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**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

**Europe's next leaders: the Start-up and Scale-up Initiative**

{COM(2016) 733 final}

## PUTTING INTELLECTUAL PROPERTY AT THE SERVICE OF SMEs TO FOSTER INNOVATION AND GROWTH

### INTRODUCTION

This Staff Working Paper puts forward policy actions to support access to and use of intellectual property<sup>1</sup> (IP) by start-ups in Europe – and more generally by innovative and creative small and medium-sized enterprises (SMEs) as a whole. It is an accompanying document to the Communication **Europe's next leaders: the Start-up and Scale-up Initiative**<sup>2</sup>.

The key role of IP in the success of start-ups and innovative SMEs has long been recognised: it allows innovative businesses to appropriate the results of their creativity, inventiveness and R&D investments, and creates an incentive for further investment in innovation<sup>3</sup>. Recent data from the EU Intellectual Property Office (EUIPO) show that businesses using IP rights perform better, and this is particularly true in the case of SMEs. SMEs owning IP rights have almost 32 % higher revenue per employee than SMEs that do not<sup>4</sup>. They also expand their workforce faster and pay higher salaries. IP is therefore key for smart and sustainable growth.

Yet the same data show how few SMEs in the EU actually make use of IP: only 9 % of SMEs have registered IP rights, compared to 36 % of large companies<sup>5</sup>. Moreover, even those SMEs that do use IP tend almost exclusively to rely on national titles and make little use of the EU trade mark or registered Community design, while only 0.3 % of SMEs own European patents<sup>6</sup>. SMEs do not use the IP system essentially because they do not see the benefit of it, they lack the necessary expertise and they find that procedures are too costly<sup>7</sup>. The need to support SMEs in accessing, using and exploiting the IP system is thus an important challenge<sup>8</sup>.

Given that an information and knowledge-based economy with strong innovation performance is made up of businesses whose most valuable assets are intangible, all innovative and creative start-ups and SMEs need to be aware of the advantages of using IP and the dangers of neglecting it<sup>9</sup>. Once protected, these rights have to be managed to generate value and thus enable innovation to play its full role<sup>10</sup>. As more than a third of EU SMEs

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<sup>1</sup> In this document, Intellectual Property encompasses all the options that exist for the protection of a number of intangible assets. The IP system thus includes formal IP rights granted by registration (such as patents, EU trade marks and geographic indications, informal IP rights (such as copyright) and other forms of IP protection (such as trade secrets and domain names), but the IP system also includes mechanisms and procedures to obtain and enforce IP rights and settle legal disputes.

<sup>2</sup> COM(2016) 733 of 22.11.2016.

<sup>3</sup> See Enhancing the Competitiveness of SMEs through Innovation (OECD, 2004).

<sup>4</sup> Intellectual property rights and firm performance in Europe: an economic analysis (EUIPO, 2015).

<sup>5</sup> *Ibid.*

<sup>6</sup> Granted by the EPO and validated in more than one European country.

<sup>7</sup> Intellectual property SME scoreboard (EUIPO, 2016).

<sup>8</sup> See SMEs and entrepreneurship: lessons from the global crisis and the way forward to job creation and growth (OECD, 2010).

<sup>9</sup> See <https://www.iprhelpdesk.eu/library/case-studies> for examples.

<sup>10</sup> See specifically for the cultural and creative sectors: Open Method of Coordination Member States Expert Group - Good practice report on innovative instruments to facilitate access to finance for the cultural and creative sectors (European Commission, 2015).

engage in innovation related activities<sup>11</sup>, there is clearly ample room for more SMEs to derive benefit from using IP rights.

A variety of different strategies and support measures are applied by Member States in order to encourage and help SMEs in the use of IP. This is illustrated in the annexed 'report on existing national initiatives seeking to improve IP civil enforcement procedures for SMEs', which is the result of a consultation process with Member States over the course of 2015 and 2016.

In the Single Market Strategy<sup>12</sup>, the Commission announced that it would come forward with EU-level measures to support the use of IP by SMEs. Delivering on that commitment, the Commission has now undertaken to put in place a package of IP-support measures for start-ups and SMEs<sup>13</sup>, which will have the effect of improving coordination and consistency in addressing sub-optimal use of IP by them across the EU. These measures comprise:

- (i) streamlining European IP awareness schemes for SMEs and providing a cooperation platform for Member States; (see below section 1.1)
- (ii) developing an EU IP mediation and arbitration network for SMEs; (see below section 2.2)
- (iii) encouraging the creation of European-level insurance schemes for litigation and IP theft, building on a common IP valuation method; (see below section 2.3)
- (iv) improving coordination of IP support funding schemes, including by means of a possible guidance to Member States and by developing monitoring methods their impact.(see below section 3)

This Staff Working Document articulates these measures in more detail, in addition to explaining how COSME funding will be targeted (see below sections 1.2, 1.3, and 2.1), to encourage start-ups and SMEs to use IP. The measures will be delivered on the basis of a partnership approach between the relevant Commission services, Member State authorities, the EUIPO and other relevant European IP stakeholders.

## **1. FACILITATING SME ACCESS TO IP**

### **1.1. INFORMATION AND AWARENESS**

Different initiatives at EU, national and local level exist to raise awareness on IP<sup>14</sup>, but the challenge is to ensure messages are streamlined, easily accessible and that they address the real business needs of innovative SMEs. This will require better coordination between all players; at EU level, a coordination platform will exchange experience, best practice and align messages across Member States. A similar effort of simplification and coordination needs to be undertaken within Member States. The activities of public bodies dedicated to IP – such as national IP offices, Patent Information Centres and national IP support coordination – need to be closely coordinated with business support instruments and innovation support. Awareness actions should be targeted at those SMEs that use innovation and consider expansion within

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<sup>11</sup> European Innovation Scoreboard (2016).

<sup>12</sup> COM(2015) 550 of 28.10.2015, p. 15 and its Staff Working Document, SWD(2015) 202, pp. 68-71.

<sup>13</sup> COM(2016) 733, of 22.11.2016. For ease of reference, the four measures are repeated here.

<sup>14</sup> At EU level, the IPR SME Helpdesks support EU SMEs with information and initial guidance on IP both within the EU and in certain non-EU countries and regions (China, Latin America and Southeast Asia). In addition, the EU and its Member States cooperate on IP support for SMEs through the IPorta2 project.

the single market as their priority. More precisely, targeted and streamlined IP information actions should be more effective at inducing innovative SMEs to make best use of IP protection.

The Commission services, in partnership with the EUIPO, will streamline European IP awareness schemes for SMEs and will support exchange of best practice through an EU coordination platform. This will involve the development of a common portal, of common materials for information and training, and of common training of trainers.

As a complementary action to EU level efforts, Member States could internally streamline their national IP awareness activities and coordinate them with business and innovation support schemes. This could involve mapping existing schemes and establishing effective links between business schemes and innovation schemes and IP support measures.

## **1.2. IMPROVING AND DEVELOPING IP PRE-DIAGNOSTIC SERVICES**

Awareness actions need to be complemented with more concrete actions to support SMEs in the access and use of IP. Some Member States provide individualised advice on the IP potential of a firm's intellectual assets within its specific market context (see Annex). These services, known as IP pre-diagnostic services, can be particularly effective as a way of helping SMEs both to assess the value of their intellectual assets and to include IP in their business strategy.

Such services should be available more broadly in the EU and cover all IP protection methods, without distinction between registered and non-registered rights. To this end, using COSME funding, the Commission services will finance a project of IP pre-diagnostic services to be implemented in a coordinated manner with Member States, the EUIPO and other relevant European IP stakeholders<sup>15</sup>. It will build on existing experience, but will comprise a more thorough coverage of such services across the EU, and will systematically consider EU-wide IP rights within the whole IP spectrum. This measure could be complemented by a Horizon 2020 funded project to deliver further IP services for SMEs and start-ups.

Training provided by the EUIPO, and collaboration with relevant stakeholders, will allow Member States to scale up IP pre-diagnostic services in the future. The focus will be on innovative SMEs; hence in the first phase the IP pre-diagnostic will be made available to SMEs that have received the 'seal of excellence' under the Horizon 2020 SME Instrument<sup>16</sup>; though any extension of this scheme should reach out to a broader community of innovative SMEs, including those that already have IP rights.

Between 2017 and 2019, the Commission services:

- in cooperation with the EUIPO, will establish a common training programme for IP pre-diagnostic service providers that will be rolled out in 2017;
- will fund and monitor IP pre-diagnostic services, as provided for in the 2017 COSME work programme, with a view to developing – with Member State authorities and the EUIPO – an EU-wide service for innovative SMEs; and

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<sup>15</sup> Under the 2017 COSME programme budget, EUR 4.3 million is devoted to funding these actions. See C(2016) 7033 of 8.11.2016.

<sup>16</sup> The 'seal of excellence' is a quality label awarded to project proposals which were submitted for funding under Horizon 2020, have passed stringent selection and award criteria, but could not be funded due to budget constraints.

- will report in 2019 to the Member States, to their SME envoys and to the European Enterprise Network on the impact of IP pre-diagnostic services.

### **1.3. FUNDING FOR PATENTS**

Patents are expensive and the patent system can be complex for SMEs. Today, protecting an invention throughout the Single Market can be achieved through the European Patent Office, but only at substantial cost<sup>17</sup>. In addition, European patents need to be maintained (and defended) in each Member State where they are validated, increasing the burden. Pre-grant costs and patent attorney fees represent an important barrier for SMEs and start-ups to market their innovative products and services across Europe. In view of these factors, it is not surprising that only 0.3 % of SMEs currently own European patents<sup>18</sup>.

The Commission services will help innovative SMEs and start-ups that want to patent in Europe using European patents. A pilot project will be launched to finance innovative SMEs<sup>19</sup> requesting and being granted patents. The subsidies will cover 50 % of the pre-grant costs for European patents as well as a part of attorney fees<sup>20</sup>. This will support innovative SMEs in the early years of developing their innovative products by significantly reducing patent costs. This in turn should facilitate their access to finance and investment.

Such an initiative could in the future be extended to other European IP titles (notably EU trade marks and Community designs, or the future unitary patent once it is in force), notably as regards private professional advice, the main source of expenses for those titles. On the basis of the applicable IP-related legislation, Member States could reinvest part of the fees received from European IP titles to support such a programme in the future.

Under the COSME programme, between 2017 and 2019, the Commission services will pilot co-financing of patent registration costs and attorney fees for innovative SMEs requesting patents at European level.

## **2. FACILITATING THE USE AND ENFORCEMENT OF IP**

Getting innovative start-ups and SMEs to benefit from the IP system, whether by registering rights or by applying other IP protection methods, is not enough. Once such firms own IP rights, they face subsequent challenges on how to make good use of the IP system. With the appropriate tools, such as a commonly agreed valuation methods, start-ups and SMEs could generate more income through licensing or sales of their protected IP, as well as raise more funds for investment. Small businesses however will not receive the full value of their IP if they cannot enforce them when needed. Evidence suggests that enforcing IP titles is costly and complex, especially for start-ups and SMEs facing large entities. In this context, the Single Market Strategy announced that the Commission would pay specific attention to SMEs

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<sup>17</sup> Approximately EUR 5 000 in pre-grant administration fees and potentially more than EUR 30 000 in renewal fees only for the first ten years for 27 EU Member States.

<sup>18</sup> When considering European and/or national patents, only 0.8 % of SMEs own patents in the EU versus 10.4 % of large firms (EUIPO, 2015).

<sup>19</sup> The scheme will also focus on SMEs with the 'seal of excellence' and will be funded from the above-mentioned COSME 2017 budget. A subsequent extension of this scheme could take a broader community of innovative SMEs into account; to address a common failure on the part of SMEs that have participated in research and innovation projects funded publically but not considered IP protection during the time eligible for funding from such sources.

<sup>20</sup> Attorney fees are estimated around EUR 5 000, the scheme could subsidise 40-50 % of such a sum.

in the context of the on-going review of Directive 2004/48/EC on the enforcement of IP rights.

### **2.1. A PATENT LICENSING ON-LINE INFORMATION TOOL TO PROMOTE IP SHARING AND AVOID UNNECESSARY LITIGATION**

SMEs need to pay attention not only to their own IP rights, but also to the IP rights of others. In a knowledge-based environment, even IP-savvy SMEs need help to find commercial partners. A tool with patent licensing information could be very useful to facilitate such partnerships and avoiding costly disputes.

Existing patent databases (which simply list patents and owners) do not effectively reduce transaction costs, as they do not provide sufficient information on the technology as well as its commercial potential<sup>21</sup>. Also, in the case of European patents, the same patent may be listed in one country but not in another one (i.e. where such a database is not available).

The Commission services will therefore work with the network of Member State authorities to develop a platform for knowledge-sharing and business matchmaking on technologies covered by current and future patents in 2017-18. This platform would offer organised and comprehensible information (e.g. know-how, key contractual conditions, and partnering) in order to facilitate licensing between parties. The platform would serve as a service to find information on the licensing possibility of patents in force in different Member States. While all entities would benefit from such a tool, it would particularly help SMEs and start-ups to license-in and license-out technologies across Europe<sup>22</sup>. Member States' authorities could assist in the promotion of this tool to innovative SMEs within their IP support services, using a common portal and materials.

### **2.2. MEDIATION AND ARBITRATION – AVOIDING EXPENSIVE LITIGATION**

Alternative, lighter and faster methods of solving legal disputes – namely through arbitration and mediation – can be very useful for SMEs as an alternative to litigation in court, if such arbitration and mediation can be provided at an affordable cost. These methods also allow for more proportionate settlements than simple out of court bi-lateral agreements, while the involvement of an experienced IP specialist as an independent expert ensures a more equitable outcome. However, EU SMEs do not use mediation and arbitration as frequently as other ways of settling disputes<sup>23</sup>.

Neither at EU level nor in the majority of Member States (see Annex) can firms benefit from specialised IP mediation and arbitration services. The recent EU trade mark reform has empowered the EUIPO to offer mediation services on trade marks and design rights<sup>24</sup>.

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<sup>21</sup> To further incentivise licensing agreements of technologies, some European countries (e.g. Spain, the UK and Germany) have established a 'Licence of right' (LoR) system where owners declare that they are prepared to license patents on a non-exclusive basis in return for a renewal fees discount. The Registry of the unitary patent will have a similar LoR system.

<sup>22</sup> A 2012 Commission survey revealed that SMEs innovative at EU-level would welcome such an initiative. See Options for patent valorisation (European Commission, 2012).

<sup>23</sup> Mediation is the third procedure to fight IP infringements used by SMEs (18 % of them), after bilateral negotiations and court proceedings, while arbitration is the least used (10 % of EU SMEs). Intellectual property SME scoreboard (EUIPO, 2016).

<sup>24</sup> In addition, the future unitary patent system will also have a mediation and arbitration centre.

The Commission services will strive for the availability of mediation and arbitration services covering the whole spectrum of IP, accessible across the entire EU and designed in an SME-friendly way. They will be available online and potentially through local intermediaries (e.g. chambers of commerce) and will dovetail with broader legal mediation. More accessible mediation and arbitration would also facilitate cross-border dispute settlement where multiple courts are competent (e.g. in the case of European patents).

The Commission services:

- with the EUIPO, will map existing mediation and arbitration services in the EU and internationally; and
- in partnership with the relevant competent bodies, will develop an EU IP mediation and arbitration network fit for SMEs.

Member State authorities could also engage in the creation and operation of this system and the promotion of it to SMEs.

### **2.3. IP LITIGATION INSURANCE AND IP VALUATION**

The ability to enforce rights is essential for IP to keep its value, but SMEs do not necessarily have the financial or legal means to do so. Litigation insurance, if it was available for IP, would allow for the sharing or transfer of the financial burden and risks associated with IP litigation. This would be of decisive help to innovative SMEs. Not only would it help them address the costs and potential financial risk of litigation, the added capability that it would provide would also bring additional leverage in a negotiation related to an IP dispute. This would increase the likelihood of SMEs obtaining more favourable settlements. Insurance would also facilitate drawing upon expert advice.

However, according to information provided by Member State authorities (see Annex), the market for insurance products for IP litigation has, to date, been too limited. The Commission services will seek to encourage insurance companies to enter this market in respect of EU-wide IP titles, and it will assist innovative SMEs to access such services. To this end, a two-year pilot project on multi-territory patents will be launched, after which the initiative will be evaluated and, if appropriate, continued and possibly extended to other IP titles.

In conjunction, the Commission services will engage with stakeholders on the development of insurance for loss of IP<sup>25</sup>. Aside from the immediate advantages to SMEs that greater protection of their assets would bring, a significant by-product of such an initiative would be the creation by the insurance industry of a generally-applied IP valuation methodology.

Difficulties in establishing the value of IP, which is highly case-specific, reduce the possibility of using IP to access finance. While putting a value on an IP asset is not an easy task, totally neglecting it is obviously not an option either. The EU economy is increasingly centred on services, information and knowledge with the effect that the value of intangible assets owned by business – especially start-ups – is greater than tangible assets (such as real estate and machinery), the only form of assets that are measured. Therefore, bizarrely, while the importance of information and knowledge is growing, the relative measured-value of company assets available as security is actually shrinking. With the help of a well-established and widely recognised valuation method, businesses holding IP would be better positioned to

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<sup>25</sup> That is, insurance covering the damages suffered by malicious or accidental disclosure of a trade secret as well as by the revocation by a court of an IP right or declaration of its invalidity.

gain recognition of IP assets, and, as a result, would find it easier to obtain access to competitively priced finance. Once commonly recognised across the insurance marketplace, IP-holding SMEs could then exploit valuations based on this methodology in financial markets so as to lever finance.

To encourage the creation of a European-level IP litigation insurance scheme, the Commission services will:

- in 2017, in partnership with the EUIPO, identify existing cross-border IP litigation insurance products;
- in 2017-2018, consult SMEs, insurers and IP experts to identify best practice and obstacles to the emergence of a competitive and dynamic single market for such products;
- in 2018, encourage the offer and uptake of IP litigation insurance, and set up a platform that will assemble and diffuse information on best practice in IP litigation insurance; and
- from 2018, use COSME funding to co-finance the initial take-up of patent litigation insurance by innovative SMEs so as to kick-start this market.

Starting in 2017, the Commission services will encourage the development of IP valuation methods by:

- together with the EUIPO, identifying methods of IP valuation most commonly used for financial and insurance purposes; and
- working with Member State authorities and stakeholders to agree on a common valuation method to be used in IP loss insurance and IP backed financial services, as well as for IP valuation under the newly adopted anti-tax avoidance package Directive<sup>26</sup>.

### **3. COORDINATION OF IP SUPPORT AND MONITORING OF IMPACT**

#### **3.1. ACTIONS TO COORDINATE IP SUPPORT FUNDING SCHEMES FOR INNOVATIVE SMEs**

An EU system of IP support for start-ups and SMEs has to work together and complement business and innovation support both at EU (e.g. through the Enterprise Europe Network) and national level<sup>27</sup>. It also needs to be consistent with the IP support measures provided by Member State authorities. EU IP schemes should complement and develop with national offerings. This requires coordination and sharing of best practice.

While national IP support is funded by national budgets<sup>28</sup>, Member States can use two additional sources: the European Structural and Investment Funds (ESIF) and fees generated from EU level IP rights. Given the priorities of ESIF, these naturally dovetail with innovation and competitiveness supports. In addition, the Regulation on trade marks<sup>29</sup> allocates to Member States a share of the fees paid by the IP users<sup>30</sup>. Such income could potentially become a major source of additional funding for Member States to support IP use by SMEs.

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<sup>26</sup> Council Directive (EU) 2016/1164 of 12.7.2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

<sup>27</sup> For example, via regional development agencies, chambers of commerce and trade associations.

<sup>28</sup> State aid for supporting SME innovation is in principle compatible with EU competition law (see Article 28 of Commission Regulation 651/2014).

<sup>29</sup> Article 123c of Regulation (EU) No 2424/2015 foresees funding of helpdesks, information centres and awareness raising activities.

<sup>30</sup> A similar mechanism is provided for in recitals 21 and 22 of Regulation (EU) No 1257/2012, where – once this Regulation enters into force – funding for patent-related activities is foreseen, with an important role for IP offices in Member States to provide advice and support for SMEs.



Horizon 2020 requires beneficiaries to protect and exploit the results of projects and the rules of this Framework Programme provide for the eligibility of IP protection costs<sup>31</sup>. Likewise, in a number of Member States, IP protection costs are deemed as eligible costs in research and innovation projects. Member State authorities could consider as eligible a broad range of IP protection costs. In a similar vein, Member State authorities could agree on a common minimum obligation to adequately protect IP and publish the ensuing economic results of state-funded projects.

The Commission services:

- in partnership with the EUIPO, will provide mechanisms for the exchange of knowledge on IP support services and will furnish more detailed information on how to use different sources of financing to develop IP support services;
- in 2017, with the support of the EUIPO, will set up an EU coordination platform bringing together national IP support coordinators;
- in cooperation with the EUIPO and Member State authorities, will streamline European IP support for SMEs and exchange of best practice in this platform; and
- possibly by means of guidance to Member State authorities, will seek to improve coordination of IP support funding through research and innovation (as well as SME competitiveness) schemes, and to use IP rights fees distributed to Member States under the applicable EU IP legal instruments.

Member State authorities could improve IP support measures and link them with business and innovation support schemes by:

- setting up identifiable national IP support coordinators; and
- upgrading IP support measures based on the guidelines, best practice and results of monitoring to achieve the best economic impact on SMEs.

### **3.2. MONITORING SYSTEM FOR IP SUPPORT AND FOR SMEs USE OF EU IP RIGHTS**

The use of EU IP rights by SMEs is not currently monitored on a systematic basis. Similarly, the evaluation of existing IP support measures is undertaken solely at national level. In addition, there is no common methodology to assess the economic impact of such measures.

With the EUIPO, the Commission services will set up a system to monitor the use of IP rights by SMEs and monitor and measure the impact of EU IP support activities. This system will include structured engagement with SMEs.

For their part, Member State authorities could monitor and measure the impact of national-level IP support, based on a common methodology.

### **CONCLUSION**

This IP support package for start-ups and SMEs will be put in place with Member State authorities, the EUIPO and other relevant European IP stakeholders. On the basis of data collected by the EUIPO, the Commission services will prepare an implementation report in 2019 that will assess the impact of the package on innovative SMEs.

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<sup>31</sup> It also provides some IP coaching to beneficiaries of the SME instrument and European Research Council grants.

## Annex

### **Report on existing national initiatives seeking to improve IP civil enforcement procedures for SMEs**

In July 2014, the Commission adopted a Communication entitled **Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan**<sup>32</sup>. This Action Plan reaffirmed the importance of intellectual property (IP) as a key driver for growth and innovation for the industrial competitiveness. The objectives of the Action Plan were subsequently reflected in the October 2015 Single Market Strategy<sup>33</sup>.

One of the actions foreseen in the Action Plan was a report on existing national initiatives seeking to improve IP civil enforcement procedures for SMEs. This report compiles the information received from Member States within the framework of the Group of Experts on the Enforcement of Intellectual Property Rights<sup>34</sup>. The present report is the result of a two stage consultation with the members of this expert group. The first stage took place on the basis of a questionnaire discussed with the group on 22 June 2015. The preliminary results of the consultation were presented in the meeting of the group of 13 November 2015. It was agreed at that point to circulate the questionnaire again for a second round of replies, allowing the members of the group to develop further their responses, taking into account the provisional summary of responses.

#### **1. INTRODUCTION**

There is a wide diversity of forms in which SMEs can be encouraged to and helped in the use of IP. Raising awareness and providing information is one of them. General IP information and training services are widely available, either through dedicated websites, publications, helpdesks, information points, e-learning tools, awareness campaigns, or through workshops, lectures and seminars. All these actions and schemes would benefit from detailed mapping and joint coordination effort to optimise outreach, impact, avoid duplication, and add a cross-border focus. Many Member States also make available databases and e-filing tools, which facilitate access to and management of IP titles. In contrast, bespoke IP advice services are more limited. This report focuses on individualised support services such as counselling and funding, as well as on procedures and mechanisms that facilitate IPR enforcement by SMEs.

#### **2. INDIVIDUALISED SUPPORT SERVICES FOR THE ACQUISITION AND USE OF IP RIGHTS**

##### **2.1. Financial aid to use of IP**

###### *2.1.1. Funding*

Several Member States have funds in place that can be leveraged for the acquisition, use and exploitation of IP titles. This funding can consist of subsidising applications, registration and renewal fees, tax deductions for IP related to the afore-mentioned costs. There are also national schemes subsidising use of IP export services.

**Austria** has developed funding programmes assisting SMEs in acquiring IP titles outside of Europe (50 % subsidies with '*IP.Finanzierung*', with a ceiling of EUR 18 000) and

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<sup>32</sup> COM(2014) 392 of 1.7.2014.

<sup>33</sup> COM(2015) 550 of 28.10.2015.

<sup>34</sup> Created by Commission Decision C(2014) 6449 of 16.9.2014.

programmes helping SMEs to commercialise their IP rights (out-licensing with '*IP.Vermarktung*' and in-licensing with '*License.IP*').

In **Bulgaria**, funding of innovative SMEs under the Operational Programme 'Competitiveness' includes patent application fees as eligible costs.

In **Finland**, Tekes (the Finnish Funding Agency for Innovation) is preparing a new funding instrument aimed at SMEs (innovation funding of SMEs), which includes a section on funding of intellectual property related matters (e.g. application and enforcement of an IPR).

In **Germany**, the Federal Ministry of Economic Affairs and Energy runs the WIPANO programme which assists SMEs in registering their first patent. The assistance covers relevant costs in relation to the filing and commercialisation of a patent up to EUR 16 575.

**Italy** has funding schemes (Brevetti +, Marchi +, Disegni +) aimed at encouraging SMEs to register IPRs and benefit from their economic exploitation. In addition, a National Innovation Fund (*Fondo Nazionale Innovazione*) has been created in order to fund innovative SME projects stemming from IPR exploitation through venture capital tools.

**Latvia** is developing a new State Support Programme. This consists of innovation vouchers for micro, small and medium sized enterprises supporting the purchase of external expertise that is necessary to develop new or significantly improved products or technologies, to prepare and submit applications to register industrial property rights, or for the certification of a new products or technologies. The support will cover up to 60 % of costs, with a cap of EUR 25 000 for each company.

In **Sweden**, there is financial support in the form of an 'IP-check', as an incentive for companies to have IP strategies. The programme grants a maximum of SEK 100 000 for contracting IP-professionals. The aim is to help companies make an inventory of their IP assets and put in place an IP strategy.

#### 2.1.2. *Fees reduction*

In **France**, the Intellectual Property Office (INPI) grants a 50 % reduction on patent registration fees and maintenance fees in order to encourage innovation within SMEs.

Both **Germany** and **Slovakia** provide for a 50 % reduction on renewal fees in cases where the patent holder issues a binding declaration concerning willingness to license the patent.

**Slovakia** also has a 50 % fee reduction on application fees applicable in case the patent or utility model is applied for by the inventor/author. This fee reduction is often claimed by SMEs and the self-employed.

#### 2.1.3. *Tax measures*

**Italy** has a tax regime granting businesses an exemption from corporate income tax and local income tax related to the licensing and the direct exploitation of qualifying IPRs - patents, trademarks, designs, business and technical-industrial know-how.

In **Spain**, through the 'Patent Box scheme', the exploitation and licensing of patents, designs and trade secrets benefits from a tax reduction<sup>35</sup>. In addition, deferral of any patent fees payment is available for any person with an annual income below a given threshold.

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<sup>35</sup> See *Ley de Emprendedores* and Article 23 of *Impuesto sobre Sociedades* (*Ley 27/2014*).

## 2.2. Access to finance

The **UK** offers an IP Finance toolkit aiming at facilitating dialogue between businesses and financial services professionals. It includes templates and guidance to help businesses accurately identify and describe their IP assets in a way that prepares them to fill in finance applications. The toolkit also supports decision-making by a potential lender.

## 2.3. Personalised support services

Personalised support services assist individual SMEs in their specific needs. Support services may range from providing answers to questions on registration procedures and best available IP options, to auditing the intangible assets of a business with view to developing and following-up on an IP strategy.

The present report focuses on services that go beyond general helpdesks/information centres, and looks rather at be-spoke support services that imply direct engagement with the user and his or her business project: e.g. services involving a written report with recommendations based on preparatory work that may include face-to-face meetings, analysis of the relevant business model and documentation of valuable intangible assets and innovative solutions for possible IPR protection and exploitation.

In **Austria**, within the framework of the joint initiative 'discover.IP' the Austrian Patent Office and Austria Wirtschaftsservice (aws) analyse SME strategies for handling intellectual property, suggesting concrete steps for optimisation and tailor-made recommendations for action.

**Croatia's** IPO (SIPO) has a pre-diagnosis procedure for SMEs provided by SIPO experts. **Slovakia** also provides IPRs Pre-diagnostics and **Latvia** offers free of charge consultations with patent attorneys for SMEs. Consultations in Latvia are organised once a month, with a time allowance of around 20 minutes per enterprise. The **Austrian** Patent Office provides information and consultation services regarding the protection of IP and utilisation of registered rights. Through the programme 'Discover IP', the Patent Office further consults SMEs.

The **French** Intellectual Property Office (INPI) offers a series of services called '*Coaching INPI*', which allows start-ups and SMEs to obtain and develop an IP strategy that is fit for their needs and their environment. These services include:

- '*Booster PI*', a pre-diagnostic financed by the INPI which evaluates the IP needs of SMEs and provides recommendations not only on IP protection but also on licensing, valorisation, etc.;
- '*Pass PI*', financial support the implementation of the recommendations coming out of the above-mentioned pre-diagnostic; and
- '*Master Class PI*', training for SME managers allowing them to develop an IP strategy for their businesses.

The **Estonian** Patent Office offers free-of-charge consultations to SMEs and to individuals on how to acquire legal protection for industrial property. In 2014, the Patent Office assisted 207 SMEs and individuals in respect of inventions, 128 SMEs and individuals on trade marks and 37 SMEs and individuals on designs.

The **Irish** Patents Office offers a free 'IP clinic' service, which gives an opportunity to members of the public, inventors, entrepreneurs and business people to discuss with the Patents Office their ideas in relation to matters concerning IPR applications.

In **Spain**, the Cevipyme is an SME support centre specialised in IP, providing, among other things, free personalised advice services on the acquisition, exploitation and management of IP. Spain provides an IP Audits programme for high growth SMEs – which includes an in depth analysis of a business's IP, including opportunities for increasing revenue as well as any potential risks, together with recommendations for maximising the value of a firm's IP.

The **UK** IPO funds an 'IP Audits' programme for high growth SMEs. This specialised service is administered by the IPO and carried out by an IP professional; it provides an in-depth analysis of a business's IP, including opportunities for increasing revenue as well as any potential risks, together with recommendations for maximising the value of that business's IP.

### **3. PROCEDURES AND MECHANISMS FACILITATING IPR ENFORCEMENT BY SMEs**

In terms of legal proceedings put in place for the enforcement of IP rights, many Member States have general schemes for legal aid, small claims procedures and legal caps on recoverable lawyers' fees. In general, these instruments are not designed specifically either for IP litigation or for SME use.

The existence of specialised IP courts and the availability of Alternative Dispute Resolution (ADR) schemes may also facilitate enforcement for SMEs, as they allow for streamlined procedures and speedy judgments. Operating through specialised courts and ADRs offers improved predictability as regards judgments and therefore increases legal certainty. This in turn reduces unnecessary litigation.

Many Member States have Boards of Appeal, which are a form of IP specialised service in the sense that they are generally set up to hear appeals against decisions of IPOs.

IP litigation insurance can also play a relevant role in supporting SMEs, reducing the financial risk of litigation, strengthening negotiation capabilities, and it may include some form of legal advice. There is however little information available on the availability and uptake of such products.

#### **3.1. Specialisation of Courts**

Certain Member States present some degree of IPR specialisation in IPR dispute handling.

This is the case in **Finland, France, Germany, Italy, Portugal** and the **UK**, which have IP specialised courts. **Slovakia** and **Sweden** have also very recently established IP specialised courts. In **Slovakia**, as of 1 July 2016, there is one sole district court dealing with industrial property rights disputes, while there are three courts dealing with copyright and unfair competition cases. In **Sweden**, as from 1 September 2016, IP cases are adjudicated by the new Patent and Market Court in Stockholm, at first instance, and by the new Patent and Market Appeal Court at second instance.

In other Member States, IP litigation takes place before courts dealing with commercial/business affairs (**Austria** and **Croatia**), so providing a certain degree of specialisation.

### 3.2. Simplified enforcement procedures

In the **UK**, the Intellectual Property Enterprise Court, which hears IP claims, has a Small Claims Track for cases where the amount in dispute, not including costs, is GBP 10 000 or less (approximately EUR 12 275).

### 3.3. Alternative Dispute Resolution (ADR) mechanisms - Arbitration and Mediation

Mediation and Arbitration services are widely available, but as a rule they are neither specialised in IP nor focused on SMEs.

The **German** Institution for Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit – DIS*) has a special arbitration procedure specifically for SMEs, which can be used in IP cases. The arbitration procedure is expedited and costs are reduced.

**France** provides a governmental mediation service for businesses facing contractual issues with providers or clients. In cooperation with the INPI, the scope of the service has been extended to IP matters (an agreement with the INPI to this end was signed in 2015).

**Portugal, Spain** and the **UK** offer IP specialised ADR:

- **Portugal** has a state supported arbitration and mediation centre for IP disputes (*Arbitrare*) providing a simple, bilingual (Portuguese and English) fast and inexpensive ways to resolve conflicts. The proceedings are carried out online.
- In **Spain**, the First Section of the Intellectual Property Commission provides mediation and arbitration services.
- The **UK** IPO offers an IP mediation service, and maintains a list of accredited mediators who have indicated that they are able to mediate in IP disputes. In addition, the IPO offers an Opinion Service providing impartial and authoritative opinions on questions of infringement and validity of patents. Although these opinions are non-binding, they can help parties to resolve disputes without the need for costly litigation. An opinion is prepared by an IPO senior examiner and costs the requester GBP 200. Opinions are based on papers submitted by the parties.

Many Member States have ADRs in the field of copyright, in particular for disputes involving collective management organisations or disputes on remuneration tariffs for cable retransmission. This is the case of the **Czech Republic, Denmark, Estonia, Germany, Poland, Portugal, Slovenia, and Sweden**.

**Slovakia** plans to put in place an ADR mechanism for top-level domain (.sk) disputes.

### 3.4. State sponsored insurance schemes for legal expenses incurred in solving IP disputes

State sponsored insurance schemes are practically inexistent. An exception is the **UK**, where there is an increasingly active market providing Before the Event (BTE) IP Legal Expenses Insurance (LEI) policies. BTE LEI policies can cover the insured entity against its own legal costs and/or the legal costs of someone the entity is in dispute with. The UK programme ‘Cyber Essentials’ provides innovation vouchers which may be used to, among other things, to purchase insurance, and the UK is proactively encouraging the use and offer of such types of insurance products. The **Danish** Patent Office has also been facilitating the emergence of patent insurance products.

Some Member States have no information on the market availability of such products, and in others it seems that such products do not exist at all. Although IPR insurance products are available in certain Member States, there is a general lack of data on the extent to which these products are effectively used and the specific terms and conditions of coverage.

In **France**, past initiatives to support availability and access to insurance products on IP did not take off due to lack of demand. In France, access to justice is free of charge. Some other Member States have mentioned that the lower value of the Court fees.

### **3.5. Other measures to support IPR enforcement**

**Austria's** *Wirtschaftsservice Gesmb* (aws), the country's principal business-focused funding agency, has an IP enforcement support programme that assists businesses in enforcing their intellectual property rights in Austria and abroad. It focuses on SMEs who develop their own technological expertise. The service includes consulting services, the awarding of government grants and assistance with court procedures (50 % of litigation costs can be covered, but also other costs that occur during the procedure of enforcement). In cases where there is evidence of infringement, aws develops an enforcement and litigation plan, detailing the form and scope of aws's involvement. Within the scope of its activities, aws offers support by consulting its local networks and alliances and organising networking events between SMEs, large-scale enterprises and litigators, in order to enable them to exchange knowledge and share best practise solutions. Aws also offers training and support through IP awareness courses organised with other governmental bodies such as the Austrian Patent Office.