



POLICY NOTES OF THE WORKING PAPER 5.25

Harmonization of Intellectual Property Rights within and beyond the European Union: The Acquis Communautaire in the Framework of the European Neighbourhood Policy

September 2013

Since the early '90s, the European Union has been acting as a global actor in the process of international harmonization of the laws protecting Intellectual Property Rights (IPRs). Alongside the progress towards the harmonization of the laws of its Member States, the EU has also acted at international level to promote approximations of laws as instrumental to free trade. The EU Neighbourhood Policy provides one of the most ambitious tools to achieve this international harmonization.

The working paper reviews the EU IPRs harmonization policy at both 'internal' and 'external' level. While harmonization within the EU boundaries has progressed speedily in certain areas of IPRs (namely trade marks, designs and geographical indications), it has progressed more conservatively in others (copyright). Similarly, beyond-boundaries harmonization has resulted in a fragmented scenario, whereby the level of IPRs protection in European neighbouring countries varies greatly, with some similarities that can be detected within sub-groups (Eastern European, Southern Mediterranean, and Black Sea countries).

The review of the European Neighbourhood Policy carried out in 2010/2011 has introduced a 'more for more' approach, whereby the more a Neighbouring Country achieves social, political, and economic reforms, the more it will be integrated in the Internal Market. This approach is expected to result in a more balanced process of approximation of laws, as well as in a process consisting of more realistic and measurable objectives. The preliminary findings of our study suggest that this is the way forward.

In the framework of a policy aimed at setting targets that can be successfully implemented, the following recommendations can be made:

- The dismissal of the 'one size fits all' approach to IPRs international harmonization, and the adoption of a more balanced approach, will have positive effect on successful implementation of the obligations agreed in the Action Plans and in the related bilateral agreements. This approach has to be pursued more decidedly, especially in

the field of ‘automatic’ IPRs, i.e. rights that do not depend upon registration and examination (copyright and related rights, unregistered design);

- Presently, all bilateral agreements between the EU and NCs include a ‘safeguard clause’ whereby restrictions on trade can be imposed on the ground of protecting IPRs. This clause forecloses the application of Community exhaustion of IPRs to contracting NCs, and has the effect of restricting parallel import of IPRs-protected goods from NCs to EU and *vice versa*. This is a serious barrier to trade. It is suggested to explore the possibility of repealing or modifying the ‘safeguard clause’ with respect to those NCs that show a level of protection comparable to that of the EU (in our analysis: Israel, Jordan);
- Most of the bilateral agreements stress the importance of law approximation and set detailed targets in this respect. It is suggested to shift the focus on aspects of IPRs protection that are more directly relevant to inter-state trade; these include, above all, coordination of judicial procedures and enforcement mechanisms;
- Progress towards the coordination of financial assistance to develop IPRs agencies have been made. Such financial assistance should be paralleled with administrative support from EU agencies (for example, the OHIM) and other inter-European institutions (e.g. the EPO).