Office for Harmonisation in the Internal Market (Trade Marks and Designs): tasks related to the protection of intellectual property rights

2011/0135(COD) - 24/05/2011 - Legislative proposal

PURPOSE: to entrust the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy in order to avoid significant harm being caused by counterfeiting and piracy to the European economy and to the health and safety of European citizens.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the EU's economic well-being relies on sustained creativity and innovation. Accordingly, the Europe 2020 Strategyhighlights the need to strengthen the EU's research performance, to promote innovation throughout the Member States, ensuring that innovative ideas can be turned into new products and services that create growth and quality jobs. Intellectual property rights (IPR) are vital business assets, which help to ensure that innovators and creators get a fair return for their work and investments.

Over the last ten years, however, IPR infringements have increased significantly. In 2009, the OECD estimated that international trade in counterfeit and pirated goods accounted for USD 250 billion in 2007, which is larger than the national GDPs of 150 economies. Also, figures published by EU customs authorities reflect a clear increase in customs activity, with a rise in registered cases from 26 704 in 2005 to 43 572 in 2009, i.e. up by about 60 % in five years.

One of the main initiatives to address this threat launched by the Council and the Commission in 2009 was to set up a European Observatory on Counterfeiting and Piracy to improve understanding on intellectual property rights (IPR) infringements ('the Observatory').

In line with the Council's request of 2008, the Observatory in its current form is a centre of expertise with no legal personality managed by the Commission services.

The latest Council Resolution relating to the Observatory added further responsibilities, by inviting it to assess the needs for implementation of EU-level training programmes for those involved in combating counterfeiting and piracy. A September 2010 European Parliament Resolution additionally called for the Observatory to compile scientific research data on counterfeiting and IPR regulation.

LEGAL BASIS: Article 114 and 118(1) of the Treaty on the Functioning of the European Union (TFEU).

IMPACT ASSESSMENT: the Impact Assessment looked at three different options, each with a number of sub-options:

Option 1: the Observatory continues to be administered by DG MARKT, but with extra resources:

- **Sub-option 1a** – DG MARKT's human and budgetary resources are increased.
- **Sub-option 1b** – The management of the Observatory is outsourced to an external contractor.

Option 2: tasks are performed by a private body or jointly under a public-private partnership:

- **Sub-option 2a** – Industry-led initiative, financed by private sector stakeholders.
- **Sub-option 2b** – Industry-led initiative, financed by a Commission grant/programme.
- **Sub-option 2c** – Public-private partnership (PPP).

Option 3: the Observatory is entrusted to an EU agency:

- **Sub-option 3a** – The tasks of the Observatory are entrusted to a newly created EU agency.
- **Sub-option 3b** – The tasks of the Observatory are entrusted to an existing agency. In budgetary terms it would offer a cost-efficient solution (with total costs of between EUR 3.3 million and 4.3 million in the first two years and between EUR 4.74 million and 5.52 million as of year three) and allow costs to be covered by financial resources outside of the EU budget.

The Commission concludes that **Option 3b** (entrusting the tasks to an existing EU agency, preferably OHIM) is the preferred option. It would allow the Observatory to have access to expertise, resources and financing and to become quickly operational. In budgetary terms it would offer a cost-efficient solution and allow costs to be covered by financial resources outside of the EU budget.

CONTENT: over the last two years, the Observatory's institutional framework has been set up. This setting up phase of the Observatory having been concluded it shows that, due to a **lack of funding**, human resources, IT and meeting capacities and necessary expertise, with its current infrastructure it will **not be able to meet its objectives in the future** and that the taking on of additional tasks under the current setting would be excluded.

It is proposed to entrust the Office for Harmonisation in the Internal Market with the tasks and activities relating to the management of the European Observatory on Counterfeiting and Piracy, including those concerning copyright, rights related to copyright and patents.

The **specific objectives** are:

- to make public authorities and private stakeholders more aware of counterfeiting and piracy as regards their scope, impact and trends, and effective techniques to combat the problem and to improve day-to-day cooperation;
- to inform consumers of the economic impact and dangers related to counterfeiting and piracy and to help them avoid being misled into buying fake products;
- to improve the coordination of actions directed towards third countries.

The **operational objectives** are to ensure that the Observatory has the necessary infrastructure (in terms of human resources, funding, IT and meeting capacities, expertise and independence from vested interests) to perform its tasks effectively, as quickly as possible and at minimum cost to the EU budget.

These objectives dovetail with existing EU policies and strategies, such as Europe 2020. They also fit in with the Commission’s main priorities and proposals concerning its IPR strategy for Europe.

BUDGETARY IMPLICATIONS: the proposal does not create any costs for the EU budget. Instead, it would allow for savings of around EUR 40 000 as certain costs that are currently borne by the EU budget would in future be borne by the OHIM’s budget.