

Knowledge and Awareness Building Conference

# Counterfeiting of foodstuff, beverages and agricultural products

EXECUTIVE SUMMARY



An event co-chaired by  
European Union Intellectual Property Office (EUIPO),  
Europol and Eurojust

16-18 March 2016

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On the 16, 17, and 18 March 2016, a knowledge building and awareness conference was co-chaired and hosted by the European Union Intellectual Property Office (EUIPO), Europol and Eurojust. Through the European Observatory on Infringements of Intellectual Property Rights, the EUIPO enjoys close cooperation with Europol and Eurojust through the development of knowledge and competencies in IP enforcement. The conference formed the eighth event within a programme on specific sectors threatened by IP crime, and focused on the counterfeiting of foodstuffs, beverages and agricultural products.

The event aimed to enable Member States and third countries to discuss the complex issues surrounding the identification and seizure of counterfeit foodstuffs and beverages, and to strengthen cooperation between law enforcement agencies (LEAs) working in this area. Key participants included experienced investigators, brand protection managers from the private sector, legal experts, policy makers and representatives from the judiciary and associations, who amalgamated at EUIPO in order to discuss best practice, the daily practical issues facing LEAs, and to identify new methods of collaboration in order to protect IPRs within the foodstuffs sector.

During the three day conference, participants heard presentations from Europol, UNICRI, ASAE (Portugal), the Community Plant Variety Office (CPVO), the UK IPO, the Scotch Whisky Association and Nestlé. One of the conference sessions focused on geographical indications (GIs), and progress and methodology of the study on infringements of GIs currently under research by the Observatory was detailed. On the second day of the conference, participants were divided into four simultaneous workshops which enabled them to concentrate on specific questions, to discuss challenges and identify practical steps forward from a Customs, police and prosecutorial point of view. The bullet points from these workshops are included in an annex at the end of this report.

It is estimated that counterfeit foodstuffs and beverages generate USD 49 billion annually. Notably, fake and substandard foodstuff and beverage commodities pose a particular and additional threat because consumers who purchase the products are likely to believe them to be genuine. Unlike other counterfeit products, it is doubtful that consumers would deliberately procure food or beverage that they believed to be dubious in origin. Resultantly, the majority of illegally manufactured food and drink must at some point penetrate the legal supply chain. Ultimately, counterfeit food products pose a substantial threat to product security and market integrity, in addition to a direct and serious risk to European citizens of all ages.

Figures released by DG AGRI in January 2016 reveal that in 2014, EU Member States contributed to 58.7% of the total world wine production figure, which is currently estimated at €27.4 billion. Owing to its high profit margins, the wine sector has been frequently targeted by organised counterfeiting groups; in an article published by the UK Daily Telegraph in November 2013, it was suggested that counterfeit wine accounts for 20% of international sales. Based on 2014 data submitted by DG TAXUD on Member State seizures, the Observatory report “EU Border Recoveries of IPR Infringing Food and Beverage Products: 2014”, distributed to the participants of the seminar, reveals a specific threat from entities in Eastern Europe which attempt to access Europe with infringing products. However, seizures of infringing and dangerous food and beverage items exported from Africa, South America, and China demonstrate that the problem is not confined to one geographical area or OCG. Analysis of the various products and their values underlines the different business methodologies used by OCGs in the various countries of provenance. China exports high volumes with low unit value consignments, whilst Panama exports relatively low numbers of units with high unit values. The transport methods identified in the case studies and analysed in the report clearly highlight that the vast majority of infringing consignments are shipped in bulk - either by sea or by road. Presentations during the conference underlined the volatility of transportation routes from Asia and the Middle East into Europe which are able to constantly adapt in order to avoid detection.

The evolution of counterfeiting in the food and beverage industry was explained, which has moved from a cottage industry into a sophisticated, large scale production and supply chain system. Criminal networks possess access to high quality packaging and labelling which is difficult to distinguish from genuine products. It was agreed that the main driver in the supply chain is e-commerce platforms and global shipping capabilities. Nestlé highlighted the scale of counterfeited food and beverage products which calls for increased dedication on behalf of the private sector to support enforcement action in order to achieve the highest impact to organised criminal networks - including detection of production sites and major distributors.

OLAF's presentation highlighted the industrial scale of production and the increasing trend toward domestic production via clandestine factories using illegal workforces within the EU territory. OLAF underlined the necessity to establish systems of cooperation with third countries and with the private sector in order to obtain accurate information which could be used for investigations.

Presentations by enforcement authorities underlined the need to establish multiagency and multidisciplinary collaboration at strategic, formal and bilateral levels owing to the transnational nature of food crime and the various jurisdictions involved in the transport of infringing and substandard food products, as well as the various regions involved in the flow of money. The UK IPO's presentation underlined the interconnecting links between counterfeit goods, tax evasion and dangerous and substandard goods. It also highlighted how collaboration between different authorities including regional crime units, Customs, trading standards, and academia can lead to the detection of various interlinking violations. The model used in Operation OPSON was highlighted as best practice, including knowledge of the trade, experts in the industry and advice from academia.

A case study from the FSA (Ireland) on the production and distribution of counterfeit wine and vodka explained with clarity that the production and sale of counterfeit is linked with other crimes including tobacco smuggling, drug dealing, money laundering and tax evasion, and is carried out in an increasingly sophisticated manner, involving fake facing companies, bank accounts in many countries, and complex logistics methods which stretch across many jurisdictions. OCLAESP underlined the importance of pursuing the confiscation of proceeds of crime, in order to destabilise criminal networks and remove the objective of their illegal activities.

UNICRI underlined the increasing trend in Italy towards diversified investment by OCG into the legal supply chain; in essence, crime groups are increasingly buying shares in the legal economy in each Member State. This causes problems when organisations such as supermarkets buy food products from them in the belief that they are procuring goods from legitimate companies. It also offers OCGs the opportunity to trade with less risk whilst enjoying high financial returns.

Debates within the workshops suggested a general lack of knowledge held by Customs with regard to the food and beverage sector, and a lack of knowledge regarding the gravity and implications of IP crime held by prosecutors. Discussions also highlighted the practical obstacles faced by Customs on a daily basis including the difficulties in tracing food within the supply chain because it is a brokered and often re-exported commodity; plants and foodstuffs are often described in a generic way on shipping documents, which make suspicious items difficult to detect; and detailed chemical analyses of the foods seized must be carried out prior to proceeding with an investigation, which can lead to lengthy delays in cases involving perishable products. It was suggested that EU harmonised guidelines on how analysis could be carried out at national level should be produced.

Within the framework to reduce IP infringements in Europe - which is an initiative based on a proposal by the UKIPO - the Observatory aims to demonstrate how commercial scale infringers deliver products to the market using their own developed networks, and how they infiltrate the legitimate supply chains with IP infringing goods. The main objective of the study is to improve understanding of how both the legal and illegal supply chains of function, and to identify effective practices which could be implemented by LEAs to disrupt the supply chain of commercial scale infringements. It was agreed at the conference that work must be done in order to enhance industry support because often, the actors hide themselves within the legal supply chain - including restaurants, food distributors and wine dealers.

Notably, a general social tolerance of IP crime and counterfeiting was cited as an integral element in the existence of counterfeit products important role - which includes the attitude held by police officers and judges.

The Observatory gave an update on their GI study carried out in cooperation with DG AGRI whose main objective is to form an inventory in order to assess the formal controls in the context of (Regulation EC 882/2004) and informal controls in place, which include administrative measures to facilitate sampling. A map of remedies will also be created, in terms of civil, criminal and administrative measures, with the aim of creating a practical guide document for national use, with focus on cross-border violations and the competent authorities to contact in each Member State.

It was agreed that higher level of cooperation is needed with Eurojust and Europol on cross-jurisdictional cases in order to harness multidisciplinary expertise and competencies within investigations. Effective civil, administrative and criminal remedies were discussed and the conference concluded that a holistic approach using a range of enforcement tools, practices, intelligence and legislation must be used in order to effectively tackle commercial scale counterfeiting in this sector. Notably, it was suggested that the issue is a common one faced by the public and private sectors, and with a common goal. To this end, it was agreed that enhanced relationships must be established between European and international law enforcement agencies (LEAs); between the public and private sectors; and with key intermediaries including e-commerce and social media platforms in order to ensure a comprehensive and systematic approach to fight the increasing problem of counterfeiting and IP crime.

### Welcome Speech and Introduction

The Deputy Director of the Observatory on Infringements of Intellectual Property Rights warmly welcomed all participants to the conference. The three day event formed the eighth conference within a sectorial conference programme, involving 100 participants from across 27 Member States and four non-EU Member States. He underlined the successful interagency collaboration with Europol and Eurojust, and participation from European competent authorities including the police, market surveillance, prosecutors, the European Commission, OLAF, EFSA, CPVO, WCO, Interpol, UNICRI, and the private sector.

He underlined the four main work streams of the Observatory, which focus on the creation of empirical studies and reports to improve understanding and knowledge surrounding IP; initiatives to enhance the knowledge of enforcement authorities including the European Intellectual Property Prosecutors' Network (EIPPN) and the 800 strong judges' network; the development of IT tools to support LEAs; and to assist Member States in raising awareness of citizens regarding the value of IP and the negative impact of counterfeiting on the economy and on public health.

He introduced the agenda and explained the interactive theme of the conference, including case study presentations by the private sector alongside practical investigative cases from police authorities, in order to share best practice. He underlined the essence of the Observatory's inclusive network, which is based on knowledge sharing between public and private sector authorities from across the Member States and relies on proactive participation, cooperation, and networking.

The Deputy Director highlighted the opportunities during the conference to network, to consolidate relationships and to gather information concerning best practice and practical solutions. Notably, a section dedicated to the infringement of geographical indications (GIs) took place on the second day of the event, alongside workshops during which specific questions were discussed and tackled by participants.

He thanked to Eurojust and Europol for their cooperation in organising the conference, and referred to the imminent signing of an MoU with Eurojust which will form the basis of future joint initiatives.

Eurojust thanked the Observatory and expressed the hope that judicial cooperation, referrals to Eurojust by Member States, and cross-border organised crime issues would be discussed in detail during the conference. They highlighted the programme's utility in improving knowledge on commercial infringement in the foodstuffs sector amongst the amalgamated prosecutors and LEAs.

Europol expressed their commitment to the longstanding cooperation with EUIPO which has been recently consolidated in the establishment of the new Intellectual Property Crime Coordination Centre (EIPCCI) at Europol. The centre is funded by EUIPO and will open on 12 July 2016.

### The Point of View of Brand Owners – Nestlé

Nestlé is the largest global food and beverage company in the world, and operates within 197 countries. Their presentation underlined the impact of counterfeiting on the foodstuffs industry, which has grown exponentially during the last five years. It is estimated that counterfeit foodstuffs and beverages generate USD 49 billion annually; if such a revenue belonged to a legitimate entity, it would hold third place in the global ranking of food and beverage industries.

The presentation underlined the importance of raising awareness regarding the threat to the public health of citizens of all ages. Nestlé applies strict quality criteria and strict safety criteria because the health and safety of their consumers is prioritised. Counterfeit foodstuffs do not respect any quality criteria and risk the health and safety of consumers, containing unknown provenance ingredients. Additionally, the products mislead consumers and undermine brand trust owing to negative brand exposure via social media and the internet and additionally, undermine the legitimate market share and profitability of companies in this industry.

The speaker explained the evolution of counterfeiting in the food and beverage industry, which has moved from a cottage industry into a sophisticated large scale production and supply chain system. Additionally, criminal networks have access to high quality packaging and labelling which is extremely difficult to distinguish from genuine products. The rise of e-commerce platforms and improvements in global shipping capabilities play a significant role in the illegal supply chain. Three main types of counterfeiting models can be identified – packaging and supply within China; packaging in Asia and supply within Europe; and production and distribution in mainland Europe.

The scale of counterfeited food and beverage products requires an increased dedication to interagency enforcement actions in order to result in the highest impact to organised criminal networks – which involve working alongside

major distributors, the rapid detection of production sites, and the consolidation of relationships with LEAs. During the last two years of their implementation strategy, Nestlé supported 1571 global enforcement actions in 2015 via administrative, Customs led, criminal and civil actions. Nestlé’s proactive corporate strategy aims to assist enforcement authorities and includes the transparent production of lawfully obtained evidence and the process of obtaining information. They participated in Operation OPSON in cooperation with Interpol and Europol, which resulted in record numbers of seizures of infringing food and beverage products.

Nestlé explained that their decision to engage in either civil or criminal law suits depends on the jurisdiction and the legal systems in place; the criminal process offers the most deterrent sanctions, whilst criminal cases are often supported with civil remedies. Subsequent to Operation OPSON, Nestlé’s efforts have been shown to be effective, because less market based enforcement seizures have been noted, which have led to upstream enforcement investigations.



It was explained that there less-developed retail industries suffer from prolific infiltration via entry points in the legal supply chain. In the case of food and beverages, a main entry point has been established in restaurants and nightclubs because the packaged products are not visible to consumers - which results in opportunities for infiltration by counterfeiters and abettors.

The speaker also emphasised that the transportation routes into Europe are volatile and constantly adapt in order to avoid detection; the Middle East was cited as a main provenance area. LEAs participating at the conference underlined their willingness to support the private sector in terms of gathering information.

### The Point of View of Breeders – The European Seed Association (ESA)

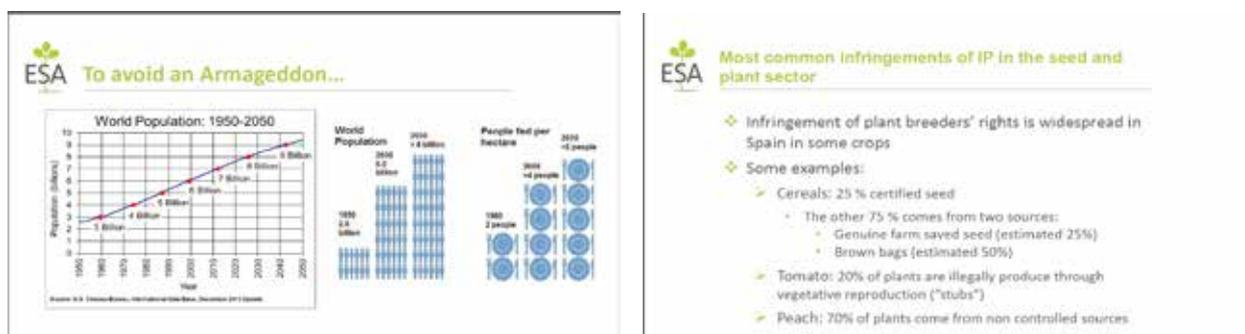
The presentation focused on the infringements to plant variety rights (PVRs) and enforcement of PVRs. IPRs are indispensable in the protection of breeders’ efforts and investments.

ESA membership includes 38 national seed associations, 48 members and 30 associate company members. The European seed market enjoys a €7 billion annual turnover and employs 52,000 people. The industry requires a high level of research investment into the enhancement of crop yields, resistance to disease, nutritional quality, and plant breeding.

The scope of protection set out under the UPOV Convention is based on propagating material (whole or parts of plants), harvested material (fruits) and products obtained directly from material of the protected variety. However, there are “farmers’ exemptions” with the restriction that the breeder is informed and remunerated by larger

agricultural businesses. Notably, the most commonly infringed products include fake farm saved cereals, and fake seeds.

The presentation underlined the main obstacles to enforcement which include the relative ease of the manufacture and distribution of fake seeds. Conversely, there is a lack of commitment by the competent authorities in the prosecution of counterfeited plants and seeds, and there is a lack of dissuasive fines across Europe. Additionally, there is a general lack of knowledge concerning the applicable regulations and technical aspects involved in PVR. Furthermore, farmers' privileges regarding entry onto private land thwarts a large number of investigations.



A key judgement by the German Supreme Court Ruling (XZR93/04 on 14 Feb 2006) in the "Melanie" case underlined the liability of third parties acting within the supply chain who should not put into circulation products which do not possess the relevant IP rights; the ruling underlined that the supplier should have held adequate knowledge. The ESA explained to the floor their environmental protection training programme which took place in 2013 and which was held in cooperation with Seprona (the Guardia Civil's nature protection unit) in order to raise awareness regarding counterfeit plant products. The Observatory underlined their commitment to the potential for enforcement training in collaboration with ESA.

It was noted that there is a loss of €30 - €35 million in Europe owing to the sale of seeds which have passed their expiry date. The floor asked which are the most useful tools to establish the counterfeit status of seeds and how to identify the legal origin of seeds. The ESA confirmed that the sole method to effectively test suspected counterfeit seeds are DNA tests. It is also very useful to enter the premises of suspected infringers. The ESA concluded their presentation by underlining the necessity to educate citizens regarding the scale of the problem.

### Project OPSON – Interpol and Europol

The presentation focused on the progress of the operation, which sits under the EU Policy Cycle of priorities and currently involves participation by 50 countries across the world - including the Member States, the Middle East and Asia, and America. During the four operations to date, 11,000 tonnes of infringing and substandard products have been seized, including unsanitary alcoholic products, fake meat products and machines seized in Africa and the Middle East which had been used to erase product expiry dates.

Europol's Focal Point Copy team works to tackle counterfeit food and beverage products, and in 2010 initiated cooperation with Interpol under the first international meeting on counterfeit and protected food products. During 2010, 3 million items were seized at EU borders alone. The main objectives of the joint initiative are to dismantle

organised criminal networks involved in the production and distribution of counterfeit food products, to raise awareness amongst consumers and LEAs, and to enhance cooperation between stakeholders including the private sector and food agencies.

Interpol explained that the issue of counterfeit food products is an increasing phenomenon on a global scale, facilitated by organised cross-border crime groups which work to generate money in opposition to the health and safety of citizens.



Case studies were presented, which reveal the commercial scale sales of expired food products, and the systematic production of substandard food and alcoholic products which list ingredients including toxic material and ingredients highly dangerous for human consumption.

The presentation highlighted the necessity to operate in a multidisciplinary manner and with complementary competencies. It was agreed that specific regard should be paid to capacity building events, regional enforcement communication, and the consolidation of relationships with the private sector – all of which would offer a more complete understanding of the complexities of the organised production of counterfeit food and beverage products. It was underlined that the issue must be dealt with sensitively when communicating with consumers, in order to avoid distress. Interpol and Europol joint objectives focus on expanding the number of private sector representatives and on reinforcing the existing network, whilst increasing capacity building and training for LEAs working in this field. They expressed their wish to collaborate closely with DG AGRI in future.

### Operation on Counterfeit Ground Coffee – OLAF

OLAF's core business focuses on the protection of the financial interests of the EU and the organisation has the authority to support investigations in third countries under specific violations of tax and IP infringement.

A case study was presented which underlined the success of interagency cooperation. French Customs and Belgium Customs worked alongside OLAF in order to dismantle the supply chain of counterfeit coffee entering the EU. French Customs informed Belgium Customs and OLAF assisted in tracing the products and in receiving information regarding similar items produced in Cambodia. OLAF used shipping documents and bills of lading with inaccurate declarations to trace the products to China, with distribution via Singapore and Malaysia, and eventual entry to mainland Europe via Italy. Dangerous chemical compounds used to imitate genuine coffee, and instruction manuals to make the products were also seized. Notably, the VAT and Customs duty on coffee are high (7.5%) and these margins are enjoyed by the criminal organisations behind the manufacture and distribution of fake coffee products. The speaker referred to the utility of the EU IPR Action Plan in place with China and Hong Kong authorities which enabled a direct exchange information with Hong Kong Customs concerning suspicious products leaving Shanghai port and destined for Hamburg.

The presentation highlighted the industrial scale of counterfeit production and the increasing trend towards domestic production of fake foodstuffs via clandestine factories which use illegal workers within the EU territory. OLAF underlined the necessity to consolidate relationships with third countries and to forge new relationships with the private sector in order obtain accurate information on which to base investigations.

### The Community Plant Variety System – CPVO

The presentation gave an overview of the Community Plant Variety System, and the Community Plant Variety Office (CPVO). The CPVO has been in operation since 27 April 1995 is based in Angers, France. It is a decentralised Community agency, with its own legal status and is self-financing, mainly on the basis of the fees paid. The CPVS offers intellectual property rights protection for 25 years (and up to 30 years for trees, potatoes and vines) and covers all botanical genera and species. Provisional protection can also be given, in order to cover the period between the application and granting of the right. Operational since 1995 and based in France, the CPVO has received over 55,300 applications for 1800 different species and has issued over 33,000 titles. The CPVO sits under the competence of the European Council, European Commission, the Court of Justice and the European Parliament. The CPVO's examination offices are based at national level and if successful, one application and the subsequent right/s offer protection across 28 Member States.

The technical and legal examination process and protocols were detailed, and the scope of material protection. The complexities of the scope involving propagating material and variety constituents were explained. The EU system is tailor made for the protection of plant variety rights including the establishment of breeder exemptions, agricultural exemptions, and exemptions covering acts carried out for experimental purposes.

Currently, there are no specialised courts competent for PVRs and there is an incomplete EU harmonisation regarding preliminary measures for infringement of PVRs.

## Operation OPSON Agenda in the UK; Past, Present and Future – IPO UK

Under EMPACT, the UK IPO Intelligence Hub focuses on how criminal manufacture and trade routes function. In many cases, the same logistics companies are used to transport legal and illegal products which presents problems - but also offers the potential for multinationals to apply pressure on logistics companies regarding their role in the implementation of due diligence.



Operation Loft targeted the seizure of fake champagne originating in Italy which had been imported into the UK and Ireland. Europol coordinated the joint effort which involved participation from the Guardia di Finanza and Gendarmerie. Subsequently, the UK's South East Regional Crime Unit detected prolific volumes of counterfeit products distributed through cash and carry businesses and self-storage units. The infringing and substandard goods were subsequently tracked and confiscated, alongside the proceeds of crime - which included warehouses, machinery and substantial amounts of money.

The presentation underlined the interconnecting links between counterfeit goods, tax evasion and dangerous and substandard goods. It also highlighted how collaboration between authorities with different competencies including regional crime units, Customs trading standards, and academia, can lead to the detection and prosecution of various violations.

The operation model used in OPSON was highlighted as best practice. The speaker underlined that the future of the operation relies on continual engagement with industry in order to encourage a flow of relevant intelligence from right holders, and proactive efforts of a food subgroup. It was noted that consumers are concerned by food crime and public communication messages should be carefully planned in order to reassure them about the preventative activities carried out by authorities.

## Collective Efforts in the Fight Against Counterfeit Food – FSA, Ireland

The presentation underlined a key message that the main objective of food crime is to generate large financial returns: food crime is organised and strategised by large criminal commercial entities. When dealing with the rise in food crime and the technical aspects of identifying and analysing counterfeit and substandard food, the Food Standards Agency (FSA) faced the following pertinent questions – are their food scientists competent to act as law enforcement regarding food crime? And conversely, are the police competent to analyse whether food is counterfeit or genuine; safe or unsafe?

The FSA Ireland is a member of the EU Food Fraud Network which concentrates on coordinating efforts and developing advanced techniques to rapidly analyse foods. Ireland’s National Food Fraud Task Force is a multidisciplinary investigational team which brings together Revenue and Customs, Garda Síochána, the FSA, food inspectors, and the DAFM in order to share intelligence and hold case conferences on specific foodstuffs under threat.



The presentation underlined the large practical difficulties in tracing food within the supply chain because it is a brokered commodity and is often exported and reexported via various continents. Additionally, the actors involved are able to hide themselves within the legal supply chain including restaurants, night clubs and food wholesalers. A case study on the production and distribution of counterfeit wine and vodka highlighted with great clarity that the production and sale of counterfeit is linked with other crimes including tobacco smuggling, drug dealing, money laundering and tax evasion, and is carried out in an increasingly sophisticated manner, involving cover companies, bank accounts based in many countries and complex logistics methods operated by interlinking OCGs across many jurisdictions.

**Experience and Case Study from Portugal – ASAE, Portugal**

ASAE (Autoridade de Segurança Alimentar e Económica) is the national authority in charge of the official food control system, including food safety and hygiene in all stages of production, storage and distribution. It is competent for law enforcement regarding food safety in Portugal. Based in Lisbon, ASAE also has a national investigation unit with national powers, supported by regional units. Its mission is to discipline economic activities relating to food and non-food sectors, and to assist judicial authorities. ASAE inspections may take place in all stages of the food chain – finished products and intermediaries, and at restaurants and social locations.

Preventative activities include training and knowledge building seminars, and risk assessments. The organisation is highly proactive in the establishment of technical and legislative annual priorities and in reactive planning based on complaints and reports on specific foods and sectors. ASAE has the competence to enforce administrative sanctions, and if criminal infringements are detected, ASAE will pursue a claim with the Public Prosecutor. Under the EMPACT priority, the organisation facilitates training and has organised a joint enforcement training event within EUIPO’s regional seminar programme, which will take place in Lisbon for the southern EU Member States.

The Observatory asked whether ASAE exchanged information regarding infringing products containing GIs and possessed a follow-up system with authorities and in other Member States. ASAE confirmed that they systematically forward all documentation to competent authorities in other Member States in order to report cases.

The Serbian Prosecution reported that feedback from their Court underlined that the information given by competent food and beverage authorities is often highly technical, and not fully understood by the Court in many cases.

### Experiences and a Case Study from France – OCLAESP

The Central Office against Public Health and Environmental Crimes (OCLAESP) sits under the French Home Office Authority. Founded in 2004, the organisation works alongside Customs; Gendarmerie nationale; the Medicine Agency; the Competition, Consumer and Fraud Inspectorate; Europol and Interpol, and consists of 350 special investigators and 80 embassy police attachés worldwide. OCLAESP also works alongside the private sector and organises training and awareness raising sessions with industry, with whom they expressed their wish to work more closely.

The organisation aims to coordinate all types of judicial and complex investigations, and to act as a single point of contact for criminal investigations. The unit houses seconded advisers, intelligence experts, cybercrime investigators, case managers, multilingual officers, and dedicated teams specialising in foodstuffs. The unit collects and manages criminal intelligence in order to monitor and analyse criminal activities and to participate in the implementation of new standards. In France, there are strong penalties related to public health threats caused by IP crime.

Under IP Key, OCLAESP took part in EUIPO's training conference on IPR criminal enforcement in China, with focus on counterfeit products which pose a threat to security and public health. The organisation has also been involved with Operation OPSON since the initial stages.

A case study was given on counterfeit wine which had been exported from China with suspicious shipping documents. The presentation underlined the quality of intelligence gathered through successful collaboration with the private sector – which, in this case, led to a criminal inquiry. The documents identified possessed faked verification by the French Chamber of Commerce, fake addresses, fake bills of lading and unknown companies. During the operation, the Chinese authorities seized the products. However, the infringing items fell below the threshold cited in Chinese criminal law so an administrative fine was applied, and the proceeds of crime were confiscated. The case also highlighted cooperation between the French and Chinese authorities, and the importance of pursuing the confiscation of proceeds of crime, in order to destabilise criminal networks and remove the objective of their illegal activities.

#### Conclusions

A review of the first day was given, which focused on the links between counterfeit food and beverage products, and OCGs, which enjoy large financial returns owing to the scale of production and sale of infringing and substandard goods.

It was agreed that a multiagency and multidisciplinary approach should be implemented, alongside the consolidation of relationships with industry in order to enable rapid and competent investigations within the Member States.

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## Day Two

### Workshops

Participants were divided into four simultaneous workshops which enabled them to concentrate on specific questions, to discuss challenges and identify practical steps forward from a Customs, police and prosecutorial point of view. The bullet points from these workshops are included in an annex at the end of this report.

#### Studies on Geographical Indications – EUIPO

The Observatory study which has been carried out in collaboration with DG AGRI is nearing completion and will be published simultaneously alongside the joint EUIPO-OECD study in April 2017. The methodology focuses on products infringing GIs, PDOs, and PGIs protected by TRIPS (Articles 22 and 23) and by EU legislation, which include protection of products from some third countries. The study is based on 2010 data submitted by DG AGRI concerning 2800 GIs and aims to analyse the economic impact of GI infringements. An estimation has been applied with regard to sales of infringing products and the impact on consumers using intra-EU trade statistics from industry and national authority sources. The total EU GI market consumption in 2014 equates to EUR 48 billion (producer prices), more than half of which consists of GI wine products.

The main issues identified in infringing GI products are the lenient attitudes held in relation to products which infringe GIs, and the disparities in Member States' controls - some of which are large producers and consumers of certified products, including Italy, Greece and Portugal. The disparities identified compromise the effectiveness and reliability of the function of GIs.

The scope of infringement in the study includes the unlawful use of names and logos; imitation, evocation or translation; non-compliance with product specification and any practice liable to mislead the consumer. The area of infringement includes 28 Member States but excludes third countries. Results will be presented with focus on the infringing market (country, product class and type of infringement) and the consumer impact caused. The presentation underlined the notable problem that approximately 21% GI infringements are carried out within retailers, distributors and restaurants directly and indirectly associated with the GI community.

A second study will be carried out by the Observatory, initiated by DG AGRI, which will focus on the national controls systems on GIs in the Member States. The Observatory explained that the need to make such a survey stems from the differences in controls procedures in place in the Member States, and the national disparities in available data. A main objective is to establish an inventory of control systems, comprising of "official controls" in the general legal framework of EU regulation on safety of food and agricultural products, and so called "ex officio" controls. A major part of the inventory will cover administrative procedures, control methodologies and sampling. A map of remedies will also be created in terms of civil, criminal and administrative measures, with the aim of developing a practical guide document for operators to better protect their rights, with focus on cross-border violations and contacts within each competent national authority.

The map will also contain existing tools which facilitate the exchange of information between Member States – and assist in mutual assistance.

UNICRI offered to send the Observatory their report on GIs which could be used as a comparison for the Observatory's study, or to support their findings.

The floor expressed their support of the Observatory's study.

### Counterfeit Spirits: The Challenge – Scotch Whisky Association, UK

A presentation was given on the whisky industry which underlined the problems of bulk shipments of counterfeit alcohol products and the difficulties in proving the status of fake whisky.

Annual whisky exports from the UK are worth 4 billion UK sterling which equates to 23% of the total annual export figures of food and drink products. Genuine Scotch whisky possesses strict quality and production controls and enjoys comprehensive EU legislation (Article 9 and 16 Regulation (EC) No 110/2008 of the European Parliament and the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks) and a strong compliance system which has been implemented in the UK since 2015.

The Scotch Whisky Association, UK, has 58 members whose role is to advance the global interests and profile of the product and the industry as a whole. Half of the association's budget is spent on legal affairs – there are approximately 60 ongoing civil cases across the globe at any point in time, and 100 trade mark oppositions, investigations and administrative complaints. Increasingly, the association aims to work alongside LEAs in order to support their efforts. The recent aim of the association is to disseminate information and training materials on the analysis of fake spirits across the Member States. UK Customs intend to publish a list of brands verified by HMRC. The presentation underlined the problems of cargo consignment certificates which purport to contain legal and genuine products; once in the EU, these products are mixed with other spirits and sold as blended whisky. It was suggested that enforcement focus should rest on entry points into the EU, because it is easier to detect prior into dissemination in the supply chain.

Feedback from the floor underlined the problems encountered by LEAs when attempting to secure support from the private sector.

### Experiences and a Case Study from Spain – Spanish Denomination of Origin

The presentation focused on the misleading use of the name of quality schemes in Spain. The main objectives of the association are to promote recognition of PDO and PGIs, and to promote dialogue concerning IPR at national and European level. The association aims to enhance knowledge amongst consumers and the general public in order to avoid consumption of infringing products, and to maintain the security of the supply chain.

A case study was presented which underlined violations of the denomination of origin, which exist on a huge scale in the case of certain food stuffs including saffron, which is labelled and exported fraudulently as Spanish in origin. These products infiltrate local markets and supermarket chains. The floor asked what enforcement actions are taken to deter such violations and it was noted that the association proactively pursues civil actions, and has signed agreements with the Guardia Civil in order to file criminal prosecution which complements administrative actions taken by Customs.

### Counterfeiting of “Prosciutto di Parma”: Concrete Examples – Consorzio del Prosciutto di Parma

It was explained that Prosciutto di Parma was one of the first products to be recognised and protected as a GI; it is protected under national legislation and enjoys protection in all EU Member States under Regulation (EU) 1151/2012. Approximately 30% of the national product is exported, and the USA is the largest consumer of Prosciutto di Parma.

The consortium was founded in 1963 and is a voluntary association of producers (it consists of 150 producers and 50,000 employees) with the aim of protecting and promoting Parma ham. Under specific national legislation, the product must be produced within a certain area and made only with Italian pork via a strictly controlled curing process. EUCJ case-law (C-108/01) recognises the production systems of Parma ham following a case of infringing Parma ham which infiltrated the supermarket supply chain.

Surveillance is carried out by producers and official bodies across the globe with which the association has established relationships, in order to impose and maintain controls. The majority of intelligence and risk assessments are submitted by enforcement bodies including Customs, and it was noted that the majority of infringement is carried out within Italy.

The association's agreed strategy is to send cease and desist communication and to liaise with the international legal office in order to deter infringing distribution. Annually, over 1 million EUR is spent on enforcement and surveillance activities in order to protect the GI. In third countries, however, there are difficulties in the enforcement of rights – in particular, with regard to a Canadian Parma ham which had registered a trade mark in 1950s called "Parma".

The association's main objective with regard to consumer relations is to educate the public about the quality and identifying the quality features of Parma ham.

### Conclusions

The main points of the day were reviewed, including presentations which underlined the commercial scale of counterfeit foodstuffs and beverages. The active role of OCGs was also discussed, alongside the links to other crimes including tax evasion, money laundering and human trafficking.

It was noted that a multidisciplinary and multiagency approach must be harnessed in order to achieve rapid results owing to the cross-border nature of organised IP crime, and the growing scale of the activity.

### Session Five: New Challenges

#### Challenges in the Digital Space – Apple 36 Consulting

A presentation was given on food fraud and online advertising of counterfeit food and beverage products, with emphasis on the confectionary industry. The speaker underlined the difficulties in identifying the scale of the problem owing to its constant evolution and the increasingly sophisticated methods of automated production and packaging used by OCGs with links between Europe and China. Additionally, the presentation highlighted the obstacles to overcome between Customs' needs and approaches, and rights holders' needs and approaches. The majority of seizures occur within investigations involving extremely short timescales in which right holders are approached in order to identify products, and issues surrounding data protection. In many cases, it was suggested that useful Customs' information is not given to rights holders.

The importance of the private sector's efforts to gather intelligence was underlined -which is procured by some companies via private investigation organisations – in order to build understanding about the scale of the problem. Intelligence gathered highlighted the methods used by counterfeiters including systematic separation of labelling and packaging; the location of manufacture; and critical volumes of shipments from China and use of e-commerce

as a sale channel. Notably, the scale of business to consumer (B to C) sales is facilitated by the opportunity for anonymous and direct sales to the consumer via the internet. Business to business (B to B) sales typically involve large volumes of products placed in 40 feet ship containers, which offer bulk shipments. It was noted that enforcement efforts focus on logistics intelligence, including unexpected directions of supply and products which emanate from unusual origins of manufacture.

Brand protection support tools used by industry were cited, including Netnames and Mark Monitor which can be used to build risk analysis on group platform sellers and on their geographical location, and in order to map trends in price points used by criminal networks. Interestingly, it was explained that social media accounts and postings can be tracked via the use of apps to a specific geographical location. Using digital intelligence can support targeted physical investigations across the world, including enforcement raids.

Customer complaints throughout the EU can be collated in order to plot a geographical map of counterfeited products, followed by the facilitation of controlled purchases.

#### Infringement of Decorative Flowers and Fruits - CIOPORA

The presentation underlined the presence of organised crime groups behind the production and distribution of commercially cut flowers.

CIOPORA (the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties) was founded by ornamental breeders with the establishment of UPOV. The organisation offers advice regarding the content of IP laws and enforcement tools; composes position papers on plant breeding rights; networks and lobbies on behalf of members; and is in charge of the coordination of breeders' IP positions before governments. The CIOPORA Academy offers a training and certification programme for individuals seeking to expand their knowledge on IP rights in the field of horticulture, including producers and breeders, and enforcement officers. The enforcement of plant breeding rights (PBR) protects the royalties of right holders and it prevents overproduction and dumping. It protects exclusivity, which is the exclusive right to grow a variety granted to a grower or a group of growers. Increasingly, it is necessary to prevent the illegal trade of commercially grown cut flowers from South America through preliminary injunctions and via AFAs in terms of Customs, civil and criminal actions. In this sense, it is possible to enforce PBR and patents in one or several countries. However, the speaker explained the necessity for horticultural technical experts to work on site when commodities of infringing products are discovered, in order to check whether the goods are genuine or not – for example, to ascertain whether royalties have been paid, and in order to identify the grower or propagator of a specific cut flower variety.

A case study was given on a joint action which took place in February 2008 at the main airport entry points of Schiphol, Madrid and Heathrow – which involved breeders, Customs and the European Commission. The operation was a huge success and resulted in the seizure and destruction of tens of thousands of confiscated and illegal roses found within 20 shipments and involved 160 Community PRBs. A formal dialogue between traders and growers regarding the establishment of joint efforts to maintain IP compliance was established, and a deterrent message to infringers was conveyed. Importantly, new requests for license contracts were received following the dialogue. A second case study was given which involved an infringing apple producer based in Italy. Ex parte interim measures were issued, followed by a search order. Technical expert documentation was composed, based on an affidavit concerning the existence of the specific cultivation area, and with the aim to pursue an action on the merits based on damages for unpaid royalties – which was achieved successfully.

The speaker underlined the importance to raise awareness amongst the public and amongst LEAs regarding PBRs and their value to the European economy.

CIOPORA underlined their wish to consolidate relationships and cooperation with enforcement authorities in order to sustain efforts focused on tackling IP crime in the commercially cut flowers and fruits sector. They also explained the need to find a harmonious solution with growers in source countries including Kenya, Ethiopia and Colombia. UPOV detailed their programme with third countries including Africa; with the support of the Dutch examination office and European companies which invest in these countries, they have been able to raise awareness and knowledge concerning cut flowers and infringements.

### Counterfeiting: Organised Crime Revenues and their Impact on the Legal Economy – UNICRI

The presentation gave an overview of traditional organised crime structures that have forged close relationships with loose criminal networks, with a trend towards a diversification of activities in order to spread risk and gain high financial returns.

In 2011, Europol published figures which underlined the profit margins enjoyed by OCGs generated through the production of fake Viagra and counterfeit goods which offer higher returns than the distribution and sale of cocaine. It was noted that the replication of products is easy to achieve, and increasingly, it is used a tool with which to launder money and to reinvest into legal activities.

One of UNICRI's current work streams focuses on the diversification of infringers into legal activities. In cooperation with the Guardia di Finanza, the organisation has gathered case studies on Italian Mafia and Chinese criminal networks, which reveals the level of cooperation, and specific supply and demand criteria, supplied and satiated by the two groups. It was found that in order to disguise distribution channels and origin, shipments pass through several countries and corruption is used widely to facilitate such logistics. Ultimately, the Italian criminals identified also owned several legitimate shops which offered opportunities for money laundering and reduced the risk involved.

In one case alone, over EUR 5 billion had been transferred from Italy to China during a period of four years using various money transfer methods and the OCGs had carried out complementary crimes including human trafficking and money laundering. In data collected from past operations, UNICRI highlighted the vast amount of real estate, vehicles, machines, factories and warehouses and bank accounts which have been seized. Notably, the origin of the main criminal organisations identified were China, Italy and Turkey, with links to Belarus, Israel and Canada; the majority of destination countries were located in northern Europe.

The emerging modus operandi reveals acquisition of legal enterprises which reduces risk, and allows the infringers to reinvest into illegal activities under a cover of legality. The example of Euromilk was given, in which an Italian criminal organisation had acquired a legitimate milk production facility, in order to supply milk to supermarkets. The OCG in question used intimidation in order to ensure that they maintained a monopoly in the industry.

UNICRI asked the floor how LEAs could work together in order to stop the phenomenon.

The Italian Effort Against Counterfeiting: The "Web Experience" – Ministry of Agriculture and Forestry Policies, Italy

Under the Ministry of Agriculture and Forestry Policies, and with an informal liaison network across Europe, the Ispettorato Centrale della tutela della qualità e della repressione frodi dei prodotti agro-alimentari (ICQRF) has competence to carry out controls including inspections and chemical analysis, also under the direction of the Public Prosecutor.

In 2015, almost 40,000 controls were carried out within Italy, with a seizure value in excess of EUR 68 million. In 2014, the European Commission carried out an audit and underlined the efficiency of the ICQRF system in terms of frequency and effective risk assessment.

The definition of food fraud is the intentional violation of Regulation (EC) 882/2004 on official controls on feed and food, with the motivation of financial gain. The speaker explained the differences between counterfeit goods and products which evoke a link between them and another product. Such evocations are subject to administrative sanctions under Regulation (EU) 1169/2011, Article 7 (d) – which details misleading food information with regard to character, country of origin and place of provenance. Notably, there were 690 Italian ex officio cases regarding evocations during the last 2 years.

The presentation underlined the huge Chinese presence within the e-commerce system and Chinese business to consumer market penetration via Tmall and Alibaba. On eBay alone, there exist over 160 million buyers worldwide. Additionally, Chinese production networks have direct access to European businesses, which is the main method of selling bulk quantities to the European market. The speaker underlined the success of working alongside Alibaba in recent years. A system has been established with which brand owners report infringements to the platform after which it contacts sellers in order to request a listing removal. If the seller does not comply, it is possible for the brand owner to take legal action.

In recent years, a new Italian legislative approach to e-commerce has resulted in a reform of the Criminal Code with regard to food crime and there now exists an Italian online repository which contains the results of the 160,000 inspections carried out by the ICQRF since 2014, to date.

The presentation called for the implementation of new tools and new administrative approaches in order to protect consumers owing to the rapid procurement, sale and transport methods involved in counterfeiting. The speaker called for European level agreements and bilateral agreements with key players in the digital market.

### **Conclusions of the Conference**

The Director of the Observatory thanked all participants for their contributions during the conference, and expressed the hope that the three day event had helped to distil the issues facing prosecutors, Customs, police and the private sector in the fight against infringing foodstuffs and beverages. The Observatory underlined their commitment to the progression of knowledge building conferences and the increasing interaction of stakeholders through the Observatory network. To this end, a questionnaire will be sent to participants in order to evaluate the use of the information received during the conferences and workshops.

The Director underlined the utility of the IP sectorial studies researched and written by the Observatory, and the need to learn from the findings of such studies, in order to harness the data, case studies and best practices to maximum use. It was confirmed that the infringement of geographical indications economic study will be published by the Observatory in May 2016.

It was noted that the interests of the private sector and the public sector converge in the fight against counterfeit products. However, it was added that the public sector must think and react with the same speed of the private sector in future.

It was agreed that with regard to the increasing role of e-commerce sales platforms and social media sites, it is vital to engage in dialogue with intermediaries including Google, Facebook and Twitter in order to secure agreements on due diligence.

Eurojust thanked EUIPO for the organisation of the conference, and thanked the participants for their input and suggestions during the three day event. They underlined the need for interagency cooperation, and multidisciplinary expertise to be harnessed as the norm during operations across the Member States.

Finally, Europol expressed their gratitude to EUIPO for hosting the conference, which presented new information to the network and established new working relationships between LEAs and the private sector. They explained that the next phase of Operation Opson will be planned with Interpol during June 2016, and expressed their anticipation of continued collaboration with EUIPO and Eurojust in order to support the knowledge building of LEAs.

The conference was closed.

Knowledge and Awareness Building Conference

# Counterfeiting of foodstuff, beverages and agricultural products

EXECUTIVE SUMMARY



An event co-chaired by  
European Union Intellectual Property Office (EUIPO),  
Europol and Eurojust

16-18 March 2016

## ANNEX

### Theme A (45 minutes) – Case Initiation

Q1. What challenges do you face in identifying fake foodstuff, beverages and agricultural products? Are there difficulties identifying the relevant IPR?

Q2. How can the right holders of a Geographical Indication be identified and contacted? Do you have access to contact information at national, EU and international level?

Q3. What are the responsibilities of the right holders (Trademark, Geographical Indication and Plant Variety Right)? What information is it necessary to obtain from IPR holders on the legal and illegal supply chain?

- Belgian Customs highlighted that the majority of cases are masterminded by OCGs including the Italian Mafia working alongside criminal networks in other EU Member States, who send products and labels separately and with misdeclared transport labels.
- It was noted that in general, brand owners collaborate on an ad hoc basis in order to protect their image, rather than to establish concerted engagement with LEAs.
- It was suggested that right holders in the food and beverage industry do not ask for protection in the same way as those who own other branded goods, nor do they offer training to Customs, in general, on this topic.
- A general lack of knowledge held by Customs regarding GIs and counterfeit food products was cited.
- Norwegian Customs' practice was highlighted, which focuses on different counterfeit foodstuffs each year, and enables specific and targeted training of Customs.
- The negative reaction from right holders was noted, in response to Customs' seizures of entire containers in order to verify the contents. With regard to counterfeit luxury foodstuffs, Customs must be authorised to open a bottle of expensive champagne or wine to ascertain genuineness.
- The food and beverage industry applies strict quality criteria. Counterfeited foodstuffs do not respect any quality criteria and pose serious risks to the health and safety of consumers, with unknown provenance ingredients. Additionally, the products mislead consumers and undermine brand trust and legitimate market share.
- Participants underlined the volatility of transportation routes from Asia and the Middle East into Europe which were described as able to constantly adapt in order to avoid detection.
- The UK and Irish authorities were cited with regard to best practice within Operation OPSON, through which right holders have given training to Customs officers on identifying and verifying specific products. The private sector has also given Customs information on specific distribution routes of their legitimate products.
- Overall, the model used in Operation OPSON was highlighted as best practice, including knowledge of the trade, experts in the industry; and advice from academia.
- It is very difficult to trace food within the supply chain because it is a brokered commodity, and often re-exported.
- It was highlighted that industry support is vital because often, the actors hide themselves within the legal supply chain - including restaurants, food distributors and wine dealers.
- It was noted that employees in wine bars and restaurants have more competence to detect fake products. However, drinks warehouses, brokers, and nightclubs are not focused on the genuineness of the product and are an easy target for dissemination in the distribution chain. It is possible that in some cases and

regions, these intermediaries are complicit in the supply of counterfeit and substandard products.

- Infringers monitor the supply chain in order to target the weak links. FSA Ireland underlined the vast and complex range of possible adulterations to food stuffs, which are not visible. They highlighted the necessity to focus on opportunity points of infiltration in the supply chain (such as processing plants and brokers), rather than on seizures.
- A presentation by the Anti-Infringement Bureau (AIB) on counterfeit seeds explained that the problem is compounded by the fact that consumers are not concerned with fake seeds or fruit and vegetables, despite the fact that huge financial losses are suffered by the European economy each year through their sale – and the returns are enjoyed by OCGs. It was discussed that Customs face great difficulties in identifying seeds which infringe IPRs. AIB explained their e-learning module for operational field staff members and enforcement agencies entitled “IPR in the Vegetable Seed Sector” which is facilitated alongside the International IP Crime Investigators College (IIPCIC) and is an Interpol Initiative in cooperation with UL University.
- Online enforcement tools including the IPM and EDB were cited as helpful in identifying transport routes and product identifiers.
- Goods seized within borders pose problems in terms of storage capacity and associated costs; it was suggested that national criminal law could provide for destruction and the salvage of some items for use as samples.
- There is the need heightened interagency cooperation at national level – databases could be created in order to contact the competent authorities, and to identify the correct angle with which to prosecute. Many actors are involved in pursuing an infringement case on foodstuffs.
- It was noted that the majority of investigations in counterfeit foodstuffs are initiated from a food fraud angle, but there is the need to raise awareness with regard to trade mark and GI infringements.
- It would be useful for LEAs and the private sector to share a black list of infringers within the supply chain.
- The German Federal Office of Consumer Protection and Food Safety gave a presentation on the efforts exerted in Germany to address the problem of counterfeit food products. The German Food Fraud Contact Point is responsible for the coordination of meetings, exchange of information via the Administrative Assistance and Cooperation System (ACC), and the implementation of control plans. The Expert Committee on Food Fraud invites relevant actors to work together and address the problem of counterfeit foodstuffs. The early warning system allows for data mining and analysis. Prevention practices address education and developing competences related to food controls. The German Federal Office stressed the importance of strengthening inter-administration cooperation and the need to build on the ACC system which forms integral communication lines between Member States.
- EUIPO referred to the importance of early warnings and the exchange of information. The lack of definition of “food fraud” impacts the enforcement mechanisms and level of competencies involved, and suggested associating IPR infringement (including trade marks, GIs, seed protection etc.) to food fraud to clarify the concept of food fraud and counterfeiting.
- Nestlé’s representative stressed the importance of bridging relations between the relevant authorities and right holders in order to work together to protect consumers and diminish the chains supplying counterfeit foodstuffs.

#### Theme B (45 minutes) – Detention and Investigation

Q4. What is your role in investigating infringements of IPR in the area of foodstuff, beverages and agricultural products?

Q5. Which IPR do you focus on? Are there IPRs you do not take into consideration? Are you tackling such cases from a different perspective, i.e. fraud?

Q6. How do you deal with storage and destruction of seized foodstuff, beverages and agricultural products in your country?

- Historically, there was a link between the economic development of a country and its tendency to consume counterfeiting, but this is not necessarily the current situation.
- The FSA underlined the vast and complex range of possible adulterations to food stuffs, which are not visible. They highlighted the necessity to focus on opportunity points to infiltrate the supply chain (such as processing plants and brokers) and in order to concentrate on these areas, rather than on seizures.
- It was highlighted that it is important to carry out detailed chemical analyses of the foods seized, prior to proceeding with an investigation, which can lead to lengthy delays.
- The significant logistical problem of the necessity for storage of huge volumes of foodstuffs prior to prosecution until the final judgement was discussed. It is also vital to maintain storage and disposal systems which avoid reintroduction of counterfeit products into the supply chain, with the support of certified waste disposal organisations.
- Additionally, the practical problems associated with foodstuffs seizures include the perishability of most products which reduces the time frame in which to contact the correct people.
- Plants and foodstuffs are often described in a generic way on shipping documents, which make suspicious items difficult to detect.
- The Italian Anti-Fraud Ministry underlined the lack of knowledge held not only by the public, but also the public authorities across the Member States regarding features of genuine GI products. Italy has an agreement with eBay regarding the e-commerce of GI products. Additionally, the ministry sends reports to other national contact points regarding detected infringements.
- In terms of risk analysis, early warning systems are an essential tool with which to fight IPR crime. Food safety authorities, the private sector and enforcement could share information collated in databases.
- It was suggested that EU harmonised guidelines on how analysis could be carried out at national level should be produced. It was questioned whether courts would be more responsive if fraud was brought as the main grounds for a case, rather than a specific IPR infringement? However, in some larger or cases with strong evidence of infringement, it is easier to prosecute for IPR infringement, and the case can be finalised more quickly.
- The UNIFAB training programme was cited as best practice, which offers training to Customs and police. The Hellenic Police referred to the problems related to time constraints, where in cases of examining alcohol samples for instance, the chemistry lab requires 3-5 working days to produce results, giving time for criminals to evade justice and avoid arrest. Moreover, court proceedings are lengthy which prolongs enforcement action.
- The Romanian Police explained that the country's Penal Code considers counterfeiting illegal only if the counterfeit product posed health hazards. If not, it is not a crime. Moreover, right holders are generally hesitant to press charges due to the complication of the process.
- Irish Customs gave an example of right holders' collaboration by providing pubs with devices that would allow employees to check if a bottle of an alcohol drink of a certain brand was genuine or not.
- Hungarian Customs explained that there are many authorities involved, which means that it is difficult to identify the responsible agency to look at a specific issues and cases. They suggested exploring a multi-agency approach and cooperation between the different institutions. There is also a need to differentiate the competences of civil administration and criminal administration, and to define the powers of these

two categories.

- The Hellenic Police explained that they have local/national databases to help identify the food products/items that are protected by GIs; these databases are used as an important source of information.
- There was a general interest by the participants on the EDB, ACIST and COPIS and requested further information on these databases. The Office offered to respond to any question sent by email.
- The German Federal Office of Consumer Protection and Food Safety suggested establishing a “reference laboratory” across the EU, considering that the methods employed by national labs vary, which lead to disparities in results. OLAF supported the idea and suggested devising a common matrix for analysis.
- The Slovakian Prosecutor explained that civil procedures on GIs are followed because they are shorter and depend on preliminary statements; right holders do not initiate criminal procedures and also fear jeopardising their reputation if they did. The Finnish Prosecutor’s Office confirmed a similar situation in Finland.
- The Office explained that in the case of Italy there is no national harmonisation on how to deal with seized goods, but on a local level there is an agreement between the concerned authorities on how to store the products and establish time limits to take samples for analysis.

#### Theme C (45 minutes) – Prosecution

Q7.How do you deal with the health and safety aspects of a foodstuff/alcohol case? Analysis of the product? Expert involvement? How to present this in court?

Q8.What are the main obstacles for a prosecutor dealing with foodstuff/alcohol cases compared to other IPR cases? Will you prosecute both trade mark violation and Geographical Indication violation simultaneously, or only one of them?

Q9.What has been the final outcome from cases concerning foodstuff, beverages and agricultural products in your country? Were there Court convictions? What lessons were learned? What could have improved the end result?

- The Czech prosecution explained that in a case involving dangerous alcoholic products manufactured by an OCG, which caused many deaths, the prosecution was unable to prove intent.
- The costs of litigation play a role in certain Member States regarding the decision to pursue a case.
- The obtention of expert evidence was cited as a major practical problem involved in criminal prosecutions – for example, general laboratories are often signposted by the court, which do not have the necessary capabilities.
- It was noted that countries known for certain products e.g. Italian olive oil, and French wine, import those products from other countries and rebottle the goods to sell at a premium.
- Best practice by the pharma industry in the UK and Ireland suggest that it is beneficial to target specific areas in the supply chain – for example, payment providers - in order to gather information.
- Social tolerance plays an important role – which includes the attitude held by police officers and judges – and right holders.
- Criminal prosecutions offer a pedagogic message, and are favoured systematically in some countries for this reason.
- In terms of initiating cases, there are disparities issues within the legal systems; if there is no health impact it is difficult to initiate a prosecution based on an IPR infringement and it is necessary to obtain a complaint from the right holder.

- In some countries, it was discussed that it is beneficial to focus on confiscation of the proceeds of crime.
- It was noted that the majority of laboratories do not possess up to date technology in terms of analysing the composition of counterfeit and dangerous food substances. It is equally important to focus on documentary evidence unearthed by enforcement officers.
- UNICRI underlined the increasing trend in Italy towards diversified investment by OCG into the legal supply chain; in essence, crime groups are increasingly buying shares in the legal economy in each Member State. This causes problems when organisations such as supermarkets buy food products from them in the belief that they are procuring goods from legitimate companies. It also offers OCGs the opportunity to trade with less risk whilst enjoying high financial returns.
- The increasing role of social media within the e-commerce of counterfeit goods was highlighted.
- It was underlined that the issue must be dealt with sensitively when communicating with consumers, in order to avoid distress.
- Interpol and Europol joint objectives focus on expanding the number of private sector representatives and in reinforcing the existing network, whilst increasing capacity building and training on the subject for LEAs.
- It was concluded by all workshops that sharing information with Eurojust and Europol should be an addressed action point, in order to ensure that the possible links to organised crime are investigated, and multidisciplinary competencies are harnessed.
- Databases which would allow comparison could be created. OLAF reminded participants that a database exists for tobacco products as a best practice tool which could be replicated for the food and beverage sector. In Lithuania, it was noted that the police do not prioritise IP crimes per se; there is a lack of political will. In Croatia, the Criminal Law threshold must be applied. Trade mark infringement can be useful in counterfeit food and beverage cases.
- Member States underlined the effectiveness of neighbouring countries working together on a regional basis – best practice between Spain and Portugal was cited.
- It is important to use the strongest combined legal means possible to make a strong case including provisions for IPR infringement and fiscal violations.

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