



4 September 2019

## **BUSINESSEUROPE Comments on EUIPO Draft Strategic Plan 2025 (SP2025)**

BUSINESSEUROPE is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and actively campaigning on the issues that most influence their performance. We speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.

Following its first comments to the consultation on the Strategic Plan 2025 (SP2025) in the beginning of 2019, BUSINESSEUROPE is now pleased to present its comments on the EUIPO Draft Strategic Plan 2025 (“Draft SP2025”).

BUSINESSEUROPE is happy to continue contributing - with its comments below - to this debate that will have an impact on the EUIPO’s activity and the European Intellectual Property (IP) system over the coming years. BUSINESSEUROPE appreciates the very close cooperation with the EUIPO and trusts that this synergy will continue in the future.

### **General comments on the EUIPO Draft Strategic Plan 2025**

BUSINESSEUROPE welcomes the Draft SP2025 presented in June 2019 and appreciates that several crucial points for businesses have been taken on board and are reflected in the Draft SP2025. In this context, BUSINESSEUROPE would like to put forward the following comments and suggestions on some initiatives envisaged in the Draft SP2025, which are relevant from the users’ perspective.

### ***Strategic Driver 1: Interconnected, efficient and reliable IP system for the Internal Market***

- *Goal 1.1: Matching tools and practices with users’ needs*

BUSINESSEUROPE supports Key Initiative 1 intended to develop more efficient and collaborative networks for the benefit of users. The following considerations should however be taken into account. First, the notion of “intermediaries” that the EUIPO intends to involve in new networks should be better clarified. A closer cooperation with intermediaries such as platform or marketplace operators or other service providers could be helpful, especially for the purposes of IP enforcement. Beyond these operators, some clarity is necessary to identify the other “intermediaries” that the EUIPO intends to involve under this Initiative.

Second, if the new networks also aim at involving user associations located outside of Europe, then it should be made sure that such involvement would also bring some benefits to European users or, at least, that it would not lead to a deviation from the main EUIPO’s focus which should remain European centric.



BUSINESSEUROPE welcomes Key Initiative 2 intended to develop a closer cooperation with EU institutions and bodies. Businesses need to see a stronger and accountable IP governance and a better coordination among the various institutions and bodies in order to guarantee a horizontal and stringent IP strategy. Such focused and efficient coordination, including regular meetings, should occur both at political and technical level. Similar to the IP offices in other parts of the world, EU institutions and other bodies should be able to speak with “one single voice” both in Europe and on the global scene. In this regard, the idea that the EUIPO would support the European Commission’s (“Commission”) actions on IP rights when it comes to trade policy negotiations is very positive.

Furthermore, the cooperation between the EUIPO and the General Court and the Court of Justice on case-law developments and sharing data through the immediate update of the multilingual e-Search Case Law database is a good initiative that could benefit users.

BUSINESSEUROPE supports Key Initiative 3 on the enhanced engagement with “global partners” for the extension of common tools and practices. The possible involvement of any non-EU partners and non-EU stakeholders should be duly justified as the EUIPO’s main focus in terms of resources should remain European centric.

On the interaction within TM5 and ID5, BUSINESSEUROPE reiterates its view that the current trademark and design cooperation framework between the five IP offices is seen as a priority and the way forward. It should be formally recognised in the new Strategic Plan 2025. Its focus on common projects aiming at the harmonisation of trademark and design procedures should continue to deliver tangible results that benefit European businesses. For instance, users could clearly benefit from the cooperation framework if, as a result of such cooperation, they could access directly the databases of different IP offices.

- Goal 1.2: Stepping up IP enforcement in defence of rights holders and society

BUSINESSEUROPE clearly supports Key Initiatives 1 and 2 intended to develop effective tools and capabilities for IP enforcement as well as better harmonising and coordinating IP enforcement efforts. These initiatives should be translated into concrete projects as they are important aspects in particular with respect to IP enforcement on the internet.

Regarding the enforcement network, the development of a better data exchange system between enforcement authorities, like custom authorities, is a positive sign in the fight against counterfeiting.

- Goal 1.3: Developing an IP knowledge hub

BUSINESSEUROPE takes notes that the EUIPO is planning to improve the interplay between the domain names and trademarks. However, the way the EUIPO intends to tackle the “domain names vs. trademarks” topic is still vague and requires further explanations from the EUIPO. Domain names offer a wide range of possibilities, that often result in situations of coexistence with trademarks. It should make sure that any possible initiatives in this regard would really be helpful and bring added value for



businesses. It would be important that the EUIPO liaises with Top Level Domain registers, such as EURid, to better understand the impacts of initiatives in this field.

On Key Initiative 2 on increasing evidence-based contributions to IP policy making, BUSINESSEUROPE supports the idea to create a “technology incubator” which could become a kind of exchange platform for all kind of participants for technological advances affecting IP in order to contribute to the identification of new projects. Businesses are already spending quite some time and resources on “scouting” new digital tool and AI applications; thus, it is positive that the EUIPO is also developing a “technology incubator” and other tools that could benefit a wide range of stakeholders, including user associations.

BUSINESSEUROPE fully supports Key Initiative 3 as raising awareness of the benefits that IP offers should also be a priority. Information campaigns and education initiatives aimed to highlight the positive impact of IP on various aspects of EU economy (e.g. competitiveness in current and future technologies, growth, jobs, solutions to implement UN’s sustainable development goals, climate change) should be promoted and organised all over Europe. The use of IP and knowledge-based assets (e.g. trade secrets) should also be better promoted as a major business opportunity through international, EU and national projects.

In addition, BUSINESSEUROPE believes that it is fundamental to create an “IP literacy” intended to foster education on IP matters and benefits. Such literacy should be developed and promoted not only towards citizens and businesses, but also to decision-makers and central and local administrations. The EUIPO should take a more active role in educational efforts when it comes to enforcement of trademarks and designs at national level.

### ***Strategic Driver 2: Advanced customer-centric services***

As already emphasised in its Comments of 26 February 2019, BUSINESSEUROPE expects that the EUIPO procedures ensure the appropriate balance between high-quality products, timeless and efficient use of the resources of the EUIPO, and the users. It is fundamental for European businesses to have flexible but robust procedures and practices to ensure that valuable IP rights can be protected.

BUSINESSEUROPE considers that the continuous involvement of users in decision-making processes of the EUIPO is key. Hence, it is very important that the EUIPO clearly recognises the need to involve and consult users as frequently and in as many instances as possible, including lifting up this dialogue at a more strategic level.

- *Goal 2.1: Improved user experience, quality and efficiency*

BUSINESSEUROPE welcomes the EUIPO’s intention to enhance the efficiency of the EUIPO’s processes and offer more customer-centric services, while continuously improving quality, consistency and predictability. New service offers, such as, for example, a dispute resolution service, would be welcome insofar as they could bring concrete benefits for users.



The Stakeholder Quality Assurance Panels (SQAP) constitute a successful example of user involvement in quality management as it contributes to improve the quality of decisions and proceedings for all users. The SQAP activities should thus be maintained and possibly expanded to other kinds of decisions, e.g. decisions delivered by the EUIPO Boards of Appeal.

- Goal 2.2: New services to increase added value to businesses

BUSINESSEUROPE welcomes the idea to set up a new multilingual platform with self-explanatory integrated online services which addresses the different needs of different user segments from filing to enforcement. It also appreciates the possibility to schedule a direct exchange with the examiner who is handling absolute grounds or *ex parte* cases. This possibility could facilitate personalised and more direct communication, that has been difficult to achieve so far.

On enforcement, the EUIPO commits itself to support users to Applications for Action (AFAs) to the custom authorities. To assess whether this initiative could be beneficial for businesses, more details should be provided especially on the kind of support that the EUIPO is planning to offer. For instance, a mere support in filing the AFA would not bring a great added value, while offering a single platform for filing the AFAs, following the grant procedure, and keeping the contacts with the competent customs authorities would certainly be helpful for businesses.

- Goal 2.3: IP services for SMEs

BUSINESSEUROPE fully supports the establishment of stronger synergies between the EUIPO and users to make the IP system even more efficient and help address the lack of awareness and understanding of the importance and relevance of IP rights protection, in particular for Small and Medium-Sized Enterprises (SMEs).

BUSINESSEUROPE welcomes the idea to create a special SME Programme covering projects and actions particularly addressed to smaller businesses to enhance their accessibility of the IP system and encourage them to increase their competitiveness through better use of IP rights. The EUIPO should cooperate closely with the Commission and national IP offices to implement the SME Programme.

Among the possible solutions tailored for SMEs, the Draft SP2025 includes IP valuation on all products and services. Currently, the determination of the value of a e.g. trademark is a “dilemma” for all companies regardless of their size. European businesses often resort to external providers offering IP valuation services, but in the absence of a standardised IP valuation method, it is difficult to rely on the resulting quantification. Thus, IP valuation can be a value-added initiative provided that (i) it is available to all businesses and (ii) the EUIPO does limit itself to provide a list with external service providers in this field but also really starts to explore valid and reliable evaluation methods.

***Strategic Driver 3: Dynamic organisational skill sets and an innovative workplace of choice***

BUSINESSEUROPE welcomes the EUIPO's awareness that the technological revolution entails new challenges for the EUIPO itself, its staff and users. Lifelong learning, which corresponds with companies' skills needs, and sustainable staff engagement, digital awareness and adaptation to the digital transformation, as well as the overarching need to create more competitive and productive workplaces, are challenges that businesses are also facing nowadays. In this context, it is positive that the EUIPO is also focusing on introducing a more "entrepreneurial thinking" and planning to adopt organisational changes that are necessary in the new digital era.

**Final remarks**

BUSINESSEUROPE looks forward to the finalisation and adoption of the Draft SP2025, as well as its implementation phase and the concrete projects that will be proposed. In this regard, BUSINESSEUROPE also welcomes the extraordinary User Group meeting scheduled in September 2019 as this meeting would offer a good opportunity to further discuss the Draft SP2025, exchange views with the EUIPO and clarify the points that still would require some explanations from the EUIPO.

BUSINESSEUROPE renews its full commitment to work together with the EUIPO towards a stronger IP system, efficient enforcement and better understanding of IP rights in a global and increasingly digital environment as IP is essential in supporting competitiveness, innovation and creativity in the Europe.

\*\*\*