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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

Evaluation of the Application of the Regulation (EU) No 386/2012 of 19 April 2012

{ COM(2020) 755 final }

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Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
ACIST	Anti-Counterfeiting Intelligence Support Tool
ACRIS	Anti-Counterfeiting Rapid Intelligence System
Commission	European Commission
Council	Council of the European Union
CEPOL	European Union Agency for Law Enforcement Training
EDB	Enforcement Data Base
EU	European Union
EIPPN	European Intellectual Property Prosecutors Network
EUIPO	European Union Intellectual Property Office
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
Impact assessment	Commission Staff Working Paper “Impact assessment” of 24 May 2011, SEC(2011) 612 final
IP	Intellectual property
IPR	Intellectual property rights
IPEP	IP Enforcement Portal
Observatory	European Observatory on Infringements of Intellectual Property Rights

OECD	Organisation for Economic Co-operation and Development
Office	European Union Intellectual Property Office (EUIPO)
OLAF	The European Anti-Fraud Office

1. INTRODUCTION

The European Union Intellectual Property Office ('the Office')¹ manages the European Union trade mark and the Community design systems (receiving, examining and deciding on applications for the registration of trade marks and designs as well as keeping public records of such rights, their proprietors, etc.)². In addition, the Office facilitates the activities of national authorities, the private sector and the EU institutions in the fight against infringements of intellectual property (IP) rights (that is, not only trade marks and designs but also patents, copyright, geographic indications, etc.). This second set of tasks were entrusted to the Office under Regulation No 386/2012³ ('the Regulation') which further specifies that "*In carrying out these tasks the Office shall organise, administer and support the gathering of experts, authorities and stakeholders assembled under the name 'European Observatory on Infringements of Intellectual Property Rights' ('the Observatory')*".

This report evaluates the implementation and functioning of the Regulation, assessing whether its initial objectives are still valid and whether they were met in an efficient and coherent way. For that purpose, the evaluation examined the activities carried out by the Office under the Regulation, since its entry into force on 5 June 2012, until 31 December 2019. The evaluation is required by the reporting obligation under Article 8 of the Regulation⁴.

2. BACKGROUND TO THE INTERVENTION

Description and objectives

The share of intangible assets in companies' overall value has risen from 17% in 1975, over 68% in 1995, to 84% in 2015⁵. Intellectual property rights (IPR) help businesses to ensure that investment in intangibles (such as inventions, brands, and product design) results in competitiveness gains, generating revenues, growth and jobs. Trade marks allow consumers to identify good quality products and repeat rewarding experiences, therefore providing incentives for manufacturers to continually improve their products. However, popular branded products are too often copied, using poor materials, assembled in clandestine sites that elude safety regulations, deceiving consumers and putting their health and safety at risk. At the same time, the

¹ The Office was initially named "Office for Harmonization in the Internal Market (Trade Marks and Designs)". The Office was created by Council Regulation (EC) No 40/94 which was repealed by Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ L 78, 24.3.2009, p. 1). Regulation No 207/2009 was amended several times including by Regulation (EU) 2015/2424 of the European Parliament and of the Council, which operated the change of agency's name to European Union Intellectual Property Office (EUIPO). Regulation No 207/2009 and its different amendments were codified by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark

² Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ EC No L 3 of 5.1.2002, p. 1).

³ Regulation No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ EC No L 129 of 16.5.2012, p. 1).

⁴ According to Article 8 of the Regulation "The Commission shall adopt a report evaluating the application of this Regulation by 6 June 2017".

⁵ S&P 500 intangible asset value study, 2017.

advent of the Internet has made it easy to make available copyright content without rewarding authors and creators for their works.

As with any illicit market, it is not easy to determine the volume of counterfeiting and piracy. According to a study from the Organisation for Economic Co-operation and Development (OECD) released in 2008⁶ without regular, reliable and robust data on the scale, scope and impact of the problem, it is not possible to measure trends and threats, and therefore to improve the efficiency of IP enforcement. The same study found that *“Governments, business and other interested stakeholders could do a far better job collecting and analysing information that is essential for designing and implementing effective strategies for combating counterfeiting and piracy”*.

In 2009, the Commission created the European Observatory on Infringements of Intellectual Property⁷ (‘the ‘Observatory’), an informal platform bringing together, and enabling close cooperation and dialogue between, the departments of the Commission, national authorities and private sector stakeholders concerned by the enforcement of IPR. Managed by the departments of the Commission, the Observatory’s main goals were to:

- collect data on the scope, scale and impact of infringements of IPR in the EU;
- improve cooperation between those engaged in protecting and enforcing IPR;
- share best practice in enforcement; and
- raise awareness among consumers.

In 2010⁸, the Council of the European Union (‘the Council’) invited the Commission to elaborate further on the scope of competences, tasks and role of the Observatory, supporting its activity through existing institutional structures. It also encouraged national authorities, right holders, consumer organisations and other stakeholders from all sectors, to actively participate in, and contribute to the work of the Observatory. Furthermore, the Council invited the Commission, the Member States and industry to provide the Observatory with available information and to jointly develop and agree on plans to collect further information, and to jointly develop a common methodology for collecting data. The Council also encouraged the Commission, the Member States and stakeholders to implement effective awareness campaigns. In addition, the Council also invited the Observatory to explore the need for the implementation of European Union level training programmes for those involved in combating counterfeiting and piracy. In addition, the Council requested the Observatory to facilitate regular experts’ meetings, involving representatives from public authorities, private sector bodies and consumer organisations, to promote successful and proportional solutions against counterfeiting and piracy. The Council also invited the Commission to assess, in close cooperation with Member States, how best to enhance coordination, cooperation, information exchange and mutual assistance between all national and European authorities involved in combating counterfeiting and piracy with the cooperation of the economic operators.

Following the Council’s invitation to review the scope of competences, tasks and role of the Observatory, the Commission studied possible means of providing the Observatory with a sustainable infrastructure that would allow it to fulfil a broadened range of tasks, in a more effective way.

6 OECD, The economic impact of counterfeiting and piracy, 2008

7 Communication from the Commission ‘Enhancing the enforcement of intellectual property rights in the internal market’, 11 September 2009 COM(2009)467.

8 Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market (2010/C 56/01).

As a result, and based on an impact assessment⁹, on 24 May 2011 the Commission adopted a proposal for a regulation that would entrust the management and the tasks of the Observatory to the Office. The operational aim was ensuring *“that the Observatory had the necessary infrastructure to deliver its activities effectively, as quickly as possible and with minimum costs for the EU budget.”*

The Regulation was adopted on 19 April 2012 and assigns the Office with the following specific tasks¹⁰:

- improving understanding of the value of IP and of the scope and impact of infringements of IPR;
- enhancing knowledge of public and private sector practices to protect IPR;
- assisting in raising citizens’ awareness of the impact of infringements of IPR;
- enhancing the expertise of individuals involved in the enforcement of IPR; and on technical tools to prevent and tackle infringements of IPR;
- providing mechanisms to improve the online exchange, between national authorities, of information on the enforcement of IPR, and fostering cooperation with and between those authorities;
- working to improve international cooperation with IP offices in non-EU countries to build strategies and develop skills and tools to enforce IPR

The Regulation sets out in detail the activities that the Office should carry out to fulfil these tasks¹¹, namely;

- Collecting, analysing and reporting data and information on the economic value of IP, on infringements of IPR and their impact, as well as on best practices for preventing or combating infringements;
- drawing up publications and organising events to raise awareness amongst citizens of the impact of infringements of IPR, as well as assisting in national and European awareness actions
- monitoring legal offers of cultural and creative content, and raising consumer awareness in this respect
- identifying and promoting skills, tools related to preventing and combating IP infringement, including training for officials involved in protecting IPR
- improving information sharing on infringements of IPR between public administrations and relevant organisations;
- programmes providing assistance to non-EU countries.

The Regulation also states that to carry out these activities, the Office *“shall at least once per year invite to meetings of the Observatory representatives from public administrations, bodies and organisations in the Member States dealing with intellectual property rights and representatives from the private sector, for the purpose of their participation in the Office’s work under this Regulation”*¹². The Regulation provides for the creation of working groups under the Observatory made up of representatives from Member States and the private sector¹³.

Under Article 3 of the Regulation, the Office *“shall at all times ensure that the activities entrusted to it by this Regulation are carried out by making use of its own budgetary means”*.

⁹ Commission Staff Working Paper of 24 May 2011, SEC(2011) 612 final, p. 21 (‘impact assessment’).

¹⁰ Article 2(1) of the Regulation.

¹¹ Article 2(2) of the Regulation.

¹² Article 4(1) of the Regulation.

¹³ Article 4(4) of the Regulation.

Baseline and points of comparison (2009-2012)

In 2009 there was little data available on the volume and impact of counterfeiting, piracy and IPR. One of the more reliable sources of information available were the reports published by the Commission on annual customs detentions at EU borders. Such reports remain today a major source of information on customs' detentions. These relate to attempts to import physical goods into the EU. The reports on customs detentions do not cover seizures of counterfeits manufactured or placed on the single market. They also do not include data on other forms of infringement of IPR (such as online illegal offer of movies, music and live sport events protected by copyright).

Statistical data were otherwise scarce and often supplied on a one-time-off basis. Business organisations representing the interests of owners of IPR, also published data, but using different and not always transparent, methodologies.

There was also no coordinated effort for awareness raising and little was known about consumer behaviour towards counterfeiting and piracy, consumer's perception of IP or the views of targeted groups such as young people. The Eurobarometer would sporadically include a limited number of questions on IP, with no follow-up in subsequent years.

In addition, there was insufficient cooperation between the national authorities. Cooperation existed in customs, promoted and coordinated at EU level by the Commission, in the form of training, events and electronic systems to exchange information on IPR infringing goods. However, other authorities involved in the fight against counterfeiting and piracy, such as police forces not dealing with border issues, were not involved in this cooperation. There was no dedicated permanent mechanism enabling mutual learning through experience and knowledge sharing focusing on IP enforcement in a comprehensive manner, bringing together all the relevant authorities (customs, police, public prosecutors, officials from IP offices and ministries in the Member States, etc.). Moreover, there was little or no cooperation at EU level between public authorities and holders of IPR and there was no online tool making it possible for right holders to share with enforcement authorities throughout the EU data relevant to facilitate the enforcement of IPR.

Table 1 Baseline (Commission own sources)	
Independent EU-wide data	
on the economic value of IP	Non-existent
on infringements of IP (business models, methods and routes, etc.)	Non-existent
on the volume and impact of infringement of IP (on loss of sales, jobs, taxes, etc.)	Limited to customs data
Awareness	
Campaigns, events, social media and publications	National driven, sporadic and uncoordinated
EU-wide independent research on IP awareness among consumers, young people, SMEs	Sporadic, very limited in scope and inconsequential
Best practices	
Enhance knowledge of best public and private sector practices to protect IPR	Limited to customs and SMEs
EU wide information on legal offers	
Dissemination information on the availability of copyright protected content to reduce demand for	Non-existent

illegal offers	
Developing skills	
Training officials involved in the enforcement of IPR	Limited to customs
Technical tools	
Identifying and promoting technical tools, including track and trace systems for genuine goods	Non existent
Exchange of information tools	
Tools to exchange information on infringements of IPR between national authorities	Limited to customs
Non-EU countries	
Technical assistance to non-EU countries, training programmes and events for officials from non-EU countries	Limited to customs

The launch of the Observatory was a first important step to changing the state of affairs. However, there were limited human and financial resources available within departments of the Commission. On 9 April 2012, the date of the adoption of the Regulation, the Observatory network was composed of 27 representatives from Member States and 38 representatives from the private sector, which was in need of enlargement (in particular civil society representatives, but also relevant international organisations). The Observatory was managed by a team of two administrators and one assistant (who was temporarily seconded to the department of the Commission by the Office).

Staff assigned to the Observatory	3
Representatives to the Observatory:	66
Breakdown of representatives:	
Public sector	27
Private sector	38
Consumers and civil society	1
Observers	--
Members of the European Parliament	--

The departments of the Commission created the foundations of what the Office's Observatory is today. While it was not able to collect, assess and report on levels of infringement or on the value of IP, it paved the way for a comprehensive approach to statistical data on IPR and their infringement by launching a study on methodology to measure the impact of infringements of IPR. Due to the scarcity of human and financial resources, the Observatory's remaining activities consisted mainly in organising meetings with stakeholders to exchange best practice. Indeed, there was no appropriate funding to organise events, trainings and campaigns, and there was no suitable structure to develop and operate a major set of online tools for public authorities and IPR holders.

The following table summarises the Observatory’s activities during the two years and seven months that followed its creation (September 2009), until they were transferred to the Office (April 2012):

Table 3 Observatory output from September 2009 to June 2012 (Commission own sources)	
STUDIES	
Legal studies on civil law enforcement of IPR	4
Economic studies on IP	---
Studies on awareness of IP	---
Studies on infringements of IPR	---
Studies on enforcement of IPR	---
Other studies	---
Total studies	4
AWARENESS	
Awareness campaigns carried out or funded	---
TRAINING	
Training events carried out	---
Number of participants	---
TOOLS & DATABASES	
Enforcement tools	---
Legal use of IPR	---
Training tools	---

3. IMPLEMENTATION / STATE OF PLAY

Framework, resources and network of representatives to the Observatory

In order to implement the tasks assigned to it by the Regulation, the Office created the Observatory department¹⁴. Its activities are funded by the Office’s budget which is financed by

¹⁴ The term “Observatory” refers to the body of stakeholders foreseen in Article 4 of the Regulation, The Office named its new department the “Observatory” because the organisation of the meetings and the works of the Observatory is one of its main tasks. The literature reviewed in the evaluation, including the study by Technopolis (‘the contractor’), sometimes refers to activities of the Observatory “.

the fees the Office charges from the users of the EU trade marks and of the Community designs systems. The Office's Observatory team had 34 members of staff at the end of 2012¹⁵. By 31 December 2019 this number had risen to 55, corresponding to 5,3% of the statutory Office staff¹⁶. The Office's expenditure on the Observatory increased from €2.44 million in 2012 to €11.74 million in 2019. The following table indicates the number of staff (at the end of year) and spending of the Office's Observatory department:

	2012	2013	2014	2015	2016	2017	2018	2019
Number of staff	34	47	29	31	37	42	52	55
Spending (million €) ¹⁷	2.44	6.08	7.09	11.54	9.35	12.2	13.3	11,74

The number of representatives to the Observatory has also increased. Between 19 April 2012, the date of the adoption of the Regulation, and 31 December 2019, the Observatory network increased from 67 to 128 representatives.

The public sector representatives are designated by the EU Member States, whereas representatives from the private sector are invited by the Office. The Observatory's private sector stakeholders are organisations that are involved or experienced in the fight against infringements of IPR¹⁸. In addition, the Office invites, to the meetings of the Observatory, members or other representatives of the European Parliament and representatives from the various relevant departments of the Commission¹⁹, as well as other EU bodies and international organisations. The list of Observatory members and of organisations invited as observers is available online²⁰.

Representatives to the Observatory contribute to the Office's work by integrating working groups that follow-up on different clusters of projects. In 2012-2018, the Office structured the work of the Observatory around the following groups: (1) IP in the digital world; (2) Public awareness; (3) Legal & international; (4) Enforcement, and (5) Economics and statistics. The working groups meet twice a year. In these meetings, the Office reports on the different projects and invites stakeholders to present their views on the progress made and on the next steps.

However, it should be noted that all activities under consideration in the evaluation are activities of the EUIPO. The Observatory, that is, the network of stakeholders, does not have a legal personality and does not carry out any activities on its own, but rather participates at, and provides input to, the activities of the Office.

¹⁵ Initially the Observatory integrated the Office's Academy, a unit that was detached from it in 2014, leading to a drop in staff of the Observatory department from 47 (in 2013) to 29 (2014).

¹⁶ The EUIPO has 1031 statutory staff (officials, temporary agents, contract agents and special advisors) – source: 2019 Annual Report EUIPO.

¹⁷ Including salaries of statutory staff and other staff related expenditure.

¹⁸ The selection criteria is available online: - [EUIPO-Observatory's webpage](#)

¹⁹ The invitation of members or representatives of the European Parliament and of representatives of the Commissions s expressly foreseen in Article 4(6) of the Regulation,

²⁰ <https://euipo.europa.eu/ohimportal/en/web/observatory/observatory-network>

In 2019, the Office discontinued the Legal and international work group and created six expert groups: (1) Observatory outreach; (2) Impact of technology; (3) Cooperation with intermediaries and (4) SMEs, (5) Legal, and (6) International. While members of working groups represent organisations that are members of the Observatory (example, an association of owners of trade marks), expert groups are composed of experts selected in their individual professional capacity. Expert groups help the EUIPO in making concrete steps in specific projects and they meet as often as necessary. Working groups meet twice a year, and are used by the EUIPO as a means for to consult a broad range of representatives to the Observatory

In addition, the Office organises ‘statutory annual meetings’: one public sector stakeholders’ meeting, one private sector stakeholder’s meeting and one plenary meeting. The plenary meeting assembles the whole Observatory network. In addition, the Observatory team conducts videoconferences with the Observatory’s civil society stakeholders two to three times a year.

Studies, surveys and reports

Between 5 June 2012, the date of the entering into force of the Regulation, and 31 December 2019, the Office has published 84 studies related to its tasks under the Regulation²¹.

IP contribution studies

This first group concerns studies on the economic relevance of IP both for the EU economy and for the individual performance of businesses. So far, the Office has published eight studies in this area. Some of these studies are repeated in time to identify trends. In 2013, for example, the Office published the report *Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union*. The report was updated in 2016, and again in 2019. According to the 2019 edition, IPR-intensive industries account for 45% of EU GDP and almost one third of all jobs (29.2%) in the EU²². The Office also analysed the relevance of IP for business: *Intellectual property rights and firm performance in Europe* (2015). This study has shown that, on average, companies that own IPR generate 29 per cent higher revenue per employee, and they pay 20 per cent higher wages, than companies that do not use IPR. In 2019 the Office published the study *High-growth firms and intellectual property rights. IPR profile of high-potential SMEs in Europe*, revealing that companies that have IPR activity have a much more likely to achieve subsequent growth than other companies.

IP infringement studies

The Office has published 28 studies on the volume and impact of infringements of IPR and other related matters such as the operational aspects of infringement activities. Looking at the scale of IP infringement on a global level, the Office, in joint cooperation with the OECD, published a report *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact* (2016). According to its findings, in 2013 trade in counterfeit and pirated goods accounted for up to 2.5% of global trade (and 5% of the imports into the EU). The Office and the OECD repeated the exercise in 2019. The results revealed a rise of the volume of global trade in counterfeit and pirated products (up to 3.3 % of global trade and 6.8% of EU imports). The Office has also conducted research on the economic impact of IP infringements, in terms of loss of sales, loss of government revenue and loss of jobs. The Office has done so using a sector by sector approach and it has covered 12 sectors so far, from cosmetics to tyres and batteries to recorded music. The Office also looked to other impacts such as in the *Qualitative Study on Risks Posed by Counterfeits to Consumers* (2019).

²¹ The studies, surveys and reports carried out by the EUIPO the under the Regulation are available online at <https://euipo.europa.eu/ohimportal/en/web/observatory/observatory-publications>.

²² In its 2013 edition, IPR-intensive industries accounted for 38.1% of EU GDP and 27.8% of all jobs.

Looking at the operational aspect of IP infringement, the OECD and Office complemented these reports with a number of related studies, such as *Mapping the Real Routes of Trade in Fake Goods* (OECD/EUIPO 2017) where China is identified the top producer of counterfeit goods in 9 out of 10 categories of goods that were researched. Other studies include: *Why do Countries Export Fakes* (OECD/EUIPO 2018), *Misuse of Small Parcels for Trade in Counterfeit Goods* (OECD/ EUIPO, 2018) and *Trends in Trade in Counterfeit and Pirated Goods* (OECD/EUIPO 2019) *Online Business Models Infringing Intellectual Property Rights - Phase 1* (2016) and *Online Business Models Infringing Intellectual Property Rights - Phase 2* (2017).

The Office has also joined forces with Europol. The two organisations carried out a study, which benefited from contributions by national enforcement authorities and the private sector, leading to the publication of the 2015 *Situation Report on Counterfeiting in the European Union*. This study identifies the main traits of the phenomenon and provides illustrative case studies. An updated version of the study was published in 2017 assessing the evolution and providing new insights into emerging trends. The two organisations published a third edition in 2019, titled *Intellectual Property Crime Threat Assessment* (2019).

Enforcement studies

The Office has published over 30 studies on the legal and practical aspects of enforcing IPR, including among others the following: *Study on voluntary collaboration practices in addressing online infringements of trade mark rights, design rights, copyright and rights related to copyright* (2016), *Legislative measures related to online IP infringements* (2018); *Deposit systems for audio visual works* (2017, with the European Audiovisual Observatory), *Protection and Control of Geographical Indications for Agricultural Products in the EU Member States* (2017), *Voluntary Registration and Deposit Systems: United States and China* (2018) *IP Litigation Insurance Landscape* (2018).

To help European businesses in their exports or overseas investment operations, between 2014 and 2015, the Office published five guides to IP protection in non-EU countries (Turkey, Russia, India, China, Brazil and Ukraine).

Furthermore, the Office prepared case-law collections, namely *Recent European Case-Law on the infringement and enforcement of Intellectual Property Rights* (2019), and *IPR Enforcement Case-Law Collection - The liability and obligations of intermediary service providers in the European Union* (2019).

Raising awareness studies

To support work in raising awareness, the Office has conducted research on Europeans including young people's perception of IP and their behaviour towards counterfeits and piracy, as well as on best practice in IP and education. These studies include: *European Citizens and Intellectual Property: Perception, Awareness and Behaviour*, EUIPO (2013), *Intellectual Property and Youth*, EUIPO (2016), *Intellectual Property and Youth*, EUIPO (2019), *IP and Education in Europe* (2015), *European Citizens and Intellectual Property: Perception, Awareness and Behaviour* (2017), and *IP in Education Best Practice Report*, EUIPO (2019).

In *Intellectual Property (IP) SME Scoreboard* (first published in 2016 and then updated 2019), the Office has also reported on the extent to which SMEs use the IP system and why.

In its studies *Intellectual Property (IP) SME Scoreboard* of 2016 and 2019, EUIPO has furthermore reported on the extent to which SMEs use, or not, the IP system, and why.

Other studies

The Office has also published studies such as *Derivative Use of Public Domain Content - Film Industry Focus* (2017), *The Baseline of Trade Secrets Litigation in the EU Member States* (2018), and *A Satellite Account for the European Union Creative Industries* (2019).

Training, workshops and seminars

Every year the Office organises more than three seminars with its network of judges. This network is composed of judges dealing with IP infringements. Additionally, every two years the Office organises a Judges Symposium, which includes members of the Court of Justice of the EU, the General Court and of the Office's Boards of Appeal. In cooperation with Eurojust, the Office has set up the European Intellectual Property Prosecutors Network that brings together prosecutors from the EU and neighbouring countries working with IP crime cases. The network shares best practices and has discussed a number of case studies involving successful criminal IP prosecutions. The European Intellectual Property Prosecutors Network meets once a year and that meeting is usually followed by a smaller one-day exchange of best practice with a number of Chinese prosecutors.

Furthermore, the Office provides training to law enforcement officers from national bodies such as customs or police. In total, the Office provided 88 training events and knowledge-building seminars between 2012 and 2019, gathering more than 4,100 participants. These events were often organised in collaboration with the departments of the Commission (DG TAXUD and OLAF) and EU agencies, such as the European Union Agency for Law Enforcement Training (CEPOL), the European Union Agency for Law Enforcement Cooperation (Europol) and the European Union Agency for Criminal Justice Cooperation (Eurojust).

In addition, the Office created, together with CEPOL, a virtual training centre offering enforcement officers more than 60 courses, e-learning modules, webinars and other useful training materials.

The Office has also collaborated with the departments of the Commission to organise high level international events on IP enforcement. These included the 2014 IP Enforcement Summit (London), the 2017 IP Enforcement Summit (Berlin) and the 2019 International Forum on IP Enforcement (Paris). The first two summits were co-organised with the UK and German authorities. The 2019 International Forum on IP Enforcement was co-organised with the OECD which assembled more than 60 speakers and panellists, in addition to more than 280 participants.

Raising awareness

As an integral part of its research, or building up on its results, the Office has, in cooperation with the relevant national authorities and private sector stakeholders, carried out a number of awareness-raising initiatives. These include *Ideas powered*, by which the Office interacts with young people using social media alongside with events titled *IP Youth workshops*²³. The Office also funded 30 awareness-raising campaigns. These campaigns were organised by private or public stakeholders under a grant scheme set up by the Office with a total budget of €1.5 million. These initiatives have enabled the Office to create a repository of awareness raising material, which is freely available for bodies active in this field²⁴. In addition, when the Office launches a major publication it carries out a media campaign to raise awareness.

The Office has also made available online guidance on copyright (FAQs on copyright) aimed primarily at consumers, but also useful for creators and users of copyright protected content. The Office's FAQs on copyright aims at making information on copyright easily accessible and easily understandable, therefore helping people, entrepreneurs and businesses to avoid involuntarily infringing IP rules. This information is country specific and therefore there is a set of FAQs for each Member State available online in at least two language versions: the official language of the

²³ In 2019, the fourth edition of the Ideas Powered Youth Workshop brought together 50 young influencers from the EU-28. For more information see the dedicated [webpage](#)

²⁴ The repository of public awareness campaigns and respective materials are available online at <https://euipo.europa.eu/ohimportal/en/web/observatory/public-awareness-campaigns>.

Member State in question (or at least one of the official languages in case there are more than one) and English²⁵.

Tools and databases

The Office developed tools and databases that facilitate the work of, and cooperation between, different law enforcement authorities, namely the Enforcement Data Base (EDB), the Anti-Counterfeiting Rapid Intelligence System (ACRIS) and the Anti-Counterfeiting Intelligence Support Tool (ACIST):

- EDB helps right holders to protect authentic products against counterfeiting by making information on products, registered IPR and contacts available to enforcement authorities. Police and customs officials from all the Member States, as well as staff from Europol and OLAF can access this tool to view information and product details, facilitating the identification of counterfeits²⁶. EDB also allows companies to submit applications for action (AFAs²⁷) to custom authorities.
- ACRIS is a web-based tool developed at the request of the Commission's department for Trade. It allows users to report, in a structured format, all data relating to cases of infringements of IPR affecting EU companies in countries outside the EU. Users report on their cases and corresponding enforcement actions with local authorities²⁸.
- ACIST includes statistics on detentions within the EU. Information is collected from the border and within the single market. It is harmonised between countries and authorities. Data from the borders of the EU-28 have been included since 2012 as well as data on single market detentions from authorities in 25 Member States²⁹.

In June 2019, the Office launched the IP Enforcement Portal (IPEP)³⁰ integrating EDB, ACIST and ACRIS into a single, secured EU platform that allows for the multilingual exchange of information between law enforcement authorities and right holders, which is available free of charge. The IPEP is accessible to 63 law enforcement authorities and over 800 IP right holders have registered to the IPEP.

The Office has also developed tools to benefit Europeans. For example, the AGORATEKA portal helps consumers to identify legal content online (films, TV shows, music, e-books, games and sports events) in participating Member States³¹.

International cooperation

The Office acts as an agency implementing EU funded programmes, such IP Key China, IP Key south-east Asia, IP Key Latin America, and ARISE+ IPR (covering the ASEAN region), which aim at strengthening IP protection in these countries and regions. Moreover, the Office provides support to the Commission's department for Trade in running an IP focused network for EU officials in EU delegations around the world. The Office has also carried out surveys intended to gather feedback from EU stakeholders on the level of IPR protection outside the EU and it has published guides on IP protection in non-EU countries (Turkey, Russia, India, China, Brazil and

²⁵ <https://euipo.europa.eu/ohimportal/en/web/observatory/faqs-on-copyright>

²⁶ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.28-29.

²⁷ An application for action is a request from a holder of IPR to customs authorities to detain goods suspected of infringing IPR of the applicant.

²⁸ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.30

²⁹ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.31

³⁰ For more information see the [IPEP dedicated webpage](#).

³¹ <https://agorateka.eu/ea/>

Ukraine). In addition, it has developed an extensive programme of bilateral cooperation involving the signature of around 50 cooperation agreements with IP offices in non-EU countries and regional organisations around the world, also covering matters related to the enforcement of IPR, sharing information and IP economic-related studies.

4. EVALUATION METHODOLOGY

The evaluation roadmap was published in September 2016. The roadmap sets out the purpose and scope of the evaluation. According to the roadmap, the evaluation would use the following sources of information: relevant documents (the impact assessment accompanying the Commission's proposal leading to the adoption of the Regulation, the Office's annual programmes and annual reports, public statements from stakeholders), a study from an external contractor and a public consultation.

The study was commissioned in November 2016 to Technopolis ('the contractor'). The methodology used in its preparation included desk research and interviews. A total of 113 interviews were carried out mainly with stakeholders participating in the work of the Observatory, but also with members of the Office's Observatory team. The contractor also contacted officials from national customs authorities that are not involved in the Observatory's work, but who are in charge on a daily basis of IPR enforcement at the EU border. The contractor also carried out an online survey, sent through the Members of the Observatory, and their constituencies³². The study was concluded in August 2017 and it is available online³³.

Another important means of data collection was the public consultation which ran between 3 July 2018 and 5 October 2018. The public consultation was announced on *Your Voice in Europe*, and it was carried out through an online questionnaire made available in the 24 EU official languages, using the EU's *EUSurvey* consultation tool³⁴. The public consultation received 98 contributions. The synopsis report of the public consultation provides information on who participated in the consultation and summarises the main results (see Annex 2). The results of the consultation are assessed in Annex 2 with reference to the various categories of respondents, such as individuals, professionals and organisations (that is, legal persons or entities), Members of the Observatory (a sub-category of the latter)³⁵.

Limitations and robustness of findings

The documents mentioned above provide a solid factual basis to assess of the Office's activities under the Regulation, the resources employed, the extent to which the cooperation between stakeholders became a reality and the results obtained (the development of new research methodologies, development of tools and their use, how many people received training, how many studies were published, how many times they have been quoted in policy documents, how much attention did the Office's publications received from the media etc.). The evidence is in general robust and publicly available. The body of evidence was independently examined by the contractor who complemented the analysis with the feedback provided by stakeholders, both members and non-Members of the Observatory, through interviews and a survey.

The contractor faced some difficulties in reaching out to stakeholders not participating in the work of the Observatory, but it still succeeded in receiving input from a number of customs officials outside the network who enforce IPR rights.

³² For further details on the contractors' methodology see Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.20.

³³ https://ec.europa.eu/growth/industry/intellectual-property/enforcement/infringements-observatory_en.

³⁴ For further information on the procedural aspects of the public consultation, see Annexes 1 and 2 (questionnaire).

³⁵ For an explanation of these categories, please see the introduction section of Annex 2.

This limitation was largely compensated by the public consultation which received contributions from 98 respondents (of which only 18 are Members of the Observatory) including 52 individuals.

Another limitation that the contractor referred to is the relative infancy of their evaluation work, given that during the first two years 2012-2014, the Observatory was in an inception phase. Therefore, the contractor's quantitative basis for the evaluation mainly refers to data between 2015 and 2017. In order to render the evaluation more meaningful the period to be covered by the evaluation was extended until 31 December 2019.

Finally, while the work done by the Office is well documented³⁶, the real impact of its activities is less so. The Office monitors the impact of some of its activities, such as measuring the outreach of publications through press clippings, monitoring downloads and quotations of its studies and carrying satisfaction surveys on meetings and training sessions, etc.). However, in the first years after the adoption of the Regulation, the Office focused on putting projects in action to fulfil its new tasks and did not have a comprehensive scheme for evaluating and measuring the impact of its activities. Naturally, the Office cannot be expected to be able to measure the extent to which it contributes to the ultimate policy objective of lowering levels of IP infringement. Still, it could offer better information on the possible impact of some its activities, such as its awareness-raising actions and campaigns.. By the end of 2018, the Office announced that it would be setting up a tool for internal use which helps monitoring at least some of its activities, for example its awareness actions and campaigns.

5. ANSWERS TO THE EVALUATION QUESTIONS

This section assesses the relevancy, effectiveness, efficiency, coherency and added value of the EU's intervention³⁷, taking in consideration the activity carried, and the main results achieved, by the Office in implementing the tasks assigned to it by the Regulation.

How relevant is the EU intervention in IP enforcement

The key question under the relevance criteria is whether the objectives of the Regulation are still valid and match the current needs and problems.

There is no doubt that IP infringement continues to be a real problem having a major impact on the EU's welfare:

- In 2017, customs authorities in the EU registered almost 60 000 detention cases (with 31 million articles suspected of violating IPR)³⁸. The retail value of the articles seized exceeded EUR 580 million.
- In 2013, 2.5% of value of the world trade (USD 461 billion) concerned IP infringing goods³⁹. In 2016, this value increased to USD 509 billion, equivalent to 3.3% of world trade.

³⁶ The Office used to include in its annual reports a section specifically dedicated to the Observatory and the activities of the Office under the Regulation. That was not the case of the 2018 and 2019 annual reports. Instead, the Office published a stand-alone annual activity report on the activities carried out under the Regulation.

³⁷ Relevancy, effectiveness, efficiency, coherency and added value are the standard criteria that the Commission uses when evaluating its initiatives in accordance with its better regulation guidelines (https://myintracomm.ec.europa.eu/sg/better_regulation/Pages/evaluation.aspx)

³⁸ *Report on the EU customs enforcement of intellectual property rights: Results at the EU border, 2017*, European Union, 2018.

³⁹ OECD/EUIPO, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, 2016. The report assesses data on seizures collected from the World Customs Organisation, the European

- The EU is particularly hit: imports of counterfeit and pirated products into the EU rose from EUR 85 billion in 2013 (equivalent to 5% of total EU imports) to EUR 121 billion in 2016 (equivalent to 6.8% of total EU imports)⁴⁰.
- The figures above concern physical products only. Online illegal offer, and consumption, of copyright content such as movies, music and live sport events, is also widespread. Between 2012 and 2016 piracy in the EU caused the recorded music industry annual average losses of EUR 200 million and 1300 jobs⁴¹.

IPR infringement, such as counterfeiting and piracy, hurt businesses and the economy but they also feed organised crime. In addition counterfeiters use manufacturing sites, processes, materials and ingredients that often do not comply with health, safety or environmental regulations. Therefore, consumption and use of counterfeited goods can have a serious impact on the health and safety of consumers, as well as negative environmental consequences. Counterfeiting and piracy can only be tackled through the cooperation of all those affected. In addition, counterfeiting is to a large extent carried out by criminal organisations operating globally⁴², and cannot be tackled without cooperation with third countries.

The establishment of the Observatory and its entrustment to the Office in 2012 was a key element of the EU's response to counterfeiting and piracy, alongside with the EU secondary legislation on IP and other initiatives (such as in the area of customs, international trade, etc.).

The contractors concluded that the most valued objective of the Regulation is to **improve the knowledge** of public authorities and private sector stakeholders. Most stakeholders also supported the objectives of **improving day-to-day cooperation**, and **raising individuals' awareness**. A less consensual view seems to have emerged from the contractor's interviews with stakeholders on the specific objective on **cooperation with non-EU countries**. However, these hesitations relate to the manner in which the Office has implemented the Regulation and not to the relevance of the objective itself⁴³. Stakeholders interviewed by the contractors agreed in that "(...) *many counterfeited goods come from third countries. Much could be done to better understand and thus address counterfeiting in third countries, especially in China, South East Asia or South America.*" This is in line with the views expressed by 59% of the respondents to the public consultation. In particular, 86% of the participating companies, organisations and professionals find it important that the Office helps authorities from non-EU countries to develop techniques, skills and tools for enforcing IPRs⁴⁴. Therefore, the tasks entrusted to the Office in relation with non-EU countries are relevant and should be maintained.

Another area worth mentioning is the promotion of technical tools for professionals and benchmark techniques, including tracking and tracing systems which help to distinguish genuine

Commission's Directorate-General for Taxation and Customs Union and the US Customs and Border Patrol.

⁴⁰ OECD-EUIPO, 2019, *Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade*. These amounts do not include domestically produced and consumed counterfeit and pirated products, and pirated digital products distributed online.

⁴¹ EUIPO, 2019 *Status Report on IPR Infringement*, 2019.

⁴² IPR infringing items detained at EU borders, such as counterfeited goods, originate mainly from mainland China, Hong Kong, Turkey and Vietnam. For an overview of the routes, key locations and transportation methods, see EUIPO- Europol report, *Intellectual Property Crime Threat Assessment*, 2019.

⁴³ "Several stakeholders felt there is room for improvement in the implementation of this important specific objective of the Observatory", Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.45.

⁴⁴ See Annex 2, Public Consultation Synopsis Report.

products from counterfeit ones⁴⁵. Of all activities assigned to the Office by the Regulation, the promotion of the above mentioned technical tools was the one that received less positive replies as to its relevance⁴⁶. There seems to be two reasons for this result:

- Some individuals are concerned that such tools may invade their privacy⁴⁷.
- Right holders see track and trace systems as a sensitive issue, involving confidential commercial information. They also argue that such systems should not be standardised as there is no one size fits all solution, and some fear that the Office may end up promoting one specific solution to the detriment of other solutions.

That said, most respondents to the public consultation (54%) consider this activity to be either important (31%) or very important (27%).

The departments of the Commission consider that it is still useful for the businesses, in particular, SMEs to be made aware of the different technical solutions available, and the Office can share relevant information in that respect without favouring a particular track and trace solution. Indeed, track and trace solutions are business-to-business products that should be left free to compete in an open market without interference of public bodies.

According to the feedback collected by the contractor, most stakeholders indicated that the scope of the Regulation is still appropriate and relevant and that there is no need to extend the scope of the Office's tasks⁴⁸. That was also the dominant view expressed by respondents to the public consultation (39% of all respondents). Still, according to the contractor, some stakeholders indicated that the Office should have more powers, particularly in enforcement and sanctions⁴⁹. Likewise, some respondents suggested that the Office should facilitate the exchange of data between law enforcement authorities across the EU, at EU level and to certain non-EU countries. However, this is an area where the Office is already active, since one of the tasks of the Office under Article 2(1)(g) of the Regulation is to provide "*mechanisms which help to improve the online exchange, between Member States' authorities working in the field of intellectual property rights, of information relating to the enforcement of such rights, and fostering cooperation with and between those authorities.*" While some of the replies received indicate a certain lack of awareness on the Office's mandate, some others, provided by knowledgeable stakeholders, could indicate a wish for the Office to do more in certain areas covered by the Regulation. The same is true with most of other suggestions received through the public consultation (see Annex 2).

In conclusion, the tasks and activities carried out by the Office under the Regulation are still valid and relevant. Both the contractor and the public consultation revealed a broad consensus on the tasks assigned to the Office under the Regulation. According to the contractor "the Observatory's general and specific objectives are still considered to be relevant by the majority of stakeholders consulted"⁵⁰. The contractor found "*barely any differences in the views of Observatory staff, observers, EC representatives and MEPs, national authorities and civil society organisations –*

⁴⁵ Track and trace systems are used in logistics to determine the current and past locations (and other information) of a unique item, and therefore may help identifying a given product as being genuine and not a counterfeit.

⁴⁶ While more than half (54%) of the respondents consider this activity to be important (31%) or very important (27%), the other tasks entrusted to the EUIPO received between 62% and 77% positive replies.

⁴⁷ The fear presumably being that if a specific item can be located at any given point in time, the location of its proprietor and what use is made of the item in question can also be traced.

⁴⁸ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.47.

⁴⁹ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.47.

⁵⁰ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.43.

*i.e. all agreed on the relevance of the objectives*⁵¹. The findings of the public consultation has also shown broad support for the tasks assigned to the Office. The respondents considered that all the tasks assigned to the Office were important with approval rates between 54% (research on technical tools to prevent and tackle infringements of IPR, including tracking and tracing systems which help to distinguish genuine products from counterfeit ones) and 77% (research on the economic and cultural value of IP for individuals, businesses and society). The approval rates were higher among professionals and organisations, from 73% (technical tools to prevent infringements of IPR) to 95% (training on IP enforcement and tools for cooperation between authorities).

Effectiveness of the Regulation and its implementation

In this section the evaluation assesses the progress made in achieving the objectives set out by the Regulation.

Operational objective: sustainable infrastructure for the network

The Office’s Observatory department

The immediate operational objective of the EU legislator was ensuring *“that the Observatory had the necessary infrastructure to deliver its activities effectively, as quickly as possible and with minimum costs for the EU budget”*⁵².

The Office has met this objective. The Observatory team has now 18 times more staff than it had before the adoption of the Regulation and the Office has allocated on average an annual budget of €11 million to the activities linked to the Observatory. According to the contractor, the Office *“seems to be well equipped in terms of expertise to perform the tasks attributed to it by the Regulation under evaluation”* and the evidence collected *“does not suggest that there are any shortcomings of expertise”*⁵³. Most Observatory members (77%) that participated in the public consultation considered that *“the EUIPO is well equipped to carry out its tasks and activities, in terms of independency, funding, staff, expertise, IT and meeting capacities”*⁵⁴.

Composition of the Observatory network

The well-functioning of the Regulation requires more than adequate budget and staffing. Central to the Office’s missions is to ensure that its activities under the Regulation can benefit from the stakeholder’s expertise gathered by the Observatory.

The Office has also met this objective. It has broadened the Observatory network by filling gaps in its earlier composition. The number of representatives more than doubled and it is now composed of 123 representatives. This expansion has enabled the Office to benefit from a broader range of expertise, while ensuring that meetings remain manageable and workable.

<p>Table 5 Staff and representatives Source: Commission and EUIPO</p>		
	<p>Before transfer to the EUIPO</p>	<p>31/12/2019</p>

⁵¹ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.43.

⁵² According to recital 13 of the Regulation: “in view of the range of tasks assigned to the Observatory, a solution is needed to ensure an adequate and sustainable infrastructure for the fulfilment of its tasks”.

⁵³ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p. 50.

⁵⁴ See Annex 2, Public Consultation Synopsis Report.

Staff assigned to the Observatory	3	55
Observatory representatives (total)	66	123
Representatives from the public sector	27	28
Representatives from the private sector	38	68
Representatives from consumer organisations and civil society	1	8
Observers	---	14
Members or other representatives of the European Parliament	---	5

Private sector stakeholders include organisations representing the interests of IPR owners and industry sectors that rely heavily on IP (footwear, electric components manufacturers, composers and songwriters, journalists, publishers, movies and audiovisual software, toys, etc.). SMEs are represented through organisations such as SMEUnited, Business Europe and Eurochambres. Despite the significant growth in participants, one third of the respondents to the public consultation considered that the Observatory network should include more stakeholders from the private sector, such as freelancer artists and legal practitioners, particularly litigators.

The Observatory network also includes various international organisations and other institutional bodies, such as the World Customs Organisations, Europol, the OECD, OLAF, the European Patent Office, etc.

The participation of civil society organisations has also increased since the adoption of the Regulation (from one to eight members), including organisations representing consumers' interests, civil and human rights associations. However, examples of missing interest groups mentioned by respondents include (i) organisations and observers of human rights and net neutrality defenders, (ii) citizens in general, (iii) Pirate Parties International, (iv) Open Knowledge International, and (v) representatives of universities and research centres.

It should be recalled that the main purpose of the Observatory network is not to promote discussions on the added value of the IP system as such, but rather to help the Office in carrying out its tasks of supporting the enforcement of IPR. While the composition of the Observatory should be diversified and open to change, its core must be formed by stakeholders concerned by or most experienced in the fight against infringements of IPR – as provided for by Article 4(2) of the Regulation. In addition, there is a need to keep the number of participants to a workable level.

Overall, most respondents (58%) – and 67% of professionals and organisations - considered that no interest groups were underrepresented in the Observatory. The study did not find any flaws in the composition of the Observatory network.

Working with stakeholders

The good functioning of the Regulation requires the Office to ensure stakeholder engagement. Having a broad, representative and balanced network of stakeholders from the public and private sectors and civil society is not enough. It must result in a meaningful partnership between the Office and the network of stakeholders gathered under the Observatory.

While it is for the Office's governing bodies to ultimately decide what specific projects are to be carried out, the annual programmes of activities to be carried out under the Regulation (work programmes) are prepared in consultation with the departments of the Commission and all the stakeholders gathered by the Observatory. It is also the Office who decides how much resources

it allocates to a specific study, campaign, tool or event, without consultation of the Observatory network. The funding of the different areas of activity and projects is a matter dealt by the EUIPO internally.

Stakeholders have different concerns and views over priorities and specific actions. These differences are visible in their different contributions to the EUIPO's work programmes. Still, there is broad consensus over most of the activities that the Office has been developing under the Regulation and there has been no major disagreements on the content of the different work programmes and strategic plans. Consistency with the EU's priorities has also been ensured. The public consultation has shown that the Observatory members are virtually unanimous in finding that the process leading to adoption of the Observatory's work programme is transparent.

The Office also implements its work programmes in regular consultation with the Observatory's representatives, mainly through the working groups meetings that take place twice a year. More recently, the Office has also created expert groups (see Section on current situation). It is too early to assess the effectiveness of these new work arrangements.

While the creation of smaller and more targeted groups has clear advantages, the Office should maintain a strong level of engagement with all its representatives. Stakeholders should be given ample opportunities to participate actively in the Office's work under the Regulation. Therefore, there must be sufficient exchanges of information between the expert groups and the working groups or the stakeholders as a whole. The departments of the Commission should also continue to be invited to the meetings of both the working groups and the expert groups to ensure that the Office's activities are consistent with Commission priorities.

Some stakeholders have indicated some instances where projects have been planned and announced without having been given the opportunity to provide input at early stage of the process. This is certainly not the rule, but this evaluation concludes that the Office must strengthen its efforts to systematically seek and obtain stakeholders feedback before and during the execution of the actions set out in its work programme. The Office should therefore consider adopting practices that promote effective consultation of the Members of the Observatory network. As an example, studies and reports could systematically describe the extent to which the Observatory's representatives have been consulted.

Conclusion on the operational objective of equipping the Observatory with a sustainable infrastructure

In view of the above, it is concluded that the Office succeeded in delivering on the operational objective. It has put a stable and sustainable framework at the service of the objectives pursued by the Regulation, allocating sufficient human and financial resources to its new tasks. This evaluation concludes that the composition of the Observatory network is well balanced and is consistent with its mandate of helping the Office in carrying out the activities set out in the Regulation.

Furthermore, the Office has succeeded in building good cooperation with the Observatory's representatives. The public consultation has shown that there is a general positive perception on the way the Office informs, interacts with and listens to the stakeholders that participate in the Observatory's work. The Office should continue seeking an even stronger engagement from stakeholders and provide them with ample opportunities for contribution in all its projects, as this has not been always fully achieved.

The Office's implementation of the tasks assigned by the Regulation

The overall assessment of the different activities carried out by EUIPO under the Regulation is very positive, in particular for research, training, raising awareness and developing tools.

Research, publications and training

As seen above, the Office has since its inception gathered, analysed, published and shared quite a substantial body of information and intelligence.

The Office has increased substantially the output of the Observatory in terms of publications. From the entry into force of the Regulation until 31 December 2019, the Office has published 84 studies, at a rate of a study every 4.7 weeks. One major achievement has been the development of transparent methodologies for the collection, analysis and reporting of independent, objective, comparable and reliable data on infringements of IPR, a task of utmost importance that has been carried out well according to 83% of the Observatory’s stakeholders.

Building up on these results, the Office’s research has materialised in a number of major publications providing valuable insights on the loss of sales, government revenue and jobs caused by IP infringements⁵⁵. Furthermore, the Office’s studies on public awareness and use of IP by SMEs are a key source of information for designing new strategies and specific actions for awareness raising by Member States, private sector stakeholders and EU bodies. Its ground breaking report “Intellectual Property SME Scoreboard” on use of IP by SMEs is based on an EU-wide survey reaching out to around 9,000 SMEs. The SME scoreboard provides insights over the different reasons why the IP system may not be meeting its full potential in terms of helping SMEs to grow and prosper. The EUIPO has so far published two SME scoreboard reports (2016 and 2019), and plans to repeat the exercise every three years, in order to identify trends. Finally, the data that the EUIPO collects on the routes, methods and business models used by IP infringing organisations provide enforcement authorities with valuable information for the risk assessment and the strategic planning of operational actions by enforcement authorities across the EU. Such data also informs the Office’s training programmes, therefore contributing to improve the expertise of those involved in the enforcement of IPR.

Some indicators provided by the EUIPO suggest that its Observatory dedicated webpage and its publications attract increased interest.

	2016	2017	2018	2019
Observatory website visitors (per month)	5 558	8 077	12 924	9 360
Downloads of relevant paper/publications from the Observatory website	35 384	152 968	113 976	126 010
Quotations of Observatory studies and reports by EU institutions	14 191	9 343	10 452	18 215

The Office’s extensive training programmes carried out in collaboration with the relevant EU bodies (such as CEPOL, Europol, OLAF or Eurojust) and various national and international authorities and organisations have closed the existing gaps in developing the required expertise. Today, training on IP enforcement is no longer limited to customs officials, but is extended to police officials, judges and prosecutors. This is an activity that neither the Commission departments nor the EU bodies mentioned above pursue before the entry into force of the Regulation.

To date, the Office has trained around 4,100 people working in IP enforcement in more than 88 training events with participants coming from across the EU. The surveys carried out after each training event consistently show high levels of satisfaction among participants. Between 2015 and 2018, the average satisfaction rate was 97.4%. Furthermore, according to the contractor “*the*

⁵⁵ All works published by the EUIPO in the context of the Observatory are available on <https://euiipo.europa.eu/ohimportal/en/web/observatory/observatory-publications>

training programs were seen by interviewees as valuable opportunities for exchange of knowledge between judges as well as between public stakeholders such as customs representatives or judges and private stakeholders such as companies having experienced infringement on the other side”⁵⁶. The Office’s training programmes received positive responses from 72% of the Observatory’s stakeholders responding to the public consultation.

Raising awareness

The Office’s publications also contribute to the objective of raising awareness. First, the Office promotes the release of its publications. According to the contractor’s research, the Office’s studies published between 2012 and 2017, were mentioned or commented in nearly 2,000 published articles and generated a total value of €8.3 million in advertising value equivalency⁵⁷. Second, the knowledge generated by the Office’s research and publication activities, for example on the individuals’ behaviours towards counterfeiting and piracy, enables it to design and deliver effective awareness initiatives.

In addition, the Office has invested €1.5 million in different awareness campaigns using a grant scheme. The campaigns are designed and implemented by third parties, usually on a national basis. The campaigns implemented in 2018 and 2019 reached 60 million Europeans, at a cost of approximately €1 per 59 individuals reached. The ‘Authenticity campaign’⁵⁸, carried out by three beneficiaries of €50,000 worth of grants each in 2016, is one such example.

The authenticity campaign was implemented in three capital cities (Paris, Rome and Madrid) and a couple of smaller ones, with the support of local authorities. It targeted the general public in local environments through an advertising campaign in the city (bus and metro stations during the Christmas period), social media activities and in some cases training of enforcers. Based on the reporting of the project at the end, the campaign reached 4,2 million people on Facebook and more than 35 million people saw the poster campaign in major train and metro stations (data aggregated for all three countries). In Rome alone more than 200 local enforcers were trained and were followed up by seizures of counterfeit goods. The success of this campaign and the potential of the project developed at the end of 2018 in the creation of a European Cooperation project (with national offices) in EUIPO to extend the piloted project at European level with a view to establish over the years a European network of “authenticity” cities.

According to the Office, the campaigns organised by third parties in Member States (and co-funded by the Office in 2017) have reached 60 million Europeans in 10 EU countries, corresponding to 12% of the EU’s population. This includes 800 000 teachers reached by the campaign organised by the European Trade Union Committee for Education.

In 2019, the Office conducted a Europe-wide media campaign coinciding with the publication of its 2019 Status Report on IPR infringement. The campaign covered all EU Member States and targeted print, online and audiovisual press for two weeks.

Graphic 1

⁵⁶ Technopolis, Evaluation of the application of Regulation 386/2012, 2017, p. 55.

⁵⁷ These results are based on the monitoring carried for the EUIPO during the period of one week following each publication. For cost-effectiveness reasons, only five countries are monitored (Germany, France, Italy, Spain and the UK). AVE measures the benefits a client gets from media coverage of its campaign; the higher the AVE, the higher the visibility. AVE is a proxy to measure readership and audience.

⁵⁸ <https://authenti-city.eu/>

Reach out of 2019 Status Report media campaign

(Source: EUIPO)



The campaign was developed in close cooperation with Observatory stakeholders who provided support and shared it further. According to the Office, the campaign reached an estimated advertising value over €4.1 million for 1,438 clippings in total. The campaign also reached qualitative coverage as major media outlets in key countries reported on the study and its findings.

The real impact that the Office's campaigns have in influencing consumer behaviour and lowering buying or use of IP infringing products is difficult to measure. Still, some positive signs are emerging. For example, 52% of people now consider having a 'rather good' understanding of IP, an increase of 10 points compared to 2013⁵⁹, and according to a Eurobarometer report from 2018, 90% of respondents agree that arrangements need to be in place to limit the spread of illegal content on the Internet.

The evaluation concludes that the Office has delivered both in quantity and quality on its task of raising awareness. This conclusion seems to be shared by most stakeholders represented in the Observatory - 88% of them indicated that the Office carried out its task of raising awareness well.

The Office's research and publishing activities are particularly useful for awareness raising among policy makers. The Office's studies, surveys and reports have been used in a number of Commission proposals and initiatives, such as the 2015 Single market strategy, the 2016 copyright package, the 2016 Start-up initiative and the 2017 IP package⁶⁰ as well as the IP market watch list⁶¹. The Observatory's public sector representatives also confirmed the usefulness and importance of the Office's publications. According to the contractor "*At the national level, public stakeholders were particularly enthusiastic about the sectorial studies and other 'quantifying' reports; their use is often linked to awareness-raising campaigns where numbers are required*"⁶². In addition "*ten national authorities interviewed report that the data provided by the Observatory is regularly used in policy documents (although many of these seem to be internal documents) and/or in internal briefings and/or published on national websites. The data and studies therefore reinforce the capacity for IP enforcement in national policy making*"⁶³.

⁵⁹ EUIPO, *European Citizens and Intellectual Property: Perception, Awareness and Behaviour* (2017).

⁶⁰ *Upgrading the Single Market: more opportunities for people and business*, COM(2015) 550, 28 October 2015; *Towards a modern, more European copyright framework* COM(2015) 626, 9 December 2015; *Europe's next leaders: the Start-up and Scale-up Initiative*, COM(2016) 733, 22 November 2016; *A balanced IP enforcement system responding to today's societal challenges*, COM(2017) 707, 29 November 2017.

⁶¹ Commission Staff Working Document *Counterfeit and Piracy Watch List* of 7.12.2018, SWD(2018) 492 final.

⁶² Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, page 39.

⁶³ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, page 52.

Tools

The Office has also achieved good results on creating tools to support enforcement of IPRs. Such tools are available through the IP Enforcement Portal ('IPEP'). While IPEP is relatively new (some of its components were launched in 2014, while others in 2016), it is clear that its usage is growing. By the end of 2019, there were 65 law enforcement authorities with access to IPEP. These authorities include all EU customs authorities, Europol, OLAF and police forces from Belgium, Bulgaria, Cyprus, Czechia, Germany, Estonia, Spain, France, Greece, Hungary, Ireland, Italy, Latvia, Malta, the Netherlands, Portugal and Romania. The tool assembles data, collected by the Commission's department for Taxation and Customs Union, on border detentions from the EU's borders. The EPIP also receives and makes available data on single market detentions of IP infringing goods (furnished by 25 Member States⁶⁴). The tool contains over 950,000 records of detentions within the EU and at its borders. The estimated value of these detentions is over €30,500 million⁶⁵.

EPIP is also used by owners of IPR through its exchange of information function (previously known as EDB). These owners feed data to the Portal. Between 2014 and 2019, the number of private sector stakeholders using the tool has grown from 117 to 810. Between 2016 and 2019, the overall number of applications for action sent by IPR owners to customs authorities through the Portal rose from 40 to 176. Most of these companies also use the report non-EU cases function (previously known as ACRIS). It is clear that the portal has a great potential. It may for example in the future be made available to Internet platforms such as online marketplaces so that they can verify the existence and ownership of for example, trade marks whenever there is a reason to believe that counterfeited goods are being offered for sale through their services. At the same time, the Office should avoid that the portal duplicates already existing tools.

Assessment on effectiveness

The entrustment of the Observatory and other related tasks to the Office has resulted in an increase in resources and in quantitative output which is reflected in the table below:

Table 7 Observatory resources and output evolution Source: EUIPO and Commission own data		
Staffing and Observatory network	5/6/2012	31/12/2019
Staff assigned to the Observatory	3	55
Representatives to the Observatory	67	127
STUDIES	Before the Regulation 09/2009 – 05/2012 29 Months	After the Regulation 05/2012-12/2019 89 months
Legal studies on civil law enforcement of IPR	4	-
Economic studies on IP		8
Studies on awareness of IP		8

⁶⁴ Germany has not yet joined this data collection exercise. Sweden and Austria, have declared that no enforcement authority in their country has the power to act *ex officio* in the internal market detentions of IP infringing goods.

⁶⁵ The precise figure is: €30,479,106,850.25.

Studies on infringements of IPR		28
Studies on enforcement of IPR		34
Other studies		6
Total studies	4	84
AWARENESS		
Awareness campaigns funded		30
TRAINING		
Training events carried out		84
Number of participants		4,100
TOOLS & DATABASES		6
Enforcement tools (EDB, ACIST, ACRIS)		3
Legal use of IPR (Agorateka, Orphan Works database)		2
Training tools (Virtual Training Centre)		1

As indicated, the way in which the Office has been carrying out those tasks has generally been much appreciated by Member States representatives and private sector stakeholders to the Observatory.

In this regard, the contractor concluded that the Office had improved the protection of IPR delivering on all the objectives in a manner that was independent while being open to all stakeholders. Likewise, 43% of respondents to the public consultation consider that the Office has achieved good or very good results in helping to improve the protection of IPR⁶⁶. The approval rate is higher among professionals and organisations (68%) and higher still within Members of the Observatory (88%).

The overall result is therefore positive. However, some areas have emerged as requiring attention and possible improvement. These will be addressed below.

i. Less is more?

Some stakeholders consider that the Office may be delivering too much. Some representatives struggle to be fully dated on all the activities and projects carried out by the Office. The vast number of streams of work has also caused occasional delays in meeting deadlines.

The growing range of projects and activities is one of the factors that some stakeholders consider as impairing the Office's effectiveness. Some of these views may be related to the vested interests of the stakeholders in question. The International trademark association (INTA)⁶⁷ for example considers that the focus of the Observatory work should be on delivering on the fight

⁶⁶ A quarter (24%) of the respondents has a negative perception of the results achieved, while 31% did not express an opinion on the overall performance of the Office under the Regulation, and.

⁶⁷ INTA is an association of brand owners and IP professionals covering 7200 organisation in 191 countries. INTA is registered in the EU's transparency Register.

against infringements of designs and trademarks. That is understandable as INTA represents the interests of trade mark owners and of professionals in trade mark protection. Some other private stakeholders would like to see the Office dedicating more projects on piracy (infringements of copyright)⁶⁸. Associations representing the interests of holders of IPR (trade marks, copyright or other) tend to be less supportive of projects and activities that are not directly related to IP infringements, such as those that are closer to the concerns of consumer associations and other stakeholders from civil society. For example, one of these right holders organisations commented that the Observatory “*is not there to justify IPR infringements, to blame all piracy on the (overstated) lack of legal offers, to promote open licensing.*”

Such a range of opinions result from the heterogeneous nature of the Observatory membership, which is also one of its strengths. As mentioned in the contractor’s study: “*A critical success factor is hence the openness of the Observatory to all types of stakeholders and not only right holders*” and “*it’s widely perceived independence from industry*”⁶⁹.

The growing number of projects in which the Office is involved can lead to suboptimal implementation. At times, the Office takes on new projects without having delivered on or begun previously agreed actions. This was the case for the study on the role of social media in relation to IPR infringement, the study on search engines, the study on the availability of forward-looking blocking injunctions, as well as the mapping of market surveillance authorities. These initiatives were included in the work programmes of 2018 and 2019, but by the end of 2019 no substantial progress had been made.

The Office should therefore manage expectations better and, where appropriate, allocate additional financial resources to its activities under the Regulation to keep up with its planning and avoid that certain projects are delayed for lack of budget.

ii. Location

The location of the Office’s headquarters (Alicante, Spain) is seen by some (10% of respondents and 33% of the Members of the Observatory) as problematic given that many private sector stakeholders have their seat in Brussels (or attend meetings in Brussels on a regular basis). These stakeholders consider it to be time consuming to attend the Observatory’s meetings in Alicante. The Office has counterbalanced this by organising some of its meetings in Brussels. In addition, the Office funds the travel and accommodation of the Members of the Observatory network. Participating in the work of the Observatory will always require time-consuming investment from the part of its members, justified by the relevance of its tasks and activities; and the meetings of the Observatory usually have a good attendance rate. In 2018, the representatives from 28 Member States and 42 representatives from private sector stakeholders, civil society and observers attended the Observatory plenary meeting (70 attendants in total, out of 114 invitations sent). In 2019, 27 Member States and 44 representatives from private sector stakeholders, civil society and observers attended the Observatory plenary meeting (71 attendants in total, out of 117 invitations sent).

This evaluation concludes that the location of the Office does not significantly affect the participation of stakeholders in the Office’s activities under the Regulation.

iii. Collecting data from Member States

The Regulation requires Member States to inform the Office of their overall policies and strategies on the enforcement of IPR, provide available statistical data on IPR infringements and inform the Office of significant case-law.

⁶⁸ “*Interviewees dealing with digital content, copyright infringement etc. pointed to an imbalance which could be explained partly with the fact that the Observatory was integrated in OHIM/EUIPO with a clear focus on trademarks and designs. “I can understand that at the start they started with trademarks, design, the core business of the Office. But there should be a change in their approach” (observer). Technopolis, page 74*

⁶⁹ Technopolis, pages 59 and 60.

Typically, a representative of a Member State to the Observatory comes from a specific IP related body in their country and often faces difficulties in obtaining data and support from other public bodies that may not have IP enforcement within their priorities. This difficulty has been particularly acute in projects that involve collection of case-law or of data related to the costs of IP enforcement.

The Office has launched a reflection together with the Member States, which led to an agreed approach on how to minimise the difficulties in collecting data; namely the country reports detailing the estimated data needs, the sources and contact persons and guidelines on how to transmit it to the Office. However, data collection from Member States remains a challenge.

iv. Accessibility of the Observatory publications

Research on IP and IP infringements is one of the most valued activities of the Office under the Regulation. However, the way its publications are made available to the public on the Office's website is suboptimal. The search area displays the Office's publications in descending chronologic order and the key words search tool is not sufficiently helpful. As a result, finding a particular study can be cumbersome. The contractor's study points out that some of the Office's publications lack well organised publishing information (clear indication of the date or year, publication number, how-to-quote guidance, etc.). The Office has in the meantime corrected some of these shortcomings, in particular on publishing information of its new studies and reports, but navigation between the different publications in the Office's website could still be made easier.

v. International cooperation

The public consultation showed that not all stakeholders appreciate the manner in which the Office has been providing technical assistance and training programmes to IP offices and officials in non-EU countries.

While there is a broad consensus on the importance of the task, this is the activity with the least favourable evaluation among Members of the Observatory. However, it should be noted that this area had the most respondents express no opinion (69% of all respondents, 63% if only professionals and organisations are considered, and 55% within the Members of the Observatory), which could be the result of lack of awareness on the activities carried by the Office in relation to non-EU countries. The level of positive feedback was substantially higher than the number of replies expressing a negative evaluation of the Office's performance (21% versus 9% for all respondents, 30% versus 6% when only professionals and organisations are considered and 33% versus 11% within the Members of the Observatory).

The contractor's study had already mentioned that "*Some stakeholders lacked awareness of the Observatory's responsibilities towards international cooperation with third countries.*" The study also reports on the need for the Office to be fully aligned with the EU's IP strategy in non-EU countries, which is an integral part of the EU trade policy.

The Office carries out international activities that both fall under the Regulation (with a focus on supporting EU activities on counterfeiting and piracy) and under the EU Trade Mark Regulation (related to the administration of trade marks and design systems). These activities are integrated in the Office's annual work programme. However, for stakeholders the distinction between different projects carried out under either of these regulations may not be clear.

The importance of cooperating with non-EU countries in the fight against counterfeiting and piracy cannot be overstated. Criminal organisations involved in IP infringements operate globally, not nationally. Counterfeits placed on the EU market are mainly manufactured in non-EU countries and imported into the EU. Border controls are therefore vital and could be increased but such measures alone will not eradicate counterfeit imports. Infringements of IPR taking place in other countries also harm European business and cooperation, trade diplomacy and multinational engagement are indispensable. Not all countries have the same capacity, or give the same priority, to the fight against counterfeit and piracy. It is therefore important that the Office establishes cooperation arrangements with IP offices from non-EU countries.

The Office's international activities consist of implementing EU funded projects for the Commission. The Office's technical expertise and its network of contacts with relevant stakeholders in IP worldwide is a valuable asset. However, as the Regulation explicitly mentions, it is important for the Office to consult with Member States. In addition, the Office's international activity should, like any other activity under the Regulation, benefit from constructive stakeholder input. The recent creation of an expert group dedicated solely to international activities should enable more engagement with Members of the Observatory network.

Efficiency of the initiative and its implementation

The efficiency criterion considers whether the Office's results in carrying out its activities under the Regulation were achieved in a cost-effective manner.

Stakeholders bear costs to the extent that they allocate time to participate in such meetings. However, the costs of implementing the Regulation are mainly covered by the Office budget, including the travel and accommodation costs of representatives and experts when they attend the various meeting of Observatory. The Office budget is solely funded by the fees paid by the users of the EU trade mark and designs systems.

The Office's total annual budget allocated to the activities under the Regulation is on average €9.25 million, including average staff costs of €3.75 million. The Office's Observatory department started its activities in 2012 with an annual budget of €2.4 million and 34 staff members⁷⁰. To accommodate its expanding activities the Office's Observatory department grew at a quick pace, quadrupling its budget and increasing the staff to 55 staff members. In 2019, the budget of the Observatory department was €11.73 million, corresponding to less than 5% of the Office's overall spending (the Office's total spending in 2019 was €237 million⁷¹).

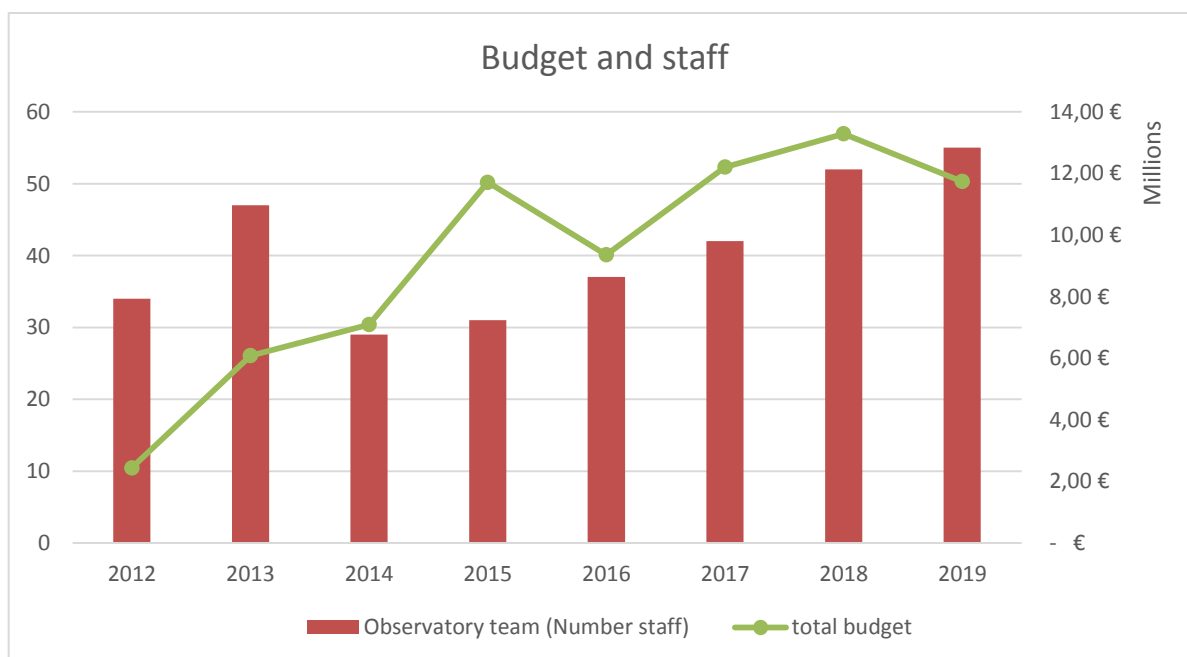
Graphic 2

Budget and number of staff allocated by the Office to the Observatory department

(Source: EUIPO)

⁷⁰ In the years of 2012 and 2013 the Observatory department included the Office's Academy. The Academy subsequently became a department on its own. And that it is the reasons why there is a drop of staff between 2013 and 2014.

⁷¹ Source: EUIPO Annual accounts 2019, provisional version 2019.



In 2017 and 2018, the Office's spending on the activities under the regulation was split between the different work streams, as indicated below (staff included):

Subject Area	Budget 2017 Exec	% of total	Budget 2018	% of total
Economic and Statistics	1,553,905.30 €	12.7%	1,383,545 €	10.4%
Enforcement	5,575,706.05 €	45.7%	3,643,234 €	27.4%
IP Enforcement Portal	included in Enforcement ⁷²	0.0%	2,085,662 €	15.7%
IP in the Digital World	1,201,656.28 €	9.8%	1,202,767 €	9.1%
Legal and International	1,161,440.54 €	9.5%	555,061 €	4.2%
Public Awareness	1,678,011.48 €	13.7%	3,725,501 €	28.0%
Statutory Meetings	745,601.23 €	6.1%	643,807 €	4.8%
Orphan Works Deployment	128,587.16 €	1.1%	35,510 €	0.3%
Virtual Training Centre	158,482.73 €	1.3%	10,487 €	0.1%
EU SMEs and IP	1,522.55 €	0.0%	2,520 €	0.0%
GRAND TOTAL	12 204 913 32 €		13 288 093 €	

The areas with the highest Office spending are (1) enforcement and the Portal, (2) public awareness and (3) economic and statistics.

⁷² The 2017 budget did not distinguish between the EU IPR Enforcement Platform 2020 and other activities related to enforcement.

Indeed, around 44% of the budget administered by the Office's Observatory department is dedicated to enforcement activities. This includes the design, deployment and maintenance of IT tools and databases such as EDB, ACRIS, ACIST currently integrated into one single tool: the IP Enforcement Portal⁷³. Enforcement activities also include the training programmes for officials involved in enforcement. Public awareness activities are also a major area of spending, which has doubled between 2017 and 2018, corresponding to 28% of the Observatory department's budget.

The Office spends around 11% of the Observatory department budget on economic and statistics, which consist in research and publication, one of the activities most appreciated by Member States authorities, private sector stakeholders and the IP community in general.

The costs of operating the Observatory can be benchmarked against a similar organisation, such as the European Monitoring Centre for Drugs and Drug Addiction ('the Centre'). The Centre has been tasked with providing factual, objective, reliable and comparable information on drugs and drug addiction and their consequences. Its main tasks include collecting and analysing data, improving data-comparison methods, disseminating data and cooperating with peer institutions within the EU and internationally. Both the Office and the Centre look at illicit and or undesired practices that harm individuals and society. Their functions are in that respect of a similar nature. The Centre has been operating with an average of 105 full-time staff per year and an average annual budget of EUR 16 million⁷⁴. The Office's Observatory department has 55 members of staff and manages an increasing average budget of €9.25 million (the 2019 budget was 11.73 million). The Observatory department has almost half of the staff of the Centre. However, it benefits from the support services that already exists in the Office (such as Human Resources departments, IT services, financial services, etc.). Taking these support services into account⁷⁵, it is assumed that the two organisations are working on proportionately comparable resources⁷⁶.

As mentioned, representatives to the Observatory also bear costs, even if they may be considered minimal. Participation in the Observatory meetings is voluntary and the Office bears the travel and accommodation costs. Still, it represents a cost in terms of working time for the people involved. These representatives have to prepare their participation, collect data and feedback from their constituencies, travel to and from the meetings, and subsequently report back on the outcomes of such meetings, in addition to providing further input in between meetings whenever necessary. Being a representative to the Observatory is voluntary. Continued interest, participation in the Observatory's work and good attendance at meetings lead to the conclusion that the cost/benefit ratio for the Observatory stakeholders is positive.

The implementation of the Regulation has brought about visible benefits, such as the availability of objective, reliable and comparable data on the value and role of IP as well as on the volume and impact of IP infringements. The data enables a better understanding of the challenges posed by counterfeiting and piracy and feeds policy making both at EU and national levels. The IP enforcement tool is also a tangible benefit linking the different enforcement authorities and right holders across the EU. In addition to more and better data and tools, the Office has put in place, in cooperation with relevant national and EU bodies, training programmes. All the above outputs,

⁷³ In the table, the budget relating to the IP Enforcement Portal and the rest of the Enforcement activities is aggregated in 2017 and separated in 2018.

⁷⁴ Commission Staff Working Document, *Evaluation of the European Monitoring Centre for Drugs and Drug Addiction* SWD(2019) 174 final, page 10 and subsequent EMCDDA general reports of activities.

⁷⁵ EMCDDA support staff accounts to about 30% of overall staff. For the EUIPO it would estimate that 24 persons may be needed if the observatory department was a standalone agency. Compare: Commission Staff Working Document, *Evaluation of the European Monitoring Centre for Drugs and Drug Addiction* SWD(2019) 174 final, page 28.

⁷⁶ The EMCDDA manages €16 million with 105 staff, while the Observatory manages €12 million with an estimated equivalent staff of 79 persons (see previous footnote) leading to a similar amount of budget managed per staff member €151-153 K

including the Office’s roles in funding and supporting public awareness campaigns, are highly appreciated by stakeholders and national authorities, as shown both by the feedback collected by the contractor and in the public consultation. In addition, the Observatory enables a regular sharing of information, knowledge and best practice between all the major actors in IP enforcement. The value of the network effect should not be underestimated. The bringing together, on a regular basis, of a substantial number of authorities and stakeholders under a stable and durable collaborative framework, under agreed work programmes also facilitates every day cooperation between Member States’ authorities, as well as EU bodies and private sector stakeholders outside the remit of the Observatory’s activities.

These benefits are difficult to quantify and therefore this evaluation does not make a direct comparison between the costs and benefits. However, some proxies provide indications on the proportionality of the costs vis-a-vis the outputs of the Office’s work under the Regulation. Some proxies related to efficiency of public agencies link the number of staff, staff budget and operational budget (that is, budget of the Observatory department excluding salaries). The table below show the evolution of the ratios from 2012 to 2019:

Year/item	2012	2013	2014	2015	2016	2017	2018	2019
Operational expenditure per staff posts (thousand Euros) ⁷⁷	27	52	121	292	171	178	156	111
Operational budget vs staff budget ⁷⁸	60%	66%	97%	340%	209%	158%	157%	109%

The table above shows that the Observatory department started by managing around €27,000 per member of staff per year. This ratio rose sharply to then slowly fall, due to increases in staff. In 2019, the ratio was approximately €111,000 per member of staff. Monitoring is needed to ensure that both ratios maintain their current good levels and do not fall beyond the 2014 numbers.

The table also shows that the operational budget since 2015 exceeds the staff budget. This ratio has been influenced by a sharp frontloading of budgetary resources that was matched by much more slow increases in staff numbers. A rapid growth in the initial years has meant that the increases in budget was not accompanied an equally fast growth in staff.

If these numbers are compared with the distribution of staff, support and operation budgets in other agencies, it can be observed that the ratio of operational budget versus staff budget of the Observatory department is in general higher than the ratios observed in Centre, and the EU Agency for Fundamental Rights (FRA) and lower than the European Agency for Safety and Health (EU-OSHA) and the European Asylum Support Office (EASO).

⁷⁷ The higher the amount of operational expenditure per staff post, the more efficient is an agency. These numbers need to be interpreted in a context as sometimes they are blurred by frontloaded budget for projects implemented over several years (see e.g. 2015)

⁷⁸ The higher the proportion of operational budget compared to staff budget it means that an operational budget is more efficiently managed from a quantitative perspective.

Budget	EMCDDA	FRA	EUIPO	EU-OSHA	EASO
Staff	60%	53%	44%	36%	21%
Support/Administrative ⁸⁰	10%	11%	n.a.	8%	12%
Operational ⁸¹	30%	36%	55%	52%	67%

Overtime increases in budget and staff posts triggered increases of outputs. The graphic 3 below shows that training events, studies and Observatory members increase at a pace lower than the budget increase. Still, between 2015 and 2019 the number of studies has doubled. The number of stakeholders increased sharply during 2012, to become more stable onwards, as it was felt that the success of the work of the Office, and of the Observatory, was dependent on an upfront comprehensive and balanced composition of stakeholders' representation to the Observatory. That said, there are several indicators that have grown at a higher rate than the budget. One such indicator is the number of meetings organised in the remit of the Observatory (dark brown line). This is also the case of several indicators relating to IT tools, namely: number of national police authorities who have access to the IP Enforcement Portal (light blue line), number of times that enforcement authorities have accessed the IP Enforcement Portal (light green line), number of companies using IP Enforcement Portal (violet line) and number of applications for action⁸² sent through IP Enforcement Portal (orange line). Overall, the Graph shows that increases in budget and staff are linked to the increase in outputs.

Graphic 3

Evolution of the budget, staff and outputs over time⁸³

(Source: own calculations based on data from EUIPO/Observatory internal data)

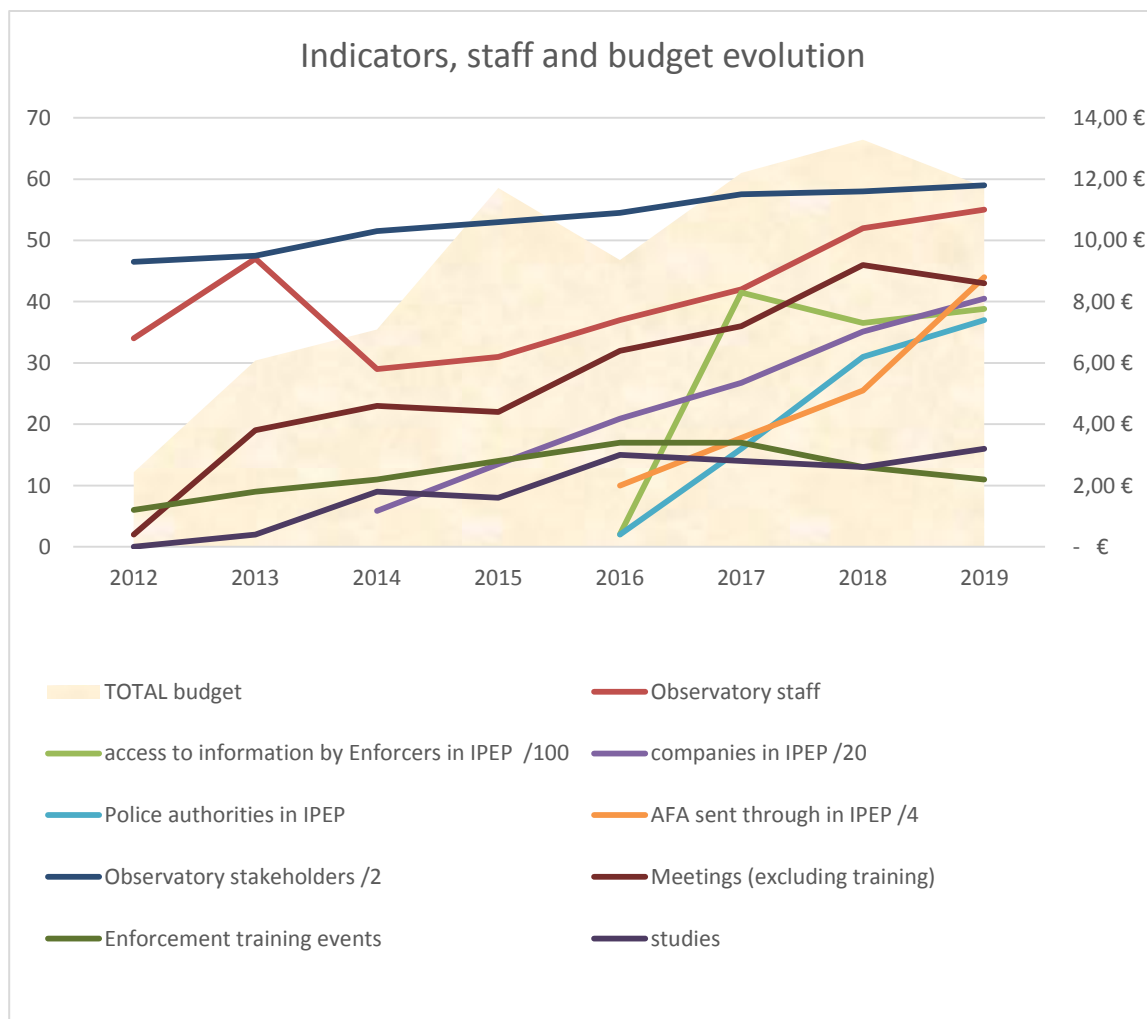
⁷⁹ The calculations are explained in Annex 3 of the final report of the external evaluation, Table 10, p. 74; these are based on the 2017 budgets of the respective agencies. EUIPO data are only for the Observatory staff and operational budget for 2017.

⁸⁰ In the case of the Observatory Department, because it is not a self-standing agency, but an administrative unit within the EUIPO, there is no support/administrative budget to consider.

⁸¹ The higher the proportion of operational budget compared to staff budget it means that an operational budget is more efficiently managed from a quantitative perspective.

⁸² Holders of IPR request customs to detain goods suspected of infringing IPR through the filing of applications for action, often referred to as AFAs. The EUIPO's IP Enforcement Portal facilitates the filing of the AFA form, the sending of the AFA, and the use of it, by customs authorities.

⁸³ The total budget figure (shaded) is expressed in € millions, while staff and outputs in actual numbers except for the outputs, where (to keep everything on one graph showing proportions) the numbers shown are divided by the number indicated next to the item description in the legend (e.g. the number of companies in IPEP is the actual number divided by 20).



From a stakeholder’s perspective, according to the contractor’s study, most interviewees stated that the costs borne by them are proportionate to the benefits generated by the Observatory’s activities⁸⁴. While participating in Observatory meetings and activities is time consuming, stakeholders stress that costs are worth the benefits. The high level of stakeholders’ engagement in the Observatory’s work also indicates that they find it cost effective. For instance, data collection takes time, but stakeholders would not carry out this task more efficiently at national level and, without the Office’s intervention national authorities would not aggregate data at EU level. According to the contractor’s study, *“The Regulation bundles resources, capacity and knowledge and expertise into one single organisation. This leads to lower administrative costs and burdens. Such efficiency could not be achieved at national level.”*

The public consultation feedback on efficiency does not seem to be very conclusive, but it leans more towards the positive side. Half of the respondents to the public consultation did not express an opinion on the question of whether the costs supported by the Office are proportionate to the generated outputs and benefits. For some respondents (8%), the Office is not investing enough. The rest are divided between those who find the costs justified (21%), those who find that the same or better results could be achieved with a lower budget (11%) and those who find that the costs are not justified or proportionate, for some other reason (9%). Criticism of the Office’s spending as expressed in the public consultation seems to be more linked to the respondents’ particular opinions on IP or on what the Office’s priorities should be rather than to possible inefficiencies in the Office’s budgetary management. As an example of the first group, one

⁸⁴ Technopolis study, page 68.

respondent finds that *“the costs could be saved by dissolving the EUIPO.”* In the second group, different visions on priorities are linked with the particular interests in which some stakeholders are vested (for example, trade mark owners prefer more investment in trade mark matters) and which are not necessarily shared by stakeholders having different concerns. Within the group of professionals and organisations, the perception of whether the costs are justified in view of the results obtained is much more positive, with 39% finding that the costs are justified, and 10% finding that the Office is overspending.

According to the contractor’s study, *“The general conclusion is that the Regulation under evaluation was implemented in an efficient manner. Despite some difference of views by different stakeholders on some particularities, the activities and projects carried out by the EUIPO are in general viewed as positive contributions to the enforcement of IP rights, to raising awareness, to generate knowledge and expertise, and to strengthen cooperation between all relevant stakeholders, while keeping to a minimum the costs incurred by all involved in the work of the Observatory (such as time expenditure). There are no indications that the Observatory team is over resourced or incurring in disproportionate expenditure in the pursuit of the tasks that were attributed to it by the Regulation.”* While there is nothing to suggest that the Office is using its resources inefficiently, it could improve considerably the information that it provides on its activities spending under the Regulation (e.g. having a short addendum to the budget and budget execution on all items for the Observatory expenditures and provide Observatory expenditure data on budgets dedicated to operational and staff costs).

This evaluation concludes that the Office is well equipped to carry out its tasks under the Regulation. It has delivered in all tasks and its spending is justified and balanced vis-a-vis the results obtained. In the future, some aspects could be improved, in particular better data could be made available to assess more quantitatively the efficiency of the Observatory, also allowing for example to monitor the ratios of operational expenditure per staff posts and the ratio of operational budget vs staff budget, which should not fall beyond the 2014 numbers.

Coherence of EU intervention

The tasks attributed to the Office under the Regulation were designed to lower levels of IP infringement. More fact-based knowledge serves training and awareness, more integrated enforcement tools reinforces cooperation and efficiency, more and better cooperation in enforcement helps tackling supply of IP infringing products whereas awareness raising addresses demand. Reducing IP infringements within the EU requires reaching out to non-EU countries from which most counterfeits originate.

Promoting and facilitating the use of IP and combating counterfeits and piracy in a coordinated manner across the EU is a key element to reinforcing a business environment that favours creativity and innovation. The Office’s tasks are therefore aligned with the EU priorities of creating jobs, growth and investment, reinforcing the single market and promoting a fair and rules based trading system.

Most respondents interviewed by the contractor agreed that there is a broad coherence between the objectives of the Regulation and the Observatory’s work. The public consultation, carried out after the publication of the contractor’s study, confirmed this finding. Most respondents (56% – 71% in the case of professionals and organisations – also agreed that there are no contradictions between the Office’s different tasks under the Regulation.

Some of the respondents considered that it is incoherent to ask the Office to research on the value of IP and at the same time carry out tasks relating to strengthening IP enforcement, which assume that IP is beneficial, a view that they dispute. However, it should be noted that the EU is strongly committed to the protection of IP. Assigning to the Office the task of researching on the value of IP cannot be read as expressing hesitations about the benefits of IP to innovation, competitiveness and creation of jobs in the EU.

Nevertheless, it remains relevant to investigate the extent to which the IP system contributes to the economic and social wellbeing of the EU and its citizens. The fundamental aim of IP

protection is not to increase profits of businesses, but to seek societal gains that derive from innovation and improving living conditions. IP policies should be based on objective research using tested, transparent and verifiable methodologies. Knowing more about the impact of IP protection can help decision makers avoid the pitfalls of over regulating IP, which can lead to market foreclosure and the creation of barriers to market entry, thus distorting competition and betraying the fundamental *raison d'être* of IP. Better knowledge on the real contribution of IP and of the effects of IP infringement also helps raising awareness, which is key to the efforts in lowering demand for counterfeits and piracy. Having new tools to facilitate enforcement, and sharing knowledge on the business models and methods used by organisations profiting from counterfeiting and piracy, supports lowering the offer of counterfeit and pirated products.

Therefore, the objectives of improving the understanding of the value of IP and of the scope and impact of infringements of IPR are coherent with the general objective improving IP enforcement and lowering IP infringements.

Additionally, the close cooperation between the Office and the departments of the Commission ensures that the implementation of the Office's tasks is coherent with and provides support to the Commission's IP policy. The Commission departments provide a coordinated input to the preparation of the Office's work programmes and officials from the different Commission departments participate regularly at the Observatory's meetings, including the working groups and the recently created expert groups. This ensures in a structured manner that the Office's activities are consistent with the Commission's priorities. However, the Office does not always communicate on its activities by linking them to the overall context of the EU IP policy and Commission initiatives, which can lead to uncertainty among stakeholders on how the two layers of EU intervention coexist.

Overall, inconsistencies are avoided and much of the Office's work complements and supports the Commission's IP activities. The Office has become a key partner of the departments of the Commission dealing with counterfeiting and piracy (DG GROW, DG TRADE, OLAF, DG TAXUD and DG CNECT). For example, the IP pre-diagnostic services for SMEs designed and made available by the Commission's department for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) through the EU Programme for the competitiveness of enterprises and SMEs (COSME)⁸⁵. The Office helps the Commission in co-organising training courses for the experts responsible for carrying out IP diagnostics. The Office also actively participates in the work of the voluntary Memoranda of Understanding between IP right owners and online intermediaries facilitated by the Commission to curb the online offers of counterfeits and to limit the benefits of IPR-infringing websites.

The Office also supports the Commission's initiatives in copyright, collaborating with the Commission's department for communications networks, content and technology (DG CNECT). The Office has set up a single publicly accessible online database of 'orphan' works, such as a piece of music or literature whose authors or other right holders are not known or cannot be located⁸⁶. The database records and provides information on orphan works contained in the collections of libraries, educational establishments, museums, archives, film or audio heritage institutions and public-service broadcasting organisations. The database allows these cultural heritage institutions to use orphan works under a copyright exception, in particular to create digital copies of the works and make them available to the public.

⁸⁵ Commission Staff Working Document "Putting intellectual property at the service of SMEs to foster innovation and growth" SWD(2012)373, page 4.

⁸⁶ The setting-up of the database was foreseen in Article 3(6) of Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ EC No L 299 of 27.10.2012, p. 5)

Furthermore, the Office is carrying out preparatory work with a view to launching a portal on out of commerce works⁸⁷. The portal will have a publicity purpose, i.e. to inform right holders and the public at large about out-of-commerce works or other subject matter that may be, or are being, used by cultural heritage institutions. In addition, the Office promotes the legal online consumption of protected works (such as music and movies) through its portal Agorateka which helps consumers to find legal sources where such works can be found, accessed and watched or listened to. Through its published FAQ, the Office is making information on copyright easily accessible and easily understandable, therefore helping consumers, entrepreneurs and businesses to avoid involuntarily infringement of IP rules.

The Office has a key role in implementing EU-funded projects in non-EU countries. The Office also supports the Commission efforts to provide IP relevant information and knowledge to officials in EU delegations around the world, and it has published guides to IP protection in non-EU countries. All these activities are carried out in line with the priorities established by the Commission's departments for Trade.

As already indicated, the Office's research and data gathering studies and reports are regularly used in the Commission's IP policy documents (the 2015 Single Market strategy, the 2016 Copyright package, the 2016 Start-up initiative and the 2017 IP package, etc.). The Office is conducting research on the impact that the Trade Secrets Directive may have in trade secret litigation in the EU, and it has produced a first report offering the baseline scenario of the litigation landscape.

This evaluation concludes that the different tasks entrusted to the Office under the Regulation are mutually supportive and consistent with the overall objective of improving the fight against infringements of IPR, thus improving the functioning of the Union's and national IP systems, and their different building blocks (trade marks, designs, patents, copyright, geographic indications, etc.). Furthermore, the activities of the Office under the Regulation are aligned with the EU IP policy, in particular in its efforts to improve the use and protection of IPR across the EU, at the EU borders and internationally.

EU added value of the Office's Observatory

Both the public consultation and the contractors' study showed a clear consensus on the added value of the Regulation and of the activities carried out by the Office with the help of the Observatory. Transferring the Observatory from the Commission to the Office enabled scaling up the benefits of the stakeholder platform that was initially created with the investment of additional resources resulting in a wide package of tools, publications and processes that are now put at the disposal of public authorities, private sector stakeholders and individuals across the EU.

According to only 9% of respondents to the public consultation, infringements of IPR could be addressed just as well, or even better, at national level without involving the Office. A majority of 60% considered that this is not the case. This majority is larger in the case of professionals and organisations (80%).

In the words of one respondent from a national customs authority, *"the EUIPO has a crucial role in coordinating all the actors involved in IPR protection. It also has the capacity and resources to raise awareness on the importance of IP protection, to publish studies on the IPR phenomenon, to monitor new emerging technologies and how they can be exploited to combat IPR infringements. All these activities would not be possible at national level."*

Piracy and counterfeiting have a strong international nature, and as mentioned in the contractor's study the scale and complexity of IPR infringement *"is too large to be dealt with by individual*

⁸⁷ Out-of-commerce works are works that are protected by copyright but no longer commercially available. The setting-up of the portal was foreseen in Article 10 of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (OJ EC No L 130 of 17.5.2019, p. 92).

Member States. Also, the cross-border nature of counterfeiting makes action at the EU level particularly useful.” The same applies entirely to the fight against piracy (copyright infringement). As mentioned, the bundling of resources in one organisation creates efficiencies that would not be otherwise possible. However, most of the results achieved with the creation of the Observatory and adoption of the Regulation would not have been possible without EU intervention. The vast majority of data that is now freely accessible to policy makers, public authorities, business, researchers and individuals was not collected, assessed and shared before the Regulation. Without the Office’s work under the Regulation, it is difficult to imagine that Member States would have been able to coordinate in the same way efforts to investigate into the value of IP, the impacts of IP infringement for the whole of the EU, or the perception of IP by consumers and young people in the EU.

Different Member States would most likely have used different fact-finding methodologies. Therefore, the data collected at national level would not necessarily be comparable and it would be difficult to have aggregated figures providing an EU wide picture. In other words, there would be fewer data of poorer quality. This is particularly important because counterfeiting and piracy are global problems and require an EU-wide strategy, while enforcement actions are mainly carried out at national level. Therefore, coordination, cooperation, exchange of information and common tools are key factors to the success of the fight against counterfeiting and piracy. Fragmentation of resources and the lack of a united platform to join forces and share best practice would mean that no common enforcement tools and databases would have been created. Joint actions would have been more difficult to organise.

To conclude, the Observatory has a strong added value in terms of coordination and networking, leading to an improved knowledge base that could not have been achieved at national or regional level.

6. CONCLUSIONS AND LESSONS-LEARNED

The **overall conclusion** supported by the contractor study and the public consultation is that the Regulation is working well through the Office’s and is achieving the expected results. The evaluation is positive on the five evaluation criteria; however improvements can still be made.

The Regulation and the entrustment of new tasks to the Office have reshaped the landscape of IP enforcement in the EU. There is now a stable framework, a network bringing together experts from the public and private sectors at national and EU levels which is supported by sufficient funding. This new reality enabled substantial progress in the areas where there were clear gaps before the Regulation, such as in data and statistics collection, research and development of knowledge, knowledge and best practices sharing, training and tools to help enforcement.

The **first conclusion** is that the Office has implemented the activities entrusted to it by the Regulation in an effective manner, as regards the management of, and interaction with, the network of stakeholders that form the Observatory on IP infringements, and also in carrying out the specific tasks and activities set out in the Regulation.

The operational objective of the EU’s initiative under evaluation was to equip the Observatory with sufficient resources and infrastructure. This objective has been met.

The Office provided the Observatory with an infrastructure that had previously been missing and which is supported by sufficient budgetary means, expertise, meeting facilities, communication tools and other necessary resources.

The Office has successfully widened the network of representatives to the Observatory, while keeping its composition balanced in view of its objectives. In the words of the contractor’s study: *“The Observatory has created a transnational community of people and organisations involved in the fight against counterfeiting and piracy. The Observatory is (...) highly effective when it*

*comes to creating possibilities to exchange information and best practices amongst various target groups, including enforcement authorities and public and private stakeholders*⁸⁸.

Indeed, one of the first effects of implementing the Regulation was that cooperation in IP enforcement is now greatly facilitated. Bringing together the representatives from private sectors and the national administrations in the different meetings that the Office organises on a regular basis and their engagement and contribution to the different activities and projects has helped continued cooperation between all relevant actors to address counterfeiting and piracy.

The Office has delivered on all the tasks covered by the Regulation.

Having developed a transparent and objective methodology subject to scrutiny and peer review, the Office carries out regular research and publication activities. These activities enable the assessment, at both EU and national levels, of the economic importance of IP, its use by businesses, people's perception, the volume and impact of IP infringements, as well as the methods and routes used by infringers.

The information produced is considered factual, objective, reliable and robust. As a result, policymaking, training of enforcement officials and awareness raising are now anchored to a wider set of accurate data. More importantly, these studies and reports are not one-off exercises, condemned to obsolescence. They are repeated regularly to identify trends, allowing authorities to anticipate needs and plan appropriate responses. The situation has therefore improved considerably. According to the contractor's study, *"many interviewees indicated that prior to the Observatory, there was very little information available on the scale and severity of issues related to IP infringements, and the damage such issues cause to the European economy. Moreover, stakeholders felt it was important for policy makers to be informed by independent and reliable data and information (a point that was made in particular by national authorities)"*⁸⁹.

The Office has developed a series of annual training events for officials, promoted awareness-raising actions, and developed and made available tools that are increasingly used by public officials and private businesses across the EU. It has also carried out a considerable number of activities in support of Commission initiatives.

As a result, the Office has become a central source of knowledge and sharing of best practice on IP infringements in the EU and internationally, with an unmatched portfolio of publications relevant to all stakeholders, from decision makers to enforcement officials, owners of IPR, consumer organisations, researchers, etc. The Office is well recognised as a centre of excellence in providing information on IP, and as a platform for knowledge sharing, not only in Europe but also internationally.

The **second conclusion** is that the objectives set out in Regulation are still relevant today and probably more so than ever. Due to the growing value of intangible assets in today's economy IPR are increasingly important for the performance of companies and the economies in which they operate. The share of intangible assets in companies' overall value has risen from 17% in 1975, over 68% in 1995, to 84% in 2015. Not surprisingly, there is an increase in criminal activities looking for profits based on IP infringements. Imports of counterfeits into the EU have been increasing and are now estimated at €121 billion, or 6.8% of total EU imports.

Both the contractor and the public consultation showed a broad consensus on the Office's tasks under the Regulation.

The **third conclusion** is that the objectives set out in the Regulation and the activities conferred to the Office under it, are mutually supportive and coherent with the EU overall policies of facilitating the use and protection of IPR within the EU Member States, at the EU borders and

⁸⁸ Technopolis, Evaluation of the application of Regulation 386/2012, 2017, p.55

⁸⁹ Technopolis, Evaluation of the application of Regulation 386/2012, 2017, p.43.

internationally. Promoting and facilitating the use of IP and improving conditions to combat counterfeits and piracy helps to maintain a business environment that rewards creativity and innovation. The Office's tasks are therefore in line with the EU objectives of creating jobs, growth and investment, reinforcing the single market and promoting a fair and rules based trading system, which looks after consumers, workers and the environment.

The **fourth conclusion** is that the Office's activities under the Regulation have clear added value. According to the contractor's study, *"the scale and complexity of the counterfeiting and piracy challenge is too large to be dealt with by individual Member States. Also, the cross-border nature of the issue of counterfeiting yields action at EU level particularly useful. The Regulation bundles resources, capacity and knowledge and expertise into a single organisation. This leads to lower administrative costs and burdens. Such efficiency could not be achieved at national level. The Observatory has a strong added value in terms of coordination and networking, leading to an enhanced knowledge base that could not be established at national or regional level. The data and studies produced by the Observatory represent a useful means for policy makers at EU and national level to understand the scale and consequences of counterfeiting and to use as evidence for policymaking purposes"*⁹⁰. These findings were further confirmed by the feedback received through the public consultation which showed a clear consensus on the added value of the Regulation and of the Office's activities with the help of the Observatory.

The **fifth conclusion** of the evaluation is that the Office carried out its activities in an efficient manner. As intended by the Commission's proposal leading to the adoption of the Regulation, the results mentioned above were achieved without costs to the general EU budget. While it has spent an average of EUR11 million per year in the activities covered by the Regulation, the Office has been able to independently fund all its activities, namely, through the fees that it charges as a trade mark and designs register. Based on the contractor's study, the Office's data and the results of the public consultation, this evaluation concludes that the Office used its human and financial resources efficiently to deliver on the tasks set in the Regulation.

The growing number of projects and activities carried out by the Office is a reflection of its ambition and the dynamics created by the close cooperation between a motivated team and a valuable network of experts and stakeholders. One of the lessons-learned is precisely that the network of stakeholders forming the Observatory is its most valuable asset. The Observatory, as a platform where the experience and expertise of stakeholders from the public and private sectors and civil society are brought together to step up the fight against the counterfeiting and piracy is as key element of the Regulation and it is vital in achieving its objectives. The Office should therefore continue to promote stakeholder engagement.

The evaluation has shown that **certain lessons can be learned** from the experience gained through the application of the Regulation.

First of all, although the Office keeps good record of its activities and deliverables, it should have in place systems to better monitor the impact of its activities. This is particularly important as regards the actions and campaigns aimed at raising public awareness. The Office has been improving its data in that respect, in comparison to the first years of the functioning of the Regulation. The Office's efforts should be extended to all areas of activity under the Regulation and the monitoring should be complemented with cost-benefit analysis and efficiency indicators. A better view of how the different actions are contributing to the objectives of the Regulation is useful for setting of priorities and will be helpful in future evaluations. Furthermore, the Office should make sure that its annual reports provide the clear information on the work of the Office under the Regulation. In 2019 and 2020 Office published an informative stand-alone annual activity report on its activities under the Regulation in the precedent years. However, this report is not subject to the approval of the Management Board.

⁹⁰ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017, p.87.

Second, despite the overall recognition that the Office has succeeded in maintaining a good collaboration with stakeholders, Members of the Observatory network have called for earlier involvement of stakeholders in preparing the Office's work programmes and in launching follow-up projects, in particular for the Office's activities in non-EU countries. The work of the Office in international cooperation on matters relating to enforcement of IPR should be subject to proper consultation of representatives from the Member States and benefit from stakeholders input. The results of the publication suggest that the Office could communicate better in this area.

Third, the Office should, when communicating on its projects and activities, refer to the relevant Commission IP policies and initiatives. This has not been always the case, which can give rise to confusion on how the projects implemented by the Office tie in with the Commission's IP policies. Therefore, the Office should make sure that the alignment of the Office's projects with EU policies should be clearly communicated. While there are a number of areas where this is relevant (support to the use of IP by SMEs, the role of, and cooperation with, intermediaries on IPR enforcement and prevention of IP infringements) such efforts seem particularly important in the area of International cooperation.

Fourth, the evaluation has concluded that collecting data from national authorities is at times complicated. Although some progress has been made, the Office is encouraged to continue overcoming the existing difficulties in obtaining data from Member States. At the same time, Member States should step up efforts to improve their contribution to the Office's work in this area.

Fifth, the Office has been quite successful in embracing new tasks and responsibilities but in a few cases planned projects have suffered delays. Such activities should benefit from sufficient resources and support to avoid that certain planned projects succumb to shifting priorities. The Office should consider creating mechanisms to ensure that all agreed projects receive sufficient resources and are properly prioritised to ensure that they are delivered on time.

Sixth, the Office's studies and reports are of high quality and internationally recognised as relevant and objective, and should be sufficiently resourced. During the first years of the Office's activity under the Regulation, these studies did not contain clear publishing information – as mentioned in the contractor's study. This has been corrected. However, there is still room for improvement, for example in the way in which studies are displayed and made available online, as it is not always easy to retrieve them on the Observatory's website.

This evaluation concludes that the Regulation has met its objectives. The combination of the Regulation, the work put forward by the Office and the functioning of a fully-fledged and highly active Observatory, substantially changed the landscape of IP enforcement in the EU. The Office was able to develop links with the Member States authorities and all the relevant stakeholders. Furthermore, it has succeeded in working with the different departments of the Commission as well as with other EU institutions and bodies, therefore ensuring that its activities are consistent with EU policy objectives. The Office is an integral part of the Commission's response to counterfeiting and piracy, and it plays an important role in supporting the implementation of Commission initiatives. While some adjustments can be made in specific areas, the Office has met expectations.

There is no system capable of measuring the full impact of the Office's activities in the enforcement of IPR. Despite all the efforts, IP infringements are still on the rise. There are numerous factors influencing the volume of IP infringing products, and there is no silver bullet to put an end to it. However, today, thanks to the Regulation, and the work developed by the Office with the support of those involved in the Observatory, authorities and stakeholders know more about what those factors are, how IP infringers operate, the means and methods they use, what routes they take and how much damage they cause. The EU, its Member States and businesses are now much better equipped to curb counterfeiting and piracy than they were before the adoption of the Regulation.

ANNEX 1: PROCEDURAL INFORMATION

Lead DG, Decide Planning/Commission Work Programme references

Lead DG: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW); Unit F3: Intellectual property and Fight against Counterfeiting

Reference in e-Decide: 2017/GROW/016

Organisation and timing

On 10 February 2016, DG GROW invited the relevant DGs to participate in the Inter-Service Steering Group (ISSG). The ISSG consisted of SG, SJ, TAXUD, TRADE, HOME, CNECT, JUST, JRC and OLAF.

On 23 February 2016, ISSG met for the first time to discuss the roadmap. On 8 March 2016, DG GROW consulted the Office on the draft roadmap. The roadmap was on 28/04/2016, under the title 'Evaluation of Regulation No 386/2012 – European Observatory on Infringements of Intellectual Property.'

On 7 July 2016, the ISSG met to discuss the terms of reference of the external study. On 27 July 2016, DG GROW requested the contractor, Technopolis, to carry out a study evaluating the application of Regulation 386/2012. The request was made under the framework contract ENTR/172/PP2012/FC – LOT 4. On 22 November 2016 DG GROW and Technopolis signed the contract for the external study.

On 5 May 2017, the ISSG met to discuss the progress report by the contractor. On 14 June 2017, DG GROW consulted the ISSG on the draft of the final report submitted by the contractor. On 21 August 2017, DG GROW consulted the ISSG on the second draft of the final report submitted by the contractor. On 23 August 2017, DG GROW consulted the Office on the second draft of the final report submitted by the contractor. On 20 October 2017, DG GROW consulted the ISSG on the final set of comments on the third draft submitted by the contractor. On 27 October 2017, DG GROW accepted the external study. On 5 March 2018, DG GROW published the external study on the webpage dedicated to the Observatory and its evaluation.

On 16 April 2018, DG GROW consulted the ISSG on the questionnaire of the public consultation. The public consultation took place between 3 July 2018 and 5 October 2018. On 3 December 2018, DG GROW published the results of the public consultation and provided the ISSG with a first assessment of the results.

On 2 July 2019, DG GROW consulted the ISSG on the first draft of the Staff Working Document on the evaluation.

On 27 July 2019, DG GROW consulted the Office on the first draft of the evaluation report.

On 8 May 2020, DG GROW consulted the ISSG and the Office on the draft of Commission's evaluation report and on the second draft of the accompanying Staff Working Document on the evaluation.

On 25 May 2020, the ISSG met to discuss the two drafts. The ISSG concluded that apart from some comments that would be sent by 26 May 2020, the two documents were ready for inter-service consultation.

Evidence, sources and quality

The Commission evaluation is based on two main building blocks, complemented by further research: a study from a contractor and a public consultation.

The study was commissioned in November 2016 to Technopolis. The methodology used in its preparation included desk research and interviews. A total of 113 interviews were carried out mainly with stakeholders participating in the work of the Observatory, but also with members of the Office's Observatory team. The contractor contacted officials from national customs authorities that are not involved in the work of the Observatory, but who are in charge on a daily basis of IPR enforcement at the EU borders. The contractor carried out an online survey, shared through the Members of the Observatory and their constituencies. The study was concluded in August 2017 and it is available online⁹¹.

The contractor carried out the study on the basis on the following evaluation questions:

Criteria	Evaluation questions
Relevance	<input type="checkbox"/> EQ 1.1. To what extent have the initial objectives of the Observatory proven to be appropriate (relevant)? <input type="checkbox"/> EQ 1.2. To what extent do they still correspond to current needs/issues given the development of the scale and different types and sources of IP infringing activity? <input type="checkbox"/> EQ 1.3. Is the scope of the Regulation still appropriate (relevant)?
Effectiveness	<input type="checkbox"/> EQ 2.1. How has Regulation 386/2012 been implemented? <input type="checkbox"/> EQ 2.2. To what extent have the activities undertaken by the Observatory contributed to enhance the proper enforcement of IPR in the European Union? <input type="checkbox"/> EQ 2.3. To what extent have the activities undertaken by the Observatory impacted the level of IPR infringements in the EU in recent years? Where expectations have not been met, what factors have hindered their achievement? <input type="checkbox"/> EQ 2.4. Are there any aspects/means/actors that render certain aspects of the implementation of Regulation 386/2012 more or less effective than others? If so, what lessons can be drawn from this? <input type="checkbox"/> EQ 2.5. Have all relevant stakeholders been invited to the meetings of the Observatory or to the activities of its working groups? <input type="checkbox"/> EQ 2.6. What obstacles or difficulties has the EUIPO faced when fulfilling the tasks given to it by the Regulation?
Efficiency	<input type="checkbox"/> EQ 3.1. What are the <i>costs</i> incurred to EUIPO, the public authorities and the other stakeholders to implement the Regulation? <input type="checkbox"/> EQ 3.2. What are the main <i>benefits</i> for beneficiaries, stakeholders and civil society that derive from the Regulation? <input type="checkbox"/> EQ 3.3. To what extent are the costs <i>justified and proportionate</i> , given the benefits achieved by the Observatory (value for money)? <input type="checkbox"/> EQ 3.4. What <i>aspects of the implementation</i> of the Regulation /functioning of the Observatory are the most efficient or inefficient? What factors influenced the efficiency of the results achieved by the Observatory?

⁹¹ Technopolis, *Evaluation of the application of Regulation 386/2012*, 2017 <https://ec.europa.eu/docsroom/documents/28221>

Utility	<input type="checkbox"/> EQ 4.1. To what extent do the activities and results of the Observatory satisfy the needs and expectations of different types of stakeholders? <input type="checkbox"/> EQ 4.2. Does the degree of satisfaction differ by type of stakeholder group, geographical location or the type of IPR, and if so, to what extent and why?
Coherence	<input type="checkbox"/> EQ 5.1. Internal coherence: To what extent are the different components of the Regulation in coherence with each other? <input type="checkbox"/> EQ 5.2. External coherence: To what extent is the implementation of the Regulation coherent with <i>other EU objectives and actions</i> ? <input type="checkbox"/> EQ 5.3. External coherence: To what extent is the implementation of the Regulation coherent with <i>other international objectives and actions</i> ? <input type="checkbox"/> EQ 5.4. External coherence: To what extent is the implementation of the Regulation coherent with <i>national policies and actions</i> ?
Complementarity	<input type="checkbox"/> EQ 6.1. To what extent does the Regulation support MS's national actions? <input type="checkbox"/> EQ 6.2. To what extent does the Regulation support EU and international actions in the field of IPR?
Added value	<input type="checkbox"/> EQ 7.1. What is the additional value of this Regulation compared to what could be achieved at the national level (i.e. principle of subsidiarity)? <input type="checkbox"/> EQ 7.2. To what extent do the issues addressed by the Regulation continue to require action at EU level? <input type="checkbox"/> EQ 7.3. What would be the consequences of withdrawing the Regulation and stopping the Observatory's activities?

(a) Desk research

The contractor reviewed all the Office's 2013 to 2017 work programmes, the 2014-2018 multiannual plan and the 2012 to 2015 annual reports. In addition, the contractor consulted the Office's studies and reports published under the Regulation, as well as the minutes of meetings, summaries of events, satisfaction surveys, project briefs on various projects and tool, and further documentation indicated in Section 9.3.1 of the final report delivered by the contractor.

The evaluation took also account of the Office's 2018 and 2019 work programmes and the 2016, 2017 and 2018 annual reports.

(b) Interviews, surveys and public consultation

The contractor carried the following interviews:

Types of stakeholders	Number of interviews
National public representatives	21
Private industry	51
Civil society organisations	6
Others	7
Observers/international organisations	9

DGs	7
MEPs	2
Observatory staff	10
Total	113

Another important means of data collection was the public consultation, which ran from 3 July 2018 to 5 October 2018. The public consultation was announced on *Your Voice in Europe*, and it was carried out through an online questionnaire made available in the 24 official EU languages, using the EU's *EUSurvey* consultation tool. The public consultation received 98 contributions. The synopsis report of the public consultation provides information on the participation to the consultation and summarises the main results (Annex 2). The results of the consultation are assessed in that report with reference to the various categories of respondents, such as individuals, professionals and organisations (that is, legal persons or bodies), Members of the Observatory (a sub-category of the latter).

(e) Workshop

On the 19 June of 2017, the contractor presented the preliminary findings of their study on the evaluation to the ISSG members.

ANNEX 2: STAKEHOLDER CONSULTATION – SYNOPSIS REPORT

Introduction

This synopsis report summaries the public consultation accompanying the preparation of the report of the Commission evaluating the application of Regulation No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Infringements of Intellectual Property Rights⁹².

The purpose and scope of the consultation

The Office is an agency of the European Union (EU) created by Council Regulation (EC) No 40/94⁹³. The Office administers the EU trade mark and the Community design systems.

In 2012, the Office was given an additional set of tasks. These tasks were given to the Office under Regulation No 386/2012 ('the Regulation') and generally aim at facilitating and supporting the activities of national authorities, the private sector and the EU institutions in the fight against infringements of Intellectual Property (IP). The Regulation also requires that in carrying out such tasks, the Office is to organise, administer and support the gathering of experts, authorities and stakeholders assembled under the name 'European Observatory on Infringements of Intellectual Property Rights' ('the Observatory').

The purpose of the public consultation was to collect the views of individuals and stakeholders on:

- the relevance, coherence and added value of the Regulation;
- the effectiveness and efficiency of the activities put in place by the Office in fulfilling the tasks under the Regulation.

The public consultation looked at the manner in which the Office has set up and managed the Observatory, and the extent to which the Members of the Observatory are engaged in, and contribute to, the pursuit of the objectives under the Regulation.

The public consultation was announced on *Your Voice in Europe*, and it was carried out through an online questionnaire made available in the 24 official EU languages, using the EU's *EUSurvey* consultation tool. It ran from 3 July 2018 to 5 October 2018. The public consultation received 98 contributions. The views of the respondents cannot be interpreted as being representative in a statistical sense.

Who participated in the public consultation?

The Commission received 98 replies to the consultation, including 52 from individuals replying in their own name and not in any particular professional capacity. The other 46 respondents replied in their professional capacity, either in their own name or in representation of an organisation ('Professionals and organisations'). As explained below, this group contains a sub-group consisting of organisations that are Members of the Observatory (18 respondents). Therefore, the other 28 respondents in the category 'Professionals and organisations' are not Members of the Observatory.

⁹² OJ EC No L 129 of 16.5.2012, p. 1.

⁹³ Initially named the Office for Harmonization in the Internal Market (Trade Marks and Designs), the EUIPO has its seat in Alicante, Spain.

Individuals

The 52 individuals responding to the consultation reside in 15 different Member States. The most represented Member States were Germany (25%), Spain (13%), Belgium (11%), Austria (7%) and Portugal (7%).

Respondents in this group had different levels of familiarity with the Office and its activities: 42% had never heard about it before; 34% know, more or less, what the Office does and 13% are well aware of what it does.

Professionals and organisations

This category covers 46 respondents from a wide background, such as associations of holders of IPR (11), business organisations (7), public authorities (6), businesses (5), self-employed professionals and consultants (4), consultancy or law firms, consumer or other non-governmental organisations (3), organisations of professionals in IP (3), and one chamber of commerce.

These respondents have their seat in 15 Member States – including Belgium (11), France (5), Czechia (5) and Italy (5) – and three are seated outside the EU. However, some of these respondents are European or International associations representing members across, and in some cases beyond the EU. For example, BusinessEurope has its headquarters in Brussels and it represents 36 national business federations spread over 35 European countries⁹⁴.

Public authorities responding to the consultation consisted of departments or public agencies concerned with IP (such as the Danish Patent and Trademark Office), or having a specific role in the enforcement of IPR, such as the Customs Department of Malta.

Most respondents in the category ‘Professionals and organisations’ (73%) are well aware of the Office’s and its activities, and 17% know more or less, what the Office does. A minority (6%) had never heard about it.

Members of the Observatory

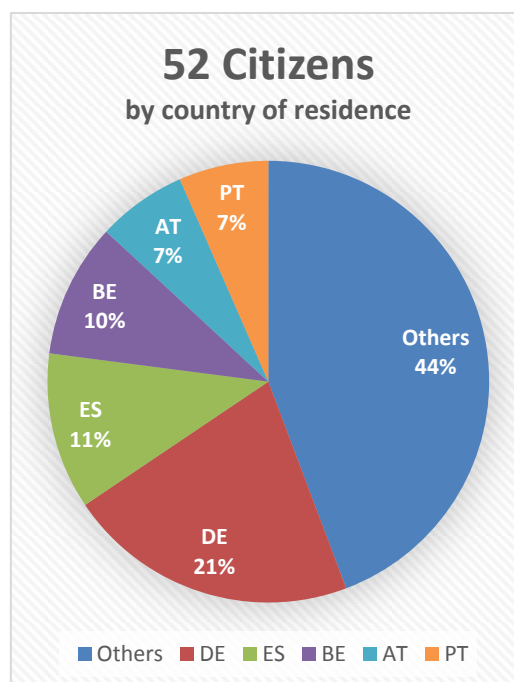
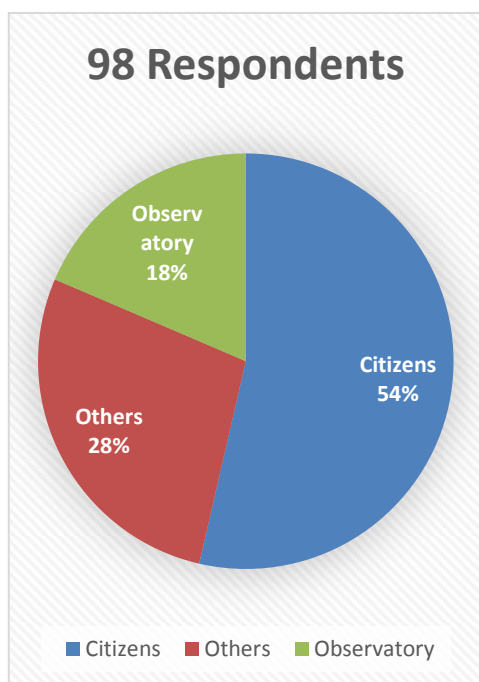
Under the ‘Professionals and organisations’ category, there were 18 respondents that form part of the network of stakeholders (from the public administration or private sector) assembled by the Office under the umbrella of the Observatory (see ‘Observatory’ in the pie chart below). These are mainly representatives from bodies and organisations with an interest in, or concerned by, enforcement of IPR. The Members of the Observatory are regularly invited to participate in meetings, events and projects organised by the Office under the Regulation. As an example, they are consulted on the drafts of work programmes and some of them participate in working groups following specific projects developed by the Office.

The Observatory, as a network of stakeholders, is envisaged in the Regulation, and the Office should at least once a year “*invite to meetings of the Observatory representatives from public administrations, bodies and organisations in the Member States dealing with intellectual property rights and representatives from the private sector, for the purpose of their participation in the Office’s work under this Regulation*”⁹⁵.

The remaining respondents in the category ‘Professionals and organisations’ are not Members of the Observatory (see ‘Others’ in the pie chart below).

⁹⁴ BusinessEurope is registered in the EU’s transparency Register under No 3978240953-79.

⁹⁵ According to Article 4(2) of the Regulation “*Private-sector representatives invited to meetings of the Observatory shall include a broad, representative and balanced range of Union and national bodies representing the different economic sectors, including the creative industries, most concerned by or most experienced in the fight against infringements of intellectual property rights*” and “*Consumer organisations, small and medium-sized enterprises, authors and other creators shall be properly represented*”.



Relevance of the Office’s mission, tasks and activities

The Office’s mission on IP enforcement

Most respondents (66%) considered that the Office's overall mission of facilitating and supporting the activities of national authorities, the private sector and the EU institutions in the fight against infringements of the IPR is important and relevant. Some respondents (16%) considered that the mission was never, or is no longer relevant or important. The approval rate is substantially higher among professionals and organisations (95%) than with individuals, where only 40% find the mission important. Almost a third of the individuals responding (30%) considered that the Office’s mission to be irrelevant. These respondents do not see any particular benefit in protecting IPR in general or copyright in particular, as expressed in their additional comments to the question.

The Office’s tasks

The public consultation also focused on the Office’s different tasks under the Regulation. Article 2 of the Regulation distinguishes between the tasks assigned to the Office and the activities that it must carry out in fulfilling such tasks.

All tasks were considered as important by respondents with an approval rate between 54% (research on technical tools to prevent and tackle infringements of IPR, including tracking and tracing systems which help to distinguish genuine products from counterfeit ones) and 77% (research on the economic and cultural value of IP for citizens, businesses and society).

Again, the approval rates were higher in the professionals and organisations category (from 73% to 95%).

Positive replies on the question: are the following tasks important?	All respondents	Professionals and organisations
Research on the volume and impact of infringements of IP rights	77%	91%
Disseminate best practices to protect IP rights	76%	93%
Tools for cooperation between authorities involved in protecting IP rights	76%	95%
Research on the economic & cultural value of IP	74%	91%
Training those involved in IP enforcement	68%	95%
Awareness of the impact of infringements of IP rights	68%	89%
Organising meetings with national authorities dealing with IP rights and representatives from the private sector (the Observatory)	65%	93%
Helping authorities from third countries to develop techniques, skills and tools for enforcing IP rights	62%	86%
Technical tools to prevent infringements of IP rights (tracking and tracing, etc)	54%	73%

Some respondents (19%) considered that there were contradictions between the tasks mentioned above. Most comments received referred to the fact that these tasks assumed that IP benefits authors, innovators and the society at large, an assertion that they dispute. Some indicated that it is not coherent to ask the Office to research on the value of IP and at the same time carry out tasks relating to strengthening IP enforcement. However, most respondents (56%) – 71% in the case of professionals and organisations considered that there were no contradictions between the tasks.

Most respondents (69%) did not have an opinion, or did not reply to the question, on whether there are gaps or contradictions between the EU’s overall objectives and activities, including in IP, and the Office’s tasks and activities in the context of its work with the Observatory and the fight against infringements of IP. A minority (9%) considered the Office's tasks to be inconsistent with the EU’s overall objectives and activities. Around 13% of participants replied “*some of EUIPO's tasks and activities are not totally aligned with the EU's overall objectives and activities*”⁹⁶. One individual pointed out that the EU wants to support and promote culture while IP is blocking it by protecting big media companies. Another commented that the EU should legislate in favour of consumers and not industry.

⁹⁶ Due to a flaw of the online questionnaire respondents were not able indicate “no” as a reply, and therefore some of the respondents may have replied “no opinion” instead. Some others ticked “Some of EUIPO's tasks and activities are not totally aligned with the EU's overall objectives and activities” as a replacement for “no”. This was the case at least of UNIFAB and AIM who provided additional comments to clarify that they see no contradictions between the two sets of objectives. As a consequence, the percentage of respondents who find that some Office’s tasks are not totally aligned with the EU’s overall objectives is 11% instead of 13%. AIM is an organisation representing national brand association in 21 European countries, and it is registered in the EU’s transparency Register under No 1074382679-01. UNIFAB is a French association of right holders promoting the international protection of IP. UNIFAB is registered in the EU’s transparency Register under No 527831213232-14.

The questionnaire also sought to unveil current gaps in the Office's tasks. According to 31% of the respondents, the Office should receive additional tasks, whereas 39% did not see the need for it.

Some stakeholders stated the Office should be given the task of facilitating the exchange of data among national law enforcement authorities across the EU, at EU level and certain non-EU countries⁹⁷. Some of the suggested new tasks relate to supporting small business, such as the development of a user-friendly website or an interface targeted at guiding start-up entrepreneurs on how to use IP without the need of hiring experts in the field. Some respondents suggested activities that the Office is already carrying⁹⁸, and most of the suggested additional tasks concern specific studies and projects that could be considered as being covered by the broader tasks and activities already provided for in the Regulation. That is the case with:

- gathering information on the Internet Corporation for Assigned Names and Numbers (ICANN) “*given the links between domain names on the one hand and counterfeiting and digital piracy on the other*”⁹⁹, which is potentially covered by the activity of collecting, analysing and disseminating relevant objective, comparable and reliable data regarding infringements of IPR - Article 2(2)(b);
- developing tools to better target consignments (sea and rail) before they enter into the EU¹⁰⁰; which could be covered by the activity of working with Member States' authorities with a view to developing and promoting techniques, skills and tools relating to the enforcement of IPR - Article 2(2)(1);
- looking at the remuneration mechanisms for authors in the different sectors¹⁰¹ which could be seen as a form of collecting, analysing and disseminating data regarding the economic value of IP and its contribution to economic growth, welfare, innovation, creativity - Article 2(2)(c).

A couple of respondents suggest that the Office should evaluate the negative consequences of enforcing IPR and the abuse of the IPR. One of them, speaking as a small business, explains the idea further:

“It’s very risky for us to sue large corporations with several times more lawyers than we have employees in total. Stronger IP enforcement regulations won’t help in this regard. Large corporations seem to abuse the IP enforcement system (patents in particular) to unfairly compete against smaller businesses. They file lots of trivial patents that would not hold up in court if ever actually changed [challenged], but are still granted by the European Patent Office and presumed valid. As a small company we don’t have enough money to challenge the validity of a patent in court; instead we must do everything possible to avoid ever being sued. This has very chilling effects on what we do.”

The Office’s activities

The Regulation also lists a number of activities that the Office should carry out in fulfilling the above-mentioned tasks¹⁰².

⁹⁷ AIM (the European Brands Association) and International Chamber of Commerce (ICC)

⁹⁸ That is the case of at the request for “easy-to-use compilation database of jurisprudence”. The Office is developing a case-law database relating to enforcement of IPR.

⁹⁹ Sports Rights Owners Coalition (SROC).

¹⁰⁰ European Brands Association (AIM) and Business Action to Stop Counterfeiting and Piracy (BASCAP)

¹⁰¹ Société Suisse des Auteurs (SSA)

¹⁰² Article 2(2) of the Regulation.

The approval rate¹⁰³ ranges between 58% and 81%. Once again, the approval rates are higher within professionals and organisations category (from 67% to 91%).

Are the following activities important?	Positive replies among all respondents	Positive replies among professionals and organisations
Reports on the economic value and societal contribution of IP, and on the volume and impact of infringements of IP rights.	81%	91%
Transparent methodology for collecting and reporting objective, comparable and reliable data on infringements of IP rights	78%	89%
Dissemination of best practices	75%	86%
Cooperation with Member States on techniques and tools for enforcing IP rights, training and awareness campaigns	67%	91%
Public awareness events and initiatives on the impact of counterfeiting and piracy	67%	86%
Monitor and disseminate information on business models that increase availability of content	60%	80%
Training of officials involved in the protection of IP rights and organise meetings of experts	60%	89%
Provide technical assistance and training programmes to IP offices and officials from third countries	59%	80%
Promote technical tools, including tracking and tracing systems, which help to distinguish genuine products from counterfeit ones.	59%	67%
Develop tools for the exchange information between public administrations on infringements of IP rights	58%	80%

Some respondents were not entirely convinced of the merits of mandating the Office to identify and promote technical tools for professionals and benchmark techniques (including tracking and tracing systems that help distinguishing genuine products from counterfeit):

- According to the European Brands Association (AIM), the Office should not be asked to “*promote technical tools for professionals and benchmark techniques,*” which by default are competing with commercial offers. AIM did not find it problematic for the Office to monitor emerging technologies, but it is up to each IP right holder to choose which one is “*appropriate for its own product and value chain.*” For AIM ‘tracking and tracing systems’ involve sensitive commercial information and cannot be standardised or mandated by an IP office.
- Union des Fabricants (UNIFAB) considered it useful that the Office monitors and shares information on technical tools including track and tracing systems, but underlined that it should refrain from promoting a particular solution.
- Some other respondents, mainly individuals expressed concerns about the possibility that such tools could imply surveillance, censorship or the compromise of data protection.

Fulfilling the new tasks, effectiveness of the office

Taking up the job

With the adoption of the Regulation, one of the first challenges faced by the Office was to build up a team and put in place the resources needed to ensure the fulfilment of its new mandate.

In this respect, half of the respondents that are Members of the Observatory agreed with the statement “*the EUIPO is well equipped to carry out its tasks and activities, in terms of independency, funding, staff, expertise, IT and meeting capacities*”¹⁰⁴. An additional 27% agreed

¹⁰³ Rate of approval being the percentage of respondents that consider that the Office carries out a particular activity satisfactorily or very well

¹⁰⁴ Question 110

in general but found that improvements could be made. The additional comments received from the respondents on possible improvements were focused on what in their view the Office should be doing and how (such as improving its website or increasing the use of video conference meetings) rather than on the resources, equipment and expertise allocated to fulfilling the tasks or the Office's ability to be independent or impartial in its publications and activities. Overall, 77% of the Members of the Observatory considered that the Office is well equipped and only a minority of 5% disagreed.

Most individuals (69%) did not reply or did not have an opinion, but 19% shared the view expressed by the most Members of the Observatory.

The Office's activities

The respondents were also asked for feedback on how well the Office has been carrying out each of the specific activities under the Regulation, and which – as seen above – most of the respondents saw as being important.

Most individuals had no opinion on the Office's effectiveness (between 53% and 67% depending of the specific activity at stake).

A significant part of those who expressed an opinion disliked the manner in which the Office has been carrying out its activities. For example, 32 % considered that the Office's activity on publications, events and projects to raise public awareness as either poor or very bad and one in four took the same view about the Office's ability to develop clear methodologies for the collection and reporting data on infringement of IPR.

This is in sharp contrast with the feedback provided by the respondents that are Members of the Observatory: 88% considered that the Office is doing a good job in raising public awareness and 83% had the same opinion on the Office's development of methodologies for collecting and reporting on IP infringements.

In fact, the publication of reports and surveys on the contribution of IP, and the impact of infringements of IPR is one activity that has almost unanimous appreciation among Members of the Observatory. Some 94% of the respondents in this category (and 69% of the broader category of professionals and representatives from organisations) considered that the Office has been carrying out this activity well or very well.

Activities that the EUIPO has carried out well	Other Professionals and organisations	Members of the Observatory
Reports on the economic value and societal contribution of IP, and on the volume and impact of infringements of IP rights.	69%	94%
Public awareness events and initiatives on the impact of counterfeiting and piracy	65%	88%
Transparent methodology for collecting and reporting objective, comparable and reliable data on infringements of IP rights	60%	83%
Monitor and disseminate information on business models that increase availability of content	63%	83%
Cooperation with Member States on techniques and tools for enforcing IP rights, training and awareness campaigns	60%	83%
Training of officials involved in the protection of IP rights and organise meetings of experts	58%	72%
Dissemination of best practices	71%	88%
Develop tools for the exchange information between public administrations on infringements of IP rights	50%	66%
Promote technical tools, including tracking and tracing systems, which help to distinguish genuine products from counterfeit o.	39%	55%
Provide technical assistance and training programmes to IP offices and officials from third countries	30%	33%

International dimension: cooperation with non-EU countries

Cooperation with IP offices from non-EU countries is the activity with relatively fewest positive responses among Members of the Observatory. While 77% of respondents in this category find it important for the Office cooperates with non-EU countries on matters related to the enforcement of IP, only 33% had a positive view of the manner in which the Office has been developing this activity.

- The International Trademark Association (INTA)¹⁰⁵ considered that IP stakeholders would “benefit from a road map of the EUIPO’s IPR strategy outside of the EU.” INTA considered for example, that the extent to which the Office participates in the funding of the IP Key programmes is not clear¹⁰⁶, and it called for more information and a better cooperation with private sector associations.
- The European Brands Association (AIM) also considered that involvement of holders of IPR in the international activities of the Office could be improved.
- According to a representative from a national intellectual property office, “There is a lack of transparency regarding EUIPO work in third countries. More efforts should be made to work in partnership with Member States, a number of which have their own IP attachés and programmes of work with third countries.”

Most stakeholders, however, did not express an opinion on this matter (55%), and the ones that provided positive feedback (33%) far outweigh those who stated that the Office performs poorly in this area (11%).

Tools and IP enforcement

Most respondents that are Members of the Observatory (55%) appreciated the work done by the Office in identifying and promoting of technical tools for professionals and benchmark techniques, including tracking and tracing systems that help to distinguish genuine products from counterfeit goods.

When it came to a different set of tools, namely those that the Office has developed to facilitate the exchange of information between public authorities, and between private sector stakeholders and public authorities, the feedback was also mainly positive. The approval rate however, varies significantly depending of the tool in question. The main tools developed by the Office are EDB, ACIST and ACRIS, each of them serving different purposes, users and functions.

ACRIS, created by the Office in cooperation with the department of the Commission for trade, is

Views of the <u>members of the Observatory</u>	Useful / very useful	little usefulness	should be discontinued
Enforcement Database (EDB)	70%	0%	0%
Anti-Counterfeiting Intelligence Support Tool (ACIST)	44%	0%	0%
Anti-Counterfeiting Rapid Intelligence System (ACRIS)	33%	11%	0%

countries. It is registered in the EU’s transparency Register under No 10141574843-32.

¹⁰⁶ IP Key programmes are the EU’s financial vehicles for cooperation with China, South East Asia and Latin America in the area of IP - <https://ipkey.eu/en/china/about-ip-key>

an application for collecting testimonies from EU companies affected by IP infringements in countries outside the EU and information on the follow-up of these cases by local authorities. ACRIS is the tool that received the least positive replies among stakeholders. However, most stakeholders did not provide an opinion on the tool. Only 6% of the professionals and organisations and 11% of the Members of the Observatory considered that the tool has little use. No stakeholders have called for the discontinuation of ACRIS and 33% see ACRIS as a useful or very useful tool.

ACIST, a database gathering statistics on detentions of articles suspected of infringing IPR is considered useful by 44% of the Members of the Observatory. No other respondents in this category replied to this question.

EDB allows right holders to upload information on their IPR along with contact information and product details, making it easier for authorities to identify counterfeits and take action. EDB is the Office's tool that gathered the most positive feedback from the Members of the Observatory - 7 out of 10 found it useful, with the remaining Members of the Observatory not expressing an opinion.

The Observatory as a network of stakeholders

According to Recital 21 of the Regulation, to fulfil its tasks in the most efficient manner, the Office “*should consult and cooperate with other authorities at national, European and, where appropriate, international levels, create synergies with the activities carried out by such authorities and avoid any duplication of measures.*” Moreover, under Recital 23 of the Regulation “*With regard to representatives of the private sector, the Office should, when assembling the Observatory in the context of its activities, involve a representative selection of the economic sectors — including the creative industries — most concerned by or most experienced in the fight against infringements of IP rights, in particular representatives of right holders, including authors and other creators, as well as internet intermediaries. Also, a proper representation of consumers and of small and medium-sized enterprises should be ensured.*”

On the composition of the Observatory and proper representation of the different stakeholders, most respondents (58%) considered that there were no interest groups underrepresented or missing. This majority is higher within the group of professionals and organisations (67%) and higher still within the group of respondents that are Members of the Observatory (72%). Some disagreed and suggested the involvement of additional stakeholders, such as Pirates party international, Human rights groups, internet users groups, Universities, research centres, creators of start-ups, market surveillance authorities and litigators (legal practitioners).

In general, Members of the Observatory had a positive view on the way they are involved in the work developed by the Office. Most considered that the Office had created fruitful cooperation with the representatives of public and private sectors (89%) and helped them to participate actively in the activities developed by the Office (83%). However, a number of the Members of the Observatory had suggestions for improvement.

- BASCAP¹⁰⁷, the Federation of European Publishers (FEP)¹⁰⁸ and AIM indicated that it would be useful if the Office could promote more cooperation between the private and public sector representatives, as these two groups do not always understand each other's priorities, limitations and challenges.

¹⁰⁷ BASCAP (Business Action to Stop Counterfeiting and Piracy) is a platform within the International Chamber of Commerce (ICC). ICC is registered in the EU's transparency Register under No 50674299591-83.

¹⁰⁸ FEP represents 28 national associations of book publishers across Europe. FEP is registered in the EU's transparency Register under No 398541467-53.

- ANDEMA representatives to the Observatory considered that all too often Observatory meetings turned into events where participants were explained what the Office was doing rather than holding proper working meetings of working groups.

Organisation of the meetings of the Observatory

Almost all the Members of the Observatory responded to the questionnaire (94%) were happy with the organisation of the Office's meetings. More specifically: 50% considered that the meetings were very well organised and 44% considered the meetings to be well organised but with room for improvement, for example:

- For BusinessEurope, the Office should avoid overlaps in the scheduling of different meetings and should make available the yearly planning of meetings in advance. AIM agreed and added that the planning of meetings should also avoid clashes with meetings organised by other bodies such as the World Intellectual Property Organisation or the World Customs Organisation.
- For AIM, the plenary and common sessions should leave more time for debate and focus less on historical overviews of work streams. Those meetings should also have fewer speakers and fewer pre-prepared statements.
- The Society of Audiovisual Authors (SAA)¹⁰⁹ and International Video Federation (IVF)¹¹⁰ would prefer to have more meetings in Brussels and fewer in Alicante.

Information and consultation of the Members of the Observatory

Some stakeholders are not sufficiently aware of all the projects carried out by the Office. One stakeholder representative stated that *"Sometimes I have the feeling that I am lost in the massive amount of initiatives, studies that are being carried out. When I ask other Members, most of them have the same feeling."* AIM and BASCAP, on the other hand, considered that they were not always sufficiently consulted and as a result, sometimes certain decisions on projects and events came as a surprise and announced as a done deal. INTA also stated that some activities and projects were planned and structured without the active contribution of experts and representatives at the very beginning of the projects. According to BusinessEurope *"The consultation process should be more structured and permanent. This is why BusinessEurope has suggested that the Observatory strengthens its presence in Brussels."*

It is therefore not surprising that while some Members of the Observatory were happy with the way the Office informs (27%) and consults them (22%), a bigger portion agreed yet considered that improvements were possible or needed both on the information to be provided (44%) and on the way they were consulted (55%). Only 11% of the Members of the Observatory considered that the Office did not adequately inform or consult them.

Most Members of the Observatory considered that the Office adequately took their views into account, while 38% did not have further remarks, 44% considered that improvements are needed. Additional comments suggested that consultations should be done in a more structured and systematic manner and that meetings should allow more time for discussion.

The process leading to adoption of the Observatory's annual work programme was seen as being transparent by 61% of the Members of the Observatory. An additional (33%) agreed in general but considered that improvements were needed. In this regard, some respondents would

¹⁰⁹ SAA is an association of European Collective Management Societies representing audio-visual authors. SAA is registered in the EU's transparency Register under No 99336382936-11

¹¹⁰ IVF represents national associations and individual companies of the video publishing sector. IVF is registered in the EU's transparency Register under No 7013477846-25

appreciate being involved at an earlier stage in the process and not only asked to comment on a draft proposal.

The Office's overall performance

A significant part of the respondents (43%) believe that the Office has achieved good or very good results in helping to improve the protection of IPR, whereas 24% considered that it had achieved no meaningful results or only poor ones. The approval rate was higher among professionals and organisations (68%) than within individuals (23%). Over a third (36%) of individuals considered that the Office had not achieved any meaningful results. On the other hand, 88% of the Members of the Observatory considered that the Office had achieved good or very good results in improving the protection of IPR in the EU.

According to half of the respondents, there were no particular circumstances preventing the Office in carrying out its tasks and activities. In total, 29% of the respondents considered that there were such circumstances:

- 14% of all respondents and half of those in the category 'Members of the Observatory' agreed with the following statement *"the EUIPO works on too many projects and activities and not all them are sufficiently relevant or useful."*
- 10% of all respondents and 38 % of those in the category 'Members of the Observatory' agreed with the following statement *"it is difficult or time consuming for participants to attend the Observatory's meetings and events that take place in Alicante."*
- 10% of all respondents and 33 % of those in the category 'Members of the Observatory' agreed with the following statement: *"it is too difficult to get data from Member States."*

Efficiency and added value of the initiative

The questionnaire included succinct information on the Office's spending on its IP enforcement related activities (namely around €7 million annually in 2016 and 2017¹¹¹) and referred to the study from the consultant which included further budgetary information and analysis.

Half of the respondents did not respond or did not have an opinion on whether the Office's spending was justified in view of the results achieved. The ones who did can be split into two categories:

- a) Those who considered the costs justified and proportionate (21%), and those who considered that the Office should be allocating more money to its activities under the Regulation (8%).
- b) Those who considered that the Office was overspending and that the same or better results could be achieved with a lower budget (11%) and those who considered that the costs were not justified or proportionate for other reasons (9%).

Therefore, for 29% of the respondents the Office should maintain or increase its spending, whereas 20% were critical of the Office's budget. The comments received from respondents in the last category were mainly from individuals that oppose the concept of IP. According to one respondent *"the costs could be saved by dissolving the EUIPO."* Another considered it abnormal to spend public money to protect the economic interests of the very few. Others considered that there were more pressing issues or that IPR were granted for too long a period of time.

Some IP right holders organisations also considered the costs unjustified to the extent that *"some of the studies that are being carried out are not that extremely important for the Observatory tasks"* (ANDEMA), or that spending should focus on trade mark or designs matters (AIM).

¹¹¹ In 2016 and 2017, the Office spent EUR 7 million and EUR 7.2 million, respectively, on activities related to its work with the Observatory and the fight against infringements of IPR (excluding salaries of statutory staff and other staff-related expenditure). This information was made available in the questionnaire and further information being available in the documents was made available for the purpose of the public consultation, including the Technopolis study.

According to the Society of Audiovisual Authors (SAA) more money should be allocated to pay for the relevant Office's staff to come to meetings in Brussels, so that more meetings of the Observatory meetings could be organised there.

Within the category of professionals and organisations, 36% considered the costs justified and proportionate, 8% considered that the Office should be investing more, 8% considered that the costs were not justified and proportionate, and 2% considered that the Office was overspending.

According to 9% of respondents, infringements of IPR could be tackled just as well, or even better, at national level without involving the Office. A majority of 60% considered that this was not the case. This majority is bigger in the professionals and organisations category (80%) and bigger still in the Members of the Observatory category (88%).