Basic information

2011/0135(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Office for Harmonisation in the Internal Market (Trade Marks and Designs): tasks related to the protection of intellectual property rights **Subject** 2.10.03 Standardisation, EC/EU standards and trade mark, certification, compliance 3.50.15 Intellectual property, copyright 3.50.16 Industrial property, European patent, Community patent, design and pattern 4.45.10 Literary and artistic property 7.30.30.10 Action against counterfeiting 8.40.08 Agencies and bodies of the EU	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	MASIP HIDALGO Antonio (S&D)	11/07/2011
	Shadow rapporteur MÉSZÁROS Alajos (PPE) WIKSTRÖM Cecilia (ALDE) LICHTENBERGER Eva (Verts/ALE) KARIM Sajjad (ECR) MAŠTÁLKA Jiří (GUE/NGL) SPERONI Francesco Enrico (EFD)	

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	BIELAN Adam (ECR)	20/07/2011
CULT Culture and Education	VERHEYEN Sabine (PPE)	13/07/2011

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Competitiveness (Internal Market, Industry, Research and Space)	3133	2011-12-05
	Transport, Telecommunications and Energy	3156	2012-03-22
European Commission	**Commission DG**	**Commissioner**	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	
European Economic and Social Committee			

Key events

Date	Event	Reference	Summary
24/05/2011	Legislative proposal published	COM(2011)0288	Summary
07/06/2011	Committee referral announced in Parliament, 1st reading		
05/12/2011	Debate in Council		Summary
20/12/2011	Vote in committee, 1st reading		
09/01/2012	Committee report tabled for plenary, 1st reading	A7-0003/2012	Summary
13/02/2012	Debate in Parliament		
14/02/2012	Decision by Parliament, 1st reading	T7-0032/2012	Summary
14/02/2012	Results of vote in Parliament		
22/03/2012	Act adopted by Council after Parliament's 1st reading		
19/04/2012	Final act signed		
19/04/2012	End of procedure in Parliament		
16/05/2012	Final act published in Official Journal		

Technical information

Procedure reference	2011/0135(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1 Treaty on the Functioning of the European Union TFEU 118-p1
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/06109

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE474.085	21/10/2011	
Committee opinion	IMCO	PE470.071	23/11/2011	
Committee opinion	CULT	PE472.122	01/12/2011	
Amendments tabled in committee		PE478.366	01/12/2011	
Committee report tabled for plenary, 1st reading/single reading		A7-0003/2012	09/01/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0032/2012	14/02/2012	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00080/2011/LEX	19/04/2012	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0288	24/05/2011	Summary
Document attached to the procedure	SEC(2011)0612	24/05/2011	
Document attached to the procedure	SEC(2011)0613	24/05/2011	
Commission response to text adopted in plenary	SP(2012)213	21/03/2012	
Follow-up document	COM(2020)0755	24/11/2020	
Follow-up document	SWD(2020)0282	25/11/2020	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2011)0288	10/08/2011	
Contribution	PT_PARLIAMENT	COM(2011)0288	07/11/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Regulation 2012/0386 OJ L 129 16.05.2012, p. 0001	Summary

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

2011/0135(COD) - 05/12/2011

Ministers took note of the progress made on three files under examination by the Council preparatory bodies in the field of intellectual property:

- a draft directive on the protection of orphan works;
- **a draft regulation for entrusting the Office for Harmonisation in the Internal Market with certain tasks related to the protection of intellectual property; and**
- a draft regulation concerning customs enforcement of intellectual property rights.

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

2011/0135(COD) - 09/01/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report drafted by Antonio MASIP HIDALGO (S&D, ES) on the proposal for a regulation of the European Parliament and of the Council on entrusting 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.

It recommended that the European Parliament's position, adopted at first reading under the ordinary legislative procedure, should be to amend the Commission proposal as follows:

Subject matter and scope: Members stipulate that the this Regulation entrusts the Office for Harmonization in the Internal Market with tasks aimed at facilitating and supporting the activities of national authorities, the private sector and the institutions of the Union in the fight against infringements of the intellectual property rights covered by Directive 2004/48/EC on the enforcement of intellectual property rights.

In carrying out these tasks, the Office shall organise, administer and support the gathering of experts, authorities and stakeholders assembled under the name "European Observatory on the infringements of Intellectual Property Rights".

The tasks and activities of the Office under this Regulation do not extend to participation in individual operations or investigations carried out by the competent authorities.

Tasks and activities: the Office shall have the following tasks:

- improving the understanding on the value of intellectual property;
- improving the understanding on the scope and impact of infringements of intellectual property rights;
- assisting in raising citizens' awareness of the impact of infringements of intellectual property rights;
- enhancing the knowledge on technical tools to prevent and tackle the infringement of intellectual property rights, including tracking and tracing systems which help to distinguish genuine from counterfeit products;
- providing mechanisms which help to improve the online exchange, between Member States' authorities working in the field of intellectual property rights, of information related to the enforcement of such rights, and fostering cooperation with and between these authorities.

In the fulfilment of the tasks, the Office shall carry out the **following activities**:

- providing regular assessments and specific reports by economic sector, including an assessment of the effects on SMEs, as well as health, environment, safety and security;
- collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory, and, if applicable, making recommendations for strategies based on such practices;
- drawing up reports and publications to raise awareness among the Union's citizens of the impact of infringements of intellectual property rights, and to this end, organising conferences, events and meetings at European and international levels as well as assisting national and pan-European actions, including on-line and off-line campaigns, principally by providing data and information;
- monitoring the development of new competitive business models that enlarge the legal offer of cultural and creative content, encouraging the exchange of information and raising consumer awareness in this respect;
- organising ad hoc meetings of experts, including meetings of academic experts and meetings of relevant representatives of the civil society, to support its work under this Regulation.

Meetings of the Observatory: in order to carry out the activities, the Office shall invite to meetings of the Observatory, at least once a year, representatives from public administrations, bodies and organisations in the Member States dealing with intellectual property rights and representatives from the private sector, for the purpose of participating in the Office's work under this Regulation. Representatives meeting as the Observatory invited from the private sector shall include a broad, representative and balanced range of Union and national bodies representing the different economic sectors, **including the creative industries**, most concerned by or most experienced in the fight against infringements of intellectual property rights.

Members or other representatives of the European Parliament and representatives from the Commission shall be invited to any of the meetings, either as participants or observers, as appropriate.

The names of the representatives, the agenda and the minutes of the meetings shall be published on the Office's website.

Information obligations: without prejudice to the law governing the processing of personal data and to the protection of confidential information, **private sector representatives** meeting as the Observatory shall, when possible, at the request of the Office:

- inform the Office of policies and strategies in their field of activity on the enforcement of intellectual property rights and any changes thereto;
- provide statistical data on infringements of intellectual property rights in their field of activity.

Content of the work programme and of the management report: the Office shall draw up an annual work programme that prioritises the activities appropriately under this Regulation and for the meetings of the Observatory, in line with the Union's policies and priorities in the field of protection of intellectual property rights, and in cooperation with the Observatory representatives.

The work programme shall be submitted to the Office’s Administrative Board for information. It shall contain an overall assessment of the fulfilment of the Office's tasks as well as observations on the enforcement of intellectual property rights and potential future policies and strategies, including on how to enhance an effective cooperation with and between Member States.

The President of the Office shall consult the Observatory representatives on the relevant parts of the management report referred to in this Article before submitting the report to the European Parliament, the Commission and the Administrative Board.

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

2011/0135(COD) - 14/02/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 569 votes to 15 with 71 abstentions a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on entrusting 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

Parliament adopted its position on first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement negotiated between Parliament and Council. The main amendments are as follows:

Subject matter and scope: in accordance with Members’ requirements, it is stipulated the Regulation entrusts the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with tasks aimed at facilitating and supporting the activities of national authorities, the private sector and the Union institutions in the fight against infringements of the intellectual property rights covered by Directive 2004/48/EC.

In carrying out these tasks the Office shall organise, administer and support the gathering of experts, authorities and stakeholders assembled under the name ‘European Observatory on Infringements of Intellectual Property Rights ’.

Tasks and activities: the tasks and activities of the Office under the Regulation do not extend to participation in individual operations or investigations carried out by the competent authorities.

The Office shall have the following tasks:

- improving understanding of the value of intellectual property;
- improving understanding of the scope and impact of infringements of intellectual property rights;

- assisting in raising citizens' awareness of the impact of infringements of intellectual property rights;
- enhancing knowledge of the technical tools needed to prevent and tackle infringements of intellectual property rights, including tracking and tracing systems which help to distinguish genuine products from counterfeit ones
- providing mechanisms which help to improve the online exchange, between Member States' authorities working in the field of intellectual property rights, of information relating to the enforcement of such rights, and fostering cooperation with and between those authorities;
- working, in consultation with Member States, to foster international cooperation with intellectual property offices in third countries so as to build strategies and develop techniques for the enforcement of intellectual property rights, skills and tools.

In the fulfilment of these tasks, the Office shall carry out the following **activities**:

- establishing a transparent methodology for the collection, analysis and reporting of independent, objective, comparable and reliable data relating to infringements of intellectual property rights;
- providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of infringements of intellectual property rights on society and the economy, including an assessment of the effects on small and medium-sized enterprises, as well as on health, the environment, safety and security;
- collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory, and, if applicable, making recommendations for strategies based on such practices;
- assisting national and Europe-wide actions, including online and offline campaigns, principally by providing data and information;
- monitoring the development of new competitive business models which enlarge the legal offer of cultural and creative content, and encouraging the exchange of information and raising consumer awareness in this respect;
- organising ad hoc meetings of experts, including academic experts and relevant representatives of civil society, to support its work under this Regulation;
- identifying and promoting technical tools for professionals and benchmark techniques, including tracking and tracing systems which help to distinguish genuine products from counterfeit ones;
- working with national authorities and the Commission to develop an online network facilitating the exchange of information on infringements of intellectual property rights between public administrations, bodies and organisations in the Member States dealing with the protection and enforcement of those rights.

In carrying out these tasks and activities, the Office shall comply with existing provisions of Union law on data protection.

Meetings of the Observatory: in order to carry out the activities the Office shall at least once per year invite to meetings of the Observatory representatives from public administrations, bodies and organisations in the Member States dealing with intellectual property rights and representatives from the private sector. Representatives meeting as the Observatory invited from the private sector shall include a broad, representative and balanced range of Union and national bodies representing the different economic sectors, including the creative industries.

Consumer organisations, small and medium-sized enterprises, authors and other creators shall be properly represented.

In addition to these meetings, the Office shall organise meetings consisting of: (i) representatives from the public administrations, bodies and organisations in the Member States, or (ii) private sector representatives.

Members or other representatives of the European Parliament and representatives from the Commission shall be invited to any of the meetings, either as participants or observers, as appropriate.

The names of the representatives attending, the agenda and the minutes shall be published on the Office's website.

Information obligations: without prejudice to the law governing the processing of personal data and to the protection of confidential information, private-sector representatives meeting as the Observatory shall, when possible, at the request of the Office:

- inform the Office of policies and strategies in their field of activity on the enforcement of intellectual property rights and any changes thereto,
- provide statistical data on infringements of intellectual property rights in their field of activity.

Content of the work programme and of the management report: the Office shall draw up an annual work programme that appropriately prioritises the activities under this Regulation and for the meetings of the Observatory, in line with the Union's policies and priorities in the field of protection of intellectual property rights and in cooperation with the at the Observatory. The activity report shall contain (a) observations on the enforcement of intellectual property rights and potential future policies and strategies, including on how to enhance effective cooperation with and between Member States; (b) an overall assessment of the proper representation in the Observatory of all the actors. Lastly, before submitting the management report to the European Parliament, the Commission and the Administrative Board, the President of the Office shall consult the on the relevant parts of the report.

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

2011/0135(COD) - 19/04/2012 - Final act

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 (IPR).

LEGISLATIVE ACT: Regulation (EU) No 386/2012 of the European Parliament and of the Council 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.

CONTENT: the Council adopted a Regulation **entrusting the EU's office for harmonisation in the internal market (OHIM) with new tasks related to the enforcement of intellectual property rights**. The adoption follows an agreement with the European Parliament at first reading.

The OHIM, which is the EU's trade marks and designs office, will carry out new tasks aimed at facilitating and supporting the activities of national authorities, the private sector and the EU institutions in the fight against infringements of intellectual property rights.

In carrying out these tasks the OHIM will organise, administer and support the gathering of experts, authorities and stakeholders assembled under the "**European observatory on infringements of intellectual property rights**".

The new tasks of the OHIM do not extend to participation in individual operations or investigations carried out by national authorities.

Tasks and activities: the Office shall have the following tasks:

- improving understanding of the value of intellectual property;
- improving understanding of the scope and impact of infringements of intellectual property rights;
- enhancing knowledge of best public and private sector practices to protect intellectual property rights;
- assisting in raising citizens' awareness of the impact of infringements of intellectual property rights;
- enhancing the expertise of persons involved in the enforcement of intellectual property rights;
- enhancing knowledge of technical tools to prevent and tackle infringements of intellectual property rights, including tracking and tracing systems which help to distinguish genuine products from counterfeit ones;
- providing mechanisms which help to improve the online exchange, between Member States' authorities working in the field of intellectual property rights, of information relating to the enforcement of such rights, and fostering cooperation with and between those authorities;
- working, in consultation with Member States, to foster international cooperation with intellectual property offices in third countries so as to build strategies and develop techniques, skills and tools for the enforcement of intellectual property rights.

Meetings of the Observatory: in order to carry out the activities, the Office shall at least **once per year** invite to meetings of the Observatory representatives from public administrations, bodies and organisations in the Member States dealing with intellectual property rights and representatives from the private sector, for the purpose of their participation in the Office's work under this Regulation.

Private-sector representatives invited to meetings of the Observatory shall include a broad, representative and balanced range of Union and national bodies representing the different economic sectors, **including the creative industries**.

Consumer organisations, small and medium-sized enterprises, authors and other creators shall be properly represented.

Members or other representatives of the European Parliament and representatives from the Commission shall be invited to any of the meetings covered by this Article, either as participants or observers, as appropriate.

Information obligations: private-sector representatives meeting as the Observatory shall, when possible, at the request of the Office: (a) inform the Office of policies and strategies in their field of activity on the enforcement of intellectual property rights and any changes thereto; (b) provide statistical data on infringements of intellectual property rights in their field of activity.

Content of the work programme and of the management report: the Office shall draw up an **annual work programme** that appropriately prioritises the activities under this Regulation and for the meetings of the Observatory, in line with the Union's policies and priorities in the field of protection of intellectual property rights and in cooperation with the representatives from the Observatory.

Before submitting the management report to the European Parliament, the Commission and the Administrative Board, the President of the Office shall consult the representatives on the relevant parts of the report.

Evaluation: the Commission shall adopt a report evaluating the application of this Regulation by 6 June 2017. The report shall assess the operation of this Regulation, in particular as regards its impact on the enforcement of intellectual property rights in the internal market.

ENTRY INTO FORCE: 05/06/2012.

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.