

## Conclusions of the 15<sup>th</sup> EU-Ukraine IPR Dialogue – Kyiv, 8 June 2017

1. On 8 June 2017, eleven months after the previous meeting, the **15<sup>th</sup> meeting of the EU-Ukraine IPR Dialogue** took place in Kyiv. On the EU side the Dialogue was chaired by Mr Pedro VELASCO MARTINS. The Dialogue chair on UA side was Mr Mihailo TITARCHUK, Deputy Minister in Ministry of Economic Development and Trade (MEDT) but for most of the day was replaced by Mr Valerii ZHALDAK – the newly appointed Head of EU Integration Department in MEDT. Mr Zhaldak was supported by his deputies Mr Boghdan PADUCHAK and Ms Antonina MALYSH, as well as numerous other MEDT colleagues. One member of the Rada (Ms Victoria PTASHNYK) was also present. The Ukrainian government representatives recalled that IPR is a priority for the Ukrainian government and emphasized their openness to constructive dialogue with the EU on IPR but noted that pressure and accusations would not work. The EU replied that improvement of the IPR environment in Ukraine is a long-term project but it will eventually benefit both sides. The EU also acknowledged that there has been some important progress (such as the Law on Cinematography) on IPR in Ukraine since the last Dialogue meeting.
2. Ukrainian side presented the **state of play of IPR reform**. SIPSU reform is well under way- its functions have been transferred to MEDT and creation of the new structure (National Office of Intellectual Property, which will replace SIPSU and get extra functions, more power and will be supervised by MEDT) is expected to be complete in autumn 2017. Insofar as new draft laws are concerned, four drafts are in the pipeline for September 2017: 1) on CMOs, 2) on creation of the new IP office, 3) on utility models and inventions and 4) copyright and related rights (implementing some aspects of the DCFTA). Some aspects of the draft laws still need to be adjusted. The EU side recalled that Ukraine seems to have chosen a difficult path, i.e. re-drafting laws that have been developed jointly by SIPSU and the Twinning project. In the Twinning drafts it was clear that they contained DCFTA implementation elements but the new drafts will need extra verification from the EU side, which will require time.
3. On **enforcement**, a representative from police gave an overview of police activities particularly in relation to copyright piracy. The Ukrainian side admitted that piracy increase gives a negative image to the country, meanwhile noting that during the last years the number of piracy cases opened has fallen and the activity of rightholders has decreased. The EU replied that the issue is not limited to piracy, it includes also counterfeit goods. In the area of counterfeit goods it's agrochemicals that are a longstanding issue. Last year the EU had urged Ukrainian authorities to cooperate regarding the seized counterfeit agrochemicals but it appears that there has been no progress. The rightholders expressed their disagreement with the position taken by the government representatives and signaled that they are not notifying police of IPR infringement cases because they are not seeing any results of that. The Ukrainian police representative admitted having some issues but drew attention to the success stories, notably the new Cyberpolice unit. A presentation was made by a representative of the Cyberpolice unit. Only 27 % of the crimes detected by the unit are related to IPR. The unit has received 500 000 EUR funding in 2016 from the US and EU member states. The unit's success is directly linked to having proper equipment which is expensive and needs to be updated constantly. The European side acknowledged the widely-reported success of the Cyberpolice unit but called for further improvements, including re-establishing a specialized IPR unit in the police.

4. Regarding **customs IPR enforcement**, the Ukrainian side emphasized that one of the pending draft laws brings the Ukrainian IPR border enforcement rules in full compliance with the EU Regulation 608/2016. The Ukrainian side also added that the draft law foresees international exhaustion regime for trademarks. The EU recommended that the primary focus for customs authorities should be counterfeit goods (not parallel imports) and keeping the rightholders informed. The EU further questioned if the customs register is being maintained. The Ukrainian side replied in the affirmative. The EU made a further inquiry regarding the fate of seized goods and the powers of customs authorities to destroy them. The Ukrainian side merely noted that "such goods should not appear on the market". As a follow up, the EU side once again encouraged the Ukrainian authorities to maintain a good cooperation with the rightholders.
5. The sides had a short discussion also on the **judicial reform and the specialised court**. The Ukrainian side informed that there are several draft laws registered. The EU side noted that it looks forward to the improvements which would increase the efficiency and speed of judicial procedures. The reform should also consider addressing the current difficulty of obtaining preliminary injunctions and the way of calculating damages. The EU noted that the corresponding DCFTA provisions on IPR enforcement are sufficiently exhaustive, and implementation thereof should not create any difficulty.
6. On **copyright**, the Ukrainian side informed that the **CMO draft law** (the one developed in cooperation with WIPO) is being translated in English, then to be discussed with rightholders and other stakeholders. MEDT would like to make sure that there is broad support for the draft. The Ukrainian side also clarified that this new draft is based on Twinning project findings and the EU will receive the draft versions which are submitted to the Rada. Note: the drafts have been received by the Delegation.

The EU also raised the long-standing issue of **non-payment of royalties** and asked for a solution to be found. A representative from the Ukrainian broadcasting company informed that one negotiation for payment has been completed – regarding Eurovision. Part of the rights has been cleared but not all of them, the situation is complicated. Stakeholders intervened to note that the Eurovision contract is for 4 months only and it does not cover public performance. The EU side commended the effort to address the issue but warned against this being a one-off solution; otherwise this is not credible for the overall IPR policy. The broadcaster representative openly acknowledged the shortcomings and emphasised willingness to find solutions but deferred to the management that chooses not to take certain steps. The EU encouraged rightholders to approach broadcasters and take advantage of the openness to find solutions.

Regarding the **antipiracy law** (Law on State support of cinematography), the EU side acknowledged that Ukraine has taken a major step towards success and encouraged to proceed in a similar way with the other pending draft laws.

7. On **pharmaceuticals**, the EU side raised concerns about the law on compulsory licensing, there are no clear criteria defining circumstances under which the government can consider and grant **compulsory licenses**. The Ukrainian side responded that currently there are no applications for compulsory licensing in Ukraine.

The EU side also raised the issue of regulatory **data exclusivity**, where apparently generic products proceed to registration despite the innovative product being under protection (case of Bayer: 20 generic products registered). The Ukrainian side responded that the information on impending registration of the generic product is made public on the website for 20 days. Accordingly, all depends on the activity of the rightholders who have all the recourse to the legal system of Ukraine.

When asked about any changes in the long-discussed plan to remove the **patent linkage** system, the Ukrainian side noted that there have been discussions on the topic but there is no draft law. The industry intervened to correct that there are three draft laws pending in the Rada but without active progress.

8. Regarding trademarks the Ukrainian side informed that current law on **trademarks** is not in full compliance with the DCFTA. This should be remedied by the new draft law (providing for electronic database, GIs as grounds of opposition, etc.). The draft law on **trademarks** is very important, as it addresses a number of requests important to the EU side, also regarding timeframes for opposition. The alternative draft on trademarks (sponsored by the Rada member Ms PTASHNYK) and pending in the Rada seems to provide for similar provisions, with the main difference between the drafts being rules on exhaustion regime. The EU side recalled that the exhaustion regime should not be the main focus here; the most important is to ensure implementation of the DCFTA.
9. The Ukrainian side reported on the progress regarding **geographical indications**: the first standing committee on GIs has taken place and Terms of Reference for the assistance project have been approved. The committee has also had the first discussion on the possibility to add new GIs to be protected under the Agreement. The Ukrainian side acknowledged importance of GIs for Ukraine and once again emphasized the need of assistance in this area.
10. The Parties agreed that there has been a delay in the legislative process of IPR reform. The EU will continue to raise IPR issues on Ukraine on all levels. Ukraine committed to speed up the process and acknowledged the existence of commitments that have to be complied with. In practice, Ukraine would submit the draft laws to the Rada before autumn and send the drafts also to the EU.