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EU enforcement of intellectual property rights: results at the EU border and in the EU internal market 2020

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Executive Summary

In previous years, DG TAXUD and the EUIPO have published separate reports describing the annual results of the enforcement of intellectual property rights (IPRs) carried out by the respective enforcement authorities at the EU border and within the EU internal market. The two entities now have agreed to jointly publish an annual document presenting the efforts made and work carried out by all authorities in the domain of the enforcement of the IPRs. This edition provides the figures for the detentions of IPR-infringing goods and other related information in 2020.

This factual document on the 'EU enforcement of intellectual property rights: results at the EU border and in the EU internal market, 2020', has been produced from the data on the detentions at the EU border reported by the customs authorities of all the Member States, through the EU-wide anti-counterfeit and anti-piracy information system (COPIS)([1]), as well as the data on detentions within the internal market ([2]) reported by the enforcement authorities of 23 out of 27 EU Members States ([3]), through the IP Enforcement Portal (IPEP). Its objective is to provide useful information to support the analysis of IPR infringements in the EU and the development of appropriate countermeasures. On a broader scale, it should provide EU policymakers with data to develop an evidence base for priorities and policies.

Despite the efforts of national authorities some data gaps remain due to different reasons.

([1]) In accordance with the relevant EU customs legislation (and in particular Regulation (EU) No 608/2013), COPIS is the EU-wide anti-COunterfeit and anti-PIracy information System containing all applications for action and all detentions. COPIS is the only legal channel for sharing information between rights holders and customs.

([2]) To be succinct, the part of the EU internal market corresponding to a Member State will be referred to, throughout the document, as the Member State's national market.

([3]) Records on national market detentions are not available from the Austrian and German enforcement authorities, the first because their regulations do not allow the Police to execute *ex officio* seizures of counterfeit or pirated goods in the national market, and the second because they have not yet joined the data provision network. Moreover, data for 2020 detentions are still missing from Finland and Sweden.

Detentions at the EU border in 2020

The annual number of detentions ([4]) of goods suspected of infringing an IP right by customs authorities at the EU border decreased significantly in 2020 compared to the previous year (from circa 90 000 in 2019 to circa 70 000 in 2020). The number of initiated procedures has also decreased from approximately 117 000 in 2019 to approximately 102 000 in 2020. A similar development can be observed with regard to the number of detained articles (from some 41 million in 2019 to some 27 million in 2020). However, the estimated value of the detained articles has slightly increased from some EUR 759 million to some EUR 778 million, due in equal parts to a shift of the basket of products detained towards more expensive items than in the previous year (more Clothing) and to the increase of the estimated unit price of some of the products detained (Watches), which neutralised the otherwise expected reduction in the estimated value of the detentions as a consequence of the reduction in the number of items detained. The Covid crisis certainly had an impact on detentions results at the border for 2020 due to a combination of various factors, such as less trade in the first months of the pandemic, less goods crossing the borders as well as enforcement authorities facing difficulties to deliver controls as usual.

In terms of number of procedures, the product subcategories appearing most were common consumer products (Clothing and Footwear, both sport and non-sport shoes) and luxury products (Bags, wallets and purses, and Watches). In turn, in terms of the number of articles detained, the subcategories in which the unitary item is usually smaller in size and value and are mainly transported in bigger shipments in containers or trucks (Packaging materials, Lighters, Other goods) led the top 5, but there was also a strong presence of Foodstuffs and Clothing. Regarding the estimated value of the products detained, luxury products whose corresponding genuine item had a high unitary domestic retail value (in particular due to the brands involved), such as Watches, Clothing and Bags, wallets, purses, clearly led the ranking.

As to the provenance of the articles infringing IPRs arriving in the EU, the volumes show that the primacy of China (for the majority of categories), Hong Kong, China (main source of Mobile phone accessories and Labels, tags, stickers) and Turkey (main source of Clothing, Medicines and Clothing

([4]) Each detention is called a case, which includes a number of individual articles, ranging from one to several million, and can cover different categories of goods and different rights holders. For each rights holder in a case, a procedure will be initiated by customs.

accessories) as countries of provenance is constant, whereas several other countries appear for single categories.

The relation between the number of cases and type of goods is also reflected in the means of transport. Most cases with common consumer products but a low quantity of articles take place by postal and express courier. Together they represent 85 % of all cases but only 5 % of the number of articles. The main transport modes for bringing articles into the EU are sea and road transport, which together represent 87 % of all shipped articles but only 2.8 % of all cases.

Where infringed IPRs have been recorded, trade marks predominated as the most infringed IPR in detentions at the EU border (in over 72 % of the articles detained where at least one IPR was infringed, a trade mark was infringed). Other infringed rights were designs (over 27 % of the items detained), followed far behind by copyright and geographical indications ([5]).

In almost 83 % of the detention procedures started by customs, the goods were destroyed under the standard or small consignment procedure after the owner of the goods and the rights holder agreed to their destruction. In 7 % of the detentions, either a court case was initiated to determine the infringement, or the goods were dealt with as part of criminal proceedings, or an out-of-court settlement was reached. However, in 10 % of the procedures the articles were released, either because the rights holder did not respond to the notification sent to them by customs, or because the articles were eventually found to be original goods, or because there was no infringement situation.

Detentions within the EU internal market in 2020

The trend of IPRs infringing goods detained in the EU internal market increased in 2020 compared to the previous year. Indeed, according to the figures reported by police, customs and market surveillance authorities in that scenario, the annual number of IPR-infringing goods reported as detained increased in 2020 (46 million) compared to 2019 (44 million). The figures reported have been conditioned, but only partially, by the pandemic lockdown scenario and by the lack of data

([5]) The total number of reported IPRs infringed in the detentions, both in COPIS and in IPEP, exceeds the number of detained items, at the EU border and in the EU internal market respectively. This is because the two tools allow multiple assignments of IPRs infringed to the detention of an item.

provided by the British enforcement authorities. The detentions made in 2019 by the internal market enforcement authorities that did not report in 2020 amounted to some 1.3 million items. Despite these gaps in the provision of data, the number of items detained in the EU internal market showed a slight increase of 1.6 million items between 2019 and 2020, which represents a 3.6 % interannual increase in terms of number of items reported as detained. However, the estimated value of those items detained decreased by EUR 0.5 billion, representing a 27 % interannual decrease, due to the reduction of the unit value of the main or more expensive products detained (in particular Recorded CDs/DVDs, Jewellery and Clothing accessories).

For both the number of items detained and estimated value, the top 5 Member States accounted for in the area 89-93 % of total detentions in the internal market during 2020. In terms of number of items detained, Italy clearly led the way with almost 40 % of the items. In terms of estimated value, Greece was in first position with over 48 %. Hungary and France also appeared in both number of items and estimated value top 5 ranking, whereas Bulgaria and Croatia completed this rank in terms of number of items detained and estimated value respectively.

In the top 4 identified product subcategories, Clothing accessories led the list, both in terms of number of items reported as detained within the EU internal market and in terms of their estimated value, followed by Recorded CDs/DVDs, also in both parameters. Packaging materials and Labels, tags, stickers subcategories complete the top 4 most detained identified products within the EU internal market in 2020, while Clothing and Non-sport shoes complete the list in terms of estimated value. It should be highlighted that Packaging materials, with its potential multiplier effect for the production of more fake products by wrapping unbranded products within fake packaging materials, also appeared in the top 5 most detained products at the EU border.

Lastly, trade marks predominated as the most infringed IPR in detentions in the EU internal market (over 76 % of the articles detained). Other infringed rights such as designs (in circa 23 % of the items detained), closely followed by copyright (over 22 %) and, to a lesser extent, patents played a role as infringed IPRs in the internal market.

Overall detention data in 2020: aggregated data at the EU border and in the EU internal market

The volume of fake items detained and not released in the EU was approximately 66 million items in 2020 ([6]). This implies a reduction of almost 13 % of the number of items reported as detained and not released compared to 2019 (76 million items). Over 69 % of those were detained in the internal market and the rest at the EU border.

The estimated value of fake items detained in the EU amounted to some EUR 2 billion. This value represents a decrease of circa 19 % compared to the previous year. Almost 65 % of the total value of detained items reported was accounted for by detentions in the internal market while the remaining resulted from detentions at the EU border.

The 10 Member States with the highest number of detentions reported accounted for over 91 % both by volume and by estimated value of the items. Italy recorded the highest individual figures by volume, with over 34 % of the total detentions, and Greece did so by estimated value with 34 %.

The 4 most common subcategories of identified detained products, in terms of the number of items detained, were Clothing accessories, Packaging materials, Recorded CDs/DVDs and Labels, tags, stickers. These four subcategories accounted for 49 % of the products recorded.

In terms of estimated value of the items reported, the top 4 subcategories of products identified were led, by far, by Clothing accessories, followed by Clothing, Recorded CDs/DVDs and Watches. These subcategories represented more than 68 % of the estimated value of detentions reported during 2020.

([6]) It is important to stress that the data on overall detentions are not the exact addition of the data on detentions at the EU border and those on detentions in the national markets of EU Member States, since the fake goods detained at the EU border but later released are not recorded in the IP Enforcement Portal and, therefore, do not appear in the overall results.

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