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IMPACT ASSESSMENT

Accompanying document to 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

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Disclaimer

This impact assessment commits only the Commission's services involved in its preparation. The document has been prepared as a basis for comment and does not prejudice the final form of any decision to be taken by the Commission.

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1. INTRODUCTION

The economic well-being of the EU relies on sustained creativity and innovation; therefore measures for their effective protection are indispensable in ensuring its future prosperity. The Europe 2020 Strategy¹ has therefore identified "Smart Growth" as one of the Commission's three policy priorities for the future. In this respect, intellectual property rights (IPR) are vital business assets that help to ensure that innovators and creators get a fair return for their work and investments.

Unfortunately, legitimate businesses are not the only ones to realise the importance of IPR and the organised infringement of rights has become a global phenomenon. Counterfeiting and piracy² are causing worldwide concern. Infringers of IPR not only deprive EU creators of their appropriate rewards but also harm competitiveness, destroy jobs in the Member States, deny much needed revenue to public finances and, in some cases, threaten the health and safety of EU citizens.

Strong legislation has been put in place across the EU to protect and enforce IP rights. This legislation has been complemented by various practical measures, adopted by both public authorities and private sector bodies, at national and international levels in order to improve existing knowledge about counterfeiting and piracy and to enhance the cooperation of all actors involved in fighting this phenomenon. In the same way the Commission has taken a lead by launching a European Observatory on Counterfeiting and Piracy, at a high-level conference in April 2009 involving Members of the European Parliament, Member States' representatives and representatives from industry and from the consumers' side. The Observatory's main objectives include data collection and the analysis of the overall scope, scale and impact of IPR infringements in the EU, improving cooperation between those engaged in protecting and enforcing IPR, ensuring the dissemination of best practices in enforcement and developing greater consumer awareness.

Since the launch of the Observatory, the political discussion has further evolved. As a result, additional fields of activity for the Observatory have been identified. As a result, there has been increasing concern that the Observatory needs to continue to deliver on its aims. Consequently, this has caused a need to re-examine the Observatory's structure. In this respect, the Commission is concluding a Memorandum of Understanding with the Office for Harmonisation in the Internal Market (OHIM the EU trademarks and designs office) to enable the Office to support the delivery of some of the Observatory's tasks related to trademarks and designs. However, at this point in time, this is a relatively short term initiative.

This Impact Assessment therefore aims at presenting solutions for a more sustainable infrastructure for the Observatory, which should allow it to fulfil a broadened range of tasks, in a more effective way.

¹ Communication from the Commission: 'Europe 2020: A strategy for smart, sustainable and inclusive growth' of 3 March 2010, COM(2010) 2020.

² In this Impact Assessment, the term "counterfeiting and piracy" should be understood as covering the infringement of all intellectual property rights as referred to in the Statement by the Commission concerning Article 2 of Directive 2004/48/EC, OJ L 94, p. 37.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Procedural issues

The preparation of this Impact Assessment was monitored by an Inter-Services Steering Group, composed of Directorates General MARKT, SANCO, ENTR, TRADE, HOME, INFOS, TAXUD, SG, LS, BUDG, HR, EMPL, AGRI and the JRC. The Steering Group met on three occasions. Its last meeting was convened on 14 December 2010.

A draft of this Impact Assessment Report was submitted to the Impact Assessment Board (IAB) on 12 January 2011. The Board met on 9 February 2011. In its opinion dated 11 February 2011, the Board found that the report provided the necessary evidence base for action in the area, but suggested further improvements in the analysis on a number of issues.

Thus, the IAB made recommendations to strengthen the analysis of impacts and specific issues affecting the Observatory, to clarify the various problem drivers and to update the definition of the baseline scenario to take account of the Memorandum of Understanding that the Commission intends to sign with the Office for Harmonisation in the Internal Market (OHIM) on short term support in view of the Observatory's activities.

Following the comments from the IAB, in particular the problem definition (section 3) was modified by moving general explanations on the EU's policy on intellectual property rights and the scope and impact of infringements of such rights to a new Annex II and by extending the explanations on the Observatory's role and the problems it is currently facing. Furthermore, the baseline scenario in section 3.3 was adapted as well as the objectives in section 5 and the evaluation of the different options in section 6.

The initiative that this Impact Assessment relates to has been introduced into the Commission's agenda planning as 2011/MARKT/009.

2.2. Consultation of interested parties

Since its inception, issues surrounding the structure and financing of the Observatory have been discussed regularly, both at the four Observatory meetings³ held so far and in regular specialist sub group meetings which have brought together, since September 2009, representatives from a number of private sector Observatory members⁴.

Within the Observatory, the private sector is represented by European and national organisations covering all geographical areas and sectors affected by and involved in combating counterfeiting and piracy. The sectors include pharmaceuticals, luxury goods, food products, toys, creative media, software, sports, fast moving consumer goods etc. European associations of consumers (BEUC) and SMEs (UEAPME) also take part in the Observatory. The public sector is represented by officials from a wide range of ministries, agencies, departments and other authorities from the 27 EU Member States, including those from Ministries of Justice, Economy and Culture, national intellectual property (IP) offices and enforcement agencies. In addition, international organisations such as the World Intellectual Property Organisation (WIPO), the OECD, INTERPOL, the United Nations Interregional

³ These meetings took place on 4 September 2009, 14 December 2009, 16 February 2010 and 10 June 2010.

⁴ See Annex I for the complete list of associations and public bodies represented in the Observatory.

Crime and Justice Research Institute (UNICRI) and EUROPOL have been invited as observers, to the Observatory meetings involving public authorities.

The conclusion, from discussions within the Observatory, has been that a more sustainable infrastructure is necessary to allow the Observatory to work successfully. Some Member States, however, felt that this should not lead to the creation of new structures.

Members of the European Parliament are regularly informed about the work and developments of the Observatory and on two separate occasions, in 2010, the European Parliament Forum on counterfeiting, contraband and organised crime openly discussed the future of the Observatory and focused, in particular, on a possible transfer of the Observatory's tasks to the Office for Harmonisation in the Internal Market (the trade marks and designs registration office of the European Union, OHIM) at Alicante, Spain.

Outside of the Observatory meetings, a wider range of stakeholders have been made aware of the issues facing the Observatory in terms of its potential for delivering on current and possible future aims. For example, DG Internal Market and Services (DG MARKT) has been invited to discuss the issue at meetings of the AIM (Association des Industries de Marque, representing some 1800 companies in 21 countries) Anti-Counterfeiting Committee, and the Committee members were invited to provide their views.

In addition, within the context of the Commission's Stakeholders' Dialogue on illegal up- and downloading⁵, issues regarding the structure of the Observatory, including the possible transfer of its tasks to the OHIM, have been discussed on two separate occasions with representatives of copyright holders, the telecommunications sector and Internet service providers.

At the political level, the Council, as a reaction to the two Commission Communications concerning the Observatory⁶, adopted two Resolutions⁷ welcoming the creation of the Observatory and asking the Commission to elaborate further on its role and tasks, whilst supporting this through existing structures. Furthermore, the European Parliament on 22 September 2010 adopted a report on the Commission's 2009 Communication asking for an enhanced involvement of the OHIM in enforcement related matters⁸.

The idea of entrusting some enforcement-related activities to the OHIM has been the subject of additional consultations with users of the European trade mark system, within the framework of a comprehensive evaluation of the trade mark system in Europe⁹. The contract for this study was commissioned in 2009 to the Max Planck Institute for Intellectual Property, Competition and Tax Law. As part of the study, the Commission asked the Institute to evaluate the potential, appropriateness and added value of assigning additional tasks to the

⁵ On the Stakeholders' Dialogue see section 4.2 of Commission Communication of 11 September 2009: 'Enhancing the enforcement of intellectual property rights in the internal market', COM(2009) 467 final.

⁶ Commission Communication of 16 July 2008: 'An industrial property rights strategy for Europe', COM(2008) 465 final, and COM(2009) 467 final.

⁷ Council Resolutions of 25 September 2008, OJ C253, 4.10.2008, p.1, and Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market (2010/C 56/01), OJ C56, 6.3.2010, p. 1.

⁸ Resolution of 22 September 2010 on the enforcement of intellectual property rights in the internal market (2009/2178(INI)), A7-0175/2010.

⁹ For details refer to the text of the study available at http://ec.europa.eu/internal_market/indprop/tm/index_en.htm.

OHIM, particularly in the field of enforcement (anti-counterfeiting). In the context of the study, the views of users were sought on the possible involvement of the OHIM in enforcement related activities. In total, eighteen business, IP and trade mark associations with national, European and/or international membership contributed to this process. The question was finally discussed at a specific workshop at the Pan-European IP summit 2010 held in Brussels on 2 and 3 December 2010¹⁰ where the idea received broad support. Equally, the proposal was viewed positively by the OHIM governing bodies, the Administrative Board and the Budget Committee¹¹, in their meetings in November 2010.

In view of this specific, targeted and continuous consultation process, it was considered that there was no need to organise a supplementary, standard consultation exercise.

3. PROBLEM DEFINITION

Despite comprehensive IPR policies, at national, EU and international levels, infringements of intellectual property rights occur on a massive scale and cause considerable damage to the European economy by hampering growth, destroying jobs and, in some cases, putting at risk the health and safety of consumers¹². Details on the EU policies to protect intellectual property rights and on the current situation concerning IPR infringements can be found in Annex II.

3.1. Reasons for ineffective enforcement of intellectual property rights in the EU

The reasons for the problems in effectively enforcing IPR, in the EU, are, to a large extent, related to a lack of knowledge, both in relation to the precise scope and impact of IPR infringements and about the effective policies and methods to prevent and fight such infringements. Other major issues relate to the legal framework to combat IPR infringements and the considerable demand for counterfeit products and for downloads of illegal content play a role.

3.1.1. Lack of reliable, objective data

Existing studies suffer because there has been no agreed methodology for collecting and analysing data on counterfeiting and piracy. Furthermore, the studies have been 'snapshots' of limited phases of time, which have been commissioned by different industries and have employed different approaches. Moreover, due to the secretive nature of counterfeiting, obtaining comprehensive data for all product sectors has been virtually impossible. Added to this, some sectors of industry have been hesitant to disclose information on the scope of the problem in certain areas, as they fear damaging both consumer confidence and the reputation of their brands. Finally, as far as online copyright infringements are concerned, a rapidly changing technical environment makes the collection and analysis of data a considerable challenge.

Without regular, reliable and robust data on the scale, scope and impact of the problem created by IPR infringements, it is not possible to measure trends and threats. This means that those involved in enforcement are not able to establish precise priorities and programmes,

¹⁰ <http://www.premiercercle.com/sites/ip2010/overview.php>.

¹¹ Both bodies are composed of representatives of Member States and of the Commission.

¹² For details see point 3.3.3. below.

targets for enforcement or to design more focused consumer campaigns. Therefore, a mechanism to collect and analyse data, based on an agreed methodology, is an essential step in overcoming these problems.

3.1.2. Divergences in the enforcement legislation of Member States and the application by the courts

The recently published Commission report¹³ on the application of the so-called IPR Enforcement Directive¹⁴ reveals differences as to how the Directive was transposed in the Member States and in the practical application of its provisions, e.g. concerning the use of provisional and precautionary measures such as injunctions, procedures to gather and preserve evidence (including the relationship between the right of information and protection of privacy), corrective measures and calculation of damages.

To what extent these divergences and possible other legislative shortcomings are responsible for the current situation, will need to be evaluated in the context of forthcoming discussions on a possible review of the IPR Enforcement Directive, a potential new proposal for a Directive on criminal sanctions, the planned review of the Customs Regulation and in regulatory dialogues with third countries.

This question therefore lies outside the scope of this Impact Assessment.

3.1.3. Insufficient coordination and exchange between responsible authorities in the Member States on best practices

Despite the fact that there has been clear progress in how Member States are tackling counterfeiting and piracy at national levels, the cross border nature of the problem means that more effective collaboration between national administrations is needed to get the problem under control. Administrative cohesion requires a clearer understanding of national authorities' strategies and structures, and improved transparency in relation to the methods used for exchanging information. Currently, there are shortcomings in these areas that prevent a consistently high level of IPR enforcement, throughout the Internal Market.

In the Member States, there have been many different and innovative developments. However, Member States are not always able to benefit from the expertise of others as there is no functioning mechanism to exchange information between them on a regular basis.

Finally, cooperation on a daily basis between Member States' authorities is often ineffective. A recently published, external, study commissioned by DG MARKT¹⁵ shows that several electronic systems exist to exchange information on counterfeit goods within a number of Member States. However, not all of the authorities involved in the fight against counterfeiting and piracy, in those Member States, necessarily have access to that information. Furthermore, there are no mechanisms in place that allow real-time exchanges across-borders, to alert authorities in other Member States about specific products, trends and potential threats. Currently, a central EU customs database, entitled COPIS, is being developed to store all companies' applications for customs action, as stipulated in the Customs Regulation.

¹³ COM(2010)779, available at http://ec.europa.eu/internal_market/iprenforcement/directives_en.htm.

¹⁴ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L157, 30.4.2004, p. 16.

¹⁵ http://ec.europa.eu/internal_market/iprenforcement/docs/study_information_en.pdf.

However, the scope of COPIS is mainly limited to exchanges between customs authorities and the application system is specifically tailored to their needs.

3.1.4. Insufficient exchange on successful private sector strategies

Similarly, an external study carried out on behalf of DG Enterprise and Industry in 2007¹⁶ confirms that there is currently not enough exchange on successful private sector strategies. Such an exchange would be beneficial for businesses of all dimensions, in order to create synergies and allow them to focus on strategies that have proven to be effective. This is particularly important for SMEs, who require access to information and specific support in protecting their IP rights.

3.1.5. Insufficient knowledge of persons involved in enforcement

Counterfeiting and piracy is a fast moving environment. Those engaged in enforcement (prosecutors, customs, police etc) therefore need to be fully aware, not only of the most recent trends in the market, but also of developments concerning methods of investigation. In particular, they need to appreciate the possibilities and limitations attached to cross-border cooperation and how best to coordinate action most effectively.

Although there are training measures, in Member States and at the EU level, these measures lack general coordination and often, only cover one target group. For example, the OHIM organises series of seminars for judges sitting in trademark and design courts in the Member States. These seminars are likely to involve over 300 judges in 2010-2011, and will help to ensure that the judges share a common understanding of enforcement decisions. However, at present, the seminars do not address the needs of prosecutors, enforcers or customs.

3.1.6. Insufficient use of technologies to prevent counterfeiting

Numerous innovative techniques and systems have been developed by industry sectors to prevent copying and to track and trace fake products within supply chains and sales points. However, there is a continuing lack of interaction between business sectors. Therefore there is insufficient mutual support and many businesses cannot take advantage of new technical developments to protect themselves. For this reason, continual research is needed to make knowledge available on new technical tools that can be used to prevent or 'track and trace' counterfeited products.

3.1.7. Insufficient awareness of consumers on the impact of IPR infringements

A 2009 Eurobarometer study carried out by DG MARKT¹⁷ revealed that only between 55% (LT and DK) and 84% (FR) of consumers are aware that there are EU rules on counterfeiting and piracy. This was a much lower awareness percentage than in other policy areas.

Furthermore, the study revealed that that one out of five EU citizens had, on at least one occasion, unintentionally bought a counterfeit product. This fact substantiates the lack of

¹⁶ Technopolis (2007), 'Effects of counterfeiting on EU SMEs and a review of various public and private IPR enforcement initiatives and resources', available at http://ec.europa.eu/enterprise/enterprise_policy/industry/doc/Counterfeiting_Main%20Report_Final.pdf

¹⁷ Full report available at: http://ec.europa.eu/public_opinion/. For further details on the study see also Annex II.

awareness and the scale of the problem. In this context it should be noted that, according to the Eurobarometer survey, the percentage of citizens from the EU-12, who unknowingly buy counterfeit products is much greater than those in the EU-15. For example, approximately every second Romanian has later discovered that he or she has bought a counterfeit product. Most of these products were fashion wear and accessories (38 percent), music (13 percent), and consumer electronics, films and perfume (each between 9 and 11 percent). In contrast, in Denmark, less than 10 percent of the population have been deceived into buying fakes.

These figures show that consumers need to be more aware and have a better understanding of the risks, to allow them to make more informed decisions when buying products and services.

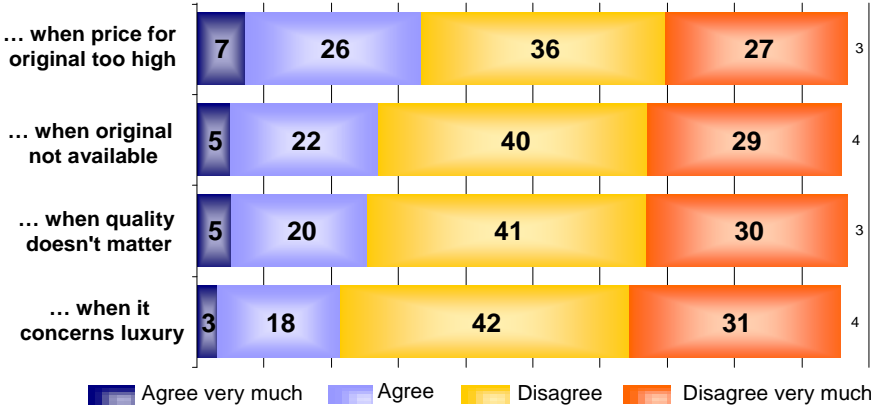
3.1.8. Demand for counterfeit products and pirated content

Not all consumers buy counterfeits inadvertently. Surveys regularly show that there is a considerable share of European consumers that knowingly acquire products that infringe intellectual property rights. This is also true for up- and downloading of illegal digital content.

Where consumers knowingly acquire counterfeits considerable differences can be observed, depending on the product sector. The 2009 Eurobarometer survey showed that the vast majority of the population in the EU (63 to 73 percent, see Figure 2 below) think that no matter the reason, it is neither acceptable nor justified to intentionally buy counterfeit goods. On the other hand, this still leaves one out of four people who believe it is acceptable to buy counterfeit luxury products. Moreover, every third person feels that it is justified to buy counterfeit products when it is considered that the price of the original is just too high.

Figure 2: Justifications to Buy Counterfeit Products

It's ok to buy counterfeit products, ...



Citizens in the EUR-12 appear to be more willing to buy counterfeit goods, with more than half of the citizens in Latvia, Estonia or Cyprus finding it acceptable, if the price is considered too high. On the contrary, citizens in the UK, Ireland and Denmark overwhelmingly disagreed, with up to 75 percent of citizens considering it to be unacceptable. Looking at the socio-demographic characteristics, it is clear that young citizens and manual workers were much more likely to feel it acceptable to buy counterfeit products. However, it should be noted that among those that considered it justifiable to buy counterfeit products, 26 percent assume that these products have the same quality as the original.

Concerning online copyright infringements, the Eurobarometer survey shows that the most widespread justification for downloading of illegal content is that doing it for 'personal use' is

acceptable or at least 'not as bad as' downloading in order to re-sell and make profit. This mitigating stance is reinforced by the view that CDs, DVDs and cinemas are all considered to be very expensive and that many citizens, even if they could not download the material, would not pay the legitimate prices.

Where consumers knowingly buy counterfeit products or up- and download illegal content, awareness measures have a limited impact¹⁸ (possibly with the exception of measures focusing on the lower quality of counterfeit products, including those that potentially endanger health and safety). Also the question of consumer demand for counterfeit products and illegal downloads will therefore largely have to be addressed in another context, in particular in the impact assessments to be drawn up to examine a review of the IPR Enforcement Directive and the appropriateness of adopting a new proposal for a Directive on criminal sanctions.

3.1.9. Lack of expertise in third countries

Developing and emerging countries are particularly vulnerable to counterfeiting and piracy and are used by complex criminal networks as manufacturing and distribution bases. These countries face significant challenges and sometimes do not have the structures and experience to combat IPR infringements.

Organisations such as WIPO, Interpol and WCO already provide certain training measures for enforcement authorities in these countries. However, while WIPO offers technical assistance to enable some developing countries to tailor their IP systems to their needs, these efforts do not always match EU needs. In particular, they have to take account of the interests of other WIPO members that are significant target regions, such as the US and Canada. For these countries, the sources of counterfeits are often different from those assailing the European market. In addition, WIPO resources are constrained and therefore they face significant challenges in ensuring that their technical assistance has a sustainable impact.

At the EU level, a recently published study, commissioned by the Commission's Directorate General for Trade¹⁹, notes that the different actions under the Commission's Enforcement Strategy lack coordination between Commission services and with other institutions and agencies that carry out activities in this field, such as the European Patent Office (EPO) and the OHIM.

3.2. The role of the European Observatory on Counterfeiting and Piracy

The creation of the European Observatory on Counterfeiting and Piracy aimed at addressing the problems that have been set out under points 3.1.1, 3.1.3. to 3.1.7. and 3.1.9.

3.2.1. The Observatory's mandate

The Observatory is a non decision making network of representatives of public authorities involved in the enforcement of intellectual property rights and private stakeholders. Membership of the network implies no specific rights or privileges other than to attend

¹⁸ This view is supported both by the 2009 Eurobarometer and by the ADE study 'Evaluation of the Intellectual Property Rights Enforcement Strategy in Third Countries', November 2010, http://trade.ec.europa.eu/doclib/cfm/doclib_section.cfm?sec=180&langId=en.

¹⁹ ADE, see FN 17.

meetings and to support and contribute to the needs of the network. Furthermore, a number of international organisations (e.g. WIPO, OECD) are participating in the Observatory's meetings as observers. Meeting agendas are proposed by the Observatory's secretariat which is provided by the Commission services (DG MARKT).

At the time of its establishment, the Observatory was assigned four main tasks. In April 2009, the Council had defined the two primary aims of delivering independent data and assessments on the scope and scale of counterfeiting and piracy in the internal market and raising public awareness²⁰. The Commission Communication of September 2009 added further responsibilities associated with exchanging and promoting best practices in relation to public authorities and spreading of best private sector strategies²¹.

Despite the comparatively short time since the Observatory's establishment and even before it became fully operational, the Council and the European Parliament called for new tasks to be added to the Observatory's mission. Thus, the latest Council Resolution related to the Observatory invited it to assess the needs for the implementation of European Union level training programmes, for those involved in combating counterfeiting and piracy²². The recent European Parliament Resolution additionally called for the Observatory to compile scientific research on counterfeiting and IPR regulation²³.

Finally, the more recently published study commissioned by DG TRADE recommends that the Observatory should become a single point of contact, within the Commission, for external parties, and an international point for the creation and dissemination of best practice²⁴.

For this reason, the Commission intends to assign these three new tasks to the Observatory, in the context of its forthcoming IPR strategy, which is planned for spring 2011.

3.2.2. *The Observatory's problems to cope with its current and future tasks*

Experience acquired during its first year of existence has shown that even if its current range of tasks are not expanded, the Observatory's organisational structure does not allow it to become fully operational.

As indicated earlier, the Observatory was established within the structures of DG MARKT. Within DG MARKT, currently all of the tasks related to the Observatory are carried out by a team of two administrators and one assistant, the latter having been seconded to DG MARKT from the OHIM for a limited period of time. This setting was appropriate for the launch phase of the Observatory, where its institutional framework was established through consultations and meetings. However, it is not suited to the operational activities (such as data collection, training, research etc.) that the Observatory should now start to roll out. Moreover, the Observatory does not have access to a suitable support infrastructure in terms of IT (for the creation, running and updating of extensive data bases on case law, trainings, public awareness campaigns, scientific research on technologies, dedicated search engines and information dissemination, including specific alert systems), meeting rooms etc., or to a designated source of funding that would allow the outsourcing of these tasks. Instead, the

²⁰ Council Resolution of 25 September 2008.

²¹ COM(2009)467.

²² Council Resolution of 1 March 2010.

²³ European Parliament Resolution of 22 September 2010, 2009/2178(INI).

²⁴ ADE, see FN 17.

Observatory is obliged to make use of Commission resources, which are not specifically designed to meet its growing responsibilities and needs. Furthermore, with only two administrators, forming the secretariat to the Observatory, it is not possible to provide the expertise needed to deliver all of the specialist tasks with which the Observatory has been entrusted.

Instead, the current resources only allow the Observatory to deliver on its minimum objectives and the Commission is consequently constrained to strictly prioritising the Observatory's activities. At present, the Observatory's work is essentially limited to the following:

- two Observatory meetings of the private sector representatives, the representatives from the Member States or both groups; due to the lack of dedicated budgetary resources for the Observatory the costs of these meetings, in the past, could only be financed with help from Council Presidencies and private stakeholders, granted on an ad hoc basis²⁵;
- around ten meetings of working groups per year (e.g. on legal matters, public awareness, statistics etc);
- the organisation of one annual conference as an awareness raising activity;
- an external study that is aimed at developing a general methodology to collect and analyse the data. The results of this study are expected for the end of 2011.

For this reason, the Observatory currently has serious difficulties in delivering its original tasks in terms of data collection, spreading best practices and improving cooperation and raising public awareness:

- Concerning data collection and analysis, the Observatory should in future apply a methodology (developed in the external study) on a regular basis and produce general and sector-specific reports. However, ensuring the Observatory's capacity to produce reliable information and data for all 27 Member States necessitates the setting up of a data gathering mechanism, as well as an appropriate IT structure to run relevant analytical systems and databases, on a day to day basis. A system such as this requires relevant expertise in statistics and IT development. Furthermore, it would require significant investment, in terms of establishment, maintenance and running costs. Such skills and means for investment are currently unavailable within the Observatory.
- In order to promote and spread best practices between public authorities and best practice private sector strategies, the Observatory would need suitable archiving systems and the capacity to arrange specific events to consult on developments, with appropriate representatives from Member States and the private sector. Again, at present, the Commission is unable to provide resources to enable the necessary analyses to be carried out, relevant records to be stored, accessible and searchable systems to be set up or organised events to take place.

Also improving day-to-day cooperation through an electronic network for 'rapid' information sharing on IPR infringements is not feasible at this stage. The establishment and administration of such a system is very demanding in terms of financial, technical and

²⁵ For details on this support from third parties see point 5 of Annex III.

human resources and thus, in the current circumstances, it would be difficult for the Observatory to deliver on this aim.

- The current resources of the Observatory are also not sufficient to take more comprehensive action to raise consumer awareness. Moreover, the introduction of extensive consumer awareness programmes, based on successful campaigns already carried out in the EU, requires sustainable funding and the employment of specialists in this area.

3.3. Likely consequences if no measures are taken (baseline scenario)

3.3.1. The situation of the Observatory in the mid-term

With the new tasks that have been identified for the Observatory, its situation is bound to deteriorate.

- Technical training programs and professional awareness events require experts, specialist materials, resources, appropriate training facilities and adequate administrative staff, to examine training needs, ensure coordination with already existing measures and design new programs. Gaining access to such resources will be impossible without sufficient financial means.
- The same applies as far as research on new technical tools that can be used to prevent or 'track and trace' counterfeited products.
- Furthermore, technical enforcement training and assistance at an international level cannot be provided in the current situation. Presently the Observatory has no means to provide such capacity building programmes in third countries.

3.3.2. Assistance to be provided by the Office for Harmonisation in the Internal Market (OHIM)

Given the need to increase the Observatory's activities in the short term, the Commission has decided to conclude a Memorandum of Understanding (MoU) with the OHIM. Through the MoU, the OHIM commits to providing technical support to the Observatory, through certain related activities that the OHIM already carries out as "accessory activities" to the registration of trademarks and designs. However, the MoU will be limited to trademarks and designs, in accordance with the OHIM's constrained framework and therefore, the OHIM will, in particular, be unable to work on issues specific to other IP rights, such as copyright or patents.

Under the MoU, the OHIM will assist the Commission in the following:

- on data collection: the follow-up to the external study aimed at developing a general methodology to collect and analyse the data;
- on public awareness-raising: a plan to define a strategy concerning infringements of trademarks and designs, and the organisation of a public awareness event in 2011;
- on training: the establishment of an online inventory of available training courses and the provision of trainings for enforcement authorities, as well as an e-learning tool, with regard to infringements of trademarks and designs;

- the organisation of three meetings of the Observatory in 2011.

Despite these improvements, the Observatory will still, without any improvements concerning its infrastructure and funding, continue to be unable to carry out a considerable number of tasks. These include:

- Data collection, public awareness measures and training related to patents and copyright;
- Identification and exchange of best public and private practices, and improving day-to-day cooperation;
- Research on technical tools to prevent counterfeiting and piracy;
- International cooperation and assistance.

Furthermore, while the MoU initiative will be very beneficial in the short term, it also has a clear link with a possibility of having the Observatory moved entirely to the OHIM. Assistance in organising a public awareness event and a number of Observatory meetings, through the MoU, is currently limited to the year 2011, and as such, the issue will need to be readdressed at the end of 2011, in the light of any future developments. If as a result a decision were to be taken to tackle the current problems of the Observatory through another measure (i.e. other than entrusting OHIM with the tasks of the Observatory in a more enduring way, it could then be anticipated that the OHIM would not be prepared to commit to a more long standing relationship beyond 2011. In the same way, it cannot be expected, in such a scenario, that the assistance being made available by the OHIM under the MoU to DG MARKT could be extended into 2012.

The Observatory also cannot rely, in the longer run, on the ad hoc financial support received from Council Presidencies and private stakeholders in the past. Therefore, taking no action could even mean that the current meeting activities of the Observatory would have to be reduced in the future, due to a further reduced operational budget and further reduced human resources to manage its activities.

3.3.3. Impacts of the current situation

IPR infringements significantly reduce investments in innovation and destroy jobs. The more the businesses fear that their IP rights are not being efficiently protected the less incentive they have to invest in research and innovation. Their resources are diverted to protecting existing brands, products and services, and therefore fewer resources are available to develop innovative new products and services, ultimately resulting in lower economic growth and lost jobs. According to a recent report by the Union des Fabricants in France²⁶, 27 percent of companies spend more than EUR 1 million per year protecting their rights. In the same report, 57 percent of companies recognised the direct impact of counterfeiting on employment, while 54 percent stated that counterfeiting is a barrier to innovation. This conclusion is supported by a study done by the Centre for Economics and Business Research (CEBR), which stresses that a concomitant reduction in investment could have a negative

²⁶ Union des Fabricants April 2010 report, available at <http://www.unifab.com/downloads/RAPPORTUNIFABavril2010.pdf>.

effect on GDP across the EU, to within the region of EUR 8 billion per year²⁷. A study by Frontier Economics, in 2009, indicated that 2.5 million jobs were destroyed in G20 countries alone by counterfeiting and piracy²⁸. While these are largely industry figures, for the reasons explained above, they provide an indicator on the size of the problem.

Concerning piracy (or online copyright infringements), the economic impact is less clear at this stage, due to the very recent nature of this phenomenon. The most recent study in this area carried out, in 2010, by Paris-based TERA Consultants and commissioned by the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative, indicates that EUR 10 billion and more than 185,000 jobs were lost due to piracy in the music, movie, TV, and software industries in the EU in 2008²⁹. However, other studies³⁰ deny any negative economic effect of piracy and point to potentially positive implications for consumer welfare.

Counterfeiting threatens the health and safety of European consumers. Apart from the general problem of consumers buying counterfeit products in good faith and suffering monetary loss, there is also the growing concern about the perceptible increase in volumes of substandard and hazardous fake products, which pose significant health and safety risks for citizens. In its 2009 'Report on EU Customs enforcement of intellectual property rights'³¹, DG TAXUD notes that while, in the past, luxury goods were most frequently hit by IPR infringements, more and more potentially dangerous items, used by European consumers in their daily lives, are being detained by customs. These include medicines, cosmetics, foodstuffs, beverages, shampoos, toothpastes, toys, household appliances, automotive components, electrical components, chemicals and toiletries³². In total, approximately 17 million items, or 18 percent of the total number of detentions made by EU custom's authorities in 2009, had the potential to place consumers at risk³³.

The rise of potentially dangerous counterfeit consumer products was illustrated in May 2010, when a two-year Europol investigation resulted in the seizure of 800 tons of counterfeit electrical products, including fake electricity generators, power drills and chainsaws, which did not comply with any European safety standards³⁴. UNICRI also confirms that dangerous counterfeits have infiltrated the automotive markets and that the incidence of counterfeit spare parts in the automotive sector could represent a loss to the industry of USD 12 billion per

²⁷ CEBR (2000), The Impact of Counterfeiting on Four main sectors in the European Union, Centre for Economic and Business Research, London.

²⁸ Frontier Economics (a report commissioned by BASCAP), 'The impact of counterfeiting on Governments and Consumers', May 2009, available at:
<http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Impact%20of%20Counterfeiting%20on%20Governments%20and%20Consumers%20-%20Final%20doc.pdf>.

²⁹ <http://www.iccwbo.org/bascap/id35360/index.html>.

³⁰ Van Eyck, Poort and Rutten, Legal, Economic and Cultural aspects of File Sharing, in: Communications & Strategies, 77, 1st quarter 2010, p.35.

³¹ Available at:
http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm.

³² Compare with Forzley, M. (2003) Counterfeit goods and the public's health and safety, International Intellectual Property Institute.

³³ DG TAXUD, see FN 29.

³⁴ <http://www.europol.europa.eu/index.asp?page=news&news=pr100521.htm>.

year³⁵. In addition, UNICRI reports that according to the Toy Industries of Europe (TIE), one toy out of ten, in Europe, could be a counterfeit³⁶.

According to the 2009 Frontier Economics study, the economic cost of deaths resulting from counterfeiting amounts to EUR 14.5 billion and the additional cost to health services, incurred in treating injuries caused by dangerous fake products approximately adds another EUR 100 million³⁷. Moreover, the Centre for Medicine in the Public Interest, a US-based medical research group, predicted that worldwide sales of counterfeit medicines would reach USD 75 billion in 2010, which is a 90 percent surge from 2005³⁸.

IPR infringements create serious problems for European SMEs. The 2007 study carried out on behalf of the DG Enterprise and Industry confirmed that SMEs were found to have been affected by lost sales, as a direct result of counterfeiting and piracy³⁹. The report noted that, in 2006, 20 percent of SMEs in the EU estimated that around 5 percent of job losses in their companies had been specifically due to counterfeiting and piracy and that the problem also reduced their ability to retain key staff. The staff of these SMEs was concerned about the future prospects of the businesses, due to the continued rise of counterfeit and pirated products. Moreover, the report confirmed that many SMEs lack sufficient knowledge, resources and finances to pursue infringers. In 2008, the Commission carried out a Best Practice project aimed at helping SMEs to better enforce their intellectual property rights, by improving available support. As part of the project, SME support and IPR enforcement experts from Member States analysed SMEs' perceived needs and available enforcement options⁴⁰. As a result, the Best Practice Group encouraged the co-ordination of IPR enforcement activities at national and EU levels, thus supporting the creation of an EU Observatory on counterfeiting and piracy to actively help SMEs fight the dangerous phenomenon of counterfeiting and piracy.

IPR infringements result in losses of tax revenues due to a reduction in declared sales. Value added tax (VAT) authorities in the UK alone estimate losses equivalent to GBP 1.5 billion due to the circulation of counterfeit goods⁴¹. This deficit in tax revenue may result in tightening government expenditure in crucial areas, such as social policies⁴². The Frontier Economics' study estimated that, in 2009, EUR 62 billion in tax revenue and higher welfare spending was lost in G20 countries due to counterfeiting and piracy⁴³.

³⁵ UNICRI, 'Counterfeiting: a global spread, a global threat', 2008, <http://counterfeiting.unicri.it/report2008.php>.

³⁶ http://www.unicri.it/news/0712-4_Counterfeiting_PressKit.php

³⁷ Frontier Economics, see FN 27.

³⁸ <http://www.cmpi.org/in-the-news/in-the-news/fake-medicines-illegal-immoral-and-liable-to-increase-drug-resistance/>.

³⁹ Technopolis (2007), http://ec.europa.eu/enterprise/enterprise_policy/industry/doc/Counterfeiting_Main%20Report_Final.pdf.

⁴⁰ http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=4053&userservice_id=1&request.id=0.

⁴¹ Union des Fabricants, 2003. available at:

<http://counterfeiting.unicri.it/docs/Union%20des%20Fabricants.Counterfeiting%20and%20Organised%20Crime%20Report.2nd%20edition2004.pdf>.

⁴² IACC, 2005, available at:

<http://counterfeiting.unicri.it/docs/International%20AntiCounterfeiting%20Coalition.White%20Paper.pdf>.

⁴³ Frontier Economics, see FN 27.

Counterfeiting and piracy is attractive to organised crime. At present, profit margins from counterfeiting and piracy are extremely high and, in comparison to other forms of illegal activities, the penalties are low. As a result, they have become an attractive investment for organised crime⁴⁴. UNICRI confirms that organised crime manages a significant proportion of counterfeit trafficking. The global trade in counterfeiting and piracy involves complex manufacturing chains and connections between legitimate and other illegitimate business partners, some of whom operate in other illicit trades such as illegal immigration and human trafficking⁴⁵. A 2009 report from Rand (Center for Global Risk and Security)⁴⁶, which compiled responses from 120 law enforcement representatives from over 20 countries, confirms the existence of "*compelling evidence of a broad and continuing connection between film piracy and organised crime. Piracy is high in payoff — with profit margins greater than those of illegal narcotics — and low in risk, often taking place under the radar of law enforcement.*" In particular, the Rand report also identified movie piracy as a funding method of the IRA, D Company India/Pakistan (both are major organised crime and terrorist organizations). Additionally, Interpol provides examples of how counterfeiting and piracy financially supports groups such as Chechen separatists, Hezbollah and Al-Qaeda⁴⁷. The Frontier Economics' study offers the added information that during 2008, G20 countries suffered EUR 20 billion in increased costs of crime due to counterfeiting and piracy. One example where the involvement of organised criminal networks became evident was in a joint operation of law enforcement agencies concluded in May 2010⁴⁸. With the support of Europol and Eurojust, agencies from seven European Union Member States took action against a network of criminals who were behind a substantial system of trafficking counterfeit commodities. Europol identified a criminal network centred in the vicinity of Naples which stretched to Australia, Iceland and Finland. The subsequent seizure of materials and assets exceeded a value of EUR 11 million.

3.3.4. *Likely development of the situation over the next few years*

Past experience and information currently available suggests that, with the economy recovering from the crisis, an increase in counterfeiting and piracy can be expected. Therefore, its dangerous and damaging impacts will become even more prevalent and serious in future years.

As previously explained, without a solid base of data, it is difficult to provide figures on what this will mean in terms of the scope and scale of counterfeiting and piracy a few years from now. However, if the trend in the customs area continues at the same rate as that witnessed during the five years immediately prior to the crisis (i.e. a yearly increase of between 13 and

⁴⁴ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/272&type=HTML>; OECD (1998), 'The Economic Impact of Counterfeiting', p. 37; Europol, 'OCTA 2009 - EU Organised Crime Threat Assessment', [http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_\(OCTA\)/OCTA2009.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2009.pdf).

⁴⁵ http://www.unicri.it/news/0712-4_Counterfeiting_PressKit.php.

⁴⁶ Rand, 'Film Piracy, Organised Crime, and Terrorism', March 2009, www.rand.org/pubs/monographs/2009/RAND_MG742.pdf.

⁴⁷ Interpol (2003), 'The links between intellectual property crime and terrorist financing', <http://www.interpol.int/public/ICPO/speeches/SG20030716.asp>; see also European Commission (2006), 'A serious problem for everyone', http://ec.europa.eu/taxation_customs/customs/customs_controls/countefeit_piracy/compating/index_en.htm.

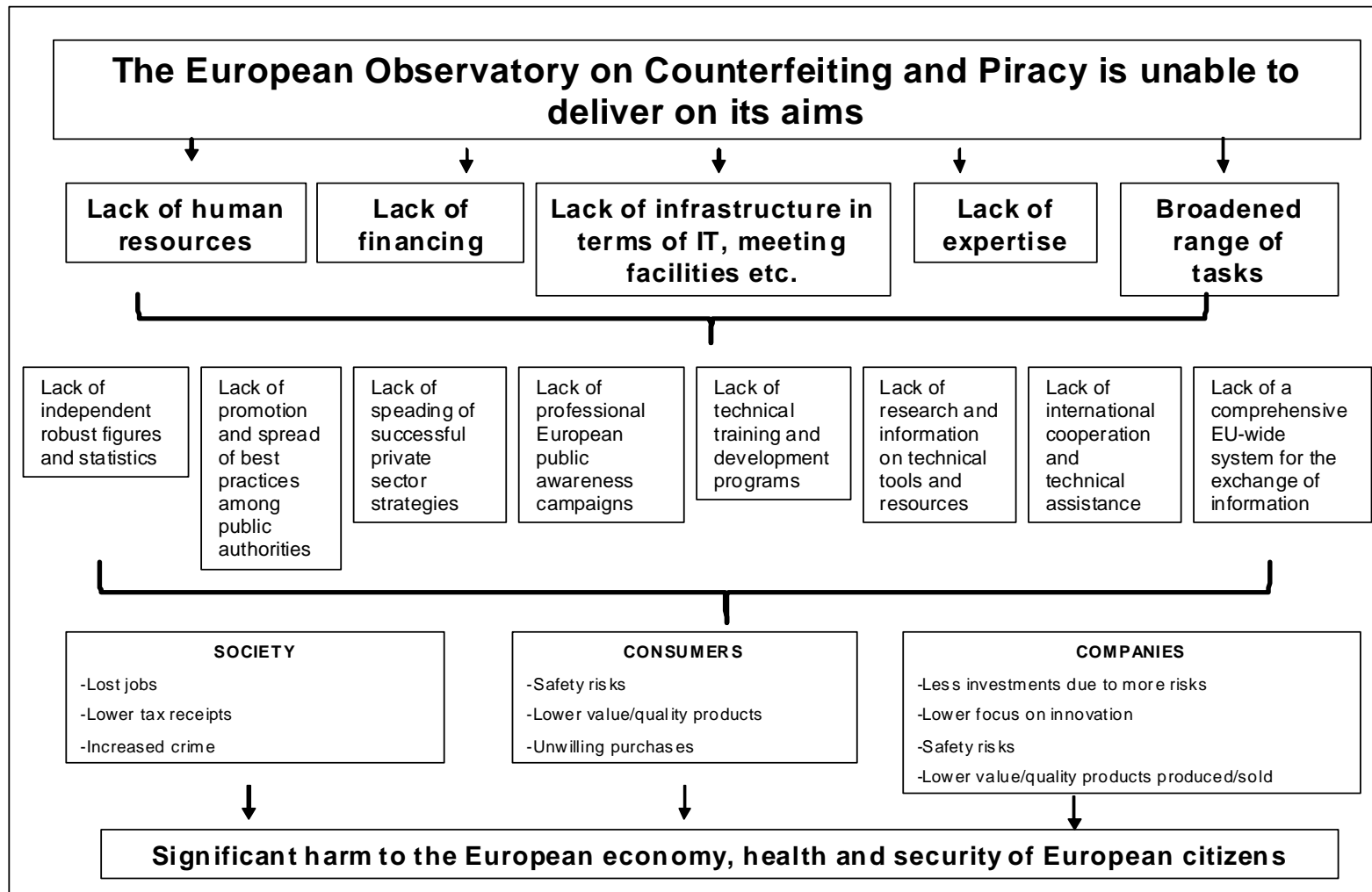
⁴⁸ See <http://www.europol.europa.eu/index.asp?page=news&news=pr100521.htm>

40 percent), this would mean that in 2014, we could expect the number of registered cases to have at least doubled, thus approaching around 100,000 per year.

Concerning training and awareness raising measures as well as research and data collection, and considering the position of the Member States in times of austerity in public budgets, there are no indications that any additional action to strengthen enforcement can be expected. The same is true for the exchange of best practices and private sector strategies and the improvement of day-to-day cross-border cooperation, which are difficult to organise at a national level. On the private sector side, important activities can be expected particularly in the area of research on "tracking and tracing" methods. However, there is likely to be some reluctance on the part of companies to share their results, which may be considered to be valuable assets that could provide a competitive advantage.

With reference to international activities, taking into account the number of institutions and agencies involved the existing coordination problems at EU level are likely to remain.

Problem tree



4. SUBSIDIARITY

Many of the activities that have been assigned to the European Observatory on Counterfeiting and Piracy are of a cross-border nature, involving all 27 Member States, and therefore they cannot be effectively delivered by individual Member States. As far as there is a need to improve bilateral cooperation between two Member States, in individual cases procedures could theoretically be improved at this level. However, given that the tools and methods needed in such a context would be similar for all Member States, it seems more efficient to develop them at EU level. This will ensure that solutions that are developed do not build on individual Member States' specificities, but provide benefits for all Member States. Furthermore, as far as relations with third countries are concerned, coordination within the Commission services and with other EU and international agencies must take place at the EU level.

Therefore, an EU initiative seems to be the most effective and appropriate way forward. Such an initiative could potentially be based on Articles 114 and 118(1) TFEU (ordinary legislative procedure). A legislative proposal could be tabled in spring 2011.

5. OBJECTIVES

General objective: To enhance effective enforcement of IPR, 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.

Specific objective: To enhance knowledge, among public authorities and private stakeholders about the scope, impact and trends related to counterfeiting and piracy and about effective techniques to fight 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 avoid them from being misled into buying fake products; to improve the coordination of actions directed towards third countries.

Operational objectives: Ensure that the Observatory has the necessary infrastructure to deliver its activities effectively, as quickly as possible and with minimum costs for the EU budget. Such an infrastructure implies:

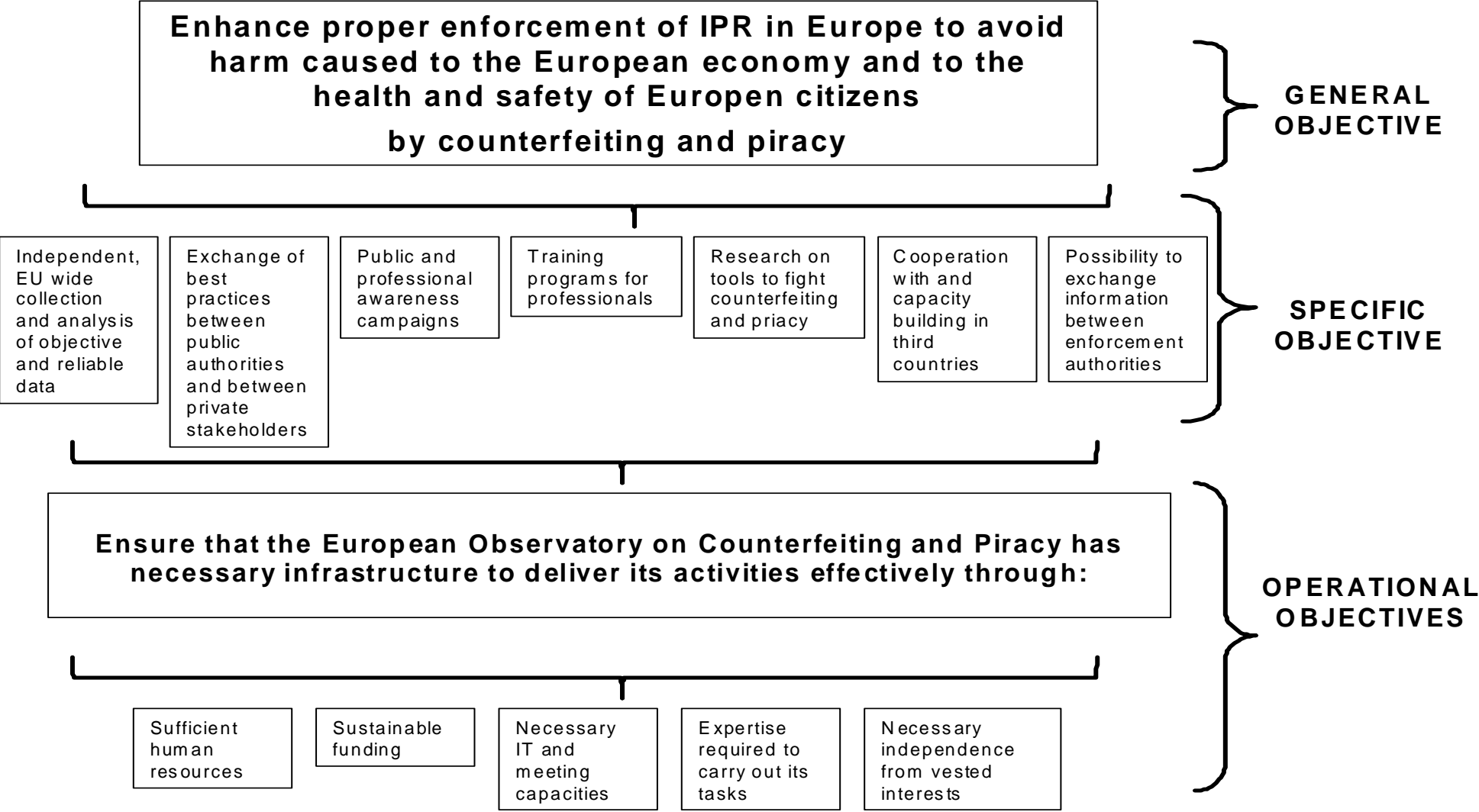
- sufficient human resources,
- the necessary IT capacities,
- sustainable funding,
- the expertise required to carry out its tasks, and
- the necessary independence from vested interests, avoiding any undue influence from stakeholders, particularly as far as data collection and analysis would be concerned.

These objectives are in line with existing EU policies and strategies, such as Europe 2020⁴⁹. They also fit with the Commission's main priorities and proposals concerning its IPR strategy for Europe⁵⁰.

⁴⁹ COM(2010)2020.

⁵⁰ COM(2008)465; see also Commission Communication of 27 October 2010: 'Towards a Single market Act – for a highly competitive social market economy', COM(2010)608 final.

Objectives hierarchy



6. POLICY OPTIONS AND ANALYSIS OF THEIR IMPACTS

6.1. Introduction

The following three main options are explored with a view to the achievement of the objectives identified in section 5:

Option 1: The tasks are delivered within the Observatory which continues to be administered by DG MARKT, with uplift in available resources:

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

Option 2: The tasks are delivered by an external body, on the basis of an industry led initiative:

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

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

- Sub-option 3a – The Observatory is entrusted to a newly created EU agency.
- Sub-option 3b – The Observatory is entrusted to an existing EU agency.

Whichever option is chosen, the Commission will retain the political control of EU IPR enforcement policies which are to be considered core tasks of the Commission.

6.2. Option 1 sub-option 1a: Increase of DG MARKT's human and budgetary resources

6.2.1. Description

The overall tasks would be delivered by the Commission. DG MARKT would continue to manage the Observatory with its additional resources. However, under this option where a final decision would be taken to keep the Observatory inside the Commission, the OHIM could not be expected to continue its assistance.

6.2.2. Analysis

If staffed sufficiently, the Commission services could deliver the Observatory's tasks in a satisfactory way, whilst ensuring the necessary independence from vested interests. In particular, due to its position as an institution and its comprehensive rules on data protection, the Commission services would be in a comparatively strong position to obtain access to necessary data. In organisational terms, there would be no changes compared to the baseline scenario, so the Observatory's governance structure would remain unaffected.

In terms of human resources, under this option, DG MARKT would retain two AD staff to continue to carry out policy related tasks, including those aligned to IP rights other than trademarks and designs. In addition, the DG MARKT personnel would provide briefings and coordinate policies linked to the work of the Observatory.

Annex III shows that in this scenario seven staff would have to be employed during the first two years, in addition to the current three staff members. The majority of these additional staff (four persons) would to be employed as officials or temporary staff, dealing with essential, substantive work strategies and initiatives related to raising public awareness, training, the development of technical tools and databases and systems to improve information exchange. The other three members of staff, as well as the replacement for the assistant currently on secondment from the OHIM and dealing with the Observatory could be contract agents, providing support in terms of IT and the organisation of meetings. At cruising speed (24 additional persons plus the replacement for the assistant), staff should probably consist of fifteen officials/temporary agents and ten contract agents. The posts for the temporary staff and/or officials would have to be made available from the Commission's establishment plan, which however will not increase over the next three years, in line with the Commission's own commitment not to request any new posts for the period between 2009 and 2013⁵¹. In this situation, an increase in staff numbers of the magnitude mentioned above seems hardly realistic.

Furthermore, even in a situation where the staff would be made available, the largely technical work to be carried out in the context of the Observatory would constantly need to compete with other primary tasks of the Commission, in particular policy making. Therefore, a permanent threat would exist that staff assigned to support its activities could be reallocated, even on a temporary basis, to other urgent tasks in the policy field. This would jeopardise the continuity of the Observatory's work.

Finally, although the Commission's IT services would be technically able to run systems, such as those required by the Observatory, there would be a serious risk that the creation and management of these systems would not be assigned the necessary priority, but ranked after other primary tasks, scheduled to ensure the running of the Commission's daily activities. A similar risk would also exist with a view to certain tasks related to public awareness strategies and campaigns.

If these obstacles are overcome, this option could be put in place within a relatively short period of time as technically it would only require making the budgetary arrangements within the Commission's budget and recruiting the necessary staff. In order to manage the recruitment procedures and the integration of the staff, it would however seem appropriate to expand the Observatory's tasks in two stages, based on an order of priority (for details see Annex III).

To summarise, while this option would theoretically be suited to meet the objectives, in the current situation, it does not seem a realistic option to solve the Observatory's problems.

The total costs of this option are detailed in Annexes III and IV. Depending on the design of the rapid information exchange system to be chosen, these would be the following:

⁵¹ Commission Report of 24 April 2007: 'Planning & optimising Commission human resources to serve EU Priorities', SEC(2007)530.

Table 1: Costs of option 1a (compared to baseline scenario)

Years	Staff required	Costs ⁵²	Admin Costs	Meeting/missions costs	Costs IT systems		Total yearly costs	
					Basic	Sophisticated	Basic IT	Sophisticated IT
n ⁵³ – n+1	8	0.77	incl.	0.5	1.9	2.9	3.17	4.17
n+2 +	25	2.57	incl.	0.59	2.23	3.01	5.398	6.17

6.3. Option 1 sub-option 1b: Outsourcing on a commercial basis to an external contractor

6.3.1. Description

Under this sub-option, DG MARKT would not run the Observatory's operational activities itself, but only act as the supervising contract manager, employing one or several external contractors to help deliver the Observatory's tasks.

6.3.2. Analysis

The governance structure of the Observatory would remain unaffected as the Commission would continue to be in charge.

Also most of the Observatory's activities set out above could be successfully carried out through an external contractor and therefore most of the objectives set out in section 5 could be met. An exception applies however in relation to the task of data collection and analysis. In this respect, the problems encountered in the context of previous studies on the scope and impact of counterfeiting and piracy makes it appear unlikely that private stakeholders and public authorities would be willing to share data, which is often perceived as sensitive, with external private sector contractors, even if the Commission would remain ultimately responsible. Therefore, although it would be technically possible to outsource this activity, it seems questionable as to whether the objective pursued would be attainable.

The time required to put this option in place would be about one year more than under option 1a, as, apart from making the budgetary arrangements, the tender procedures would also have to be carried out before the Observatory's activities could be launched. However, this delay would be compensated for by the fact that all of the Observatory's activities could be launched in parallel.

The impact for the EU budget implied under this option would probably be slightly higher in the first two years than under option 1a, and could be slightly lower in the years to follow. Given the complexity of the tasks, it seems unrealistic that a single company or a single consortium would be capable of carrying out all of the different strands of work. The pillars of

⁵² All costs in EUR million.

⁵³ Year n: Year in which the measure would become effective.

actions would be focused on very divergent issues, such as public awareness, enforcement, legal matters, technical assistance, IT, specialised research, training etc. Also, most of these actions are designed to run over extended periods of time. An ideal contractor would therefore need to be a specialist in all of these aspects and at the same time be able to provide the guarantee that all of these actions could be secured over a considerable time span. Based on current knowledge, finding a suitable contractor, with the necessary capabilities, facilities and capacity, seems unlikely. Instead, it is estimated that to deliver the Observatory's pillars of work, between seven and ten different contractors, with specialised competencies, would be required (for details see Annex V).

The management of these contracts (including the preparation of calls for tender, evaluation processes, contract negotiations, monitoring of contract performance and ensuring coherence between the different projects) would cause additional costs.

In contrast to option 1a, all staff currently working on the Observatory's activities would also need to be maintained. In particular, the AST official to organise meetings etc would continue to be needed as this 'horizontal task' would not be included within the contracts.

An estimation of potential contracts and indicative costs is outlined in Annex V. Compared to the baseline scenario, they can be summarised as follows:

Table 2: Costs of option 1b (compared to baseline scenario)

Years	Contract costs (other than IT)	Admin Costs	Cost for meetings +missions	COM staff contract management	Cost	Costs IT systems		Total yearly costs	
						Basic	Sophisticated	Basic IT	Sophisticated IT
n – n+1	2.11	incl.	0.56	4-6	0.26-0.4	1.9	2.9	4.83-4.97	5.83-5.97
n+2 +	2.11	incl.	0.66	4-6	0.26-0.4	2.23	3.01	5.26-5.4	6.04-6.18

6.4. Option 2 sub-option 2a: The tasks are carried out through an industry led initiative financed by private sector stakeholders

6.4.1. Description

Under this option, the Commission would no longer be in charge of ensuring that the tasks currently assigned to the Observatory are delivered. Instead, the tasks would be performed through an industry led initiative, with the private stakeholders ensuring the financing.

6.4.2. Analysis

Under this option, the governance structure of the Observatory would change in the sense that the Commission would neither have any influence anymore on how the Observatory is run, nor on its meeting agendas. It would be up to the private sector to determine what structure the Observatory should have in future.

To deliver the Observatory's tasks and therefore most of the results should be technically feasible.

However, as far as data collection and analysis are concerned, it should be recalled that there have been many studies carried out by industry bodies on the phenomenon of counterfeiting and piracy. All have been contested due to their perceived partiality. Therefore there are serious doubts about whether such an initiative would guarantee the necessary independence and objectivity to produce reliable analyses. Furthermore, in this context, it seems doubtful that it would be possible to mobilise public and private stakeholders, to make them cooperate and provide the necessary information. The same difficulties are also likely to arise in respect of the objectives aimed at ensuring exchanges of best practices and fostering cooperation with third countries.

With a view to other activities, the necessary independence from vested interests would have to be guaranteed through specific measures. In particular, where the level of financial contributions from stakeholders differed, there would be a risk that certain sectors, through higher contributions, might seek and gain a disproportionate influence on the way the work is prioritised and carried out. As a result, certain aspects of work might be neglected if they were of no immediate interest. In order to avoid such influence of vested interests and to ensure continuous funding, under this option, contributions would need to be determined by way of regulation.

Concerning the sustainability of the infrastructure in terms of human resources, funding and IT, the assessment of this option is negative. Despite the considerable problems presented by counterfeiting and piracy in the past, industry has never been able to work together in order to set up such an initiative. Consequently, there is no reason to assume that the Commission's request to launch such an initiative would change this situation.

The calculation of the costs of carrying out the different activities of the Observatory can be based on that made for option 1b, as it can be assumed that any such industry initiative would largely resort to outsourcing, with all the implications this brings in terms of infrastructure, overheads etc, instead of directly employing the necessary staff. Furthermore, a private initiative of this sort would necessitate the management of contracts with their related overheads. Therefore total staff costs could be estimated to be at least as high as the Commission's or even higher, as the size of the Commission leads to considerable economies of scale in this respect.

Finally, the entire costs for the organisation of meetings etc would have to be added. This total additional costs would rise to EUR 621,000 in years n and n+1, and 691,000 as of year n+2 (for details see Annex V). The total cost of this option can therefore be summarised as follows:

Table 3: Costs of option 2a

Years	Contract costs (other than IT)	Admin Costs	Cost for meetings +missions	Staff for contract management	Cost	Costs IT systems		Total yearly costs	
						Basic	Sophisticated	Basic IT	Sophisticated IT
n – n+1	2.11	incl.	0.628	4-6	0.26-0.4	1.9	2.9	4.89-5.03	5.89-6.03
n+2 +	2.11	incl.	0.69	4-6	0.26-0.4	2.23	3.01	5.29-5.43	6.07-6.21

Under this option, there would be no costs for the EU budget. Instead, certain **savings** would be made as the current work of the Observatory would not have to be financed any more from the EU budget: these savings would amount to EUR 38,773 for reimbursements of Member States' experts and the organisation of the Observatory's meetings⁵⁴.

6.5. Option 2 sub-option 2b: The tasks are carried out through an industry led initiative financed through a Commission grant/program

6.5.1. Description

Under this option, the Commission would offer a grant, e.g. through an EU program, for an initiative to be run by the private sector. As under option 2a, the private sector stakeholders would be responsible for delivering the objectives set out in section 5.

6.5.2. Analysis

The impact on the Observatory's governance structure would be largely the same as under option 2a. Also the disadvantages concerning the potential to deliver the Observatory's tasks under this option are largely the same as those in the previous option.

The financing through a Commission grant would, however, make this option a more realistic prospect. It would also remove the need to regulate the level of contributions as there would be no possibility for certain industry sectors to influence the Observatory's work through their financial contributions.

The need to set up an entirely new initiative to apply for the necessary financing, to go through the award procedures for the grant and then to outsource the individual activities means that this option would require considerable time before the Observatory would become operational. Five years appears to be the minimum timescale required in this context, which means a substantial delay compared to the previous options.

The financing through a Commission grant would, furthermore, mean that the EU budget would be charged with costs that would, at least, correspond, to those under option 2a. Taking into account the savings of EUR 38,773 set out under option 2a, this means that the minimum

⁵⁴ For details see Annexes III and IV.

overall cost, compared to the baseline scenario, would lie between EUR 4.85 per year at the lower end or EUR 5.99 million at the upper end in years n and n+1, depending on the design of the IT systems to be developed, and between EUR 5.25 million and EUR 6.17 million from year n+2.

6.6. Option 2 sub-option 2c: The tasks are carried out in the framework of a public-private partnership

6.6.1. Description

Under this option, the Commission and the private sector would cooperate under the terms of a contract, which would determine the contributions and the modalities of the work to be carried out by an entity outside the Commission services.

6.6.2. Analysis

This option would avoid a number of the disadvantages outlined in the previous options. The contract would determine the level of influence of each of the partners, including the Observatory's governance structure and the Commission's role in that context, and ensure continuous funding, at least for the duration of the contract. The continuous involvement of the Commission would facilitate an assurance that public authorities and private stakeholder both contribute to the work in an appropriate way.

However, the close involvement of the private sector would probably continue to make data collection and objective analysis an issue. The feasibility of this option can also be questioned, as although the private sector, in this scenario would have to contribute only a part of the costs, it seems doubtful that industry would be ready to commit to such an initiative.

In terms of timing, this option is likely to be similar to option 2b. The costs for the EU budget would depend on the modalities of the contract. Here, an equal share for the Commission on the one side and the private sector on the other would seem most appropriate. This means that the yearly costs for each side can be estimated to be half of those for sub-option 2a, i.e. between EUR 2.45 and 3.02 million in years n and n+1, and between EUR 2.65 and 3.11 million from year n+2.

Again, on the EU budget savings could be made of EUR 38,773, bringing the total yearly cost for the EU budget of this sub-option to between EUR 2.41 and 2.98 million in years n and n+1, and between EUR 2.61 and 3.07 million from year n+2.

6.7. Option 3 sub-option 3a: The tasks of the Observatory are entrusted to a new EU agency

6.7.1. Description

A new, specialised EU agency would be set up to carry out the tasks of the European Observatory for Counterfeiting and Piracy. This option implies the adoption of a European Parliament and Council Regulation, establishing a new agency.

6.7.2. Analysis

EU agencies are fairly independent bodies with their own legal standing, and their own budget and establishment plan. The Commission only exercises remote control functions via the 'parent DG' ('DG de tutelle'), without influencing the agency's day-to-day management which normally is the responsibility of the agency's director. The agency director therefore, under this option, would also be responsible to determine the governance and functioning of the Observatory, to the extent that this is not dealt with in the agency's basic regulation. The Commission would retain political control and responsibility for enforcement related policy initiatives.

Agencies are set up by an act of secondary legislation in order to accomplish a very specific technical, scientific or managerial task. Accordingly, the option of creating a new EU agency has the potential to allow the delivery of all the objectives described in section 5.

The range of tasks to be carried out by a new agency and the number of staff required are identified in Annex III.

However, the probable size of the Observatory is unlikely to justify the creation of a new agency. As identified in the external evaluation of EU decentralised agencies, carried out on the Commission's behalf in 2009⁵⁵, a certain minimum size ("critical mass") in terms of human resources is required for an agency to undertake its tasks efficiently. The evaluator concluded that this critical size lies somewhere between 50 and 100 staff members. The "critical mass challenge" was also highlighted in a recent study by the European Parliament⁵⁶ which revealed that agencies with less than 100 people have a much higher proportion of administrative staff, which suggests that they face certain efficiency constraints. As indicated in Annex III, the tasks of the Observatory would only justify operational staff of 25 people, which would clearly lie below this indicative threshold.

The figures contained in Annex III illustrate the problem. With operational staff of 25 people at cruising speed (of which about sixteen could be contract agents as this staff type can be employed in agencies on a permanent basis⁵⁷), the agency would require at least five additional staff members to deal with administrative tasks (human resources, finance, IT etc). The staffing costs would therefore, in total, amount to EUR 1 million during the first two years. In addition, the setting up of the agency would also require additional resources from inside DG MARKT which would incur additional costs of EUR 127,000 /year during the first two years (for details see Annex III), and also under this option the current two AD officials in DG MARKT would continue to take care of policy related tasks. From the following year there would be a reduction of costs, due to the completion of IT development and the setting up of the agency.

⁵⁵ http://ec.europa.eu/dgs/secretariat_general/evaluation/documents_en.htm. In 2008, the Commission committed itself to not propose any new regulatory agencies, while the horizontal evaluation of existing EU agencies was ongoing, see COM (2008)135.

⁵⁶ European Parliament, 2009, Opportunity and feasibility of establishing common support services for EU agencies, Table 3, <http://www.europarl.europa.eu/studies>.

⁵⁷ See Article 3a of the Conditions of Employment for other agents of the European Communities (Regulation No 31 (EEC), 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, p. 1385).

The total costs of this option are detailed in Annexes III and IV. They can be summarised as follows:

Table 4: Costs of option 3a (compared to baseline scenario)

Years	Agency staff required	Cost incl. facilities	Meeting/mission costs	Costs IT systems		Total yearly costs	
				Basic	Sophisticated	Basic IT	Sophisticated IT
n-n+1	15	1.93	0.5	1.9	2.9	4.33	5.33
n+2 +	30	2.68	0.59	2.23	3.01	5.5	6.28

Agencies are financed either from the European Union's budget or via fees paid by their users. The Observatory does not provide any payment related services or products to businesses; therefore, its activities will not generate any fees. In these circumstances, the costs of the agency would need to be entirely covered by a subsidy from the EU budget.

Furthermore, the establishment of a new agency is complex and time consuming. Recent examples, such as the setting up of the Agency for the Cooperation of Energy Regulators (ACER) in Ljubljana, have shown that, apart from the time needed for the adoption of the agency's basic regulation (which can be estimated at between 18 to 24 months), it can still take several years for the agency to be fully up and running. Therefore, this option would not ensure appropriate support for the Observatory's activities in the short and medium-term.

6.8. Option 3 sub-option 3b: The tasks of the Observatory are entrusted to an existing agency

6.8.1. Description

Under this option, the Observatory would be run by an existing agency, which currently carries out other tasks. This would allow the Observatory to profit from existing administrative structures (such as human resources and finance).

6.8.2. Analysis

For the reasons mentioned in option 3a, an EU agency would be well suited to deliver the objectives described in section 5. Compared to option 3a, this option might also provide a more cost-efficient solution.

There are currently around thirty regulatory agencies dealing with different subject matters and various scopes of activities. Several of them carry out activities comparable to those of the Observatory, i.e. data collection, developing methodologies, sharing best practices or raising public awareness. The European Institute for Gender Equality (EIGE) in Vilnius is one such example, as is the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in Lisbon. However, in the context of being housed in one of these agencies the Observatory would be unable to benefit from any pre-existing knowledge of the often complex and wide ranging subject matter it is dealing with.

It therefore seems more rational to consider the **Office for Harmonisation in the Internal Market (OHIM)** which is the EU agency responsible for registering Community trade marks and designs, valid in all 27 EU Member States. Given the clear relationship between the protection of IP rights and their enforcement, the expertise already available within the OHIM appears particularly pertinent to taking over the Observatory's tasks. The OHIM also has natural working relations with national IP offices, many of which are responsible for leading on national enforcement strategies and coordination structures. Consequently, networks exist that could be further developed by the OHIM to ensure that the work of the Observatory is carried out. Moreover, the OHIM also has an established basis for expertise in the area of enforcement of trademarks and designs, through its seminar series for judges. In addition, enforcement is incorporated into other training activities and the Office has already promoted IP awareness through tools such as the 'Hands off My Design' e-learning website. Furthermore, the OHIM has created a legal database of infringement cases, drawn from information throughout the EU. It will also develop other enforcement related projects, through the OHIM Cooperation Fund. One such project will create a multi-modular tool to assist investigations by allowing customs and other enforcement authorities to consult information on registered trade marks and designs, as well as contact information for right holders and other information to allow easier detection of counterfeit goods.

The expertise available within the OHIM concerning the enforcement of trade marks and designs provides a good basis for expanding this work. Additional expertise would in particular need to be acquired in relation to copyright issues and patents. This could be achieved through the recruitment of specialist staff and, possibly, the training of existing, redeployed staff. This basis would create important synergies between the tasks of the Observatory and those currently carried out by the OHIM. As a result, such synergies could significantly limit the number of additional staff needed to be employed to carry out the tasks of the Observatory (for details see Annex VI). Instead of the 25 staff mentioned in Annex III, only 19 staff would be required to be employed as of the third year, as economies equivalent to that of six man-years could be made through synergies within existing functions. The total costs of this option, which are detailed in Annexes V and VI, can be summarised as follows:

Table 5: Costs of option 3b (compared to baseline scenario)

Years	Staff required	Cost	Admin costs	Meeting/mission costs	Costs IT systems		Total yearly costs	
					Basic	Sophisticated	Basic IT	Sophisticated IT
n – n+1	10	1.02	incl.	0.38	1.9	2.9	3.3	4.3
n+2 +	19	2.06	incl.	0.45	2.23	3.01	4.74	5.52

Apart from the comparatively lower costs, this option would also have the advantage of allowing the Observatory to become operational more quickly than a newly established agency. While a European Parliament and Council Regulation extending the OHIM's mandate would need to be adopted, there would, for example, be no need to adopt new rules on human resources and budget before the agency could start with the recruitment of staff. Thanks to the already existing working relations between DG MARKT and the OHIM, which will be intensified through the implementation of the Memorandum of Understanding, also the

handover of tasks could be done through a smooth and staged transition that would ensure that the Observatory's tasks continue to be carried out without any disruption.

The possibility of involving the OHIM in enforcement related activities, and more generally, in broadening the scope of its competences has already been **discussed and supported**, in particular, by Member States and the European Parliament. In its conclusions of 25 May 2010 on the future revision of the Trade Mark system in the EU, the Council invited the Commission to include in its modifications to the Community Trade Mark Regulation and Trade Mark Directive "the establishment of a clear legal basis for the involvement of the OHIM in enforcement-related activities, including the fight against counterfeiting, in particular through fostering its cooperation with the National Offices, in accordance with their national competences, and the European Observatory on Counterfeiting and Piracy"⁵⁸. The European Parliament addressed this issue in its Resolution of 22 September 2010 in which it called on the Member States and the Commission to extend cooperation between the OHIM and national intellectual property offices, to cover the fight against IPR infringements. Moreover, the Parliament's Forum on counterfeiting, contraband and organised crime viewed the idea to entrust the OHIM with the management of the Observatory as the most suitable solution to enhance the Observatory's effectiveness.

Furthermore, the issue of introducing additional tasks to the OHIM, particularly in relation to enforcement (e.g. anti-counterfeiting activities), was analysed within the framework of an external study, commissioned by the Commission, on the overall functioning of the trade mark system in Europe⁵⁹. The Max-Planck-Institute that carried out the study concluded that a role for the OHIM in this area should be foreseen. The survey of user organisations showed that while in general they do not perceive a particular need for the OHIM to expand its activities they would see merit in assistance related to enforcement of IP rights.

In **legal terms**, entrusting the management of the Observatory to the OHIM would require a change to the agency's current legal basis or the adoption of a new Regulation on new tasks for the OHIM in relation to enforcement activities. Such a Regulation could possibly be based on Articles 114 and 118(1) TFEU. In practice, the management of the Observatory could be entrusted to a new section which would be established in the OHIM and function as an integral part of the Office.

The **financing** of the activities could be taken from the budgetary resources that the OHIM generates through its current activities. This would mean that the EU budget would not be required to cover these costs. At the same time, in comparison to the baseline scenario, under this option savings in the EU budget would arise to the extent of EUR 38,773 (reimbursements of Member States' experts and organisation of the Observatory's meetings, for details see Annex VI) per year.

7. COMPARING THE OPTIONS

As set out in section 6, option 1a (an increase in DG MARKT's resources) is not realistic under the given circumstances and therefore not a suitable option. Option 2a (private, industry-financed initiative) is not likely to be feasible, due to the unwillingness of the private

⁵⁸ Council Conclusions of 25 May 2010 on the future revision of the Trade Mark system in the European Union, Official Journal C 140, 29.5.2010, p. 22.

⁵⁹ The full text of the study is available at http://ec.europa.eu/internal_market/indprop/tm/index_en.htm.

sector to launch such an initiative, and also does not thus offer a suitable solution to the problem. The risk of undue influence by vested interests would pose a problem with a view to the overall objectives of the initiative. Furthermore, the sensitivity of some of the information to be handled would create an additional problem as far as data collection is concerned.

These two options are therefore not contained in the Table 6, below, which provides a summary of the analysed suitable options:

Table 6: Comparison of options

Assessment Options	Effectiveness (achievement of objectives)					Efficiency			Overall assessment
	Sustainable funding	Stable structure	Human resources	IT capacity	Independence from vested interests	Time needed	Overall costs	Implication for EU budget	
Option 0 (base-line scenario)	0	0	0	0	0	0	0	0	0
Option 1b	+	+	+	+	0	-	between EUR 4.83 and 6.18 million / year	between EUR 4.83 and 6.18 million / year	+
Option 2b	+	-	+	+	-	--	between EUR 4.89 and 6.21 million / year	between EUR 4.85 and 6.17 million / year	-
Option 2c	+	+	+	+	0	--	between EUR 4.89 and 6.21 million / year	between EUR 2.41 and 3.07 million / year	+
Option 3a	++	++	++	+	++	--	between EUR 4.37 and 6.32 million / year	between EUR 4.33 and 6.28 million / year	+
Option 3b (as regards OHIM)	++	++	++	++	++	-	between EUR 3.3 and 5.52 million / year	- EUR 0.04 million / year	++

Magnitude of effectiveness and efficiency: ++ strongly positive, + positive, 0 neutral, - negative, -- strongly negative, N/A not applicable.

Options 1b (outsourcing) and 2b (a private, Commission-financed initiative), offer suitable solutions for most of the tasks that need to be performed. Only the process of data collection and analysis would need to be carried out through different means, in order to reach the

objective defined in section 5. However, both options have high overall costs and a high impact on the EU budget, which is strongly negative. Options 2c (public private partnership) and 3a (newly created EU agency) also offer solutions that would reach all the objectives set out in section 5 a least to a certain extent. However, again, both have an adverse impact on the budget and in the case of option 3a this is particularly negative. Both options would also result in a significant delay in getting all activities up and running.

By contrast, option 3b would provide all of the advantages of option 3a but also allow the objectives to be achieved relatively soon. Furthermore, it would lead to a very cost-efficient solution (with overall costs ranging from EUR 3.3 to 5.52 million) and would allow the costs to be covered from budgetary means outside the EU budget (which would benefit of certain savings). Option 3b is therefore the preferred option.

8. MONITORING AND EVALUATION

Should a decision be taken to entrust the tasks of the Observatory to the Office for Harmonisation in the Internal Market (OHIM), then the full effect of the resulting conditions will need to be monitored, measured and evaluated, to ensure the decision has achieved its intended objectives. To this end, five years after the entry into force of the Regulation entrusting the OHIM with the management of the Observatory, the Commission should establish an evaluation report and transmit it the European Parliament and to the Council.

This report would be composed of:

- (1) An assessment of the results that will be published by the Observatory in quarterly highlight reports and in its annual report, based on comprehensive, objective data.
- (2) Any audit reports carried out by the OHIM on the work of the Observatory;
- (3) A survey of public and private stakeholders on their perceptions of the Office's work, in terms of comprehensiveness, reliability, accuracy, usefulness, objectivity and independence of its results.

The **criteria** that would be used in order to assess the effect and impact of the measure will be, in particular:

- Progress made in the development of the Observatory's activities;
- The success of the Observatory's strategy;
- The efficient use of resources;
- The impact and implications for public and private stakeholders.

The following would act as the **main monitoring indices**:

- Timeliness of the collation and publication of reports, of research on best practices, the development and delivery of tool kits on awareness raising, and the development, delivery and maintenance of databases.

- Quality of reports and research (accuracy and usefulness), quality and impact of strategies that will be developed in the fields of public awareness, research and training, including the number of campaigns carried out successfully and the number of persons trained, accessibility of databases and the extent to which these databases have been used in practice.

**ANNEX I: MEMBERS OF THE EUROPEAN OBSERVATORY ON
COUNTERFEITING AND PIRACY**

1. MEMBER STATES

Table 7: Member States' representatives to the Observatory

Member State	Ministry/Office
Austria	Federal Ministry of Finance
Belgium	Federal Public Service of Economy
Bulgaria	Bulgarian Patent Office
Cyprus	Permanent Representation of the Republic of Cyprus to the EU
Czech Republic	Generalni reditelstvi cel (the General Directorate of Customs)
Denmark	Danish Patent and Trademark Office
Finland	Kotka Customs
France	CNAC (Comité National anti-contrefaçon) INPI (Institut National de la Propriété Industrielle)
Germany	Federal Ministry of Justice
Greece	Hellenic Industrial Property Organization
Hungary	Hungarian Patent Office
Ireland	Customs Division, Office of the Revenue Commissioners
Italy	Anti-Counterfeiting Unit - Italian Patents and Trademarks Office -Ministry of Economic Development
Latvia	Patent Office
Lithuania	Ministry of Culture of the Republic of Lithuania
Luxembourg	Ministry of the Economy and Foreign Trade
Malta	Ministry of Finance, Economy & Investment, Customs Division
Netherlands	Ministry of Economic Affairs
Poland	Ministerstwo Kultury i Dziedzictwa Narodowego (Ministry of Culture and National Heritage), Departament Prawny (Legal Department)
Portugal	Directive Council of the Portuguese Institute of Industrial Property (Instituto Nacional da Propriedade Industrial - INPI)

Member State	Ministry/Office
Romania	Public Ministry, Prosecutor's Office attached to the High Court of Casation and Justice
Slovakia	Slovak Industrial Property Office
Slovenia	Slovenian Intellectual Property Office
Spain	Oficina Española de Patentes y Marcas
Sweden	Ministry of Foreign Affairs
United Kingdom	Copyright and Enforcement Directorate, Intellectual Property Office

2. PRIVATE STAKEHOLDERS

Table 8: Private sector representatives to the Observatory

Organisation (acronym)	Full name	Description
ABAC BAAN	Association Belge Anti-Contrefaçon	ABAC-BAAN is a Belgian non-profit organisation that helps companies to fight counterfeiting, does not focus on a single segment of the market.
ACT	Association of Commercial Television in Europe	Association of Commercial Television in Europe (ACT) is a trade association representing the interests of the commercial broadcasting sector in Europe. The ACT has thirty member companies active in 34 European countries, operating several hundred free-to-air and pay-tv channels and distributing several hundred channels and new services.
AIM	Association des Industries de Marque (European Brands Association)	AIM is the European Brands Association. It represents the branded goods industries in Europe on issues which affect the ability of brand manufacturers to design, distribute and market their brands. AIM's membership groups 1800 companies of all sizes through corporate members and national associations in 22 countries. These companies are mostly active in every day consumer goods. They employ some two million workers and account for over 350 billion Euro in annual sales in Europe alone.
Alliance Against IP Theft		The Alliance Against Intellectual Property (IP) Theft is a UK-based coalition of 20 associations and enforcement organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. With a combined turnover of over £250 billion, our members include representatives of the audiovisual, music, video games and business software, and sports industries, branded manufactured goods, publishers, authors, retailers and designers.
ANDEMA	Asociacion Nacional para la Defensa de la Marca	ANDEMA is a Spanish association of trademark owners from all sectors.

Organisation (acronym)	Full name	Description
APM	Aktionskreis gegen Produkt- und Markenpiraterie e.V. REACT Germany	The German Anti-Counterfeiting Association (APM) is a cross-industrial alliance in the protection of intellectual property and a joint initiative by the German Association of Chambers of Industry and Commerce (DIHK), the Federation of German Industry (BDI), and the German Brands Association. It currently has 74 members.
ARCC	The Romanian Anti-counterfeiting Association	The Romanian Anti counterfeiting Association (ARCC) was established for the primary purpose of monitoring the cases of counterfeiting by their identification by any means necessary and drawing up strategies and programs to bring them to public attention.
BASCAP	Business Action to Stop Counterfeiting & Piracy	Business Action to Stop Counterfeiting and Piracy – BASCAP – is an initiative launched by the International Chamber of Commerce to connect and mobilize businesses across industries, sectors and national borders in the fight against counterfeiting and piracy and to pool resources and expertise.
BEUC	The European Consumers' Organisation	Has a membership of 43 national consumer organisations from 31 European countries (EU, EEA and applicant countries). BEUC acts as the umbrella group in Brussels for these organisations.
BSA	Business Software Alliance	Business Software Alliance (BSA) is a non profit trade association created to advance the goals of the software industry and its hardware partners. Headquartered in Washington, DC, BSA is active in more than 80 countries, with dedicated staff in 11 offices around the globe. Members include HP, Adobe, Apple, Cisco, Dell, IBM, Microsoft, Siemens, Symantec etc.
BUSINESSEUROPE	Confederation of European Business	Through its 40 member federations, BUSINESSEUROPE represents 20 million companies from 34 countries.
CECCM	Confederation of European Community Cigarette Manufacturers	CECCM is a non commercial association which was formed to represent the common views of major European-based cigarette manufacturers and several National Manufacturers Associations.
COLIPA	The European Cosmetics Association	Colipa has been the voice of Europe's EUR 58.1 billion cosmetic, toiletry and perfumery industry since 1962. As the industry's European trade association Colipa's membership consists of: <ul style="list-style-type: none"> - 16 major international companies - 25 active national associations - 4 supporting association members - 2 correspondent members Colipa represents the interests of more than 2000 companies ranging from major international cosmetics manufacturers to small family-run businesses operating in niche markets. Together, these employ more than 500,000 people within the European Union.
DIHK	Deutscher Industrie- und Handelskammertag e. V. (Association of German Industry and commerce)	The DIHK is the central organisation for 80 Chambers of Industry and Commerce in Germany. All German companies registered in Germany, with the exception of handicraft businesses, the free professions and farms, are required by law to join a chamber.

Organisation (acronym)	Full name	Description
ECPA	European Crop Protection Association	ECPA represents the crop protection industry's European regional network. Their members include all major companies and national associations across Europe – currently there are 59 members listed on their website.
EDIMA	European Digital Media Association	EDiMA is an alliance of new media companies whose members provide new media platforms offering European consumers a wide range of online services, including e-content, media, E-commerce, communications and information/search services. EDiMA represents some of the largest new media companies and Internet platforms operating at the European level and interested in the development of the European online market. Current members: Amazon, Apple, B!, e-bay, Orange, Google, Microsoft, Music choice, Napster, Nocial, Real, Tiscali and Yahoo.
EECA - ESIA	European Semiconductor Industry Association	EECA-ESIA represents the European-based semiconductor industry. The semiconductor industry provides the enabling technologies at the forefront of the development of the information society. This sector supports around 115,000 jobs directly and up to 500,000 induced jobs in Europe, in a market valued at over €21bn (bn) in 2009. Currently they have 18 company members, 8 national member associations and 3 research institutes.
EFPIA	European Federation of Pharmaceutical Industries and Associations	The European Federation of Pharmaceutical Industries and Associations (EFPIA) represents the pharmaceutical industry operating in Europe. Through its direct membership of 32 national associations and 40 leading pharmaceutical companies, EFPIA is the voice on the EU scene of 2,200 companies committed to researching, developing and bringing to patients new medicines that will improve health and the quality of life around the world.
Euratex	European Apparel and Textile Confederation	EURATEX is the association of the European textile and clothing industry.
Eurimag	The IT Imaging and Printing Industry in Europe	EURIMAG is an organisation representing the IT imaging and printing industry in Europe. Its membership is comprised of the leading manufacturers of printers, scanners, and multifunctional devices including Brother, Canon, Dell, Epson, Hewlett-Packard, Kodak, Konica Minolta, Lexmark and OKI. In Europe these companies account for direct employment of about 100.000 people.
Eurochambres	The Association of European Chambers of Commerce and Industry	Represents European Chambers of Commerce and Industry.
FEP - FEE	Federation of European Publishers	FEP is an umbrella association of book publishers associations in the European Union. FEP represents 26 national associations of book publishers of the European Union and of the European Economic Area.

Organisation (acronym)	Full name	Description
FESI	Federation of the European Sporting Goods Industry	FESI is the European representative of the sporting goods industry vis-à-vis the European Institutions as well as other European authorities and bodies. FESI represents some 1,800 companies with an annual turnover of more than 60 billion Euro.
GACG	Global Anti-Counterfeiting Group (GACG Network)	GACG is an informal network of national and regional IP protection and enforcement organisations. There are currently 23 Members covering 36 Countries (incl. Andema, ABAC/BAAN, MARQUES, Indicam, SACG, Unifab).
IFPI	International Federation of the Phonographic Industry	IFPI represents the recording industry worldwide, with a membership comprising some 1400 record companies in 66 countries and affiliated industry associations in 45 countries.
INDICAM	Instituto di Centromarca per la lotta alla contraffazione	INDICAM represents nearly 180 companies, industry associations, law and IP firms, security consultants and other organisations daily engaged against counterfeiting activities that hit branded products. Members mainly Italian and International brand manufacturers operating in the Italian market.
INTA	International Trademark Association	INTA is a membership association of more than 5,900 trademark owners and professionals, from more than 190 countries, dedicated to the support and advancement of trademarks and related intellectual property.
ISFE	Interactive Software Federation of Europe	ISFE represents the interests of the interactive software sector vis-à-vis the EU and international institutions. Initially founded by the national interactive software trade associations in the UK, France, Germany and the Netherlands, ISFE was enlarged in January 2002 to include any company representing the industry within the 27 Member States plus Norway, Iceland, Switzerland and Liechtenstein. Thirteen major publishers of interactive software and thirteen interactive software trade associations throughout Europe have joined ISFE.
IVF	International Video Federation	The IVF represents video associations in 16 European countries and in the United States of America.
ORGALIME	European Engineering Industries Association	Orgalime is the European federation representing the interests at the level of the EU institutions of the European mechanical, electrical, electronic and metal articles industries as a whole. Orgalime's member federations directly or indirectly represent some 130,000 companies of an industry which employs 11.1 million people. The companies which are overwhelmingly small and medium-sized enterprises cover a broad industry cross-section in terms of product, market segment and geographical spread.
SACG	Swedish Anti-Counterfeiting Group	The Swedish Anti-Counterfeiting Group (SACG) is the non-sector specific association in Sweden fighting counterfeiting. The members mainly consist of representatives of the Swedish industry, importers and distributors, as well as of Swedish attorneys specialized in intellectual property rights.

Organisation (acronym)	Full name	Description
SNB-REACT	European Anti-Counterfeiting Network	SNB-REACT is a non profit coalition with the objective to actively fight counterfeit trade. SNB-REACT members come from all sectors; sports, footwear, football, fashion, merchandising, fragrances, household, automotive industry, mobile phone industry, toys and various.
SROC	Sports Rights Owners Coalition	SROC is an informal group of representatives of international and national sports bodies with a particular focus on rights issues. SROC operates as a forum through which sports bodies can share information and experiences.
TIE	Toy Industries of Europe	TIE is a non-profit trade association for the European toy industry. At present membership includes 9 direct member companies and all major national toy associations, representing approximately 80% of European toy sales.
UEAPME	The European Association of Craft, Small and Medium-sized Enterprises	UEAPME is the employers' organisation representing the interests of European crafts, trades and SMEs at EU level. As the European SME umbrella organisation, UEAPME incorporates 82 member organisations from 34 countries consisting of national cross-sectorial SME federations, European branch federations and other associate members, which support the SME family. UEAPME represents more than 12 million enterprises, which employ around 55 million people across Europe.
UNIFAB	Union des Fabricants	Unifab is a French association whose members are companies and trade organizations of all sizes and sectors.

ANNEX II: IPR INFRINGEMENTS IN THE EU AND EU POLICY ON IPR PROTECTION

1. THE EU POLICY ON IPR PROTECTION

Studies typically suggest that R&D spending is associated with an increase in productivity, with estimated gross rates of return (including both net return to capital and depreciation) ranging from 10 to 20 percent⁶⁰. Conditions which are conducive to investment include a surety that investments in new creations and R&D are properly protected and can generate an appropriate return for investors and the creative industries. For the EU where, due to our high social standards and labour costs, most areas cannot compete on the basis of price, this is a crucial aspect. A 2007 survey involving over 400 EU-based executives⁶¹ revealed the view of these executives that, as Europe's industrial base has declined, the continent has come to rely upon its knowledge based workers. Ideas were therefore considered, by these executives, to be the EU's most valuable resource. In this respect, 53% of them said that the use of intellectual property rights will be very important or critical to their business models in two years, compared to 35% who considered this to be the case at the time of the survey.

The Commission therefore has been committed to creating a high-standard intellectual property (IP) culture⁶². In the EU *acquis*, this policy is reflected in the Charter of Fundamental Rights of the European Union, which states, in its Article 17(2), that intellectual property shall be protected. At the level of secondary law, harmonisation measures have been adopted in relation to certain aspects of copyright (such as the resale right of authors⁶³, the term of protection⁶⁴, exemptions from copyright in the digital environment⁶⁵, and trademarks⁶⁶). Furthermore, the EU has created specific EU intellectual property titles that provide a unitary level of protection throughout the EU, namely the Community trademark⁶⁷ and the Community design⁶⁸, which are both administered by the OHIM. EU legislation also provides for unitary protection throughout the EU for geographical indications (GI) of agricultural products and foodstuffs⁶⁹, wines⁷⁰, spirit drinks⁷¹ and aromatised wines⁷².

⁶⁰ OECD policy brief: Creating value from intellectual assets, February 2007, <http://www.oecd.org/dataoecd/8/45/38194512.pdf>.

⁶¹ 'The value of knowledge: European firms and the intellectual property challenge', Economist Intelligence Unit white paper 2007 published by the Economist.

⁶² See in particular COM(2008)465 final.

⁶³ Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art, OJ L 272, 13.10.2001, p. 32.

⁶⁴ Directive 2006/116/EC on the term of protection of copyright and certain related rights (codified version), OJ L 372, 27.12.2006, p. 12.

⁶⁵ Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, p. 10.

⁶⁶ First Council Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks, OJ L 40, 11.2.1989, p. 1.

⁶⁷ Council Regulation (EC) No 40/94 on the Community trade mark, OJ L 11, 14.1.1994, p. 1.

⁶⁸ Council Regulation (EC) No 6/2002 on Community designs, OJ L 3, 5.1.2002, p. 1.

⁶⁹ Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ L 93, 31.3.2006, p. 12.

⁷⁰ Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), OJ L 299, 16.11.2007, p. 45.

⁷¹ Regulation (EC) No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks, OJ L 39, 13.2.2008, p. 16.

Although the main focus of this policy is to safeguard the interests of right holders, it is not limited to this aspect as it clearly serves other interests in the market. For example, IP rights increase competition by facilitating the entry of newcomers to a market, in particular SMEs, which can attract venture capital or license production to incumbents. Furthermore, particularly in the aftermath of the financial crisis, the possibility of using IP rights as security facilitates SMEs' access to bank loans⁷³.

IPRs also form the basis for cultural creation, high quality journalism and a democratic press. Thus, copyright is fundamental to intellectual and cultural creation. It is also crucial for the maintenance of media plurality. The culture and media sectors can only be sustained when accompanied by adequate protection and income for those who devote their life to the creative impulse or those who invest heavily in creative industries.

IP protection also serves the interests of consumers by ensuring that buyers of goods and services can rely on acquiring products that meet their expectations in terms of quality, security standards and, in the case of luxury goods, brand and origin reputation. This aspect is of significant importance. In 2009, DG MARKT conducted a Eurobarometer survey⁷⁴, which included a large scale quantitative telephone survey, delivering representative results for the EU population. The survey, which discussed internal market issues in depth, incorporated Focus Groups made up of citizens and business representatives, from all Member States. The results showed that one out of five EU citizens had on at least one occasion unintentionally bought a counterfeit product.

2. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

In the EU, the enforcement of all IP rights (including trademarks, copyrights and related rights, patents and geographical indications) is considered, in the first place, to be the task of the right holders. In this respect, the IPR Enforcement Directive provides right holders with civil law tools to enforce their rights before the courts.

These particular enforcement measures are complemented by a wider range of measures at national, EU and international levels, which are aimed at preventing and combating infringements of intellectual property rights on a larger scale.

2.1. Private sector

Private business' efforts to combat IPR infringements focus on a number of specific areas. Firstly, industry sectors collect information about counterfeiting and piracy incidents. This information is used to develop public awareness about illicit products and to design relevant counter-measures. Secondly, legitimate producers undertake various preventative steps to ensure their products are difficult to copy and counterfeit. These measures often involve sophisticated authentication techniques and 'track and trace' technologies. Thirdly, industries act as prompts for enforcement and offer regular support to public authorities involved in

⁷² Council Regulation (EEC) No 1601/91 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails, OJ L 149, 14.6.1991, p. 1.

⁷³ OECD, Intellectual Assets and Value Creation: Synthesis Report, 2008, <http://www.oecd.org/dataoecd/36/35/40637101.pdf>.

⁷⁴ Full report available at: http://ec.europa.eu/public_opinion/.

investigations, through information and intelligence about products, consignments and potential infringements. Moreover, industry stakeholders regularly assist in offering training and awareness raising programmes for police, prosecutors, customs officials and other enforcement personnel. Finally, industry takes pursues violators of intellectual property rights through the courts⁷⁵.

2.2. Public sector

2.2.1. EU Member States

At national levels, over the years, Member States have put in place a wide variety of structured frameworks for combating counterfeiting and piracy. These enforcement structures, that in many Member States, are developed and led by national IP offices, have resulted in significant success stories⁷⁶. However, the frameworks have often been developed in accordance with national requirements and needs. As such, different national structures are often unsuitable for use in other Member States. Consequently, there is no particular model that is applied all over the EU.

2.2.2. European Union

Over the past decade, several steps have been taken, both legislative and non-legislative, to improve the enforcement of intellectual property rights within the EU.

In the **legislative area**, the IPR Enforcement Directive, referred to above, has harmonised the laws of Member States in respect of civil measures for the enforcement of all IP rights. Furthermore, the Commission is currently assessing whether it is necessary to complement this Directive through criminal law measures. Depending on the result of this assessment, the Commission could present a new legislative proposal, which would replace the 2006 proposal for a Directive on criminal sanctions⁷⁷. Moreover, in the food and beverage sectors, the EU's official feed and food control system⁷⁸ includes geographical indications within the architecture for the enforcement of food law.

To comprehensively fight infringements of intellectual property rights and safeguard EU competitiveness, internal market based schemes are complemented by those that focus on the EU's external borders and on third countries. The EU Customs Action Plan to combat IPR infringements for the years 2009-2012⁷⁹ sets priorities for the Commission and the Member States to take action to strengthen customs enforcement at the EU border. In this context, the Commission is preparing a proposal for a new Regulation, to replace Regulation 1383/2003⁸⁰, with the objective of strengthening enforcement whilst streamlining procedures. Moreover, the EU-China Action Plan on customs cooperation on IPR enforcement should provide the basis for reducing the scale of IPR infringements in bilateral trade between the EU and China.

⁷⁵ OECD (2008), 'The economic impact of counterfeiting and piracy', OECD Publications: Paris.

⁷⁶ See e.g. <http://www.presstv.ir/detail.aspx?id=118579§ionid=3510212> and <http://www.cityoflondon.police.uk/CityPolice/Media/News/counterfeitingsmashed.htm>.

⁷⁷ Amended proposal for a Directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM(2006) 168 final).

⁷⁸ Council Regulation (EC) No 882/2004.

⁷⁹ Council Resolution of 16 March 2009, OJ C71, 25.3.2009, p.1.

⁸⁰ Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L 196, 2.8.2003, p. 7.

Finally, the Commission has put in place a range of Free Trade Agreements (FTAs), negotiated with third countries, on provisions of protection for IP rights and has developed a long-term strategy for the enforcement of IPR in third countries⁸¹, which is due to be reviewed in 2011.

These regulatory measures are complemented by **non-legislative measures**. Various initiatives to exchange best practices are carried out by the European Commission. DG Enterprise and Industry and DG TAXUD regularly organise programmes linked to anti-counterfeiting work for customs and market surveillance authorities. Furthermore, the Commission has launched initiatives to improve businesses' knowledge about the tools available to successfully pursue infringers of their IP rights and to prevent infringements, both in Europe and abroad. One example is the China IPR SME Helpdesk, which provides EU SMEs, active in China, with the business tools they need to develop their IP rights and manage related risks.

In respect of actual enforcement activities, Europol has taken a lead by launching, in January 2008, an analysis work file (AWF), to focus on product piracy and IPR infringements⁸². This AWF is the means by which Europol provides support, through intelligence analysis, to investigations carried out by the competent authorities of the EU Member States.

However, the primary, inclusive initiative at the EU level is the European Observatory on Counterfeiting and Piracy. The functions and main pillars of the Observatory's work were described by the Commission its September 2009 Communication⁸³. One of the Observatory's main objectives is to better map out the phenomenon of counterfeiting and piracy by collecting, analysing and reporting data related to IPR infringements, and to use this information to foster more effective responses. Other objectives involve spreading best practices for enforcement and developing awareness raising activities, in order to inform consumers of the negative economic and societal impact of counterfeiting and piracy and the potential dangers related to counterfeit products.

2.2.3. *International enforcement related initiatives*

Over recent years, there has also been an increase in the number of internationally led initiatives, both at policy and operational levels, aimed at reducing counterfeiting and piracy.

Examples in terms of policy initiatives include the establishment of a comprehensive multilateral, legal framework for international co-operation in specific areas, and regional and bilateral agreements within the World Trade Organisation (WTO), through the adoption of the agreement on Trade-Related aspects of intellectual property rights (TRIPS). TRIPS provides common international rules on the minimum levels of protection that the government of each participating country must guarantee, in respect of the intellectual property of fellow WTO

⁸¹ 'Communication from the Commission concerning the strategy for the enforcement of intellectual property rights in third countries – An information note from Mr Lamy', COM(2004)749 of 8.11.2004, OJ C 129, 26.5.2005, p.3.

⁸² See Europol 'Annual Report 2008', available at http://www.europol.europa.eu/publications/Annual_Reports/Annual%20Report%202008.pdf, p. 22.

⁸³ COM(2009)467.

members⁸⁴. Other major international initiatives include the - recently concluded - negotiations on the Anti-Counterfeiting Trade Agreement (ACTA)⁸⁵.

In addition, various international organisations, such as the WIPO Advisory Committee on Enforcement and the World 26,704 in 2005 to 43,572 in 2009 Organisation (WCO) have taken action to assist countries to strengthen their systems and infrastructures, to enable more effective enforcement of intellectual property rights. Moreover, the Global Congress on Combating Counterfeiting and Piracy regularly brings together high level representatives from governments and from the private sector, to pool their experiences and enhance international coordination and cooperation. The Congress is convened by leaders from INTERPOL, WCO, WIPO, the International Chamber of Commerce initiative BASCAP (ICC/BASCAP), the International Trademark Association (INTA) and the International Security Managers Association (ISMA).

In terms of actual enforcement activities, since 2003, Interpol's Intellectual Property Crime Programme and Action Group (IPCAG)⁸⁶ has developed a strong partnership with government authorities, enforcers and major business sectors affected by counterfeiting and piracy. In particular, a regular work program is carried out alongside the World Health Organisation's International Medical Products Anti-Counterfeiting Task Force (IMPACT)⁸⁷. This has resulted in major operations, with seizures of counterfeit items worth millions of euro, including illicit medical products.

3. THE SITUATION CONCERNING IPR INFRINGEMENTS IN EUROPE TODAY

Despite these measures, the number of intellectual property rights infringements has continued to increase over recent years. In the latest OECD study, published in 2009, it was estimated that counterfeit and pirated goods in international trade have grown steadily over the last decade, from just over USD 100 billion in 2000, to up to USD 250 billion in 2007⁸⁸. The OECD estimates this amount as being larger than the national GDPs of about 150 economies. While these figures are widely used to portray the overall dimensions of the problem, they are not fully comprehensive. The OECD reports that the collection of data was extremely difficult and often the figures were incomparable due to the different methodologies used for collection, analysis and reporting.

In addition, the figures published by EU customs authorities reflect a clear increase in customs activity in recent years. Thus the number of registered cases has risen from 26,704 in 2005 to 43,572 in 2009; a rise of 60 percent in five years.

⁸⁴ WTO, 'Intellectual property: protection and enforcement', http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm.

⁸⁵ See <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/>.

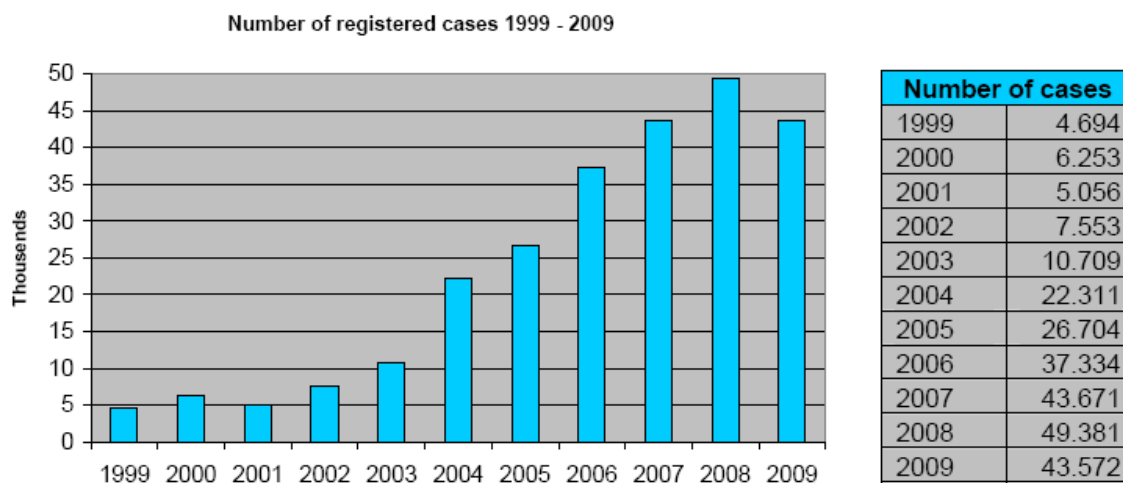
⁸⁶ Interpol, 'Intellectual Property Rights Programme', <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp>, and Interpol (2007), 'Intellectual Property Crimes: Trademark counterfeiting & Copyright Piracy', <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Publications/IIPCAGBrochure.pdf>.

⁸⁷ See <http://www.who.int/medicines/services/counterfeit/en/index.html>;

<http://www.interpol.int/Public/ICPO/speeches/2009/SGCounterfeitingMexico20091208.asp>.

⁸⁸ OECD, Magnitude of counterfeiting and piracy of tangible products – November 2009 update, http://www.oecd.org/document/23/0,3343,en_2649_34173_44088983_1_1_1_1,00.html.

Figure 1: Cases registered by EU customs



Source: EU Customs report 2009

In the above figure, the slight decrease in cases from 2008 to 2009 is likely to be linked to the economic crisis than to a general change in trend. However, once again, these figures only provide an indication of the scope and scale of the problem, as they are limited to the situation at the external borders of the EU and depend on the activities and detection rates of national customs authorities.

In the online world, copyright infringements have increased at an exponential rate over the last few years. According to a French survey, 38 percent of the French Internet users admitted to having downloaded music from "torrent sites" in 2009, while only about 28 percent downloaded from such sites the year before⁸⁹. Furthermore, another 2010 study revealed that 44 percent of the Dutch Internet population over the age of 15 admitted file sharing in the previous 12 months (this equates to around 4.7 million people). 40 percent of these downloaded music⁹⁰.

⁸⁹ Rapport au Ministre de la Culture et de la Communication, 2010.

⁹⁰ Van Eyck, Poort and Rutten, Legal, Economic and Cultural aspects of File Sharing, in: Communications & Strategies, 77, 1st quarter 2010, p.35.

**ANNEX III: STAFFING NEEDS AND COSTS UNDER
OPTIONS 1A (COMMISSION) AND 3A (NEWLY CREATED AGENCY)**

This Annex sets out the staffing needs of the European Observatory under options 1a and 3a.

In the estimates, account is taken of the fact that contract agents (CA), in the Commission, can only be recruited for a maximum of three years⁹¹, whereas they can be recruited on potentially unlimited duration contracts in an agency. For option 1a, this means that most of the required staff would need to be officials and temporary agents (TA). The long-term stability required for the build up of expertise could not be guaranteed if a larger share of the staff needed to be recruited on such contracts. Only in the area of IT services, due to the nature of these services contract agents could be used under all options.

**1. ESTIMATE OF STAFFING NEEDS OF THE OBSERVATORY UNDER OPTION 1A/
YEAR N⁹² AND N+1 (PRIORITY ACTIONS)**

Where the secretariat of the Observatory would continue to be provided by the Commission services, these would have to be reinforced by 7 staff members during the first two years in order to deliver the most urgent tasks. The current two administrators (AD) would continue to deal with more policy oriented work (briefings etc) and to coordinate the work technical work set out hereunder. The assistant (AST) would continue to take care in particular of the organisation of meetings. Given that the assistant currently made available by the OHIM would not be at the disposal of the Commission any more, an additional post would have to be made available for these tasks.

Table 9: Staffing needs under option 1a in years n and n+1

Observatory's main functions	Human resources required	AD/Category IV	AST/ Categories II and III
Preparation of policy, briefings etc	1 person	1 Senior Administrator	-
Coordination of the Observatory's activities	2 persons	1 Junior Administrator	1 Assistant
Strategies and initiatives for raising public awareness	1 person	1 Senior Public Relations specialist to assess the overall needs in terms of public awareness, public relations and media management (including the Observatory website and portal); to guide and advise on events and campaigns and to develop Europe-wide campaigns.	-

⁹¹ See Article 3b of the Conditions of Employment for other agents of the European Communities (Regulation No 31 (EEC), 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, p. 1385).

⁹² Year n is the year where the measure providing the Observatory with a more sustainable structure becomes effective.

Observatory's main functions	Human resources required	AD/Category IV	AST/ Categories II and III
Training and professional development	2 persons	1 Senior Training Specialist to carry out research and assessments of training programmes existing at national, European (EJN, ETN, Europol etc) and international level (WIPO, OECD etc) and aimed at those engaged in enforcement related activities and to develop such training programs on European level.	1 Assistant
Technical tools and systems for prevention and investigation purposes	1 person	1 Senior Technical Researcher to research, catalogue, promote and spread technical tools and systems used to prevent and investigate counterfeiting and piracy, for example tracking and tracing.	-
Case Law database	1 person	1 Junior Lawyer to collect and assess case law within and outside the EU; to assist in the development and maintenance of a data base of relevant case law; to provide legal advice on the service on all enforcement related matters.	-
Systems to improve information exchange	2 persons	1 Junior IT Systems Analyst to ensure the global project management, and 1 Junior IT Analyst to coordinate the development of a cross border system to allow authorities to rapidly exchange information on counterfeiting and piracy issues, including rapid notification and alert facilities on seizures of potentially dangerous items and other significant enforcement related developments, and the implement of such a system at a European level.	-
Total:	10 persons	8 Administrators	2 Assistants

2. ESTIMATE OF STAFFING NEEDS OF THE OBSERVATORY UNDER OPTION 3A/ YEAR N⁹³ AND N+1 (PRIORITY ACTIONS)

Under option 3a, the staffing needs would be similar to those set out under option 1a. In the year of the entry into force of the legal instrument providing the Observatory with its new structure and the year to follow, the agency would be gradually and increasingly set up, by concentrating on a number of priority activities, at each stage, using a limited number of staff.

However, given the separation from the Commission services, a Head of Service would also be required (supported by an assistant), as well as a junior policy officer to coordinate the setting up of the agency and the Observatory's activities with the Commission.

On the Commission's side, an assistant would no longer be needed to organise meetings, but the two administrators would remain to deal with the coordination with the agency and more policy-oriented tasks. Furthermore, due to the preparatory work needed to set up a new

⁹³ Year n is the year where the measure providing the Observatory with a more sustainable structure becomes effective.

agency, another two AD man years (i.e. one administrator per year) would be required in the Commission services.

This option, in the first two years, would therefore lead to two plus one administrators working on tasks related to the Observatory inside the Commission, plus eight administrators and two assistants working in the agency on the tasks of the Observatory, i.e. in total eleven staff more than under the baseline scenario. To these staff, administrative staff in the agency will have to be added (see section 4.1 below)

3. ESTIMATE OF STAFFING NEEDS OF THE OBSERVATORY UNDER OPTIONS 1 A AND 3A/ YEARS N+2 TO N+5

In the year following the entry into force of the legal instrument, the Observatory should grow into its final setting which, by this stage, would allow it to run all activities envisaged. In view of the size of the project, it would seem appropriate that under both options a Head of Service should be appointed, as well as an administrator coordinating the Observatory's work.

Table 10: Staffing needs under options 1a and 3b as of year n+2

Observatory's main functions	Human resources required	AD/Category IV	AST/ Cat. II and III
Management	1 person	1 Head of Service to manage the overall project.	-
Support	3 persons	1 Junior Policy Adviser to administer and implement day to day work programme.	2 Secretaries of the Service
Data collection, measurement and analysis	3 persons	1 Senior Economist/ Statistician to build and implement an international methodology to collect and assess data and to analyse global trends. 2 Junior Statisticians/Economists to analyse key business sectors, geographical areas and impacts on health, security, environment etc.	-
Developing public awareness strategies and public relations/press, webpage	3 persons	1 Senior Public Relations Specialist to design and develop European awareness campaign. 1 Junior Administrator to analyse national and international public awareness campaigns to help to implement European campaigns; to develop press services, website, newsletter, write articles.	1 Assistant
Training and Development – delivering technical training, awareness events and programmes	3 persons	1 Senior Training Specialist to carry out research and assessment of training programs on enforcement, and to design and develop training programs of the Observatory. 1 Junior IT Specialist to create searchable, online directory and index of the training events and programmes.	1 Assistant to provide support in organising training programs

Observatory's main functions	Human resources required	AD/Category IV	AST/ Categories II and III
Developing greater technical assistance at an international level in cooperation with IP offices	2 persons	1 Senior Administrator to work in conjunction with international organisations like WIPO, WTO etc. and Community agencies like Eurojust, Europol, to develop synergies between national IP offices and enforcement working groups. 1 Junior Administrator to assess, plan and provide technical assistance on enforcement matters in line with international needs.	-
Researching and making information available on technical tools and systems for prevention and investigation purposes	2 persons	1 Senior Technical Researcher to assess and catalogue technical tools and systems, for example tracking and tracing. 1 Junior Administrator to create and facilitate and expert group to identify needs, design strategies to improve technologies and techniques, organise events and develop publications to promote benchmark techniques, practices and standards in the area of technical tools and systems.	-
Legal Section	2 persons	1 Senior Lawyer and 1 Junior Lawyer to collect and assess case law within and outside the EU, to assist in the maintenance of the data base of relevant case law, to provide legal advice to the service on all enforcement related matters.	-
Information exchange system	2 persons	1 Junior IT Systems Analyst to ensure the global project management for a cross border system to allow authorities to rapidly exchange information on enforcement issues.	1 Assistant
Researching promoting and spreading best practice amongst public authorities	2 persons	1 Senior Administrator to research, promote and spread best practices.	1 Assistant to provide support
Researching and spreading successful private sector strategies	2 persons	1 Senior Administrator to research, promote and spread best practices.	1 Assistant to provide support
Total	25 persons	19 Administrators	6 Assistants

As in the first two years, two administrators would take care of the policy-related tasks inside the Commission, in addition to the 25 staff working on the Observatory's tasks. In the case of option 1a this would bring the overall Commission staff to a total of 27; under option 3a, there would be 25 agency staff plus two Commission administrators. In both scenarios, there would therefore be **25 more staff than under the baseline scenario** working on tasks directly related to the Observatory. In addition, under option 3a, staff to deal with administrative tasks in the agency would be required (see section 4.1 below).

4. ESTIMATE OF STAFFING COSTS

The staffing costs have to be measured against the baseline scenario. As set out in the Impact Assessment, under the baseline scenario only two administrators would in future take care of the Observatory's tasks, given that the assistant has been put at the Commission's disposal only on a temporary basis by the OHIM and that it could not be expected that such secondment would be extended where a decision was taken to establish a sustainable infrastructure for the Observatory outside the OHIM. The tables below therefore only calculate the costs that would be incurred in addition to those of the baseline scenario under the two different scenarios.

4.1. Staffing costs in years n and n+1

With a view to option 1a, the costs of the staff can be calculated on the basis of the average budgetary costs applicable to the Commission. These costs include the costs for overheads. Under these options, the additional staffing costs (compared to the baseline scenario), during the first two years would therefore amount to EUR $(4 \times 127,000 + 4 \times 66,000=)$ 772,000.

Table 11: Types of staff under option 1a in years n and n+1

Functions (Option 1a)	Commission			
	Official/TA	CA FG IV	CA FG III	CA FG II
General coordination	-	-	-	1
Public awareness	1	-		-
Training	1	-	1	-
Technical tools	1	-	-	-
Case Law database	1	-	-	-
Info exchange	-	2	-	-
Total	4	2	1	1

Under the scenario, where a new agency would be created (option 3a), administrative staff would have to be recruited in addition to the operational staff. The figures contained in table 12 below are based on the example of the gender equality agency in Vilnius (EIGE) which has a size comparable to that of such a new agency.

Table 12: Types of staff under option 3a in years n and n+1 (compared to baseline scenario)

Functions (Option 3a)	Commission				EU Agency			
	Official/T A	CA FG IV	CA FG III	CA FG II	Official/T A	CA FG IV	CA FG III	CA FG II
Setting up the service	1	-	-	-	1	-	-	-
Coordination and policy tasks (COM)		-	-		-	1	-	1
Public awareness	-	-	-	-	1	-	1	-
Training	-	-	-	-	1	-	1	-
Technical tools	-	-	-	-	1	-	-	-
Case Law database	-	-	-	-	-	1	-	-
Info exchange	-	-	-	-	-	2	-	-
Head Administration	-	-	-	-	1	-	-	1
Human Resources	-	-	-	-	-	1	-	-
Finance	-	-	-	-	-	1	-	-
Total	1	-	-		5	6	2	2

The Director of an agency is recruited at AD14 level⁹⁴. Assuming that the other officials/temporary agents would be recruited at AD8 level for senior staff and AD 5 level for junior staff, and contract agents at the entry grades (13, 8 and 4) the total staffing costs for this option in the first two years would amount to EUR ($1 \times 136,000 + 4 \times 74,000 + 6 \times 36,000 + 2 \times 29,000 + 2 \times 23,000 + 30\%$ for allowances etc =) 1 million /year. Compared to the baseline scenario, furthermore the cost for one additional Commission official would have to be added for the setting up of the service, bringing the total staffing cost under this option during the first two years to EUR ($1 \text{ million} + 127,000$ =) 1.13 million.

Furthermore, to this sum, overheads need to be added. Yearly costs for the building and the office equipment can be estimated at about EUR ($450,000 + 350,000$ =) 800,000.

This means that the total cost of option 3a until the end of n+1, compared to the baseline scenario, can be estimated at about EUR 1.93 million /year.

4.2. Staffing costs in years n+2 to n+5

As set out in table 13 below, as of year n+2, the staffing costs under option 1a would rise to about EUR ($15 \times 127,000 + 10 \times 66,000$ =) 2.57 million more than in the baseline scenario.

⁹⁴ SEC (2009) 27/2.

Under option 3a, the costs of the agency staff can be estimated at about EUR $(1 \times 136,000 + 9 \times 74,000 + 12 \times 36,000 + 5 \times 29,000 + 3 \times 23,000 + 30\% =)$ 1.882 million. To this sum, the EUR 800,000 for the building would need to be added, leading to a total staffing cost (including overheads) of EUR 2.68 million.

Table 13: Types of staff under options 1a and 3a as of year n+2

Functions	Commission (Option 1a)				EU Agency (Option 3a)			
	Official/T A	CA FG IV	CA FG III	CA FG II	Official/T A	CA FG IV	CA FG III	CA FG II
Management	1	-	-	-	1	-	-	-
Policy support	1	-	-	2	-	1	-	2
Data collection	3	-	-	-	1	2	-	-
Public awareness	1	1	1	-	1	1	1	-
Training	1	1	1	-	1	1	1	-
Technical assistance	2	-	-	-	1	1	-	-
Technical tools	2	-	-	-	1	1	-	-
Legal section	2	-	-	-	1	1	-	-
Information exchange	-	1	1	-	-	1	1	-
Best practices (public)	1	-	1	-	1	-	1	-
Successful strategies (private)	1	-	1	-	1	-	1	-
Head of Administration	-	-	-	-	1	-	-	1
Human Resources	-	-	-	-	-	1	-	-
Finance	-	-	-	-	-	1	-	-
Public Procurement	-	-	-	-	-	1	-	-
Total	15	3	5	2	10	12	5	3

5. ESTIMATE OF OTHER BUDGET REQUIRED - COSTS OF ORGANISATION OF EXPERT MEETINGS

5.1. Current yearly meeting costs

As set out in the Impact Assessment, the Observatory is currently being convened in two meetings per year (in 2009, the year of the launch of the Observatory, there was one meeting

of the private stakeholders in September 2009, and one of the public authorities in December 2009; also in 2010 one meeting of the private stakeholders was held in February, and the first plenary meeting, bringing together both public authorities and private stakeholders, was held in June). Reimbursements are made only for the participation of the public sector.

The meetings in 2010 that were partially borne by the Spanish EU Presidency and by private stakeholders can be summarised as follows:

5.1.1. 2010 Expenditure borne by the Commission budget

- Plenary meeting at Madrid (June 2010)

flight tickets & accommodation for all national representatives in Madrid (10/06/2010) : Total EUR 19,892.15

- Member States' meeting: N/A

- Private sector meetings (February 2010)

Catering 16/02/2010 Total EUR 1228,10

- Subgroup meetings:

Legal Subgroup: Total EUR 611,93

Statistics Subgroup: N/A

Public Awareness Subgroup: Total EUR 740.35

Flights for winners to the RealFAKE competition awards ceremony:

Total EUR 16,300

Total expenditure Commission 2010: EUR 38,772.53

5.1.2. 2010 Expenditure borne by third parties

- Plenary meeting at Madrid: Total EUR 19,057.15

- RealFAKE competition: Total EUR 20,505.50

TOTAL 2010 EUR 78,335.18

5.2. Additional budget required to meet the Observatory's potential

On the basis of these figures, the average costs for the reimbursement of travel expenses for Member States representatives can be estimated at EUR 50,000 per meeting, and the average

cost of the organisation of the meeting (room, conference organisers, limited interpretation regime) can be estimated at about EUR 25,000 per meeting.

As financial contributions from third parties were made on an ad hoc basis in the past, the Observatory cannot rely systematically on any comparable support in the future if its functioning is to be ensured. Consequently, for the purposes of this Impact Assessment, the full costs of the meetings have to be taken into account. The additional budget required, compared to the baseline scenario, in order to meet the Observatory's full potential can therefore be estimated as follows:

- Costs for the Observatory's current activities that, in the past, have been borne by third parties: about EUR 40,000 / year
- Reimbursement of MS experts for two additional meetings involving the public authorities: EUR 100,000 / year
- Costs of meeting rooms, interpretation and conference organisers for three additional meetings per year: $3 \times \text{EUR } 25,000 = \text{EUR } 75,000$ / year
- Costs of subgroup meetings - currently the Observatory has three sub groups: public awareness, legal and statistic group, that are made up only of private stakeholders and that meet currently in a limited composition only a couple of times a year, due to the limited management capacity of DG MARKT. Once the Observatory has sufficient resources, these groups should meet on a monthly basis, which would lead to a total of 36 sub group meetings a year. These groups should be enlarged to comprise a limited number (maximum five) of representatives of public authorities for whom mission costs would have to be reimbursed. Furthermore, their activities could also be extended to other areas of action: EUR 200,000 /year
- Mission costs of Observatory staff: EUR €30,000 / year during the first two years, and 100,000 / year as of year n+2.
- Costs of publication and production of promotion materials, specialised information, handbooks etc.: EUR 50,000 / year

The **total other budget required (in addition to the baseline scenario)** can therefore be estimated at **EUR 495,000 in years n and n+1, and EUR 592,000 / year as of year n+2.**

ANNEX IV: IT COSTS

IT costs are composed of the costs for the development of the system ("**development costs**"), the hosting costs, maintenance and support costs.

Hosting costs arise where physical space is rented on a server allowing information, web pages and files to be viewed. The vendor charges costs for the storage and retrieval of the information.

Maintenance covers the activities necessary to correct faults after delivery, to improve the performance or other attributes or to adapt the system to a modified environment.

Support costs cover all activities necessary to ensure customers can use efficiently the information system. **Technical support** concerns the diagnosis and resolution of faults during the operation of the system, and the provision of a contact point for all fault reporting, upgrades and repairs. **Users support** delivers all necessary help to end-users to use the functionalities, including training. Also promotional activities fall into this category.

While development and hosting costs arise during the development phase of the system, after the end of that phase costs arise from hosting, maintenance and support. In the present case, the development phase can be estimated to extend over the years n and $n+1$ so that the systems would become operational in year $n+2$.

1. COSTS OF A DATA COLLECTION SYSTEM AND A CASE LAW DATA BASE⁹⁵

A data collection system and the case law data base are relatively simple information storage and analysis systems. The main costs arise here for the staff that gathers the information, formats it and feeds it into the system. This latter staff would be regular staff working for the Observatory, so that its costs are reflected in Annexes III and IV, and not in this Annex.

In terms of IT costs, for the **data collection system**, a cost estimate of EUR 300,000 seems appropriate for development and hosting in years n and $n+1$ (i.e. EUR 150,000 / year), and EUR 150,000 / year for hosting, maintenance and support from year $n+2$ onwards.

For the **case law data base** the costs can be expected to be slightly higher given that it would have to be accessible from the outside. Therefore, an estimate of EUR 400,000 for the costs of development and hosting during years n and $n+1$ seems appropriate in this case, i.e. EUR 200,000 / year. As of year $n+2$, hosting, maintenance and support costs would arise which can, again, be estimated at EUR 150,000 / year.

2. COSTS OF A RAPID INFORMATION EXCHANGE SYSTEM

The costs for a rapid information system would be substantially higher, due to the complexity of the information to be fed into the system and the need to allow different users (public authorities and private stakeholders, in particular trade mark owners) to feed in information through predefined channels.

⁹⁵ Internal estimates.

2.1. Yearly costs during the development phase (years n and n+1) – Tables 14 and 15

2.1.1. Basic web-based system

IT system	Development	Hosting	Total
Users and management	100,000		
Classification products management	100,000		
Fraud management and notification	50,000		
Agents' and right holders' contact details	50,000		
TM and designs synchrony	100,000		
Machine Translations	25,000		
Stats and monitoring	50,000		
Total Basic System	475,000	300,000	775,000
TOTAL INCL. RISK FACTOR (x2)	950,000	600,000	1,550,000

2.1.2. Interconnected premier system

IT system	Development	Hosting	Total
Costs basic system	475,000	300,000	775,000
Additions interconnected premier system			
Web services set up monitoring	50,000		
Interconnection with MS	200,000		
Subtotal premier system	250,000	250,000	500,000
TOTAL (basic system + additions premier system)	725,000	550,000	1,275,000
TOTAL INCL. RISK FACTOR (x2)	1,450,000	1,100,000	2,550,000

**2.2. Yearly running costs after completion of the development phase (as of year n+2)
– Tables 16 and 17**

2.2.1. Basic web-based system

IT system	Hosting	Annual Maintenance	Support costs (technical and user support)	Total
BASIC WEB-BASED SYSTEM	300,000	200,000	462,000	962,000
TOTAL INCL. RISK FACTOR (x2)	600,000	400,000	924,000	1,924,000

2.2.2. Interconnected premier system

IT system	Hosting	Annual Maintenance	Support costs (technical and user support)	Total
Costs basic system	300,000	200,000	462,000	962,000
Additions Interconnected premier system	250,000	75,000	66,000	391,000
TOTAL (basic system + additions premier system)	550,000	275,000	528,000	1,353,000
TOTAL INCL. RISK FACTOR (x2)	1,100,000	550,000	1,056,000	2,706,000

3. TOTAL YEARLY IT COSTS – TABLE 18

Years	Info exchange system		Others
	Basic System Including risk factor	Sophisticated System Including risk factor	
n – n+1	1.55	2.55	0.35
n+2	1.92	2.71	0.3

ANNEX V: COSTS OF OPTIONS 1B AND 2

This Annex sets out the costs that would arise if support tasks to the Observatory were outsourced to external contractors (option 1b), taken on by a private sector initiative (option 2a), financed through a Commission grant (option 2b) or carried out in a PPP (option 2c).

1. ANNUAL INDICATIVE CONTRACT COSTS

In order to calculate the total cost of these options, the Observatory's tasks have been divided into ten different activities (data collection, training etc). Due to the different nature of these activities, consortia of tenderers will not easily be formed: these specialists normally do not work together and have no professional contacts. Consortia therefore only seem conceivable with a view to the two activities in the area of promoting cooperation and spreading best practices, and with a view to the IT related tasks (listed under no 3 in table 19 hereunder).

Table 19: Estimated costs of contracts

Activity	Annual indicative contract costs (EUR)	
1. Data collection, measurement and analysis Contracted team of researchers, economist and statisticians	500,000	
2. Promoting cooperation and spreading best practice⁹⁶		
2a. Programmes to develop and spread best practices amongst public bodies, including enforcers	130,000	
2b. Programmes to develop and spread successful strategies amongst private sectors bodies	130,000	
3. Building technical systems⁹⁷		
3a. Technical systems to collect, analyse and report data	Years n and n+1	150,000
	Years n+2 +	150,000

⁹⁶ Cost estimates based on figures of the UK Natural Environment Research Council 2009.

⁹⁷ Internal estimates.

Activity		Annual indicative contract costs (EUR)	
3b. Rapid information exchange system (costs depending on features of the system to be chosen, see Annex IV) and including risk factor	Simple web-based system for users to log-in and register for alert system according to product category; only free text information, machine translation function	Years n and n+1	1,550,000
		Years n+2 +	1,924,000
	Interconnected premier system allowing for upload and use of pictures and other visual content, automatic feeding of information into national IT systems of Member States concerned	Years n and n+1	2,550,000
		Years n+2 +	2,706,000
3c. Developing a case law database		Years n and n+1	200,000
		Years n+2 +	150,000
4. Developing strategies and initiatives for raising public awareness⁹⁸		500,000	
5. Training and Development – designing and organising technical training, awareness events and programmes⁹⁹		155,000	
6. Researching, assessing and making information available on technical tools and resources - tracking and tracing¹⁰⁰		250,000	
7. Developing international cooperation and technical assistance¹⁰¹		440,000	
TOTAL		Years n and n+1: Between 4.01 and 5.01 mio	
		Years n+2 +: Between 4.33 and 5.12 mio	

⁹⁸ These costs do not include the actual costs of the campaigns which will be similar under all options and depend on the type and scope of each campaign.

⁹⁹ Based on WIPO programme 17 http://www.wipo.int/about-wipo/en/budget/pdf/budget_2010_2011.pdf; these costs do not comprise the costs of professional trainers that, under all options, will have to be recruited externally.

¹⁰⁰ See e.g. <http://ted.europa.eu/udl?uri=TED:NOTICE:246101-2009:TEXT:EN:HTML>.

¹⁰¹ Based on WIPO programme 17 http://www.wipo.int/about-wipo/en/budget/pdf/budget_2010_2011.pdf.

2. ESTIMATE OF OTHER BUDGET REQUIRED - COSTS OF ORGANISATION OF EXPERT MEETINGS

For the Observatory meetings etc, an additional budget will be required.

For option 1b, this additional budget would correspond to that of option 1a, as the Commission services would continue to take care of the organisation of the meetings. To that end, as under option 1a, also under option 1b the assistant currently seconded from the OHIM would have to be replaced by a Commission staff member, adding additional EUR 66,000 / year to the overall costs and leading to a total annual cost of about **EUR (495,000 + 66,000 =) 561,000 in years n and n+1, and EUR (592,000 + 66,000=) 658,000/ year as of year n+2.**

For the different sub-options, under option 2, these costs would be the following:

- Reimbursement of Member States' experts for three meetings involving the public authorities: EUR 150,000 / year
- Costs of meeting rooms, interpretation and conference organisers for five meetings per year (two meetings each of the public authorities and of the stakeholders plus one plenary meeting): 5 x EUR 25,000 = EUR 125,000 / year
- Costs of subgroup meetings - currently the Observatory has three sub groups: a public awareness, legal and a statistics group, made up of only private sector stakeholders, that currently meet in a limited composition and only a couple of times a year, due to the limited management capacity of DG MARKT. Once the Observatory has sufficient resources, these groups should meet on a monthly basis, which would lead to a total of 36 sub group meetings a year. These groups should be enlarged to comprise of a limited number (maximum five) of representatives of public authorities for whom mission costs would have to be reimbursed. Furthermore, their activities could also be extended to other areas of action: EUR 200,000 /year
- Mission costs of Observatory staff: EUR €30,000 / year during the first two years, and 100,000 / year as of year n+2.
- Costs of publication and production of promotion materials, specialised information, handbooks etc.: EUR 50,000 / year

The additional 'other budget' required would therefore amount to EUR 555,000 in years n and n+1, and EUR 625,000 / year as of year n+2. Depending on the design of the option, some savings will be made in the EU budget. As under other options, the current two administrators in DG MARKT would continue to follow the observatory from the political angle whereas the organisation of the meetings would be taken over by the industry-led initiative, adding the costs for an assistant to the overall budget required. **The total 'other budget' required under the different sub-options of option 2 can therefore be estimated at EUR 621,000 in years n and n+1, and EUR 691,000 / year as of year n+2.**

3. COSTS FOR THE ADMINISTRATION OF CONTRACTS

To these sums, the costs for the management of the contracts need to be added. In the case of **option 1b** (outsourcing to an external contractor) these costs would arise inside DG MARKT,

under the different sub-options of **option 2**, these costs would arise for the external body taking over the tasks from DG MARKT.

It is estimated that running five contracts would require the equivalent of three AD and/or AST staff. In the case of seven to ten separate contracts, this equates to 4 to 6 AD/AST staff engaged solely in the tender procedures and their direct follow up. Even if, under option 1b, all of these staff were recruited on contract agents' contracts, the costs can be estimated at **between around EUR 264,000 and 396,000 a year**. For the sub-options of option 2, these costs can be estimated to be at least as high as the Commission's or even higher, as the size of the Commission leads to considerable economies of scale in this respect.

ANNEX VI: SYNERGIES AND COSTS UNDER OPTION 3B (OHIM)

1. ESTIMATE OF STAFFING SYNERGIES IN CASE OF OBSERVATORY'S TRANSFER TO THE OHIM / YEARS N+2 TO N+5

If, under option 3b, the management of the Observatory was entrusted to the OHIM, the Observatory's needs in terms of operational staff, during the **years n and n+1**, would be the same as under option 3a. However, due to the fact that the Observatory staff could use the Office's administration and infrastructure, the average costs of staff (including overheads) would differ, and therefore the cost of this option would be lower than those of option 3a (see below, section 2.1).

In the **years n+2 to n+5**, the number of operational staff to be employed to run the Observatory would also differ, due to synergies that could be realised with existing OHIM functions. Table 20 indicates the total resources required to perform the main functions of the Observatory between years n+2 and n+5. It shows the number of persons that would need to be recruited to work in the Observatory and alongside this, to what extent functions that are carried out by the OHIM could already be used for the purposes of the Observatory and could therefore lead to savings in terms of human resources.

Table 20: Staffing needs under option 3b as of year n+2

Observatory's main functions	Total resources required	Description	To be recruited	Economies by using existing OHIM functions
Management	1	Head of Service to manage the overall project	1 HoS	-
Policy Support	3	1 Junior ¹⁰² Policy Adviser to administer and implement day to day work programme and 2 Assistants.	1 Junior Administrator and 2 Assistants	-
Data collection, measurement and analysis	3	1 Senior Economist/Statistician to build and implement an international methodology to collect assess data and analyse global trends and 2 Junior Economists/Statisticians to support.	1 Senior and 2 Junior Economists/Statisticians	-
Developing public awareness strategies and public relations/press, webpage	3	1 Senior Public Relations Specialist and 1 Junior Administrators to design and develop European awareness campaign and 1 Assistant to support.	1 Senior PR Specialist and 1 Assistant	1 Junior Administrator by collaborating with the OHIM IPR Policy Department

¹⁰² Basic entry grades for AD staff are grades AD5 to AD8.

Observatory's main functions	Total resources required	Description	To be recruited	Economies by using existing OHIM function
Training and Development – delivering technical training, awareness events and programmes	3	1 Senior Training Specialist to carry out research and assessment of training programs on enforcement and two support specialists.	1 Senior Training Specialist	1 Junior Training specialist and 1 Assistant by integrating the organisation of the training programs with the existing OHIM training scheme.
Developing greater technical assistance at an international level in cooperation with IP offices	2	1 Senior and 1 Junior Administrator to work in conjunction with international organisations like WIPO, WTO etc. and EU agencies like Eurojust and Europol, to develop synergies between national IP offices and enforcement working groups.	1 Senior Administrator	1 Junior Administrator, by coordinating this activity with the work of the OHIM Department for institutional affairs and external relations
Researching and making information available on technical tools and systems for prevention and investigation purposes	2	1 Senior Technical Researcher to assess and catalogue technical tools and systems, for example tracking and tracing and 1 Junior Administrator to support research work.	1 Senior Researcher	1 Junior Administrator, by cooperation with the OHIM Information Technologies Department
Legal Section	2	1 Senior Lawyer and 1 Junior Lawyer to collect and assess case law within and outside the EU, to assist in the maintenance of the data base of relevant case law, to provide legal advice to the service on all enforcement related matters.	1 Senior and 1 Junior Lawyer	-
Information exchange system	2	1 Junior IT Systems Analyst to ensure the global project management for a cross border system to allow authorities to rapidly exchange information on counterfeiting and piracy issues (including rapid notification and alert facilities), and 1 Assistant.	1 Junior IT Systems Analyst	1 Assistant, by cooperation with the OHIM Information Technologies Department
Researching promoting and spreading best practice amongst public authorities	2	1 Senior Administrator to research, promote and spread best practices and 1 assistant	1 Senior Administrator and 1 Assistant	-

Observatory's main functions	Total resources required	Description	To be recruited	Economies by using existing OHIM function
Researching promoting and spreading successful private sector strategies	2	1 Senior Administrator to research, promote and spread best practices and 1 Assistant	1 Senior Administrator and 1 Assistant	-
Total	25 persons	-	19 persons	6 man years

2. ESTIMATE OF STAFFING COSTS

Table 21: Types of staff under option 3b as of year n+2

Functions	OHIM (Option 3b)			
	Official/TA	CA FG IV	CA FG III	CA FG II
Setting up of the service	1	-	-	-
Policy support		1	-	2
Data collection	1	2	-	-
Public awareness	1	-	1	-
Training	1	-	-	-
Technical assistance	1	-	-	-
Technical tools	1	-	-	-
Legal section	1	1	-	-
Information exchange	-	1	-	-
Best practices (public)	1	-	1	-
Successful strategies (private)	1	-	1	-
Total	9	5	3	2

The average staffing costs of OHIM (including overheads) of EUR 155,000 for officials/temporary agents and EUR 66,000 for contract agents would lead to a cost of the staff to be employed specifically for the Observatory of about EUR $(4 \times 155,000 + 6 \times 66,000=)$ 1.02 million / year during the first two years.

In the following years, these costs would rise to about EUR $(9 \times 155,000 + 10 \times 66,000=)$ 2.06 million.

3. ESTIMATE OF OTHER BUDGET REQUIRED IN CASE OF ENTRUSTING THE MANAGEMENT OF THE OBSERVATORY TO THE OHIM - COSTS OF ORGANISATION OF EXPERT MEETINGS

- Reimbursement of Member States' experts and consumer representatives for two meetings of the public authorities/private stakeholders and one plenary meeting: $3 \times \text{EUR } 50,000 = \text{EUR } 150,000$ / year
- Costs of subgroup meetings (to be developed as set out in Annex III): EUR 200,000 /year
- Mission costs of Observatory staff: EUR €30,000 / year during the first two years, and 100,000 / year as of year n+2
- No additional costs would have to arise for meeting facilities and meeting organisation (all available within the OHIM) and for publications etc (infrastructure and general budget of OHIM could be used)

The **total of other budget required** would therefore amount to **EUR 380,000 during years n and n+1, and EUR 450,000 as of year n+2**. At the same time, the EU budget would be alleviated by the costs borne by it in the past. On the basis of the figures provided under point 5 of Annex III for 2010, these savings can be estimated at EUR 38,773 for reimbursements of travel expenses of Member States' experts and the organisation of the Observatory's meetings.