application to registration  |
|                | 6                    | if the application has no opposition   |
|                | 18                   | if for the application was filed an opposition   |
|                |                      | Appeals  |
|                | 30 days              | for file the appeal from the communication of the decision of rejection/partial admission        |
|                | No limit             | for ending the procedure   |
|                | 30 days              | Communication of the decision of the BoA (from the date of the decision)                         |

## Annex VI — Member States Designs – Fees and fees structure (on 1 January 2021)

| FRANCE (INPI)  |   | in euros                                 |
|--|---|--|
| Deposit:   |   |  |
|  | filing of the registration application file             | 39                                       |
|  | supplement by reproduction deposited in black and white | 23                                       |
|  | supplement by reproduction deposited in colour          | 47                                       |
| Extension of protection: extension (by deposit)  |   | 52                                       |
| Regularization, rectification of material error, request for a lapse notice  |   | 78                                       |
| Registration and guarding or extension of guarding of special envelope   |   | 15                                       |
| GREECE-OBI   |   |  |
| Filing and registration fee for a design or model  |   | 100                                      |
| Supplementary registration fee for multiple deposit of a design or model (up to 50 designs or models)  |   | 10 (for each additional design or model) |
| Design or model publication fee  |   | 30                                       |
| Supplementary publication fee for multiple deposit of a design or model (up to 50 designs or models)   |   | 10 (for each additional design or model) |
| Design or model deferred publication fee   |   | 30                                       |
| Supplementary deferred publication fee for multiple deposit of a design or model (up to 50 designs or models)  |   | 10 (for each additional design or model) |
| Fee for registering assignments, licences, other modifications to rights or change in corporate name or legal status of the model or design proprietor |   | 100                                      |
| 5-year protection fee for industrial designs and models  |   |  |
| First 5-year period protection fee   |   | 0  |
| Renewal fee for second 5-year period   |   | 100                                      |
| Renewal fee for third 5-year period  |   | 150                                      |
| Renewal fee for fourth 5-year period   |   | 200                                      |
| Renewal fee for fifth 5-year period  |   | 250                                      |
| <b>General fees</b>  |   |  |
| Fee for priority certificates issued by OBI for industrial protection titles   |   | 50                                       |
| Fee for other certificates issued by OBI   |   | 20                                       |

|   |   |
|---|---|
| Purchase fee for the Industrial Property Bulletin on compact disk (CD): |   |
| Volume A' & B' price per disk   | 2   |
| Annual Domestic subscription for both Volumes (A' & B')                 | 22  |
| Annual Foreign subscription for both Volumes (A' & B')                  | 44  |
| Fee for copies of industrial property titles                            |   |
| Ordinary copies For the 21st page and each subsequent page              | 0   |
| Certified copies  | 20  |
| For the 21st page and each subsequent page                              | 0,2   |
| Foreign titles (ordered from abroad)                                    | 1.00 (per page)                                       |
| Pre-search report fee (results for up to 60 entries/titles)             | 60  |
| Pre-search report fee (for results exceeding the 60 entries/titles)     | 2 (for each additional entry/title)                   |
| Fee for an OBI opinion  | Set by OBI Board of Directors on a case-by-case basis |
| Fee according to CDM 11970/B0012  | 1 000   |

### HUNGARY (HIPO)

|   | Amount if the applicant and the designer |                 |
|---|--|-----------------|
|   | not the same person                      | the same person |
| 1. Filing fee   | 90                                       | 22              |
| plus for each further design (max. 50 included in the same application) | 18                                       | 4               |
| 2. Fee for request for amendment  | 0  | 0               |
| for the first request   | 15                                       | 15              |
| for the second request  | 26                                       | 26              |
| for the further request   | 49                                       | 49              |
| 3. Request for the extension of time limit relating to an action        | 0  | 0               |
| for the first request   | 15                                       | 15              |
| for the second request  | 26                                       | 26              |
| for the further request   | 49                                       | 49              |

|   |     |     |
|---|-----|-----|
| 4. Fee for request for the division of a design application or designs protection for each resulting application or protection. | 90  | 90  |
| 5. Fee for recording a succession in title  | 46  | 46  |
| if the designer of a service design acquires the right  | 10  | 10  |
| 6. Fee for recording a right of pledge or a license agreement, for each case  | 46  | 46  |
| 7. Fee for a request for the renewal or partial renewal of design protection  | 0   | 0   |
| for the first renewal   | 179 | 90  |
| for the second renewal  | 239 | 120 |
| for the third renewal   | 300 | 150 |
| for the fourth renewal  | 448 | 224 |
| 8. Fee for a request for the invalidation of design protection  | 394 | 394 |
| 9. Fee for a request for a decision on lack of infringement   | 394 | 394 |
| 10. Fee for the transmittal of an international or CD application   | 30  | 30  |
| <b>LITHUANIA (SPB)</b>  |     |     |
| *1. Filing fee  |     | 69  |
| 1.1. fee for 11th and each subsequent design  |     | 26  |
| * 2. Fee for registration and publication of design   |     | 69  |
| 3. Renewal for design registration:   |     |     |
| 3.1. for 2nd period renewal   |     | 86  |
| 3.2. for 3rd period renewal   |     | 115 |
| 3.3. for 4th period renewal   |     | 144 |
| 3.4. for 5th period renewal   |     | 173 |
| 4. Fee for recording of changes in the Design Register  |     | 34  |
| 5. Fee for appeal   |     | 34  |
| 6. Opposition fee   |     | 92  |
| 7. Fee for transfer rights  |     | 115 |
| 8. Fee for registration of license  |     | 28  |
| 9. Fee for extract from the Design Register   |     | 34  |
| 10. Fee for certified copy of an application; priority document   |     | 23  |
| 11. Fee for duplicate of design certificate   |     | 34  |
| 12. Fee for forwarding EU design application  |     | 28  |
| 13. Fee for extending term  |     | 23  |
| 14. Fee for resumption  |     | 34  |
| * The amount of the fees for filing an application registration design shall be reduced by 50 % for natural persons.            |     |     |
| <b>ROMANIA (OSIM)</b>   |     |     |
| Registration of the application in the National Register of Submitted Applications:   |     |     |

|  |     |
|--|-----|
| (a) for the first design   | 30  |
| (b) for each additional design   | 10  |
| Publication of the design:   |     |
| (a) for each figure, in standard space (6X6 cm), black and white                               | 20  |
| (b) for each figure, in standard space (6X6 cm), in colour                                     | 100 |
| (c) for characteristic elements (max 30 words)   | 10  |
| Deferment of publication   | 20  |
| Invoking priority  | 20  |
| Examination of the application for registration:   |     |
| (a) for the first design   | 50  |
| (b) for each additional design   | 10  |
| Issue of the certificate of registration:  |     |
| (a) for 1-20 design/model  | 20  |
| (b) for 21-50 design/model   | 30  |
| (c) for 51-100 design/model  | 50  |
| Maintenance in force of the registration certificate, for each 5-year protection period:       |     |
| (a) for 1-20 design/model  | 100 |
| (b) for 21-50 design/model   | 125 |
| (c) for 51-100 design/model  | 150 |
| Issue of the renewal certificate:  |     |
| (a) for 1-20 design/model  | 20  |
| (b) for 21-50 design/model   | 25  |
| (c) for 51-100 design/model  | 30  |
| Renewal of the registration certificate for each 5-year period:                                |     |
| (a) for 1-20 design/model  | 100 |
| (b) for 21-50 design/model   | 125 |
| (c) for 51-100 design/model  | 150 |
| Issue of the Priority Certificate  | 30  |
| Examination of an appeal   | 150 |
| Examination of opposition to design registration   | 30  |
| Revalidation of design registration certificate  | 100 |
| Registration of changes in the legal situation of the application or registration certificate: |     |
| (a) transmission of rights   | 30  |

|  |    |
|--|----|
| (b) changes in the name, name or address of the applicant/holder and agent                   | 10 |
| (c) termination of the acts referred to in paragraph a)                                      | 10 |
| Issuing of documents, certificates, duplicates, certified copies, extracts from the register | 10 |
| Transmission of the international application for registration/renewal from OSIM to OMPI:    |    |
| (a) for the first model  | 80 |
| (b) for the following models   | 20 |
| Extension of the time limit laid down in the Regulation by a period of 30 days               | 10 |

## Annex VII — Criteria used by EUIPO to calculate lump sums

**Promotional activities.** The method is based on an NIPO-by-NIPO approach by reference to certified or auditable data of the NIPO execution of 2018 activities. An average sum has been calculated, considering the total amount executed per category and the number of activities per category carried out in 2018. Three categories are defined: (1) Provision of information and advice; (2) Dissemination events; and (3) Observatory activities: awareness and enforcement activities/events.

**Daily rates.** The method is based on rates provided by each NIPO to cover the effort related to the implementation of projects, activities and the working groups' participation in 2019 cooperation agreements. An average rate per NIPO has been calculated, considering all rates from all internal staff profiles provided by each NIPO.

**Person-days per activities.** The method uses the estimation of the effort required, according to the degree of complexity of each activity and the available history from previous year's performance. The required efforts are: (1) Participation of the NIPO's in working groups – nine person-days; (2) Collaborative network project-language check – 36 person-days; (3) Maintenance of common practices – 30 person-days; and (4) Case Law project of the Observatory – 20 person-days.

## Annex VIII — Geographical Indication Registrations Application Supporting Documents

Each Member State has in place its own process for such a scrutiny and the steps and procedures vary from one Member State to the other. In addition, each Member State decides if it charges a fee for the registration and control processes, with no harmonised approach at EU level. Through various legislative acts, the Commission has established harmonised rules on geographical indication processes, namely the procedures, form and presentation of the geographical indication oppositions, amendment applications and cancellations of already registered geographic indications. National authorities submit the geographical indication registration requests to the Commission, along with the following supporting documentation:

- (a) a Member State declaration concerning the conditions of the corresponding scheme;
- (b) details of any admissible statements of opposition received during the national opposition stage;
- (c) details of any provisional national protection;
- (d) information on any national judicial proceedings that may affect the registration procedure (wine and spirits – the ‘[Piadina rule](#)’); and
- (e) information on the competent authority and, if possible, on the control body.

## Annex IX — Geographical Indication. Approval process at the Commission level

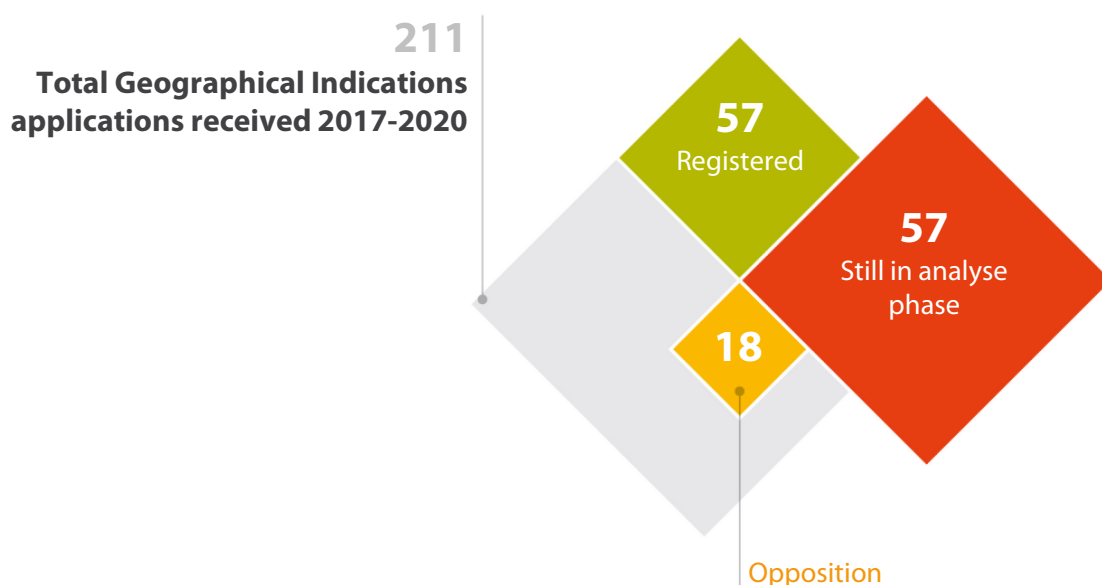
- (1) After receiving the applications, the Commission:
- Scrutinises the application in accordance with Art. 50 of Regulation (EU) No 1151/2012, for agricultural products and foodstuffs; Article 10 of Delegated Regulation (EU) 2019/33, for wine products; Art. 26 of Regulation (EU) 787/2019, for spirit drinks and Art. 14 of Regulation (EU) 251/2014, for aromatised wines to assess whether it fulfils the regulatory requirements;
  - If necessary, clarifications are sought from the requesting Member State, within a deadline of six months from the date of receiving the application (extended, if there is a need for additional clarifications);
  - if the scrutiny is positive, a first publication in the EU Official Journal, C series, is made, allowing for oppositions by interested parties located outside the requesting Member State within a two months deadline for the wine and aromatised wines sector and three months deadline for agricultural products and foodstuffs and spirit drinks (with two further months for a reasoned statement of opposition to be submitted);
  - if the received oppositions are not admissible or are subsequently withdrawn, or no oppositions are received, the geographical indication is registered through a Regulation published in the EU Official Journal, the L series;
  - if the scrutiny is negative, the Commission adopts a decision of rejection (Articles 52(1) of Regulation 1151/2012, 97(4) of Regulation 1308/2013, 30(1) of Regulation 2019/787). The responsible Committee has to vote on such a decision.
- (2) Where admissible oppositions are received, an amicable procedure is initiated between the applicant and the objector(s) (three months for the discussions, with a possible three months extension), leading to the following possibilities:
- if an agreement is achieved between the parties, not modifying the substance of the application, the geographical indication is registered;
  - if an agreement is achieved that entails a modification of substance of the application, the scrutiny process is performed anew;
  - if no agreement is achieved, the Commission is bound to take a final decision, positive or negative, and submits the Implementing Regulation to the Quality Committee, formed by the Member States, for approval.

- (3) In order to avoid duplication of the analysis by the competent authorities in the Member States and the Commission, the latter scrutinises received applications to ensure that the Union law is upheld, there are no manifest errors, and the interests of stakeholders outside the Member State of application are taken into account. In practice, the Commission is only examining the Single Document (that includes a summary of the product specifications and technical characteristics).
- (4) The Single Document is the document destined for publication in the EU Official Journal in the event of approval. When the Commission identifies inconsistencies, errors or unclear text, an e-mail is sent to the applicant Member State. The published Single Document is translated into all EU official languages. The product specifications (detailing all the technical processes related to production) sent by the applicants is drafted in the applicant's national language.

## Annex X — Geographical Indication, applications 2017–2020

- (1) From 2017 to 2020, the Commission received 211 applications for EU registrations of geographical indication-protected products. The Commission registered 57 as geographical indication products during the period concerned and published 18 oppositions. The remaining 136 applications (64 %) were at various stages of analysis. Analysis of the 57 applications registered took between nine and 49 months, with the Commission attributing delays to issues such as the need to translate documents, IT issues and reduced staffing.

### Geographical indication applications Commission 2017–2020

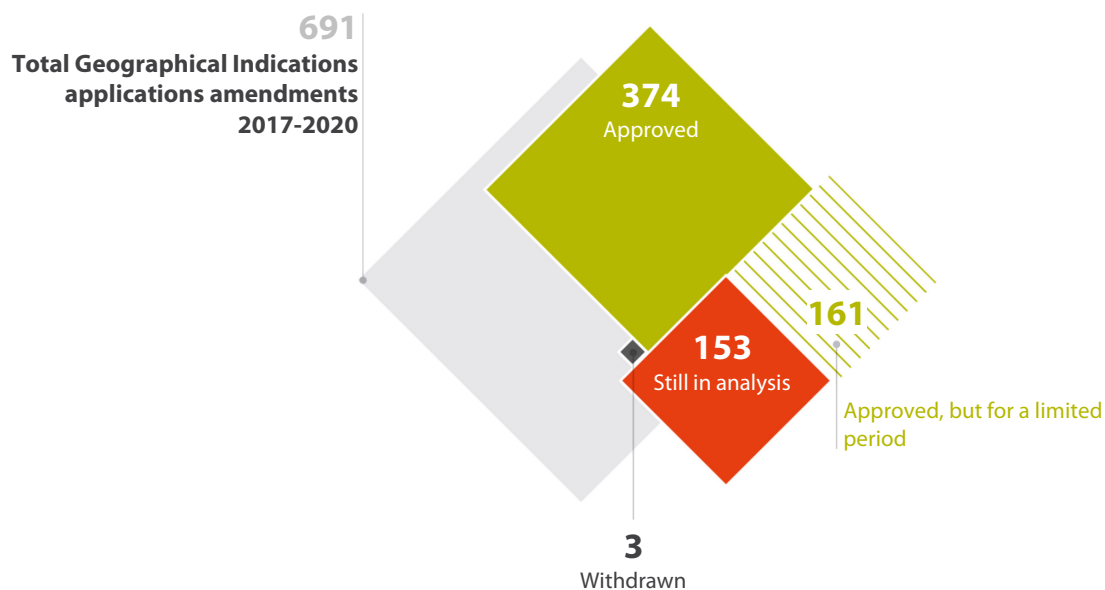


Source: ECA, based on Commission data.

- (2) We selected 22 applications for EU geographical indication registrations in the Member States visited, 14 of which had been submitted to the Commission and the remainder had been analysed by national authorities. The Commission approved seven applications, with analysis taking 16 to 48 months from submission. For the seven approved applications, the total analysis period (including initial national scrutiny) took between 20 and 56 months. For two of the 14 applications, the Commission failed to observe the initial six-month deadline<sup>29</sup> for analysis and questions to the applicant Member States, thus potentially delaying the geographical indication registration process.

<sup>29</sup> Article 10 of [Commission Delegated Regulation \(EU\) 2019/33](#).

## Geographical indication amendment applications Commission 2017-2020



Source: ECA, based on Commission data.

- (3) We selected 22 applications to amend previously registered EU geographical indications in the Member States visited, of which 18 were submitted to the Commission and the remainder were analysed by the national authorities. The Commission approved 11 applications, with analysis taking three to 48 months from submission. For the 11 approved applications, the total analysis period (including national scrutiny) lasted between six and 60 months. For five of the 18 applications, the Commission did not observe the initial six-month deadline for analysis and questions to the applicant Member States, thus potentially delaying the geographical indication registration process.

# Abbreviations

**AFA:** Application for Action

**AFIS:** OLAF's Anti-Fraud Information System

**BoA:** Board of Appeal

**CA:** Cooperation Agreement

**COPIS:** EU-wide anti- Counterfeit and anti-Piracy information System

**DG AGRI:** Directorate-General for Agriculture and Rural Development

**DG BUDG:** Directorate-General for Budget

**DG GROW:** Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

**DG SANTE:** Directorate-General for Health and Food Safety

**DG TAXUD:** Directorate-General for Taxation and the Customs Union

**DSA:** Digital Services Act

**ECP:** European cooperation project

**EUIPO:** European Union Intellectual Property Office

**EUROPOL:** European Union Agency for Law Enforcement Cooperation

**HIPO:** Hungarian Intellectual Property Office

**IP:** Intellectual property

**IPR:** Intellectual property right

**IPRED:** Directive on the enforcement of intellectual property rights

**INPI:** French National Institute of Industrial Property

**KPI:** Key performance indicator

**NIPO:** National intellectual property office

**OECD:** Organisation for Economic Co-operation and Development

**OLAF:** European Anti-Fraud Office

**OSIM:** Romanian State Office for Inventions and Trademarks

**SMART indicators:** Specific, measurable, achievable, relevant and timely indicators

**SME:** Small or medium-sized enterprise

**SPB:** Lithuanian State Patent Bureau

**TFEU:** Treaty on the Functioning of the European Union

**WTO:** World Trade Organization

# Glossary

**Class:** Formal category defining the goods and/or services.

**Declarant:** The person lodging a customs declaration in his or her own name or the person in whose name such a declaration is lodged.

**Design:** The appearance of a product resulting from its ornamental or aesthetic aspects that may consist of three-dimensional features (the shape or surface) or of two-dimensional features (patterns, lines or colour).

**Geographical indications:** Label that can only be used when a product comes from a specific place of origin, has certain characteristics and meets defined quality criteria.

**Intervention threshold:** Threshold requested by right holders for limiting customs enforcement actions to quantities of counterfeit goods above a certain level.

**ISO 10002:** Guidelines for the process of complaints handling related to products and services within an organization, including planning, design, development, operation, maintenance and improvement.

**ISO 9001:** Standard based on a number of quality management principles including a strong customer focus, the motivation and implication of top management, the process approach and continual improvement.

**OBI:** Hellenic Industrial Property Organisation.

**Patent:** Legal title that can be granted for any technical invention that is new, involves an 'inventive step', and is susceptible to industrial application.

**Piracy:** Unauthorised copying or use of work protected by intellectual property rights.

**Repair clause:** Aims to limit the protection for spare parts used to repair a product. The purpose is to prevent the creation of captive markets where there is a limited number of competitive suppliers (e.g. cars). The liberalisation for using spare parts should allow for more competition in the aftermarket, with the benefit of greater choice and lower prices for consumers.

**Right holder:** Holder of an intellectual property right, a person licensed to use the intellectual property, or an authorised representative of either.

**Small consignment:** A postal or express courier consignment, which contains three units or less; or has a gross weight of less than 2 kilograms.

**Trademark:** Sign or symbol used to distinguish an entity's products or services, and which may be registered for protection purposes.

## Replies of the Commission

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61056>

## Replies of the EUIPO

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=61056>

## Timeline

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## Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber IV Regulation of markets and competitive economy, headed by ECA Member Mihails Kozlovs. The audit was led by ECA Member Ildikó Gáll-Pelcz, supported by Claudia Kinga Bara, Head of Private Office and Zsolt Varga, Private Office Attaché; John Sweeney, Principal Manager; Benny Fransen, Head of Task; Dan Danielescu, Joaquin Hernandez Fernandez, Carlos Soler Ruiz and Esther Torrente Heras, Auditors. Giuliana Lucchese provided graphic design support



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In this audit, we assessed whether intellectual property rights in EU trademarks, EU designs and geographical indications are well protected within the Single Market.

The protection is generally robust, despite some legislative shortcomings and the absence of a clear methodology for determining EU fees. There are weaknesses in the accountability framework of the European Union Intellectual Property Office, in its management of European Cooperation Projects, and in the implementation of geographical indications and customs enforcement controls, by the Commission and Member State authorities.

We recommend that the Commission complete and update the regulatory frameworks, assess the governance arrangements and methodology for determining fees, improve the geographical indications systems, and improve the enforcement framework. The European Union Intellectual Property Office should also improve the management of its European Cooperation Projects.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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