

Position Paper on the European Commission's Communication *"Making the most of the EU's innovative potential. An intellectual property action plan to support the EU's recovery and resilience"*

SEA Europe, the Shipyards and Maritime Equipment Association of Europe, welcomes the new [Intellectual Property Action Plan](#), adopted by the European Commission on 25 November 2020, which aims at supporting the EU's recovery and resilience.

The European maritime technology industry (i.e. shipyards, marine equipment manufacturers, ship design companies and other maritime industrial service companies) has been strongly hit by the COVID-19 crisis at a time when the sector is fully involved in and seen as a strategic industry for the twin digital/green transformation. This transformation will not only be important with regard to the sector's design and production processes but also to deliver on its commitment to realize the first zero emission, connected and automated ships in the market. Therefore, SEA Europe welcomes the European Commission's initiative to support companies and key industrial ecosystems in their fight to remain global leaders in innovative markets.

As stated in the Communication, European innovators are frontrunners in green technologies holding **a major portion of green patents and have particularly strong IP portfolios in technologies such as climate change adaptation, carbon capture and storage, water and waste treatment**. This is certainly valid for European maritime technology companies, which are leading the research and development of energy efficiency, pollution and emissions reduction, ballast water treatment systems or alternative non-fossil fuels and propulsion systems.

Among the actions foreseen in the IP Strategy, the following points are of higher interest for the maritime technology industry.

1. BETTER PROTECTION OF IP

SEA Europe agrees that a first priority must be to ensure that EU innovators have access to fast, effective and affordable IP protection tools. In this regard, SEA Europe welcomes the European Commission's commitment to launch the **unitary patent system (UPS) and the unitary patent court by 2021**. As stated in a previous [press release](#), SEA Europe believes that the UPS will be highly beneficial for European maritime technology companies (one of the key pillars of Europe's waterborne transport mobility and defence ecosystems) since it will simplify and economize patent procedures and litigation.

SEA Europe welcomes the upcoming revision of EU legislation on design protection. Design protection is key for several high value segments of the maritime technology industry, such as cruise shipbuilding, luxury mega-yachts building or complex equipment and technology suppliers which develop and register their own designs.

SEA Europe agrees that, as a consequence of only partial harmonisation of design protection for component parts used for the repair of complex products, the economically important spare parts market continues to be strongly fragmented, severely distorting competition and hampering not only maritime safety but also the transition to a more sustainable and greener economy.

SEA Europe welcomes the European Commission's intention to **encourage an industry dialogue** to act as a sounding board and to accompany the many ongoing initiatives in this area and is fully available for a discussion of these points.

2. PROMOTING AN EFFECTIVE USE AND DEPLOYMENT OF IP, IN PARTICULAR BY SMES

SEA Europe welcomes the European Commission's intention to offer – together with the EUIPO – financial support or IP vouchers for SMEs impacted by the COVID-19 crisis, to cover partial reimbursements for trademark and design registration and for an IP scan. Equally, **SEA Europe agrees that tailor-made IP advice for businesses in the Horizon Europe programme will be useful for SMEs and large companies.**

SEA Europe is also pleased to see that publicly funded IP should be used to the benefit of the EU economy and agrees, as a general rule, that when IP on research results is to be exploited primarily in non-associated third countries, applicants will need to explain how this is still in the EU's interest. The European Commission should also take into consideration the lack of reciprocity on co-ownership by European companies of IPR developed in China through State grants, whilst foreign companies can still own IP generated by EU-funded research. This should be looked at by the EU and specific measures should be taken to preserve European knowledge and IPR in strategic markets and technologies.

On protection and use of IP in **public procurement**, SEA Europe welcomes the recommendation to **Member States to consider leaving IP ownership to the contractors, where appropriate**, unless there are overriding public interests at stake or incompatible open licensing strategies in place.

3. EASIER ACCESS TO AND SHARING OF IP-PROTECTED ASSETS

A resilient, green and competitive economy needs tools to facilitate access to critical IP protected technologies in times of crisis, to facilitate license copyright and standard-essential patents, and to promote data sharing.

SEA Europe agrees that facilitating licensing of IP should be done via enhanced transparency, and that the use of high-quality metadata and blockchain could help to achieve more transparency and better rights' data management, notably on copyright and an improved identification of rights owners.

On standard-essential patents (SEPs), SEA Europe welcomes the intention to improve transparency and predictability in SEP licensing via encouraging industry-led initiatives, in the most affected sectors, combined with possible reforms, including regulatory, if and where needed, aiming at clarifying and improving the SEPs framework and offering effective transparency tools.

Promoting data sharing, as set out in the recent European Strategy for Data is also important. The **Trade Secrets' Directive** provides effective tools for protection, but there is a need to clarify its scope, e.g. which type of data or datasets could qualify as 'trade secrets', whether the current set of exceptions can support the data and green economy and whether and how the tools offered by the directive can be used to efficiently counter the unlawful acquisition, use and disclosure of data and datasets.

4. FIGHTING IPR INFRINGEMENTS

As stated in the most recent SEA Europe contribution on the counterfeiting and piracy watchlist, **fighting counterfeiting and piracy in the maritime technology sector should become a priority** for the European Commission.

SEA Europe is available to reinforce cooperation between other involved players and public enforcement authorities to fight the selling and use of illegal spare parts and equipment which pose a critical risk to the environment and to maritime safety, agrees that new technologies such as blockchain can be useful for this purpose and suggest to support dedicated solutions based on the WIPO PROOF model.

An EU Toolbox against counterfeiting is mostly welcome for setting out principles for joint action, cooperation and data sharing among right holders, intermediaries and law enforcement authorities. The use of new technologies, such as image recognition, artificial intelligence and blockchain, could also play a key role in identifying and avoiding counterfeits and pirated parts.

5. FAIR PLAY AT GLOBAL LEVEL

European maritime technology businesses are global leaders in complex shipbuilding and innovative technologies. European equipment accounts for 50% of the global annual sales, meaning that a large part of the portfolio is for non-EU customers. However, the industry suffers from market barriers to access some foreign markets, e.g. in China and South Korea, and faces several challenges regarding IP protection and enforcement in those countries.

It is worth mentioning that Europe is the main producer of certain high-tech and value products, such as cruise ships, high-quality ship engines and propulsion systems which are under the explicit target of third countries like China (e.g. Made in China 2025). Therefore, it is key to **step up the EU response to unfair practices** committed by third country players, such as industrial espionage or attempts to misappropriate IP in the context of R&D cooperation.

The **foreign direct investment (FDI) screening** is of key importance in this regard. In its contribution to the FDI screening regulation¹, SEA Europe supported the openness of the EU market to FDI based on non-discrimination but, at the same time, stressed the need to ensure higher transparency around acquisitions from third country investors into European companies with key technologies. This is particularly relevant for investments facilitated by state subsidies and by state-led policies aiming at acquiring cutting-edge technological know-how or at facilitating a transfer of dual-use technologies in support of national interests. Overseas expansion through mergers and acquisitions is also an objective of some foreign industrial strategies² to accelerate indigenous technology development and acquire a major market presence in high-tech segments. In the current economic crisis, it is crucial to have safeguards in place to prevent foreign subsidised companies from taking over European maritime technology companies weakened by COVID-19³.

6. WORKING TOGETHER WITH MEMBER STATES AND STAKEHOLDERS

As the maritime pillar of the mobility industrial ecosystems SEA Europe remains available to participate in discussions with relevant players, to better connect IP policy to the changing realities and needs of EU industry.

¹ SEA Europe Position Paper on the PROPOSAL FOR A REGULATION ESTABLISHING A FRAMEWORK FOR SCREENING FOREIGN DIRECT INVESTMENTS (FDI) INTO THE EU [here](#)

² See e.g. China's NDRC et al., 2016 (2016–2020) [Action Plan to Deepen and Accelerate the Transformation and Upgrading of the Shipbuilding Industry]. See also, J. Holslag "The Silk Road Trap – How China's Trade Ambitions Challenge Europe", Polity Press, 2019".

³ See SEA Europe's contribution to the EC's "White Paper on Foreign Subsidies" and comments on how to address distortions of the internal market through foreign subsidies that facilitate the acquisition of undertakings established in the EU. Executive Summary [here](#)