



This action is funded by the European Union

ANNEX 10

of the Commission Implementing Decision on the 2016 Annual Action programme for the Partnership Instrument

Action Fiche for IP Key South East Asia

1. IDENTIFICATION

Title of the action	IP Key South East Asia			
Country(ies)/ Region	South East Asia			
Total cost	Total estimated cost: EUR 6 000 000 Total amount of the EU budget contribution: EUR 6 000 000			
Total duration ¹	78 months			
Method of implementation	Direct Management Grants – direct award			
Markers (from CRIS Dac form)	Rio Convention Markers	Not targeted	Significant objective	Main objective
	Biological diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Combat desertification	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Climate change mitigation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. RATIONALE AND CONTEXT

2.1. Summary of the action and its objectives

This action will support the introduction and spread of an EU level of IPR protection and enforcement in our ASEAN trading partners. The action will support the

¹ The total duration is calculated as from the adoption of the Financing Decision. As a result it takes into account of: (i) the contracting phase (indicatively 18 months); (ii) the implementation of the action (48 months); (iii) the closure phase (indicatively 12 months).

advancement of the EU agenda on Intellectual Property Right (IPR) for ASEAN to go beyond existing WTO TRIPs obligations.

On the one hand, the action will support the EU in its FTA talks and IP Dialogues with technical expertise on IP issues in our ASEAN trading partners.

On the other hand, the action will provide technical expertise to our trading partners on how to improve their IPR rules and regulations, high quality and expeditious processing for the registration of IP rights and their proper enforcement. The action can also assist our trade partners to implement EU FTA IPR commitments.

2.2. Context

In spite of positive developments at our ASEAN trading partners, there are still clear market access barriers due to lack of IPR protection and enforcement. EU industry is concerned that not all our trade partners have the EU level of IPR protection and enforcement. Insufficient IPR protection discourages trade and investment.

The importance of IPR for European industry has been illustrated in a study by the European Patent Office and OHIM that showed about 39% of total economic activity in the EU (worth some EUR 4.7 trillion annually) is generated by IPR-intensive industries, and approximately 26% of all employment in the EU (56 million jobs) is provided directly by these industries, while a further 9% of jobs in the EU stems indirectly from IPR-intensive industries. Furthermore, the study found that IPR-intensive industries account for about 90% of EU exports.

Better IPR protection would contribute, for example, to make ASEAN countries remain or become attractive for export from [relevant industries](#). [Failure to implement IPR protection means that relevant products are not protected from copying thus making market entry less attractive.](#)

Certain ASEAN countries (i.e. Philippines, Brunei) do not offer appropriate level of protection to the EU GIs (nor to their own GIs), or do not have a sui generis system of protection. As a consequence on these markets, many non-genuine products are put on the market using the reputation of the genuine GIs. This creates a competitive disadvantage for the EU industry. Several ASEAN countries are currently modifying or are considering modification of the legal framework, but we are still far from an appropriate system of protection in many cases

Counterfeiting and piracy pose a serious problem In the EU list of "countries of concern", 7 ASEAN countries are in the top 10. These are countries where EU industry feels that the IPR regulatory environment is most adverse in terms of enforcement. ASEAN countries also feature on the US watch lists for deficient intellectual property regimes.

Several key pieces of legislation remain pending in several countries, including legislation to address the growing problems of copyright piracy and trademark counterfeiting on the Internet, providing customs with ex officio authority control of all IPRs for goods in transit and export.

IP protection in third countries may offer significant business opportunities for European companies and will tackle the substantial losses for European companies due to fake and imitated products, both within the countries as well as entering the European market.

2.3. Lessons learnt

In defining both the implementation details and the concrete activities, best use will be made of the lessons learnt during the previous technical IP cooperation programmes in China IPR1 (1999-2004), IPR2 (2007-2011), and IP Key (2013-2016).

This ample experience relates to the project management set-up, the challenges of the launching phase, the creation of a local network, and the best sequencing and implementation of individual activities. In particular, the allocation of responsibilities and tasks between the actors involved during the planning and review exercises have been substantially improved in the course of the present programme (IP Key).

2.4. Complementary actions

The ASEAN IPR technical cooperation action ECAP III focuses on the objectives incorporated and embodied in the 2011-2015 ASEAN IPR Action Plan. ECAP's scope has thus been limited to funding activities included in that Action Plan, the political ASEAN agenda of soft approximation and convergence in the IPR area. This excludes several aspects of IPR protection incorporated in our FTAs.

Also, activities under this program are taking place only at ASEAN level and funds thereunder cannot be used for bilateral activities such as a PCA dialogue on IPR.

This proposed additional action focuses thus on the EU's more offensive interests, including in supporting the negotiations and implementation of FTAs within the region, in light of the overall objective of the Partnership Instrument.

The South-East Asia IPR SME Helpdesk funded by the Programme for the Competitiveness of Enterprises and SMEs (2014-2020, COSME) aims at contributing to the internationalisation of EU business by providing them with expert advice on how to protect and enforce their IPR in or relating to South-East Asia.

The IPR SME Helpdesks provide advisory services, develop and publish background material, train EU SMEs, monitor IP policies and legislation, provide partnering services, and communicate to EU SMEs, as well as provide some services to local SMEs to facilitate smooth business relations with EU SMEs.

The recent call for proposals (2015-2017) requested that the IPR Helpdesks assure proper coordination with other IP cooperation programmes. The same cooperative attitude would be requested from this action.

3. DETAILED DESCRIPTION

3.1. Specific objectives

The overall objective of this programme is to promote a more level playing field for European companies operating in South East Asia by contributing to greater transparency and fair implementation of the IPR protection and enforcement system in South East Asia.

The specific objectives of this programme are the following:

- To promote European standards in IPR legislation, protection and enforcement and the development of best practices where possible via FTAs.

- To support the interest of European innovators and right holders trading with or investing in South-East Asia.
- To contribute to greater transparency and fair implementation of the IPR protection and enforcement system in South-East Asia, avoiding and discouraging any protectionist market access barriers through the misuse of IPR legislation and to further improve the IPR environment.
- To increase political and public awareness of importance of IPR protection, including through universities.

3.2. Expected results and main activities

R.1. Support FTA negotiations

The expected result of the project is to obtain data and information on local IPR legislation, protection and enforcement to assist the EU Commission in the preparation, negotiation and implementation of FTAs in the region. This should be possible via studies, reports and analyses carried out for specific countries. This would give information on current legislation and enforcement practices in the countries as well as case law and the IPR institutional framework and resources.

FTA negotiations with the Philippines are to start in 2016.

With Indonesia a scoping exercise for a possible FTA is scheduled for 2016.

With Malaysia FTA negotiations might be resumed in 2016.

With Thailand FTA negotiations are on hold.

Envisaged main activities: Studies, reports.

R.2. Support IP Dialogues

The result of this activity will be the development and delivery of appropriate actions in accordance with the decisions and indications that emerge from discussions during the IP Dialogue with Thailand and Vietnam.

Annual IP Dialogues with Thailand and Vietnam are in place.

Envisaged main activities: Policy analysis, comparative studies, legal evaluation, provision of statistics.

R.3. Support Implementation of FTAs

The project will assist the countries with obligations arising from the commitments taken in the context of the trade agreements with the EU. Assistance in implementing the trade agreements will avoid potential disputes and smooth the path towards necessary changes in the host country.

The EU-Vietnam FTA is under legal revision.

Envisaged main activities: Comparative studies, legal evaluation.

R.4. Training and peer-to-peer exchanges

The programme will train officials from third countries on quality of legislation, granting of quality IP rights, enhancing the enforcement policy of the authorities' staff. As regards the granting high quality IP rights, exchanges can for example take place with EU IPR offices as the European Patent Office (EPO), the European Union Intellectual Property Office (EUIPO, the former OHIM²), the Community Plant Variety Office, and EU MS national IP offices.

In the area of IPR enforcement, there will be training activities of judges, prosecutors, police and customs officials from third countries. Also there peer-to-peer exchanges between EU and third countries are foreseen.

Envisaged main activities: Study visits, peer-to-peer exchanges, seminars, workshops.

R.5. Assistance for registration practices and tools

The programme will provide assistance to modernise South-East Asian countries' IP registration practices and its information and management tools, preferably by replacing them, or making them compatible, with those developed by EUIPO and the EPO.

Envisaged main activities: Promotion and making available of European tools, technical support and advice, support for possible translation needs.

R.6. Awareness raised on IP protection and enforcement

The programme will raise awareness in South-East Asia countries as regards the significance of providing IP protection and enforcement not only for foreign investment, but also as requirement for own innovation. Awareness raising is a two-way street, including fostering of communication and information exchange to improve mutual understanding and the mobilisation of the society and local provinces to bring about the necessary change in attitudes and behaviour.

Envisaged main activities: Conferences, publications, website and social media.

R.7. Information management system and document repository

In order to ensure a sufficient institutional memory and easy accessibility by all interested stakeholders of the documents emanating from the project (such as reports, studies, surveys), an information management system will be set up and a document repository created. It will be essential to keep the system and repository updated during the life of the project.

Envisaged main activities: Setting up of information management system and document repository.

² Regulation (EU) No 2015/2424 of the European Parliament and the Council amending the Community trade mark regulation enters into force on 23 March 2016, changing the name of OHIM to the European Union Intellectual Property Office (EUIPO). | Page 5

3.3. Risks and assumptions

Risk	Risk level (H/M/L)	Mitigating measure
Request for ad-hoc activities in support of the IP Dialogue and Sub-Committees might not meet the necessary responsiveness due to different main interests and the disruption of the implementation of the yearly activity plan.	M	The rights and obligations must be defined very clearly and concisely in the Working Agreement. In particular, they must include modalities governing requests for new activities, including the setting of estimated timelines for delivery and agreement on a reprioritisation and possible postponement of planned activities in consultation with DG TRADE (change management).
Interruption or postponement of FTA negotiations could occur, due to social/political uncertainties in the partner countries.	L	Launching of negotiations only upon assurance of commitment from other party(ies). Replacing of certain activities by others that may appear of higher priority at the given time.
The successful implementation of activities largely depends on the support provided by the various stakeholders on the third country side.	M	This risk should be mitigated through making the appropriate contacts sufficiently in advance and having clear discussions so that the host country is well aware and agrees with the activity and the approach.
Planned activities may not receive sufficient support from the Commission DG or IP Offices in charge of the substantive part.	L	The inclusion of suggested activities into the annual activity plan will require a written commitment of the Commission DG in charge of the substance matter that it will provide the necessary support to be able to carry out the activities.. The inclusion in the activities plan of any activity requiring involvement of EPO will be discussed with EPO in advance.

3.4. Stakeholders

DG Trade will have regular consultation rounds, via email and/or dedicated IP meetings, with key European stakeholders in South-East Asian countries and in Europe, such as with industry, IP associations and law firms, European Chambers of South-East Asian countries, the IPR SME Helpdesk South-East Asia, the EPO, and Commission services dealing with IP in South-East Asia.

DG Trade will further have a regular update and exchange with representatives of MS and their chambers of commerce during the Market Access Team meetings and dedicated IP meetings before each IP Dialogue.

4. IMPLEMENTATION ISSUES

4.1. Method of implementation

4.1.1. Grants: Direct Award (direct management)

(a) Objectives of the grants

The project will be implemented exclusively through the signature of a grant agreement. As a result, objectives, expected results and main activities are those defined above under section 3.1 and 3.2.

(b) Justification of a direct grant

Under the responsibility of the Commission's responsible authorising officer, the grant may be awarded without a call for proposals to the European Union Intellectual Property Office (EUIPO)³.

In accordance with the provisions of article 190(1)(f) of the RAP, characteristics of this action require a particular type of body, notably EUIPO, on account of its technical competence, its high degree of specialisation and administrative power.

Given the high political relevance for the EU of supporting promotion and enforcement of intellectual property in South-East Asia, it is judged as most appropriate to select as implementing partners of this project the Intellectual Property Office of the EU, which is responsible for intellectual property related matters in the EU by virtue of its own mandate.

In view of its position, EUIPO offers a unique combination of technical expertise and contacts with relevant stakeholders in the field of intellectual property worldwide.

EUIPO has all the necessary legitimacy vis-à-vis stakeholders in South East Asia and in particular public authorities, which constitutes a key precondition to implement a project entailing close contacts with the local IP authorities. This requires expertise at institutional level that on this domain can only be provided at the needed degree by the EUIPO as Intellectual Property Office of the EU.

With specific regard to the technical competence of EUIPO, it is worth signalling that the EUIPO has been the regulatory EU Agency in charge of Community trademarks and Community design for 20 years. In this capacity, it runs application, opposition and invalidity proceedings in the first two instances, provides practice guidelines and defends cases before the General Court and the European Court of Justice.

EUIPO is an established member of the TM5 and ID5 groups, the exchange networks on trademark and industrial design matters, together with the respective IP Offices of the USA, China, Japan, and Korea.

Furthermore, EUIPO has longstanding experience in external action projects co-financed by the EU in the area of Intellectual Property. In this regard, EUIPO is

³ As from 23 March 2016, OHIM will be renamed to "European Union Intellectual Property Office (EUIPO)" (see footnote 3). This title will further increase its political standing in the IP world, which is crucial for having direct access to key institutions and politicians in the partner country.

currently managing three different programmes (IP Key China; ECAP III ASEAN; IPC-EUI India).

EUIPO has developed various IT tools (TM view, TM class, Design view), which are also used by the national IP Offices of the Member States. In this respect, it is a key interest of European IP business stakeholders that compatibility and use of these IT tools be expanded at a global scale. As owner of these IT tools, EUIPO masters their application, development, and dissemination.

Since 2012, EUIPO has been further entrusted with the European Observatory on Infringements of Intellectual Property Rights, covering enforcement issues related to all kinds of IP rights. In this capacity, EUIPO provides data, tools and databases to support the fight against IP infringement and supports DG TRADE with country reports on the IP situation in third countries.

(c) Essential selection and award criteria

The essential selection criteria are the financial and operational capacity of implementing partner. EUIPO has sufficient sources of funding and the technical competencies and qualifications to carry out the action.

The essential award criteria are relevance of the proposed action to the objectives of the project; design, effectiveness, feasibility, sustainability and cost-effectiveness of the action.

(d) Maximum rate of co-financing⁴

The maximum possible rate of co-financing for grants under this call is 100% of the eligible costs of the action.

In accordance with Articles 192 of Regulation (EU, Euratom) No 966/2012 if full funding is essential for the action to be carried out, the maximum possible rate of co-financing may be increased up to 100 %. The essentiality of full funding will be justified by the Commission's authorising officer responsible in the award decision, in respect of the principles of equal treatment and sound financial management.

(e) Indicative trimester to conclude the grant agreement

The grant agreement will be concluded indicatively during Q1 of 2017.

4.2. Indicative budget

Method of Implementation	Amount in EUR million
4.1.1 – Grants - Direct award (direct management)	6
Totals	6

⁴ Article 192 FR – full financing of an external action

4.3. Performance monitoring

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process and part of the implementing partner's responsibilities. To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports and final reports.

A Project Management Board (PMB) will be in charge of taking decisions on the annual activity plans and budgets and of overseeing the implementation of the overall project. It will consist of representatives of FPI, DG Trade, EUIPO, Commission services dealing with IP in South-East Asia, EPO, and the technical implementation team. The PMB will be held in Bangkok (DVC connectivity) and chaired by DG Trade (EU delegation). It will meet whenever necessary, but at least once a year.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews.

4.4. Communication and visibility

It is suggested that the website that has been built up during the present IP Key programme in China (<http://www.ipkey.org/en/>) will be used as the basis for the website supporting IP Key South-East Asia. It is further suggested to use this website as a common website for the IP Key programmes in China, South-East Asia, and Latin America, for reasons of efficiency and synergy. It should also include links to the websites of other EU programmes in the regions (ECAP III, SME IPR Helpdesk South-East Asia).

The development of this website and of visibility actions will be defined in the grant agreement, aiming at implementing a more comprehensive format, including search function. The grant agreement will further clarify DG Trade's control function and ownership of the website.

Part of the annual activities will focus on the increase of public awareness. There will also be a series of visibility activities which could make use of dedicated events, publications, bi-monthly newsletters, press releases, social media and mailing lists.