



This action is funded by the European Union

ANNEX 9

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

Action Fiche for IP Key China

1. IDENTIFICATION

Title of the action	IP Key China			
Country(ies)/ Region	China			
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 aims to improve the situation of Intellectual Property (IP) protection and enforcement in China and to contribute to a level playing field in this regard for European companies operating in China.

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).

This objective will be achieved by further strengthening the IP protection and enforcement system already set in place in China with the support of the previous and present technical cooperation programmes. Proposed activities will essentially consist of a menu of studies, exchanges and communication actions, which will help improve China's IP Right (IPR) policy and regulations, as well as their implementation and enforcement, in line with international standards.

2.2. Context

China remains the EU's biggest challenge in the area of intellectual property rights. Even though significant legislative progress has been made during recent years, IPR protection and enforcement is in many areas still not sufficiently effective.

Substantial concerns exist in particular as regards the interpretation of patentability requirements, the lack of sufficient legal protection against trade mark applications made in bad faith, and the protection provided for trade secrets. An emerging concern is the assurance of fair and non-discrimination treatment in competition cases opened against foreign right holders.

Access to the Chinese administrative and judicial enforcement system in China remains problematic for EU companies, notably for SMEs. In addition, the EU industry suffers from a long-standing discrepancy between the federal and the provincial protection level in China in terms of IPR enforcement effectiveness and efficiency. Finally, the lack of transparency in proceedings before Courts and administration, as well as limited access to reliable information is constantly raised by EU stakeholders.

Moreover, 80% of all counterfeit goods seized at European borders in 2014 came from Mainland China and another 8% from Hong Kong, China. This problem goes beyond lost revenues of IP stakeholders, since a significant part of detained articles are products for daily use, presenting potential risks to the health and safety of consumers. The globally rising phenomenon of online counterfeiting and piracy sees Chinese e-commerce companies at its forefront.

The Third Plenary Session of the 18th Communist Party of China (CPC) Central Committee of 2013 included promising statements on how IPR should be developed and reinforced in the future. The following anti-corruption campaigns and the creation of specialised IPR Courts in Beijing, Shanghai and Guangzhou give hope for a more harmonized level of protection in the future. The focus of the Fourth Plenary Session of 2014 on the "rule of law" must however be interpreted in light of Chinese characteristics.

In view of the existing problems and the economic dimension of China, the European Commission's biennial report on the protection and enforcement of IP rights in third countries continuously puts China as the only country in priority category 1².

2.3. Lessons learnt

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

² <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1349>

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 programme is supposed to provide essential support for implementing activities defined during the EU-China IP Dialogue mechanism, which consists of annual IP Dialogues and bi-annual IP Working Groups.

This support is particularly needed after the recently signed Memorandum of Understanding (MoU) on reinforcing the EU-China IP Dialogue Mechanism, which not only upgraded the IP Dialogue to vice-ministerial level, creating a direct reporting link to the EU-China Joint Committee (JC) and High Level Economic and Trade Dialogue (HED), but also introduced the annual definition of priorities of cooperation.

Upon need/request, the programme will be complementary to and provide support for:

- The pending investment negotiations with China (DG TRADE).
- The pending GI negotiations with China (DG AGRI).
- The implementation of the Customs Cooperation and Mutual Administrative Assistance Agreements and of the IPR Action Plans concluded by the EU with China and Hong Kong respectively (DG TAXUD).
- The surveillance and influence upon the developments of China's growing use of competition policy in the area of IPR (DG COMP).
- The cooperation of DG GROW, DG CONNECT, and DG SANTE with China in the areas of industrial property, standard setting, copyright, plant variety, and regulatory aspects in the area of pharmaceuticals.
- The China IPR SME Helpdesk.
- Supplementary activities to the bilateral activities carried out with China by the European Patent Office (EPO) and the European Union Intellectual Property Office (EUIPO, the former OHIM³), and to their plurilateral efforts through the network of the five leading IP Offices (IP5, TM5, ID5).

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 China by contributing to greater transparency and fair implementation of the IPR protection and enforcement system in China.

³ 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).

The specific objectives of this programme are the following:

- To promote progressive convergence of China towards European standards in IPR legislation, protection and enforcement and the development of best practices.
- To support the interest of European innovators and right holders trading with or investing in China.
- To contribute to greater transparency and fair implementation of the IPR protection and enforcement system in China, 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 the importance of IPR protection, including through universities.

3.2. Expected results and main activities

R.1. Improved situation in priority areas defined during the annual EU-China IP Dialogue

The programme is in particular expected to improve the situation in the priority areas defined in the yearly EU-China IP Dialogues. The last IP Dialogue of 30 June 2015 established the following list of areas as priority of the future reinforced cooperation between the EU and China in the area of IP:

- Pending trademark issues of bad faith and inclusive development doctrine (likelihood of confusion).
- Response to online counterfeiting and piracy.
- Protection of trade secrets.
- Standard-essential patents and application of competition law.
- Roles of IP in innovation policy.
- Judicial cooperation.
- Academic cooperation.
- Patent system amendments.

Therefore, it is important to note that the programme will require flexibility in the course of the budget year, since the recently signed MoU establishes that it is during the IP Dialogue when priorities for the coming 12 months are defined, and this IP Dialogue might well be held in the middle of the year. However, it is to be expected that most of the present eight priority areas will constantly figure within the priorities defined during the next years, allowing certain continuity in the planning.

Envisaged main activities: Studies, seminars, round-tables, workshops, peer-to-peer exchanges, trainings, study visits⁴.

R.2. Regular exchange activities

The programme will assure regular exchange activities between experts on both sides (via exchange visits, conferences, seminars, workshops etc). These regular contacts and visiting programmes proved to be crucial for creating understanding, building trust and achieving tangible results.

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

R.3. Ad-hoc support for EU-China IP Working Groups

The programme will provide ad-hoc support, in form of support activities for the EU-China IP Working Groups, and in form of translations of Chinese draft legislative acts, which the EU is invited to comment upon.

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

R.4. Assistance for registration practices and tools

The programme will provide assistance to modernise China's 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.5. Awareness raised on IP protection and enforcement

Finally, the programme will constitute an important tool for raising awareness in China as regards the significance of providing IP protection and enforcement not only for foreign investment, but also as requirement for China's ambition to make the great leap from the world's work bench to an innovative society (in line with their strategy). 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, dedicated events, outreach activities, including at provincial level, publications, press releases, social media.

R.6. Information management system and document repository

⁴ The number of these and the following main activities will depend on the development of the IP situation in China and the hereto adapted definition of priority needs. In view of the experience made with previous and present technical programmes, it can be assumed that the need for studies will depend on the focus on pending legal issues, and the need for mutual exchange and visits on the number and importance of pending legislative and administrative amendments.

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
Requests for ad-hoc activities in support of the EU-China IP Dialogues and Working Groups might not meet the necessary responsiveness, due to different main interests and the disruption of the implementation of the yearly activity plan.	M	During the negotiation of the grant agreement, key elements in terms of rights and obligation will have to be defined. In particular, modalities governing requests for new activities will have to be identified, including the setting of estimated timelines for delivery and the agreement on a reprioritization and possible postponement of planned activities in consultation with DG TRADE (change management).
The successful and timely implementation of activities largely depends on the support provided by the various administrative and judicial stakeholders on the Chinese side. A risk exists that this support may not be constant over time or decrease.	M	The Joint Statement and the MoU signed during the last EU-China Summit, elevates MOFCOM's role at political level and provides a reporting link to high-level meetings (Joint Committee, HED). This is to be considered as mitigating measure, as it provides MOFCOM with additional leverage to assure support to this programme. A meticulous preparation of the programme launch and an early outreach to the Chinese stakeholders will further limit this risk. Appropriate mechanisms should allow for the necessary flexibility to adapt activities and plans to evolving circumstances.
Planned activities might not receive sufficient support from the Commission DGs involved or IP Offices in charge of the substance matter.	L	The inclusion of suggested activities into the annual activity plan will require the written commitment of the Commission DG in charge of the substance matter that it will provide the necessary support for carrying 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 China and in Europe, such as with

industry, IP associations and law firms, the European Chamber of Commerce in China (EUCCC), the European Patent Office (EPO), Commission services dealing with IP in China, the EU-China Trade Projects, and the China IPR SME Helpdesk.

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 / Working Group in Beijing (EU delegation, Trade Section).

Insofar as activities will depend on the cooperation of the Chinese side, there is a need for an early formalised involvement of China in the planning. Based on the experience with the present IP Key programme, an *EU-China Joint Committee (JC)* will be set up for identifying potential issues and overseeing the implementation of activities. The JC will be co-chaired by China's Ministry of Commerce (MOFCOM) and DG Trade (EU delegation), and attended by members of the EU delegation and key representatives of Chinese IP authorities.

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)⁵.

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 China, 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 China and in particular public authorities, which constitutes a key precondition to implement a

⁵ 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.

project entailing close contacts with the Chinese government. 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-financing⁶

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

⁶ Article 192 FR – full financing of an external action

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

4.3. 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 China, EPO, and the technical implementation team. The PMB will be held in China (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/>) be used as the basis for the website supporting IP Key China. It is further suggested to use this website as a common website for the IP Key programmes in China, ASEAN, and Latin America, for reasons of efficiency and synergy. It should also include links to the websites of other EU programmes in the regions (EU-China Trade Projects, SME IPR Helpdesk).

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. In particular, there will be dedicated programme launch, mid-term, and closing events

attended by prominent IP stakeholders from both the European and Chinese side. It is further envisaged to carry out activities back-to-back with EU-China high-level policy events, in order to assure visibility and political engagement.

It is intended to continue the communication and visibility activities of the present IP Key programme in China, which makes regular use of dedicated events, publications, bi-monthly newsletters, press releases, social media, and mailing lists.