

The European economy and the current situation that surrounds it have reached a crucial and unprecedented moment. As the global climate and environmental situation continues to worsen, European Union institutions have undertaken to prepare a bold response that affects almost all key economic sectors.

On 11 December 2019, the European Commission first presented the **European Green Deal**¹.

On 18 May 2022, the European Commission adopted the **RePowerEU Plan** aimed at reducing the EU's dependence on Russian fossil fuels before 2030.

DEVELOPING INNOVATION IN A CIRCULAR ECONOMY

The world's greatest civilisational challenge is an opportunity for the European Union and its Member States to become global leaders in building a **modern, resource-efficient and competitive** economy.

¹ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS European Green Deal, COM(2019) 640 final. <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=COM%3A2019%3A640%3AFIN>

This newsletter has been prepared to alert our Clients to certain significant developments in the Polish law. It is not purported to be a legal advice concerning any particular situation or circumstances of any of our Clients, and it should not be relied upon as such. If you have any questions concerning the developments discussed in this newsletter and their potential impact on your business in Poland, please kindly contact the partner of our Firm responsible for your engagement.



IP IN A CIRCULAR ECONOMY

The diagnoses presented in the European Commission Communication and the actions proposed in other documents that refer to the transition to a **circular economy based on green technologies** leave no doubt that **the key to effective and efficient transformation will be intellectual property protecting any innovation in this area**. Although the system of intellectual property protection in the European Union and its Member States is one of the world's most developed and modern, in the near future, we can expect a number of initiatives and specific legal solutions aimed at further improvements.

This news should not go unnoticed for entrepreneurs operating in various EU-market sectors. After all, consciously and properly preparing a company for a completely new model of the circular economy creates an unprecedented opportunity to achieve a significant market advantage in this respect. It should be borne in mind that the **protection of inventions, industrial/utility models, methods, or know-how begins at the initial idea stage and, at the latest, as soon as the innovative/creative staff starts working on new solutions**.

By way of example only, the results and outputs of R&D teams or creative personnel can be protected as:

Invention
protected
by patent

Know-how/business secrets
protected by, among other things,
the Act of Fair Trading

Industrial design/utility model
protected by registration or protection right

Work
protected under copyright law

Importantly, adopting the right IP protection strategy enables entrepreneurs to also gain a competitive advantage in foreign markets.



PROTECTION OF IP RIGHTS - LEGISLATIVE ACCELERATION

To address the above challenges, the European Commission has presented a detailed action plan for the coming months and years. Regarding the challenge of **modernising the system of IP rights protection**, the Commission intends to, i.a.:⁶

- **increase the efficiency of the supplementary protection certificate system** to provide an additional period of protection of intellectual property rights for patented medicinal products and plant protection products which are subject to time-consuming clinical trials and marketing authorisation procedures,
- **modernise industrial design regulation** to make it more accessible and enable entrepreneurs to move more smoothly into the digital and green economy,
- **strengthen the system of protection for geographical indications for agricultural products** and consider the possibility of introducing a harmonised EU system to protect non-agricultural geographical indications, and
- take further steps to make the **unitary patent system** operational.

In terms of **facilitating access to and sharing intangibles**, the Commission's actions are directed towards:

- ensuring the availability of critical intellectual property in times of crisis, including through **new licensing tools** and exploring (with Member States) the introduction of an **emergency coordination mechanism for compulsory licensing**,

- **increasing transparency and predictability in the licensing of SEPs** (standard essential patents), i.e. patents relating to technologies defined in standards (these patents play an important role in, i.a. 5G or Internet of Things (IoT) technologies), and
- **promoting access to and sharing data** while preserving the legitimate interests of right holders, i.a. by clarifying certain key provisions of the Directive on the protection of business secrets and reviewing the Database Directive.

As regards **more effective enforcement of IP rights**, the Commission intends to:

- clarify and update the obligations for digital services in the Digital Services Act, in particular, online platforms,
- strengthen the role of the European Anti-Fraud Office (OLAF) in the fight against piracy, and
- establish an EU anti-counterfeiting toolkit, setting out principles for joint action, cooperation, and data exchange between right holders, intermediaries, and law enforcement authorities.

These assumptions were confirmed and further clarified in the European Parliament Resolution of 11 November 2021 on an intellectual property action plan in support of EU recovery and resilience (2021/2007(INI)).⁷

⁶ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - Reaping the full benefits of the EU's innovation potential IP Action Plan in support of EU renewal and resilience, 25.11.2020, [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2020\)760&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2020)760&lang=en)

⁷ European Parliament resolution of 11 November 2021 on an intellectual property action plan in support of EU recovery and resilience (2021/2007(INI)), <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52021IP0453&qid=1659020577476>.

WHAT DOES THIS MEAN FOR BUSINESS?

Entrepreneurs operating in almost every market sector will face new regulatory requirements that implement the European Union's initiatives. This applies, in particular, to market sectors such as:



Transport/logistic



Automotive



The chemical industry



Energetics



Fuels



Finance and investments



Construction/Infrastructure



R&D



FMCG



Healthcare



Government/municipal administration



Advertising and Marketing



Environmental protection



Agriculture

At the same time, these challenges constitute an unprecedented opportunity for market participants to gain a competitive advantage based on consciously and consistently built intellectual property and a portfolio of rights protecting it. At the same time, the currently binding provisions of law, e.g. the Act on Copyright and Related Rights, Industrial Property Law, the Act on Fair Trading, and the Labour Code regulate the above issues only to a limited extent, leaving entrepreneurs with a significant scope of freedom.

What should entrepreneurs bear in mind regarding the impending changes?

In the context of upcoming regulatory changes, the protection of IP rights should be multi-pronged and include, i.a.:

- **adopting a proper IP protection strategy**, addressing, i.a. aspects such as the territorial scope of protection, the disclosure of developed technology under patent protection vs. maintaining its confidentiality,
- in relation to creative and innovative staff, **securing the acquisition of rights to all intellectual property protecting the technology, products, or services** being developed through the use of properly structured IP, confidentiality, or non-compete agreements,
- **proper documentation of the process of developing and protecting intellectual property** in the company,
- **depending on the type of innovative solution, a patent purity test and FTO (freedom to operate)** should be carried out before the solution is launched on the market or submitted for protection to the relevant office,
- the use of **properly drafted non-disclosure agreements (NDAs)** in contracts with business partners,
- in the case of sourcing new technologies from external suppliers, **the proper drafting of licensing or rights acquisition agreements**, taking into account the specificities and constraints arising from the often cross-border nature of such agreements,
- **monitoring the activities of third parties** in the context of the possible unauthorised use of protected solutions and taking effective action against infringements,
- **monitoring and making use of national and EU support programmes** aimed at developing new technologies and innovations,
- **monitoring and taking advantage of available tax credits and exemptions** for investment in new technologies and innovation.



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