



This action is funded by the European Union

**ANNEX 11**

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

**Action Fiche for IP Key Latin America**

**1. IDENTIFICATION**

Title of the action	IP Key Latin America			
Country(ies)/ Region	The project covers potentially all countries of Latin America but will focus more on the following (in alphabetical order):  Andean Community ( <i>Colombia, Peru, Ecuador</i> ); Central America ( <i>Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama</i> );  Chile MERCOSUR ( <i>Argentina, Brazil, Paraguay, Uruguay, Venezuela</i> );  Mexico			
Total cost	Total estimated cost: EUR 5 000 000  Total amount of the EU budget contribution: EUR 5 000 000			
Total duration <sup>1</sup>	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"/>

<sup>1</sup> 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).

## **2. RATIONALE AND CONTEXT**

### **2.1. Summary of the action and its objectives**

The overall objective of the action is to improve the situation of Intellectual Property (IP) protection and enforcement in Latin America and to contribute to a level playing field in this regard for European companies operating in Latin America. This action will support the introduction and spread of an EU level of IPR protection and enforcement in our Latin American trading partners beyond existing WTO TRIPs obligations and the advancement of the EU agenda on Intellectual Property Right (IPR) for Latin America.

On the one hand, the action will support the EU in its FTA negotiations and implementation and IP Dialogues with technical expertise on IP issues in the relevant Latin American countries.

On the other hand, the action will provide technical expertise to our trading partners on how to improve their IPR rules and regulations, ensure 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**

For the moment, there is no project specifically on IPR in Latin America apart from an IPR SME helpdesk operating in the Mercosur countries and Chile since 2014 and in the whole of Latin America since July 2015. The objective of the helpdesk is to "provide advice and support services to EU SMEs facing intellectual property rights difficulties in or arising from the Latin America region." The Helpdesk shares information on Latin America IP legislation and policies with the commission and provides some services to local SMEs wishing to do business with EU SMEs. The Commission has recently funded a survey among EU SMEs active in Latin America and Latin American SMEs regarding barriers and needs in the field of protection and enforcement of intellectual property. Its report will be available before the summer 2016. There have been isolated cases of assistance focussing on IPR issues such as seminars and country visits over the past few years, but no systematic IPR development, protection and promotion has taken place.

Basic IPR protection is guaranteed via the countries being members of the WTO TRIPS Agreement which came into effect in 1994. The TRIPS Agreement can be considered a low common denominator as far as IPR protection is concerned and includes a series of flexibilities which have been used by individual countries in different ways according to national political preferences. Most often, the flexibilities are used to weaken IPR protection, notably on patents. Moreover, the TRIPS Agreement does not cover the digital environment. The EU aims to improve and strengthen the protection of IPR in all of the countries in the Latin America region, in order to protect EU creative and innovative business and investment interests. This is all the more important when one considers that around 90% of all EU exports are from IP-protected industries.

#### *Andean Community and Central America:*

The EU has two Agreements in place (a Trade Agreement with Colombia and Peru and an Association Agreement with Central America since 2013). Ecuador, which is a new addition to the list of priority countries in the DG TRADE IPR Enforcement survey 2014, will most probably adhere to the Agreement that the EU has with Colombia and Peru. The Colombia/Peru Agreement includes an IPR chapter which is quite comprehensive, whereas the Central America Agreement has fewer details concerning patents and internet service provider liability and nothing on regulatory data protection. The EU has annual IP Subcommittees in the context of both Agreements which allow for a privileged discussion on IPR matters, but with Central America the topics for discussion are limited to Geographical indications (GIs) and technology transfer. However, a strong level of protection and enforcement of IPR is a prerequisite in the EU's view for the safe transfer of EU technology.

#### *Chile:*

The EU should most likely start negotiations in 2017 to modernise the Association Agreement with Chile which has been in existence since 2003 (including an FTA). Chile is one of the most economically and socially advanced and stable countries of Latin America and their IPR laws and enforcement are above average. The EU will be looking to agree to a comprehensive FTA IPR chapter with Chile.

#### *Mercosur:*

The negotiations with the Mercosur countries (Argentina, Brazil, Paraguay, Uruguay and Venezuela) have been stalled since 2012 and the text of the IPR chapter has never been discussed. The level of IPR protection is moderate and varies from one country to another: some national laws are outdated and others are problematic vis-a-vis the EU's interests (patent laws in Brazil and Argentina). Paraguay has only just set up an IP Office and recently started registering trademarks and patents. The situation in Venezuela is rudimentary and unstable for the moment. Argentina and Brazil are both on the list of priority countries from the 2014 TRADE IPR enforcement survey.

#### *Mexico:*

The EU should start negotiations in the second half of 2016 to modernise the Economic Partnership, Political Coordination and Cooperation Agreement with Mexico which has been in existence since 2000. The EU will be looking to agree upon a comprehensive IPR chapter with Mexico in view of its economic importance and development and its fairly advanced IPR laws, with two notable exceptions, namely the fact that it is impossible for foreign GI owners to register their GIs in Mexico (and therefore lack of protection) as well as the absence of a trademark opposition system. Enforcement at criminal, administrative and prosecution levels is rather lax in Mexico, despite increased efforts since 2010, and needs to be strengthened as counterfeiting and hard copy piracy remain widespread. Few actions have focused on internet piracy, the enforcement of which also remains weak due to ineffective criminal and customs procedures.

### **2.3. Lessons learnt**

This is a new initiative, based on the experience of two similar actions that have been in existence in China (IPR1, IPR2, IP Key) and the ASEAN region (ECAP I, II, III) for around 20 years.

The Latin American context is more complex, however, in that it is made up of countries of differing sizes and economic development divided into three different groups (Andean, Central America and Mercosur) that have either rather limited shared institutions and rules of varying degrees of obligation and commitment or none at all. Moreover, two large countries, Mexico and Chile, are not members of any of the three groups.

Experience and lessons learnt, particularly from IP Key China, will however be pertinent for 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.

### **2.4. Complementary actions**

There will be coordination with the other EU projects in Latin America that contain an IPR element (such as ELANbiz and ELANnet, the Enterprise Europe Network, and the EU SME IPR Helpdesk) as well as with the representations of EU Member States that are present (Chambers of Commerce, trade sections of Embassies) to avoid duplication.

## **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 Latin America by contributing to greater transparency and fair implementation of the IPR protection and enforcement system in Latin America.

The specific objectives of this programme are the following:

- Prepare and accompany FTA negotiations in the region.
- Promote European standards in IPR legislation, protection and enforcement and the development of best practices.
- Support the interests of European innovators and right holders trading with or investing in Latin America.
- Increase political and public awareness of the importance of IPR protection.

### **3.2. Expected results and main activities**

#### **R.1. Prepare/accompany 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 and regions. These deliverables would gather information on current legislation and enforcement practices in the selected countries as well as case law and the IPR institutional framework and resources.

Envisaged main activities: Studies, reports.

### **R.2. Information collection to prepare regional integration in Central America.**

The result of this activity is a survey providing a detailed overview of the situation regarding IPR legislation, protection and enforcement and the infrastructure, resources, organisation and efficiency of the IPR offices and institutions in each of the Central American countries. This survey should also have analysed and identified the areas that are mature enough to be supported by EU action, in order to encourage regional cooperation and integration on the processing and enforcement of IPR. Improved regional integration in Central America as concerns IPR would result in assisting EU businesses interested in expanding across the region and allow for easier registration, remuneration and defence for EU IP right holders.

Envisaged main activities: Studies, surveys, reports.

### **R.3. Support for IP Dialogue and Sub-Committees and implementation of FTAs**

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 Brazil, the Sub-Committees with Central America, the Andean Community countries and Mexico. The project will also propose actions that assist the various countries involved in Latin America with obligations arising from the commitments taken in the context of the trade agreements with the EU.

These activities should improve the level of protection and enforcement of IPR locally and thus allow for a better business climate for EU companies to evolve positively in the region. Assistance in implementing the trade agreements will avoid potential disputes and smooth the path towards necessary changes in the host country.

Envisaged main activities: Seminars, round-tables, workshops, peer-to-peer exchanges, trainings, study visits.

### **R.4. Provision of technical assistance, including IT tools**

The result of this activity will be the increased uptake of European IT tools by the local IP Offices for the processing of IPRs; increased cooperation and promotion of GI protection; peer to peer exchanges to gain experience in the EU approach to IPR protection and enforcement and exchanges of best practice in various domains, including customs, education, the judiciary, collective management of IPR and awareness raising.

Envisaged main activities: promotion and making available of European tools, technical support and advice, trainings, peer-to-peer exchanges, study visits, seminars, workshops.

### R.5. Awareness raised on IP protection and enforcement

The programme will constitute an important tool for raising awareness in Latin America as regards the significance of providing IP promotion, protection and enforcement not only for foreign investment but also for economic and social development locally. Awareness raising is a two-way street, including the fostering of communication and information exchange in order to improve mutual understanding and the mobilisation of public authorities and institutions and society at large in order to bring about the necessary change in attitudes and behaviour.

Envisaged main activities for communication: Conferences, dedicated events, outreach activities, publications, press releases, social media.

### R.6. 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.

## 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, 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	L	The inclusion of suggested activities in to the

sufficient support from the Commission DGs or IP Offices in charge of the substantive part.		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..
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**3.4. Stakeholders**

DG TRADE will have regular consultation rounds with key European stakeholders in Latin America and in the EU, such as with industry, IP associations and law firms, Commission services dealing with IP in Latin America, EU Delegations in the host countries, the European Patent Office, the EU- Latin America IPR SME Helpdesk, Member States' representations and chambers of commerce present in the countries.

DG TRADE will also gather relevant information and exchange updates with Member States and stakeholders during the Market Access Team meetings. Contact and information gathering and exchange with the partner countries will take place during the IP Dialogue and IP Sub-Committee meetings, via the EU Delegations in situ and during ad-hoc visits and contacts either in the third country or in Brussels.

**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)<sup>2</sup>.

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 Latin America, it is judged as most appropriate to select as implementing partners of this project the Intellectual Property

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<sup>2</sup> 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.

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 Latin America and in particular public authorities, which constitutes a key precondition to implement a project entailing close contacts with the local 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 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-financing<sup>3</sup>

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

<b>Method of Implementation</b>	<b>Amount in EUR million</b>
4.1.1 – Grants - Direct award (direct management)	5
<b>Totals</b>	<b>5</b>

#### 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 Latin America, EPO, and the technical implementation team. The PMB will be held in Latin America (DVC connectivity) and chaired by DG Trade (EU Delegations). 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 to use the current website for IP Key China (<http://www.ipkey.org/en/>) as the basis for the website dedicated to IP Key Latin America as part of a common website for the IP Key programmes in China, ASEAN,

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<sup>3</sup> Article 192 FR – full financing of an external action

and Latin America, for reasons of efficiency and synergy. It should also include links to the websites of other EU programmes in the region (ELANBiz, Enterprise Europe Network, SME IPR Helpdesk Latin America).

The further development of this website and of visibility actions will be defined in the Working Agreement, aiming at implementing a more comprehensive format, including an advanced search function. The Working 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.