Illicit Trade

Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms

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Preface

Illicit trade in counterfeit and pirated goods poses a major challenge. It damages economic growth and fuels organised crime, which can undermine trust in functioning markets and the rule of law. The COVID-19 pandemic has exacerbated existing problems by re-shaping value chains, shifting consumer demand, and, consequently, opening new opportunities for illicit trade networks. The harm caused by illicit trade in counterfeits is particularly severe for small and medium-sized enterprises, which often lack the resources to monitor and counter this risk. Policy makers need solid empirical evidence to take action against illicit trade. To meet this need, the OECD and the EU Intellectual Property Office (EUIPO) have joined forces to carry out a series of analytical studies. The results have been published in a set of reports that gauge illicit trade in counterfeit and pirated goods.

We are very pleased to provide a unique insight to the illicit trade in infringed IP rights of small and medium-sized enterprises. We are confident that the results will enhance our understanding of the risk that counterfeiting poses to the global economy and society, facilitate the development of innovative policy options to respond to these challenges, and promote clean trade in the COVID-19 recovery.

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Foreword

Illicit trade in fake goods is a significant and growing threat in today's globalised and innovation-driven economy. Its harmful impact on economic growth, innovation, the rule of law and, ultimately, trust in well-functioning global markets, should not be underestimated.

In recent years, the OECD and the EU Intellectual Property Office (EUIPO) have been collecting evidence on various aspects of this risk. The results have been published in a set of reports starting with *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact* (2016). These results have been expanded and updated in subsequent reports, including *Trends in Trade in Counterfeit and Pirated Goods* (2019) and *Global Trade in Fakes: A Worrying Threat* (2021). The results are a major concern, as trade in counterfeit and pirated goods amounted to up to 2.5 % of world trade in 2019; when considering only imports into the EU, fake goods amounted to up to 5.8 % of imports. These amounts are similar to those of previous years, and illicit trade in fakes remains a serious risk to modern, open and globalised economies.

This report builds on previous analysis, presenting detailed, quantitative information on the value of illicit trade in fake goods that infringe IP rights of small and medium-sized enterprises (SMEs). The effects of illicit trade in counterfeits on these companies are particularly damaging, as SMEs often lack resources to monitor and to counter this risk effectively. The evidence in this report can help raise awareness of the threat of illicit trade in counterfeits on SMEs and its implications for the design of innovation and entrepreneurship policies.

This study was carried out under the auspices of the OECD's Task Force on Countering Illicit Trade, which focuses on evidence-based research and advanced analytics to assist policy makers in mapping and understanding the vulnerabilities exploited and created by illicit trade. This report was approved by the Public Governance Committee via written procedure on 6 January 2023 and prepared for publication by the OECD Secretariat.

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At the OECD, this study was conducted under the auspices of the Task Force on Countering Illicit Trade (TF-CIT). It was shared with other OECD committees with relevant expertise in the areas of trade, regulatory policy, consumer protection policy, product safety and public sector integrity.

The report was prepared by Piotr Stryszowski, Senior Economist and Morgane Gaudiau, Economist at the OECD Directorate for Public Governance jointly with Michał Kazimierczak, Economist at the European Observatory on Infringements of Intellectual Property Rights of the EUIPO and Nathan Wajsman, Chief Economist, EUIPO. The authors wish to thank the OECD experts who provided valuable knowledge and insights: Stèphane Jacobzone and Jacobo Garcia Villarreal from the OECD Public Governance Directorate, Silvia Sorescu from the OECD Trade Directorate and Andrew Paterson from the OECD Center for SMEs and Entrepreneurship.

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The database on customs seizures was provided by the World Customs Organization (WCO) and supplemented with regional data submitted by the European Commission's Directorate-General for Taxation and Customs Union, the US Customs and Border Protection Agency and the US Immigration and Customs Enforcement. The authors express their gratitude for the data and for the valuable support of these institutions.

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Abbreviations and acronyms

AFA	Application for action
CATI	Computer-assisted telephone interview
DG TAXUD	Directorate-General for Taxation and Customs Union
DHS	Department of Homeland Security
EPO	European Patent Office
EU	European Union
EUIPO	European Union Intellectual Property Office
IP	Intellectual property
IPR	Intellectual property right
NACE	European Classification of Economic Activities
NPI	Non-pharmaceutical intervention
SME	Small and medium-sized enterprise
WCO	World Customs Organization

Executive Summary

This report analyses the economic impact of illicit trade in counterfeit goods on small and medium-sized enterprises. It also provides a deeper dive into the data on the nature of this threat in the EU context.

Trade in counterfeit goods represents a longstanding, global socio-economic risk that threatens effective public governance, efficient business and the well-being of consumers. At the same time, it is becoming a major source of income for organised criminal groups. It also damages economic growth, by reducing business revenue and undermining their incentive to innovate.

Counterfeit and pirated goods can be found in all industries and across all product categories. Consequently, all companies that use intellectual property (IP) and trademarks in their business models – including small and medium-sized enterprises (SMEs) – are exposed to the risk of illicit trade in counterfeiting.

SMEs play an important role in most economies. In OECD countries, they make up the majority of businesses and account for around two-thirds of total employment. Even though the use of intellectual property among SMEs is relatively low, innovative SMEs report higher IP ownership rates as they actively look for ways to improve existing products, services and business processes.

One of the most important reasons SMEs give for registering IP is to deter counterfeiting and prevent other firms from copying their products or services. At the same time, as many as 40% of SMEs in the EU do not monitor their markets for counterfeiting and potential infringements of their IP.

Enforcement data highlight that SMEs are affected by counterfeiting. Counterfeiters target all type of innovative goods produced by SMEs, with electrical machinery and electronics, clothing and fashion goods, perfumery and cosmetics, and toys and games being the most frequently targeted. Moreover, many of these fake goods are substandard, posing health and safety threats to consumers.

Counterfeit goods infringing SMEs' IP mostly come by mail from China and Hong Kong (China). Fewer transit hubs are abused by criminals to smuggle fakes infringing SMEs' IP than to smuggle goods that infringe large companies' IP.

Regarding the imports of fakes infringing SMEs' IP to the EU, the patterns were similar. Most of such fakes come from China and Hong Kong (China), and mail was the preferred method used to ship fakes violating SMEs' IPR into the EU. In addition, around half of the seizures of counterfeit products infringing the IPR of SMEs destined for the EU were purchased online.

The picture drawn from customs seizure data is complemented by data from a survey carried out among SMEs. It shows that, while 15% of SMEs who own IP have experienced an infringement, this rate grows to almost 20% for innovative firms. This rate might still be undervalued, as 40% of SMEs do not monitor markets for counterfeiting of their products. Consequently, the main effect of IP infringement on SMEs was a greater awareness of the need to protect IP. Other important impacts of counterfeit goods on SMEs included a loss of turnover, reputational damage and the loss of their competitive edge.

In terms of rights enforcement, submitting takedown notices to Internet platforms is the most popular form of deterring counterfeiting among SMEs. At the same time, 11% of small firms whose IP has been infringed do not enforce their rights. This is because SMEs perceive enforcement procedures to be too complex, lengthy and costly.

The damaging effects of counterfeiting on firms' performance tend to be more dangerous to SMEs than to large firms that have the experience and capacity to deal with the risks. While large companies may be able to overcome the effects of IP rights abuse, SMEs might not have sufficient resources to compensate for economic damages caused by counterfeits. In addition, SMEs are often not be able to secure effective protection and enforcement of their IP, as trademarks have limited geographical scope, and protection is often not valid in other markets (such as China) where the infringement might take place. Finally, SMEs often do not have sufficient resources and capacities to monitor this threat, or to develop effective countermeasures.

According to the data, an SME whose IP has been infringed has 34% lower odds of survival than SMEs that did not experience infringement. Put differently, counterfeiting significantly increases the risk that an SME may leave the market, by making further operations unprofitable and leading to a closing of business or even bankruptcy.

1 Introduction: The Threat of Counterfeiting

The importance of intellectual property

Industries relying intensively on intellectual property (IP) play a significant role in the modern, advanced economies, and serve as a primary driver of economic growth and competitiveness. The IP-intensive industries rely on the recognition and effective enforcement of a variety of intangible assets and products of the mind and human intellect, which we refer to collectively as "intellectual property".

The story of IP is a story of economic growth, high-paying jobs, economic competitiveness, innovation and creative expression. In a globalised and competitive economic world, the protection of IP is crucial and firms may benefit from it in different ways such as improved reputation, higher turnover, access to new markets, and strong and sustainable growth. In addition to being a major driver of economic growth, IP provides the incentive to create, invest in and commercialise new inventions, products and services, while helping artists and authors to disseminate their works, be they literary, artistic, musical, cinematic or other creative forms of human expression.

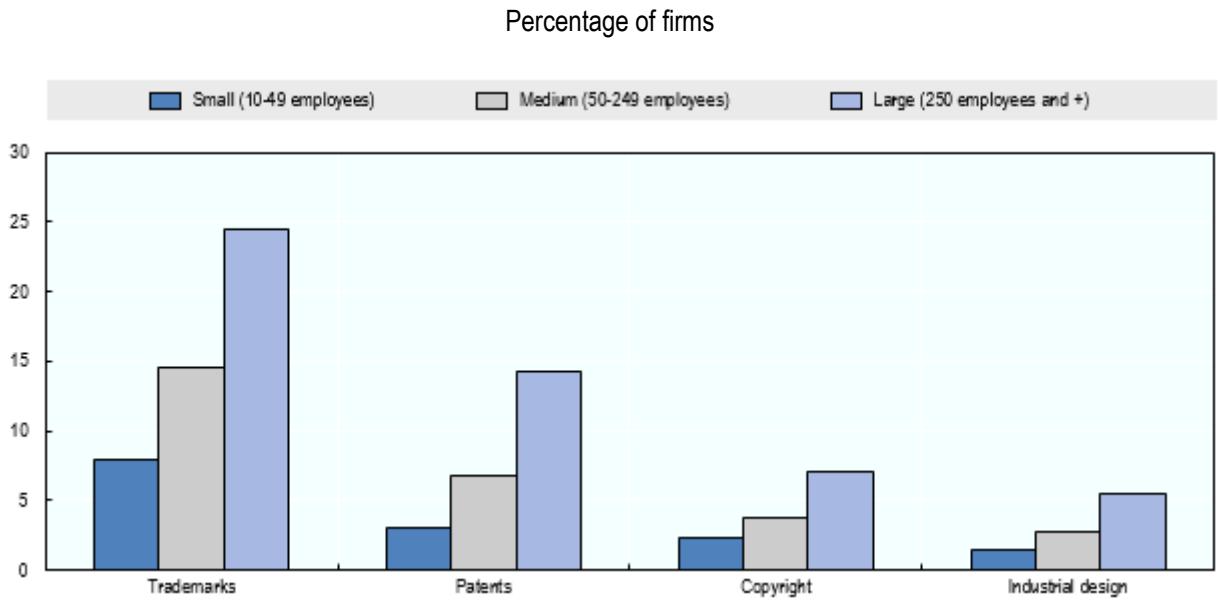
Intellectual property and small and medium-sized enterprises

Small and medium-sized enterprises (SMEs) are the backbone of the economy of many modern countries. For example, in the European Union (EU), SMEs employ two out of every three workers and provide 57% of added value. However, it is estimated that only around 30-60% of SMEs survive longer than five years of trading (EUIPO, 2022[1]).

Intellectual property plays a vital role in promoting innovation among SMEs as it provides those that invest time, effort and money in innovation with a mechanism to protect and benefit from it. Even though only a small share of SMEs register their IP, most of those that do so have seen a positive impact as a result. Most commonly, SMEs with registered intellectual property rights (IPR) reported that registration improved their reputation or image (mentioned by 60%), that it provided them with better IP protection (58%) and that it gave them better long-term business prospects (48%) (EUIPO, 2022[1]).

Despite these benefits, small companies tend to be less inclined to register IPRs. Data from the Community Innovation Survey reveal that, in the EU, smaller firms were less likely to apply for IPRs than larger firms, regardless of the type of IPR (Figure 1.1). In 2018, small firms were only one-third as likely to apply for trademarks than large firms and one-quarter as likely to apply for patents and industrial design.

Figure 1.1. Enterprises applying for intellectual property rights, by type and firm size, 2018



Source: Eurostat, Community Innovation Survey.

The threat of counterfeiting

Alongside this positive evidence of the benefit that IP has for economic growth, ingenuity and creativity lies the less positive story of IP theft and the harm it does. The growing importance of intellectual property in knowledge-based economies has generated concerns about the potential adverse effects of illicit trade in counterfeit and pirated goods on rights holders, governments and consumers. Today, trade in counterfeits gives rise to significant challenges to effective governance, efficient business and the well-being of consumers, while simultaneously being a key source of income for organised criminal groups.

It is essential to understand the threats and the impediments to effective enforcement in order to develop and implement effective strategies to tackle IP theft. This means understanding both at the macro level – the global scope and magnitude of the issue – and at the micro level – the nature of the complex schemes used by illicit actors to accomplish IP theft on a commercial scale.

Information on the magnitude of, scope and trends in counterfeit and pirated trade is critical to understanding the nature of the problem and how it is evolving. Such information is also essential for designing and implementing effective policies and measures to combat illicit operations.

This report describes an analysis conducted by the OECD and EUIPO of the economic impact of illicit trade in counterfeit goods on small and medium-sized enterprises. It also provides a deeper dive into the data on nature of this threat in the EU context. This report is structured as follows. The remainder of this chapter outlines the data and the general methodology applied in this report. Chapter 2 summarises the economic role of SMEs, and uses the SME Scoreboard Data for EU SMEs (EUIPO, 2022[1]) to examine their innovation and their use of intellectual property rights. Chapter 3 uses global customs seizure data to compare the impact of counterfeiting on SME and non-SMEs. Chapter 4 then returns to the SME Scoreboard data to investigate the impact of and responses to IPR infringement from the perspective of EU SMEs. It also presents a novel econometric analysis of the impact on SME survival rates of infringement of their IPR. Chapter 5 concludes with a roundup of the findings and their implication for policy makers.

Our data

Global customs seizures data

Data on customs seizures originate from national customs administrations. This report relies on customs seizure data from the World Customs Organization (WCO), the European Commission's Directorate-General for Taxation and Customs Union (DG TAXUD) and from the United States Department of Homeland Security (DHS). The latter submitted seizure data from the US Customs and Border Protection, and from the US Immigration and Customs Enforcement.

The data on global customs seizures are available for the period 2011-19. They are usually provided for three-year time periods with the most recent data being two years old. Overall, the unified database of customs seizures of IP-infringing goods used in this report includes almost one million observations, with more than 100 000 seizures reported by customs agencies each year.

A detailed analysis of these data revealed a number of limitations. Some of them are to do with discrepancies between the datasets, others with product classification levels or outliers in terms of seized goods or provenance economies. All these limitations were thoroughly discussed in two reports by the OECD and European Union Intellectual Property Office (EUIPO) (OECD/EUIPO, 2016[2]); (OECD/EUIPO, 2019[3]), and a methodological way forward was proposed for each limitation. This report relies on the methodology presented and discussed in these studies, and it employs the same solutions to the seizure data limitations.

Despite its limitations, the global customs seizures dataset is very rich and contains detailed information on each seizure made by customs, including the monetary value, the provenance and destination countries of counterfeit goods, the conveyance methods, and even the identity of the infringed brands. This last point is crucial for the purpose of analysing infringements of SMEs' IPR, as discussed in the section below.

Applying seizures data to small and medium-sized enterprises

In this context, the customs seizures data have specific characteristics that it is important to highlight. First, the identity of the infringed company is not always available, depending on the source of the data. This information is missing for the data coming from the US DHS. These data are therefore excluded from the scope of this report, meaning that the quantitative analysis presented here relies solely on global customs seizures data from the WCO and DG TAXUD for the period 2011 to 2019. Second, the data may suffer from bias because applications for actions (AFAs)[1] are often the origin of a customs seizure. The use of AFAs is more common among large companies with the financial and human resources to track and fight against violations of their IP rights. Third, it is easier for customs agencies to identify famous big brands than smaller and less well-known ones.

Because the infringed brand identity may be missing from the data, the analysis distinguishes between seizures of fake branded goods for which the trademark was identified and those for which the trademark is unknown.[2] Put it differently, whenever possible identification of an SME is done through the identification of a relevant counterfeited trademark that was owned by the SME concerned. Where the trademark has been identified, the companies affected have been divided into two categories: SMEs and non-SMEs (or large companies). Small and medium-sized enterprises are those with between one 1 and 250 employees, and large companies are those with over 250 employees. In this report, therefore, the terms "non-SMEs" and "large companies" are equivalent.

SME Intellectual Property Scoreboard data

The 2016 SME Scoreboard survey was conducted between June and September 2015 in 28 EU Member States (EUIPO, 2016[4]). It surveyed 8 970 SMEs using computer-assisted telephone interviews (CATI).

The 2022 SME Scoreboard (EUIPO, 2022[1]) survey was conducted in 27 EU Member States. CATI interviews were conducted between March and May 2022 and 8 374 SMEs took part in the survey.

The sample preparation process for both surveys – 2016 and 2022 – followed similar procedures so, for brevity, we only describe how the 2022 sample was developed. The Bureau Van Dijk Orbis database, containing information on companies across the world, served as a sample frame.[3] The sample consisted of two subsamples:

- a randomly drawn sample of EU SMEs, representative of the overall population of SMEs in the EU
- a sample of firms that were previously matched with IPR registers.

The latter subsample needed to be included to achieve a sufficient number of observations of IPR owners, as they make up only around 10% of SMEs. The entire sample was stratified on company size, with the desired distribution of 25% micro, 50% small and 25% medium-sized companies per Member State. The definition of company size followed the official definition of European Commission (EC, 2003[5]). The size of the gross sample in each Member State approximated the size of the SME population. However, each observation was reweighted after the final sample was obtained to achieve results that were representative of the population of EU SMEs. The analysis in this report relies on various questions in the survey that are described in the Sections below.

2 SMEs and Intellectual Property Rights

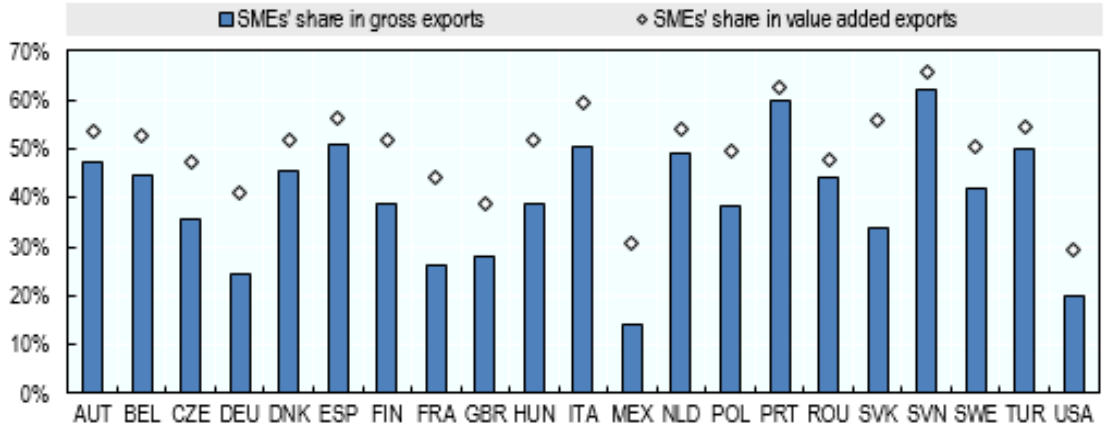
The economic importance of SMEs

According to most definitions, small and medium-sized enterprises (SMEs) are companies with fewer than 250 employees and either an annual turnover not exceeding EUR 50 million or a total balance sheet not exceeding EUR 43 million.[4] SMEs can be further broken down into micro, small and medium sized; although there is no common definition of these categories, the SME Intellectual Property Scoreboard categorises firms as micro if they have fewer than 10 employees and a turnover of less than EUR 2 million, and small if they have under 50 employees and a turnover of less than EUR 10 million (EUIPO, 2022[1]).

SMEs play a key role in most economies, and notably in OECD countries where they are the predominant form of business (around 99% of all firms in most OECD countries) and the major employers (around two-thirds of total employment). In addition, they contribute to more than half of value added in OECD countries. SMEs also actively participate in global value chains, where their indirect exporting activity (in value-added terms) is greater than their direct activities (in absolute terms). On average across OECD countries, SMEs accounted for 40% of gross exports and for 50% of the value added of gross exports. Figure 2.1 shows the gap between the direct and indirect export activity of SMEs in OECD countries. This reflects the role SMEs play as suppliers of inputs to larger direct exporters (OECD, 2021[6]).

Figure 2.1. Direct and indirect exporting activity of SMEs in OECD countries

Percentage of gross exports



Source: "Accounting for firm heterogeneity in global value chains: The role of Small and Medium sized Enterprises", STD/CSSP/WPTGS(2018)5.

Governments around the world have long recognised the importance of SMEs to economic growth, job creation, local development, inclusion and social cohesion. SMEs also play a crucial role in helping economies and societies adapt to major transitions, including digitalisation, globalisation, demographic shifts, labour-market transformations and the transition to more sustainable practices and models. At the same time, SMEs are very diverse with respect to size, sector, location, capacities and aspirations, as well as their ability to overcome inefficiencies in the business environment and policy sphere. Such diversity has important implications for the design and implementation of policies.

Countries worldwide have diverse policy frameworks in place which are to account for relevance to SMEs. These often have a broad scope and affect a large number of actors, ranging from reforms that shape framework conditions to policies for the business population at large and SME-targeted measures.

Building on more than two decades of OECD work, the OECD Council adopted in 2022 a Recommendation of the Council on SME and Entrepreneurship Policy (Annex A). This offers a coherent and strategic approach to SME and entrepreneurship policies, encompassing a mix of targeted and horizontal policy dimensions and emphasising effective governance mechanisms. While aiming to be widely applicable, it recognises the different circumstances, institutional contexts and stages of development across jurisdictions, and that countries use a variety of policy frameworks to support their SMEs and entrepreneurs. The recommendation is a response to a long-standing demand for frameworks and tools to improve SME and entrepreneurship policy effectiveness, ensuring coherence and synergy across varied policy areas and actors, and accounting for the diversity of the SME and entrepreneur population.

SMEs go digital

In recent years SMEs have significantly increased their online presence. This was particularly in response to the COVID-19 containment measures implemented by governments. Entrepreneurs and SMEs across the globe increased their digital presence, selling on line using e-commerce platforms or through personal websites, engaging with social media and digitally advertising. For example, Amazon reported that between June 2019 and May 2020, the average sales of its European selling partners (mostly comprised of SMEs) increased from EUR 70 000 to EUR 90 000.[5] This increase during a global economic downturn indicates a shift to e-commerce in response to external shocks, such as lockdowns. For many firms, this forced push to online sales was their first experience of connecting with consumers digitally. Facebook conducted a survey in February 2021 and found that, among SMEs, the three most frequently reported uses of digital tools were selling goods and services to customers, digital advertisements, and communication.[6]

As OECD governments develop their COVID-19 recovery plans, the digitalisation of SMEs is a high policy priority. Throughout the pandemic period, OECD governments have implemented diverse policy tools, including vouchers and grants for business digitalisation, strengthening e-government services to businesses, enhancing the digital re-skilling of entrepreneurs, improving access to digital infrastructure, and initiatives to facilitate the uptake of e-commerce and teleworking technologies. Instances of such instruments and initiatives have increased since the onset of the pandemic. In July 2020, OECD research found that only 13 of the 60 countries tracked had SME digitalisation support measures in place, but by the first quarter of 2021 this had risen to at least 24 countries. This increased focus on SME digitalisation in “build back better” recovery packages is linked to the central role that digital tools have played in response to the COVID-19 crisis (OECD, 2021[7]).

For example, the Portuguese recovery plan includes EUR 650 million for measures targeting SME digitalisation. These policies include tailored digital skill training, coaching, and e-commerce support for micro enterprises. Similarly, Latvia’s recovery plan dedicates EUR 125 million to the digitalisation of business. These measures aim to support firms in introducing digital technologies such as e-commerce solutions, the innovation of new productions and digital mentoring (OECD, 2021[7]).

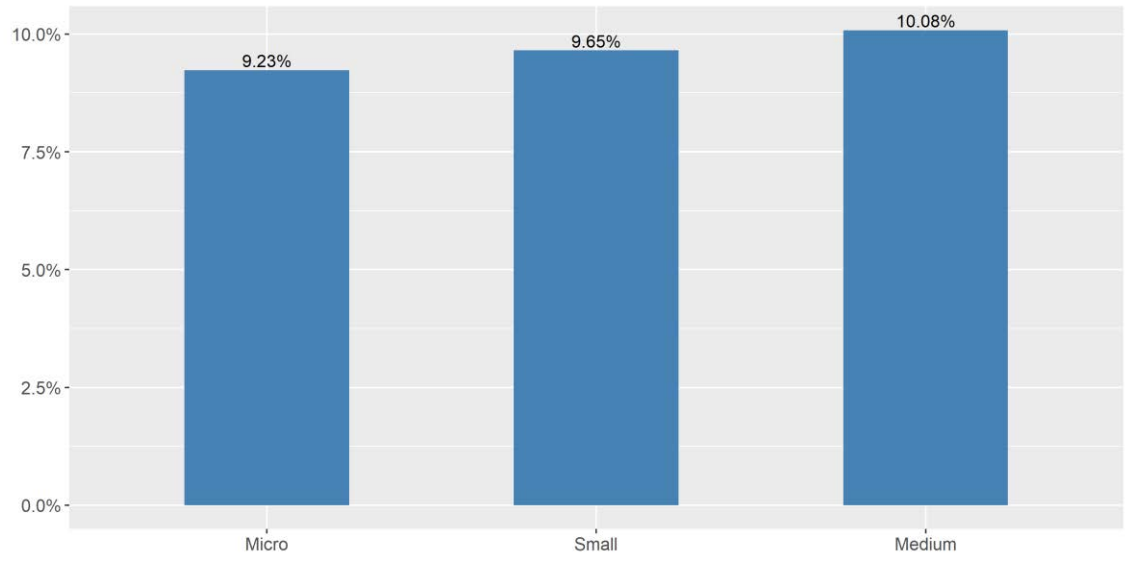
Intellectual property rights and EU SMEs

This section uses data from the recently published SME IPR Scoreboard (EUIPO, 2022[1]) to examine more closely the details of ownership of IPR among EU SMEs, breaking them down both by firm size, and by their degree of innovation.

Intellectual property ownership

The IPR ownership rate among SMEs is relatively low. Analysis of a sample of over 110 000 European SMEs conducted by EUIPO and the European Patent Office (EPO) (EPO/EUIPO, 2021[8]) showed that slightly less than 9% of SMEs have a registered patent, trademark or design. Similarly, only approximately 10% of the SMEs surveyed for the SME Scoreboard reported that they had registered any IPR (EUIPO, 2022[1]). As Figure 2.2 shows, the rate of ownership increases with firm size, although the differences across micro, small and medium-sized firms do not exceed 1 percentage point.

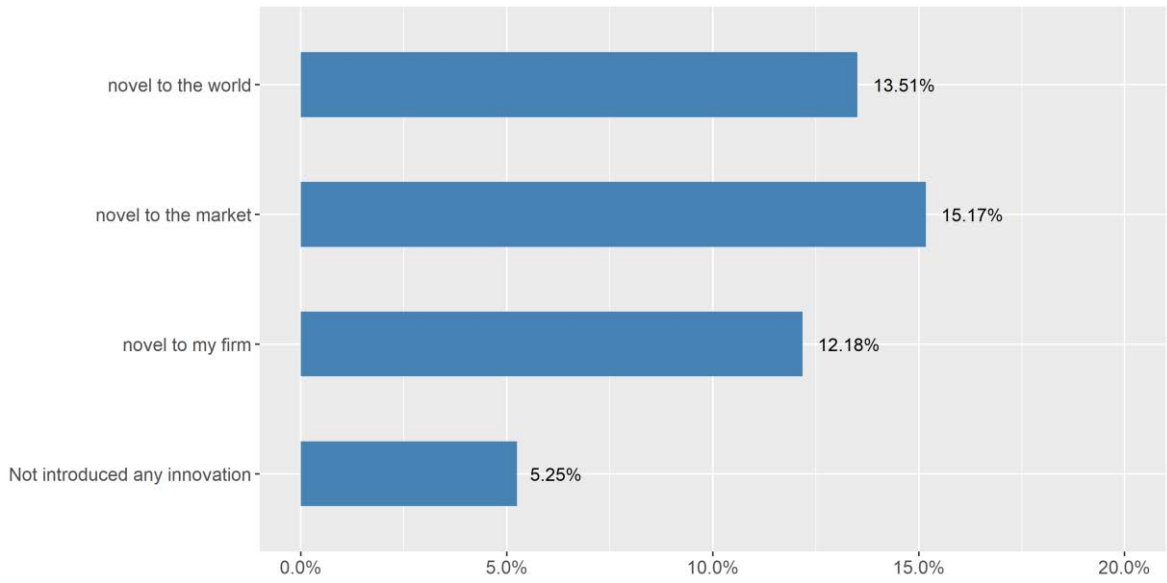
Figure 2.2. IPR ownership among SMEs, by firm size, 2022



Note: N=4084 firms from a random sample of SMEs.
Based on Q6: "How many of each of the following Intellectual Property Rights (IPR) types does your company own?"
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

However, innovativeness does make quite a large difference to the propensity of SMEs to register IPR. Figure 2.3 compares the rate of ownership among SMEs based on whether they had introduced any improvement in terms of goods, services or business processes in the three years before the survey. The rate of IPR ownership among firms that had introduced any such improvement is more than twice the rate of those that did not. Firms that had introduced innovations were further broken down by how radical they were, with the highest rate of IPR ownership found among firms which introduced innovations novel to the market in which they operate. These firms have almost three times the rate of ownership than SMEs that did not introduce any innovation in the previous three years. The rate of IPR ownership is somewhat lower among firms that introduced innovations novel to the world (13.5%) and novel to the firm (12.2%) but still much higher than among the firms that did not introduce any.

Figure 2.3. IPR ownership rates among SMEs, by degree of innovation, 2022



Note: The figure shows the rate of IPR ownership among respondents to the 2022 IPR SME Scoreboard survey broken down by type of self-reported innovation. N=4084 firms from a random sample of SMEs.
Based on Q3 "To the best of your knowledge, how novel were the improvements you introduced?" (those answering "Do not know" were omitted) and Q6: "How many of each of the following Intellectual Property Rights (IPR) types does your company own?"
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

The impact of registering intellectual property

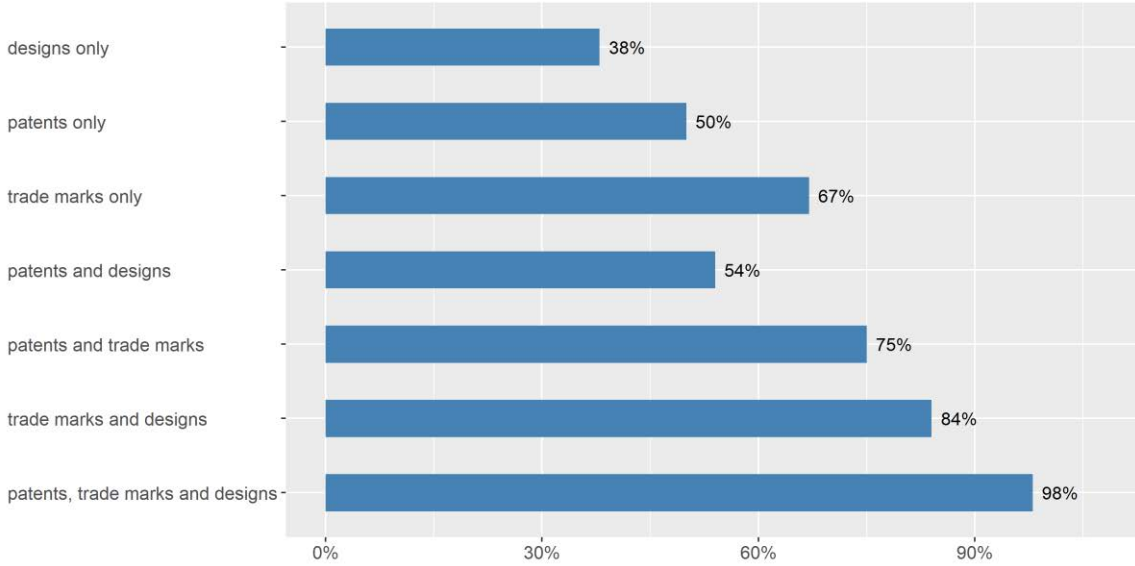
As the preceding section has shown, IPR ownership rates tend to be higher among the most dynamic SMEs, actively looking for ways to improve existing products, services and business processes. Although innovation may be risky, it also increases the chance of better performance. This is confirmed by the findings from a previous EUIPO/EPO report, that SMEs that own IPR have 68% higher revenue per employee than SMEs that do not (EPO/EUIPO, 2021[8]). The same report showed that improvements in firm performance depends on the type and combination of IPR, with highest ownership premium associated with firms combining different types of intellectual property (Figure 2.4).

The 2019 EPO/EUIPO report (EPO/EUIPO, 2019[9]) found that SMEs that have filed at least one IPR are approximately 20% more likely to experience subsequent growth and 10% more likely to experience high-growth episodes.

The 2022 IPR SME Scoreboard (EUIPO, 2022[1]) also found that 93% of SMEs that registered IPR experienced a positive impact from registration. The share is high among all SMEs, but some differences are found when firms are broken down by innovativeness. Among those firms that did not introduce any innovations in the three years before the survey, 89% experienced some positive outcomes of IPR registration. However, among those that implemented changes new to the world, the corresponding share reaches almost 95% (EUIPO, 2022[1]). Also, as Figure 2.5. illustrates, SMEs that implemented innovations novel to the market were able to name on average one more positive outcome they experienced after registration of IPR than those that did not introduce any improvement.

Figure 2.4 IPR ownership premium among SMEs, by type of IPR, 2022

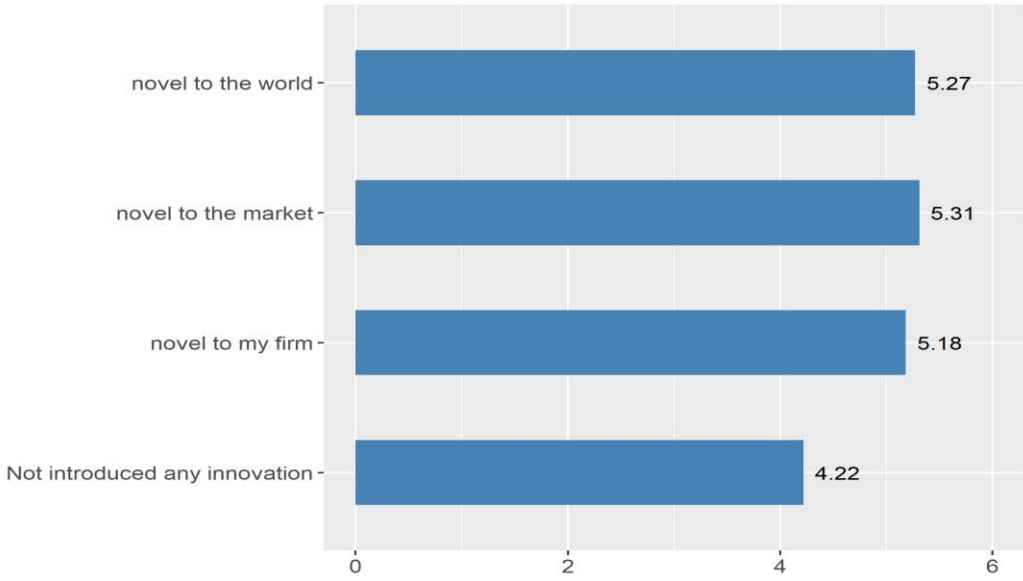
Average increase in turnover per employee over SMEs with no registered IPR



Note: IPR ownership premium has been defined as a difference in turnover per employee between relevant IPR ownership category and SMEs that were not owners of registered IPRs. The differences have been found to be statistically significant for all the IPR ownership groups.
Source: EUIPO/EPO (2021)

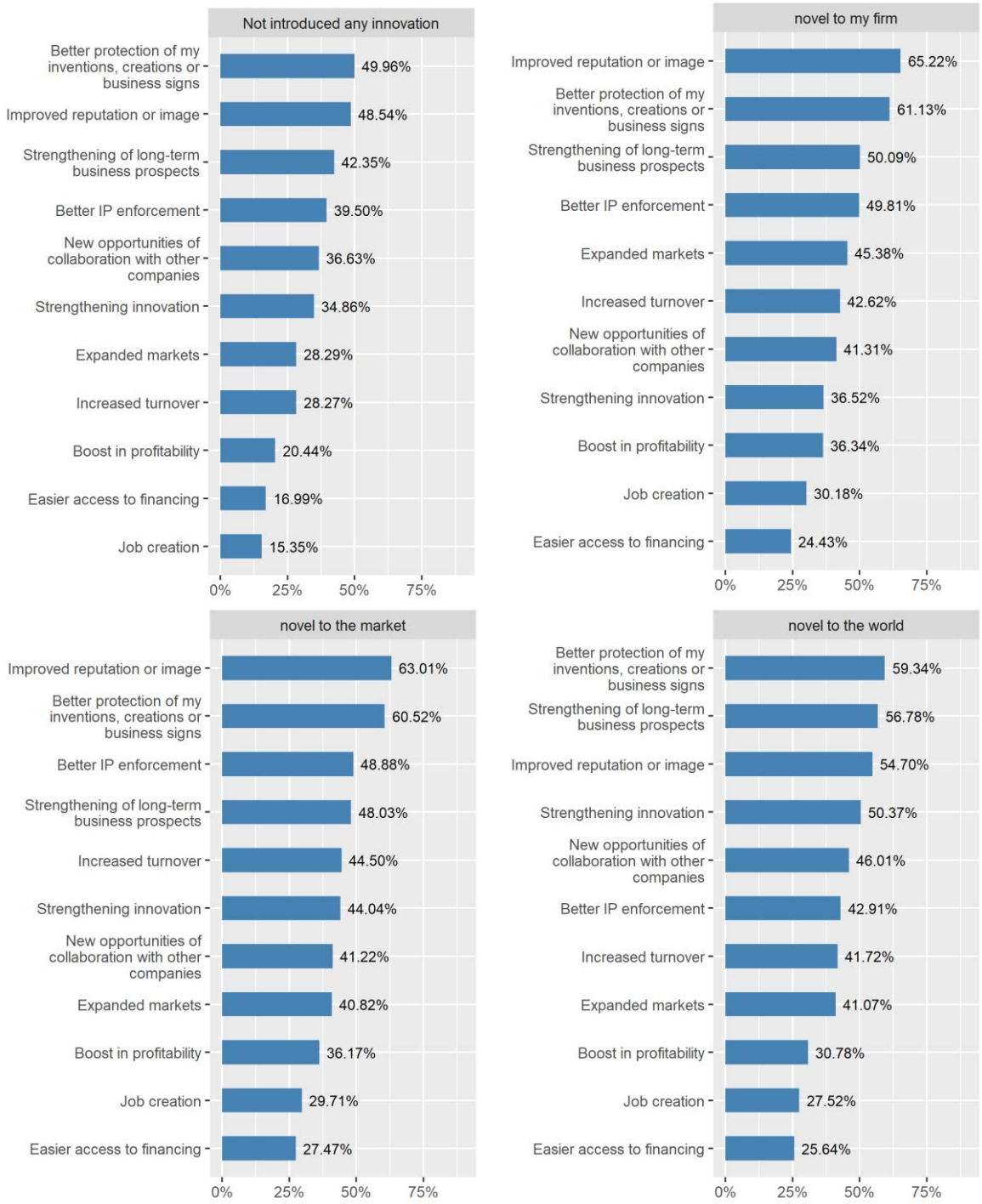
Figure 2.5. Positive outcomes from IPR ownership among SMEs, by degree of innovation, 2022

Mean number of positive outcomes reported by SMEs with registered IPR



Note: N=3985 SMEs which confirmed having registered IPR and reported the type of innovation introduced: 904 SMEs had not introduced any innovation, 2257 reported innovation novel to their firm, 952 novel to the market and 167 novel to the world.
Based on Q3: "To the best of your knowledge, how novel were the improvements you introduced?" and Q12: "What are the positive impacts of registering IP? Please indicate all forms of positive impact you have experienced."
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Figure 2.6. Types of positive outcomes from IPR ownership among SMEs, by degree of innovation, 2022



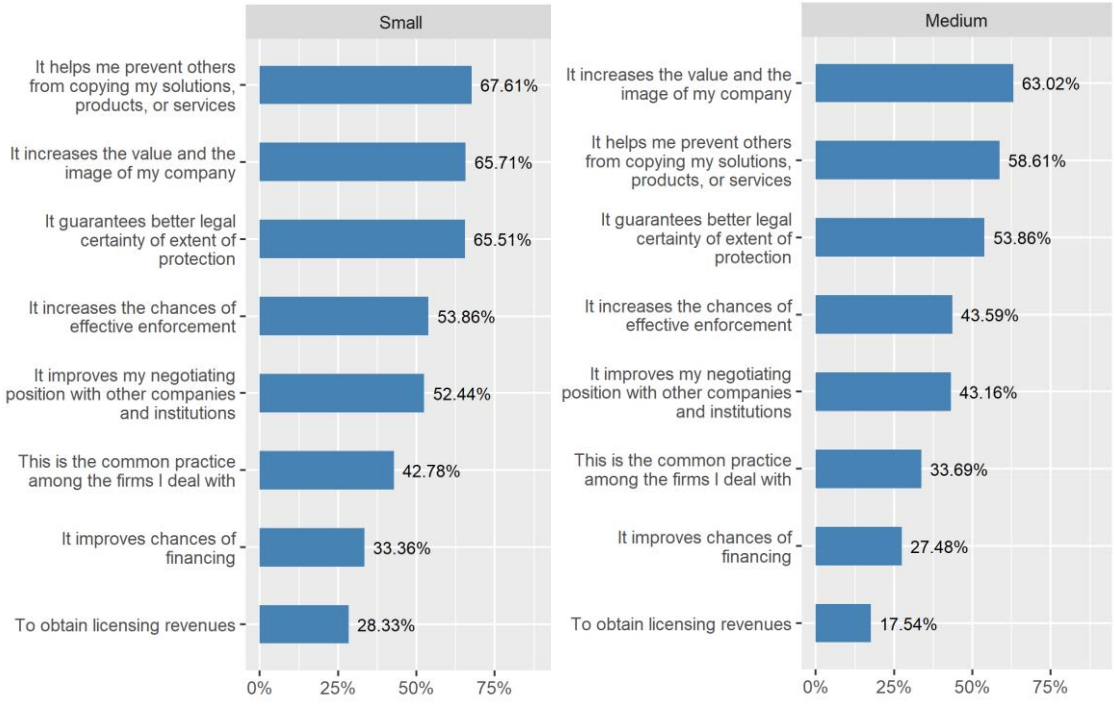
Note: N=3985 SMEs which confirmed having registered IPR and reported the type of innovation introduced: 904 SMEs had not introduced any innovation, 2257 reported innovation novel to their firm, 952 novel to the market and 167 novel to the world.
Based on Q3: "To the best of your knowledge, how novel were the improvements you introduced?" and Q12: "What are the positive impacts of registering IP? Please indicate all forms of positive impact you have experienced."
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Better protection of inventions topped the ranking of the positive outcomes of registering IPR for three out of four groups of SMEs, broken down by their degree of innovation (Figure 2.6). Improved reputation or image also made it to the top two positive outcomes in three of the four groups of firms. Among SMEs that implemented innovations new to the world, the second-most frequently reported outcome was the strengthening of business prospects. Notably, the more radical the innovations firms have implemented, the more likely they were to cite strengthening innovation as a positive outcome of registering IPR.

Motivations for registration

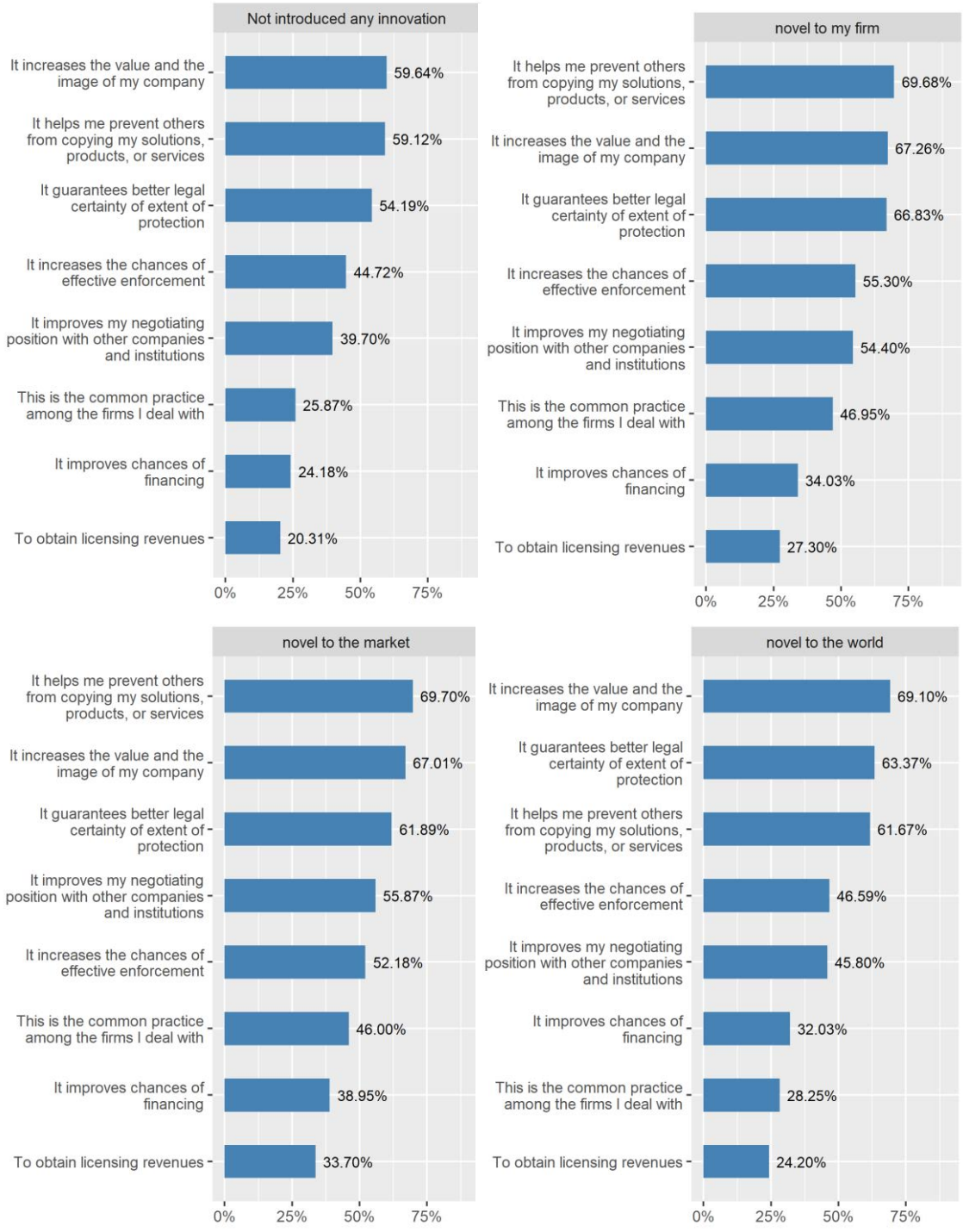
As Figure 2.7 shows, one of the most important reasons why SMEs decide to register IPR is to prevent other firms from copying their products or services. This motive is most frequently chosen by micro and small firms and ranks second among the medium-sized ones. It is worth noting that "it guarantees better legal certainty of extent of protection" is ranked among the top three for all size groups of SMEs. Over 88% of all IPR owners cited at least one of the "enforcement" options[7] among the reasons for registering IPR.

Figure 2.7 Reasons for registering IPR among SMEs, by firm size, 2022



Note: N=4278 SMEs which confirmed having registered IPR: 1050 micro, 2151 small and 1077 medium-sized firms. Based on Q8: "Why did your company register IPRs? Multiple answers possible" (those answering "other" were omitted).
Source: Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Figure 2.8. Reasons for registering IPR by SMEs, by degree of innovation, 2022



Note: N=3985 SMEs with registered IPR and reported on the type of innovation introduced; 2257 SMEs novel to their firm, 904 no innovation, 952- novel to the market and 167 novel to the world. Based on: Q8: "Why did your company register IPRs?" ("other" omitted) and Q3: "To the best of your knowledge, how novel were the improvements you introduced?" ("Do not know" omitted).
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Preventing the copying of products or services is also one of the prime motives for registering IPR regardless of firms' innovativeness, appearing among the top three reasons for all groups (Figure 2.8). It was the most frequently chosen option among firms that had introduced improvements either novel to them or to the world in the preceding three years. Surprisingly, improving the image of the company was the most popular reason for registering IPR for firms at opposite ends of the innovation scale: both firms that did not introduce any innovation and those that introduced improvements novel to the world.

3 Counterfeiting and the Impact on SMEs

SMEs and the threat of counterfeiting

The threat that counterfeiting poses to firms' performance is particularly dangerous to SMEs. In fact, for a number of reasons SMEs are more exposed to the risk of IPR abuse than large firms. Although the scale of production of SMEs is limited due to their small size, they often offer excellent quality products that are highly reputed. Consequently, they become very profitable targets for counterfeiters and other IPR infringers, as there are high potential returns from IPR infringements.

Large companies may be able to overcome the effects of IPR abuse, but SMEs face far greater potential impact, as they might not be able to secure effective protection and enforcement of their IPR. In particular, many small firms doing business overseas may not appreciate that their trademarks only provide protection in home markets and are not valid in other markets where the infringing goods are produced and shipped from.

In addition, SMEs often do not have sufficient resources and capacities to monitor this threat, and to develop effective countermeasures. As discussed below, in Chapter 4, as many as 40% of SMEs in the EU do not monitor their markets for potential infringement of their IPR, or they rely only on incidental information on infringement (for example feedback from customers or business partners). Consequently, the impact of counterfeiting on SMEs can be much more severe than for big companies with the experience and capacity to deal with the risks of such unfair and illegal practices (Box 3.1).

Finally, enforcement actions might also have be biased towards big companies, as they are often triggered by the applications for actions (AFAs). An AFA is the essential requirement in the EU for customs authorities to block IPR-infringing products at the border. The AFA is a free-of-charge mechanism used by companies that own an IP right in the EU. An AFA is filed electronically through national systems or through the IP Enforcement Portal.[8]

The use of AFAs is more common among large companies with the financial and human resources to track and fight against violations of their IP rights, and consequently customs' operations can be skewed towards products that infringe the IP of big companies. Structured interviews with industry experts also highlight that due to their limited resources, small and medium companies in the EU tend not to use AFAs, and, consequently, do not enforce their IP proactively.

Box 3.1. Examples of SMEs at risk

Two illustrative examples of SMEs that suffered from counterfeiting were provided during interviews with industry experts.

The first SME was an Italian family business, designing and producing in-house luxury footwear in small quantities in Italy. Given the high quality of products and attractive design, the company enjoyed a strong reputation and high demand for their products. Being a very small, family run company, it followed a traditional model of distribution, offering their collections in a selected number of bricks-and-mortar boutiques only.

At one point, the company decided to explore the possibility of opening an online store. A short analysis revealed the presence of an enormous number of footwear branded with the company logo in the on-line e-commerce environment, including the biggest retail platforms. An overwhelming majority of them were counterfeits.

According to the industry experts, the company could simply not counter this phenomenon. As the co-owner of the SME noted "we are a small, family-run business. We have no means to monitor the Internet. We have no anti-counterfeiting unit, nor even a legal department. Our strength and expertise are in shoemaking."

The second SME was a British company, Totseat, founded by Ms. Rachel Jones. As a mother of a toddler, Ms. Jones developed a portable fabric high chair for her baby in Edinburgh in 2004. Seeing the market potential, she decided to commercialize her idea and began collecting funds for her SME on crowdfunding platforms. The product, called Totseat, was soon available in 40 countries, and Ms. Jones' business was booming. Then she discovered counterfeit versions of Totseat were being made in China and sold through online platforms. Unfortunately, it turned out that trademark trolls, who learned about Ms. Jones' idea from crowdfunding platforms, pre-emptively registered the trademark "Totseat" in China, which made combatting counterfeiting very difficult. As Ms. Jones says, "Until somebody counterfeits your product, you have no idea about the fury that courses through your veins."

Analysing customs seizure data

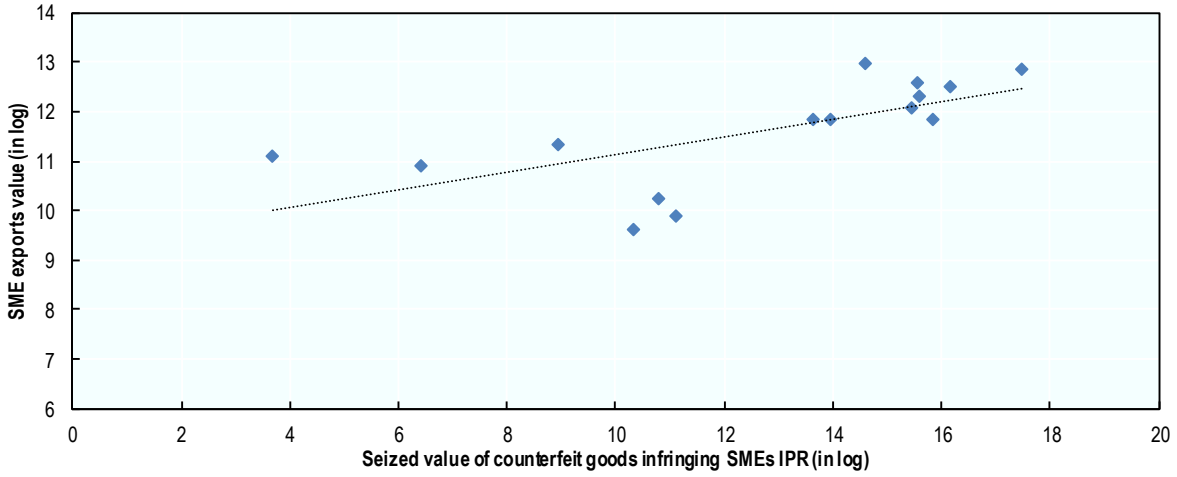
Global trade in counterfeit goods

This section presents the main characteristics of the trade in counterfeit goods infringing SMEs' IPR, based on the customs detentions data described in Chapter 1.

Criminals target SMEs and their IP rights irrespectively of the economy of location of the enterprise. Seizure data show that the overall economic intensity SMEs in an economy is positively correlated with infringements of IP rights SMEs based in that economy (Figure 3.1).

As discussed in Chapter 2, SMEs may find it difficult to protect their intellectual property, as they may lack both the financial and human resources to defend their rights. As a result, they are less keen to register IPRs and to engage in enforcement. In addition, in the case of the EU, customs seizures are often driven by an application for action (AFA) led by infringed companies. For all these reasons it is not surprising to find that, according to the WCO data, only about 10% of global customs seizures were related to IPR belonging to SMEs.

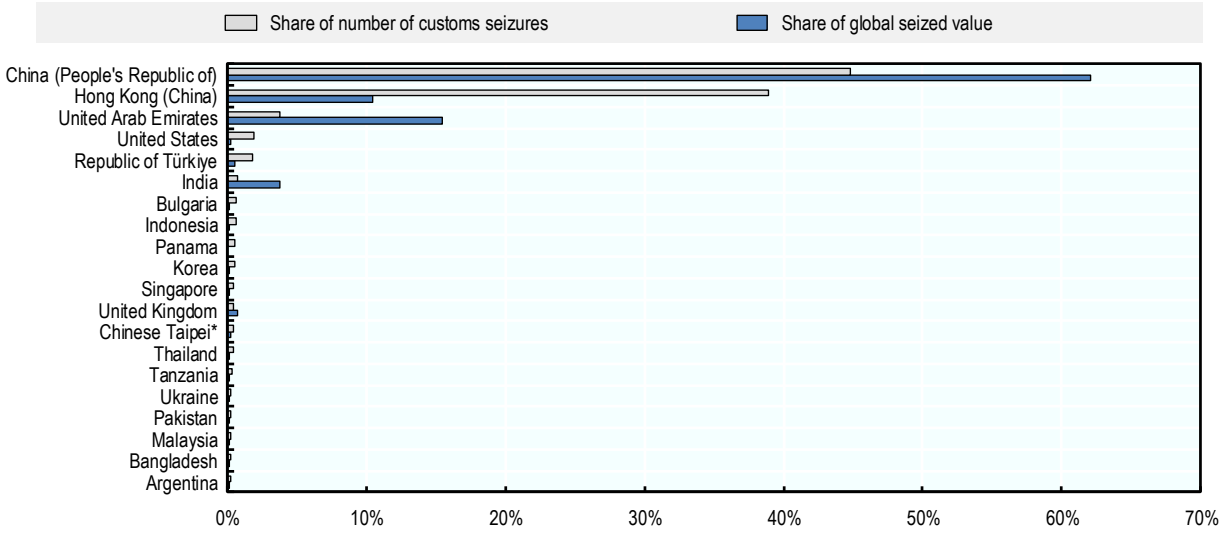
Figure 3.1. Relationship between the SMEs exports value and the seized value of counterfeit goods infringing SMEs IPR, 2019



Source: OECD/EUIPO global customs seizures database and OECD TEC (Trade by Enterprise Characteristics) database.

Figure 3.2 indicates that counterfeit goods infringing SMEs' IPR mostly originated from the People's Republic of China and Hong Kong (China). These two economies were also the main source of counterfeit goods at the global level (regardless of the size of the infringed company) as well as for counterfeit goods of large companies (Figure 3.3).

Figure 3.2. Global seizures of goods infringing SMEs' IPR, by provenance economy, 2011-19

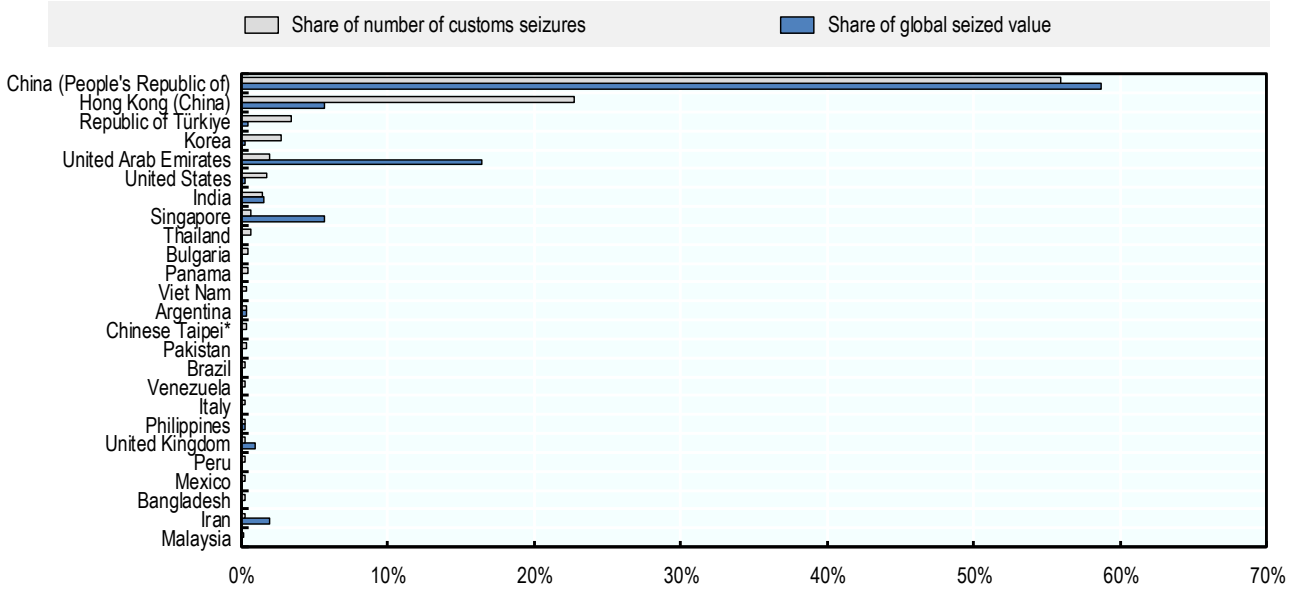


Source: OECD/EUIPO global customs seizures database.

In terms of global trade routes in fakes, there are some differences in the figures between SMEs and large companies. In the case of goods infringing SMEs' IPR, there is a greater concentration of seizures from China and Hong Kong (China): 84% of seizures were of goods from these two economies, compared to 79% in the case of large companies. It is also noticeable that the role played by important hubs of illicit

trade such as the Republic of Türkiye and Singapore is less pronounced in the case of goods infringing SMEs' IPR than for non-SMEs. It could suggest that criminals that supply fakes infringing SMEs' IPR do not pay so big attention to reducing the risk of customs seizures, as for fakes infringing large firms' IP. Consequently, counterfeiters tend to ship fake goods that infringe SMEs' IP directly, and do not abuse transit points for the purpose of reducing the risk of seizure at the final destination through for example documents' cleansing.

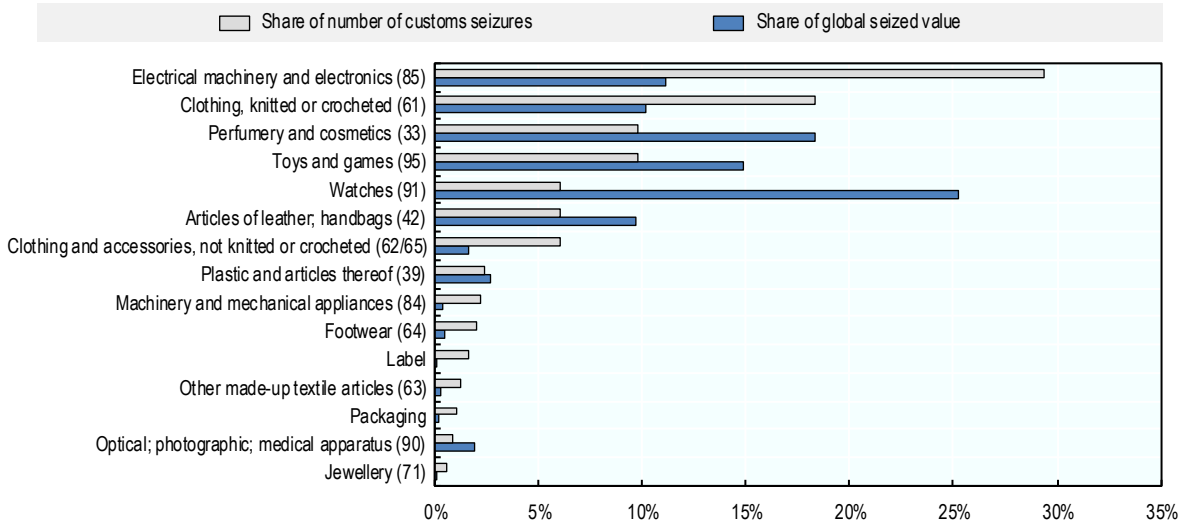
Figure 3.3. Global seizures of goods infringing large companies' IPR, by provenance economy, 2011-19



Source: OECD/EUIPO global customs seizures database.

Figure 3.4 shows that a wide range of counterfeit goods violating SMEs' IPR were seized during 2011-19, including electrical machinery and electronics (30% of global seizures of SMEs' IPR), clothing (18%), perfumery and cosmetics (10%), and toys and games (10%). This reflects the fact that 1) counterfeiters target all type of innovative goods; and 2) SMEs, as the predominant form of business in many countries, are present in many economic sectors.

Figure 3.4. Global seizures of goods infringing SMEs' IPR, by product category, 2011-19



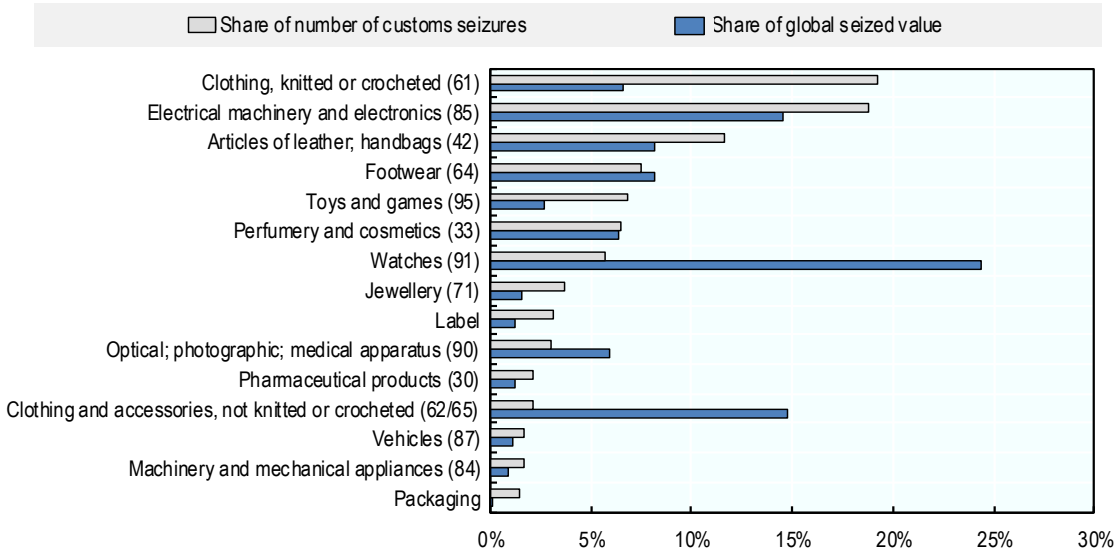
Source: OECD/EUIPO global customs seizures database.

Interviews with industry delegates highlight a vast range of SME-developed, innovative products impacted by counterfeiting. It includes common consumer goods, such as clothing, toys, and tools, as well as some specialized products, for example, fish food. Remarkably, many of these fakes are substandard and can pose significant health and safety threats to consumers. This is, in particular, the case for such counterfeit products as toys and cosmetics.

Interviews with industry experts also highlight a large volume of B2B products that infringe IPRs of SMEs. The range of such products is extensive and includes, for example, electrical components, construction tools, paints, chemicals, spare parts, or even pizza ovens. These goods are offered at attractive prices to intermediaries, who face intense market competition, and might have lower incentives to double-check if these products are genuine. As with consumer goods, fake B2B goods often pose serious health threats for final consumers due to their lower quality.

The product category figures differ for seizures related to larger companies' IPR (Figure 3.5). Seizures of fake electrical machinery and electronics make up a larger share of those affecting SMEs (29%) than for non-SMEs (19%). This also applies to fake perfumes and cosmetics (10% of seized goods in the context of infringement of SMEs' IPR versus 6% for non-SMEs) as well as fake toys and games (10% versus 7%).

Figure 3.5. Global seizures of goods infringing large companies' IPR, by product category, 2011-19

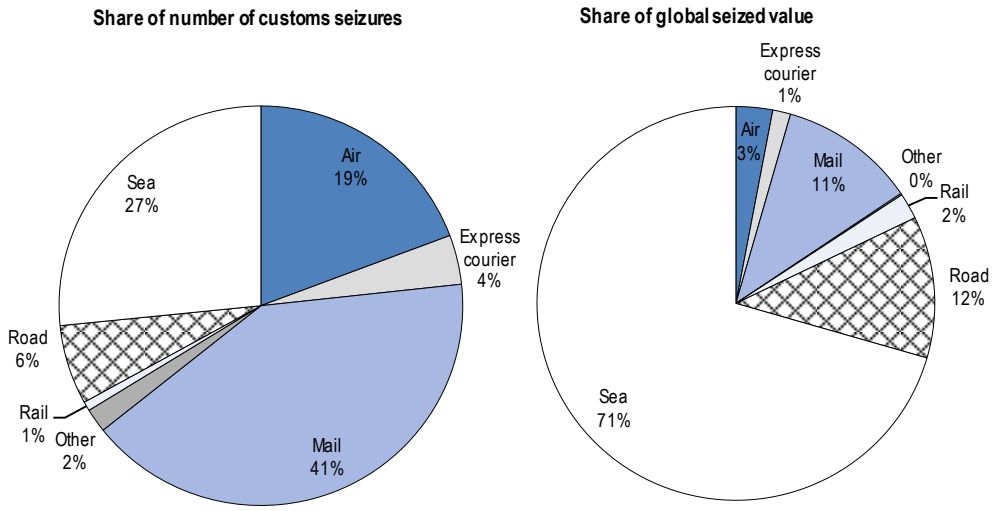


Source: OECD/EUIPO global customs seizures database.

The customs seizures dataset also provides insights into the methods counterfeiters used to export fake goods. As can be seen in Figure 3.6, counterfeit goods infringing SMEs' IPR were mostly shipped via mail (42%), sea (27%) and air (19%).

When comparing with trade in counterfeit goods infringing non-SMEs IPR, the structure of transport modes is quite similar. However, when comparing with seizures overall – regardless of whether the firm size can be identified from the data – sea and air are more often used to ship counterfeit goods that infringe SMEs' IPR than counterfeit goods more widely (OECD/EUIPO, 2021[10]). In addition, the share of IPR-infringing counterfeit goods of SMEs sent by mail and express courier is much lower than for the wider trade in counterfeit goods.

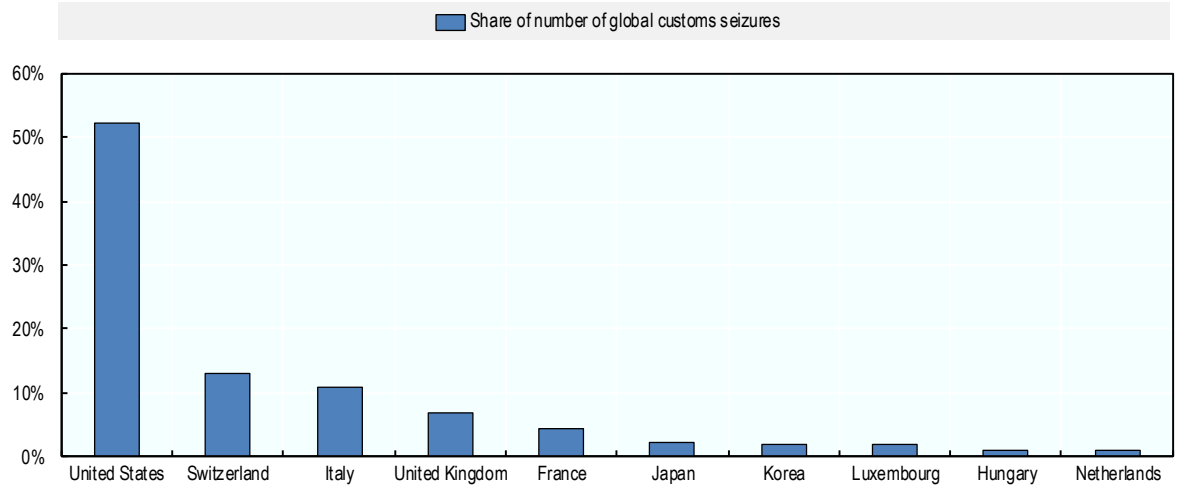
Figure 3.6. Global seizures of goods infringing SMEs' IPR, by conveyance method, 2011-19



Source: OECD/EUIPO global customs seizures database.

Figure 3.7 presents the ten countries most affected by the trade in counterfeit goods infringing their SMEs' IPR. During 2011-19, the United States was the country most affected, accounting for more than half of global seizures violating the IPR of SMEs, followed by Switzerland (13%), Italy (11%), the United Kingdom (7%) and France (4%).

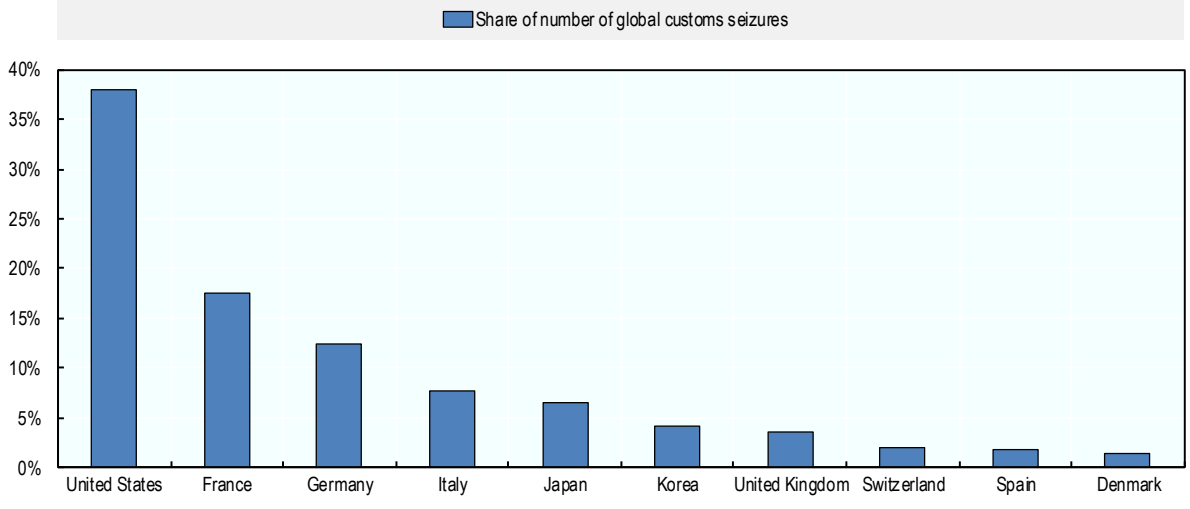
Figure 3.7. Global seizures of goods infringing SMEs' IPR, by country of IPR owner, 2011-19



Source: OECD/EUIPO global customs seizures database.

As Figure 3.8 shows, the United States was also the country most affected by infringement of non-SMEs' IPR but to a lesser extent, accounting for 38% of relevant global seizures. This means that US SMEs, as well as Swiss and British ones, are particularly at risk from the trade in counterfeit goods, as their relative weight was higher among seizures infringing SMEs' IPR than in seizures infringing non-SMEs' IPR.

Figure 3.8. Global seizures of goods infringing large companies' IPR, by country of IPR owner, 2011-19



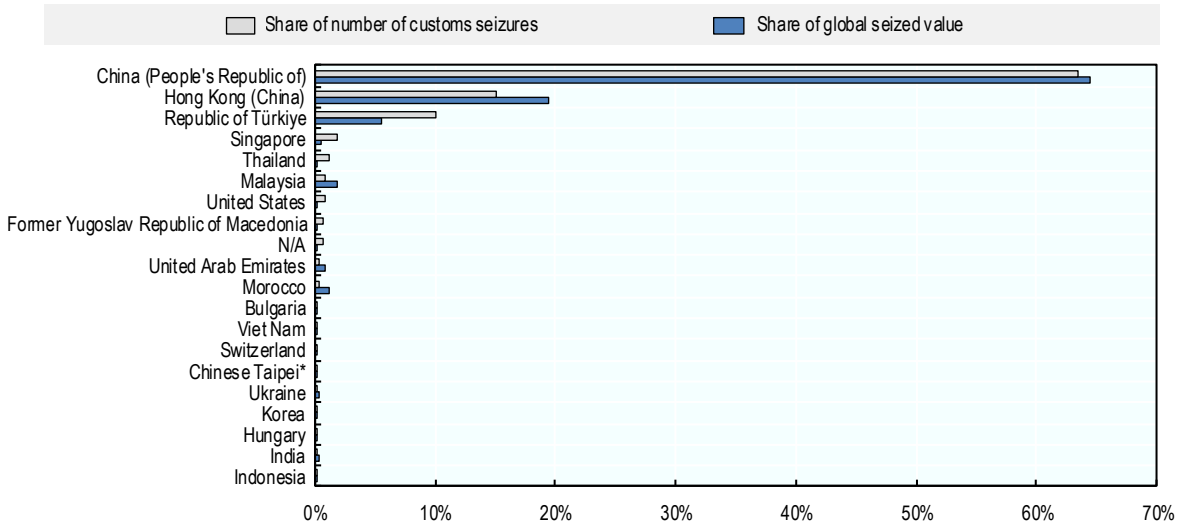
Source: OECD/EUIPO global customs seizures database.

Focus on the EU

This section presents the main characteristics of the trade in counterfeit goods infringing SMES' IPR based on the DG TAXUD data. The following analysis therefore refers to counterfeit goods seized by EU customs over the period 2011 to 2019.

Analysis of the origin of counterfeit goods entering the EU market and violating SMEs' IPR does not reveal many surprises (Figure 3.9). The three main sources of counterfeit goods infringing SMEs' IPR during 2011-19 were China (63%), Hong Kong (China) (15%) – the same top two as for global seizures (Figure 3.2) – and the Republic of Türkiye (10%). Together, these three economies accounted for almost 90% of goods infringing SMEs' IPR entering the EU market during that period. This observation also holds for seizures affecting larger companies.

Figure 3.9. EU seizures of goods infringing SMEs' IPR, by provenance economy, 2011-19

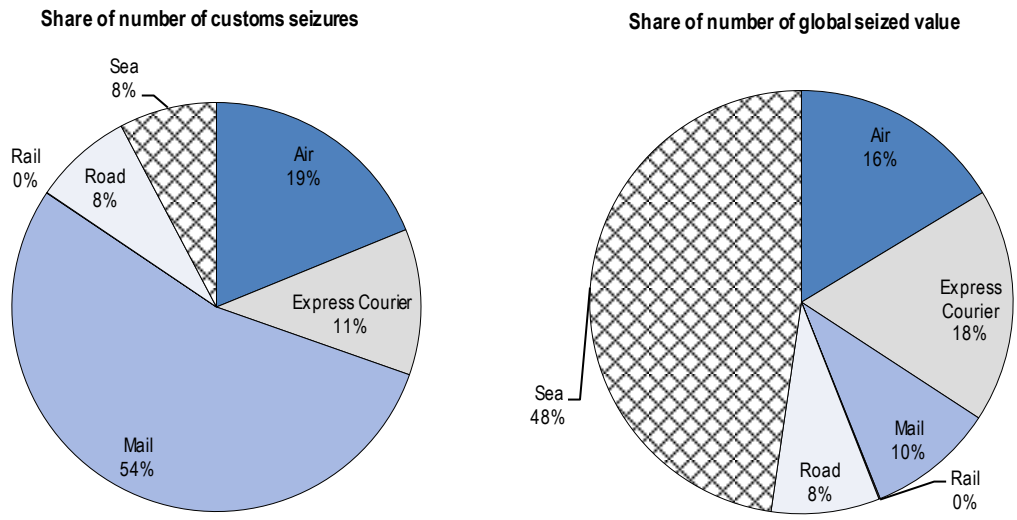


Source: OECD/EUIPO global customs seizures database.

As Figure 3.10 shows, mail is the preferred method used to ship fakes violating SMEs' IPR into the EU, representing more than half of these seizures. It is followed by air (19%) and express courier (11%).

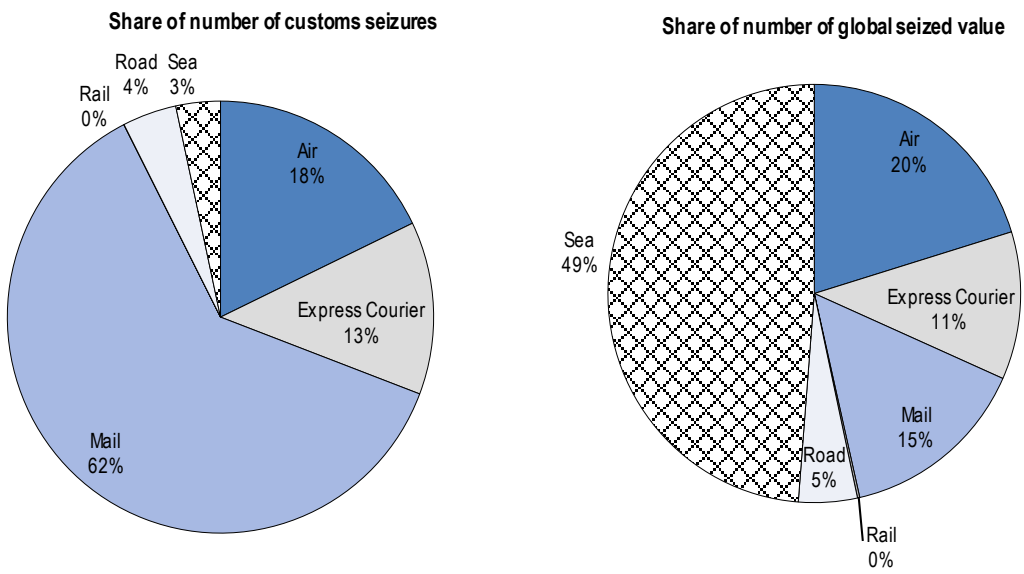
The important fact to be noted here is the relative importance of road and sea as transport modes for counterfeit goods infringing SMEs' IPR, in terms of the number of seizures. These accounted for 8% of such seizures each, whereas for counterfeit goods infringing non-SMEs' IPR, road transport made up just 4% of customs seizures and sea transport 3% (Figure 3.11).

Figure 3.10. EU seizures of goods infringing SMEs' IPR, by conveyance method, 2011-19



Source: OECD/EUIPO global customs seizures database.

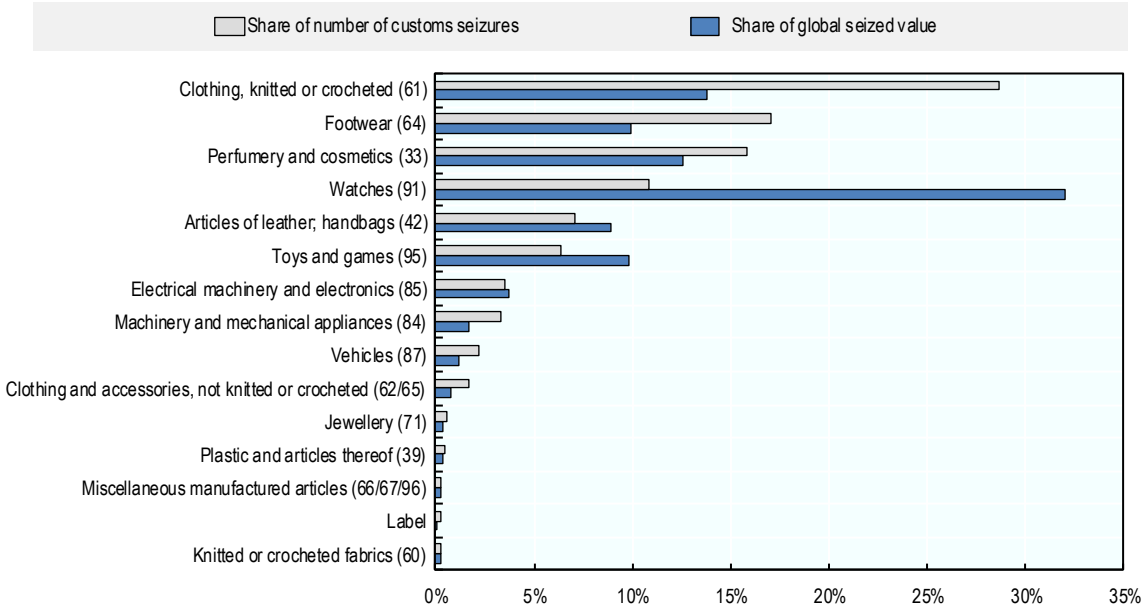
Figure 3.11. EU seizures of goods infringing large companies' IPR, by conveyance method, 2011-19



Source: OECD/EUIPO global customs seizures database.

Figure 3.12 shows that clothing, footwear, perfumery and cosmetics, and watches were the product categories most frequently seized by EU customs from 2011 to 2019. Overall, these four categories represented more than 70% of EU customs seizures relating to the violation of SMEs' IPR.

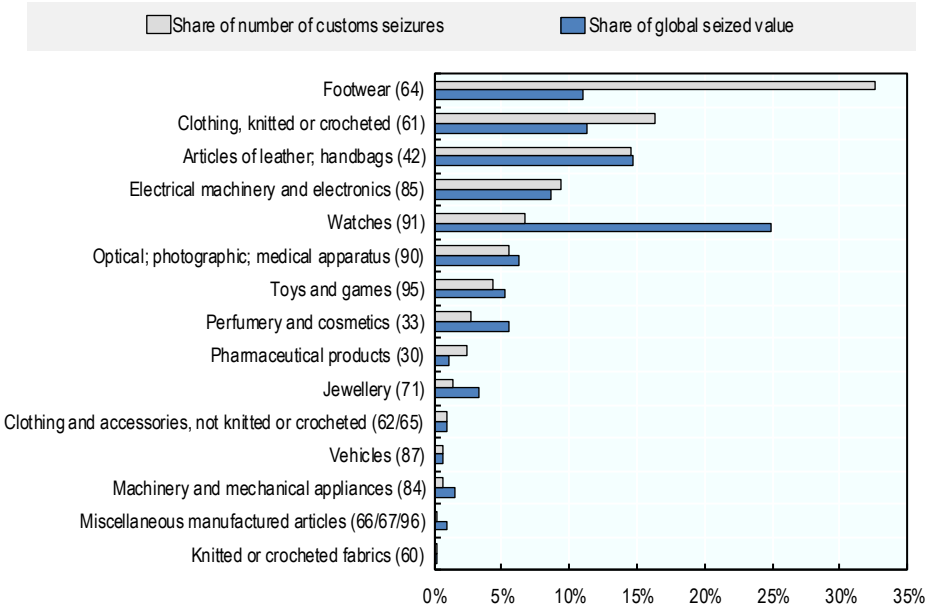
Figure 3.12. EU seizures of goods infringing SMEs' IPR, by product category, 2011-19



Source: OECD/EUIPO global customs seizures database.

Compared to seizures of goods infringing larger companies' IPR, there are some differences in the product categories (Figure 3.13). SMEs are relatively more exposed in some categories, including clothing (accounting for 29% of seizures, compared to 16% of those infringing non-SMEs' IPR), watches (11% versus 7%) and machinery (3% versus 1%). However, there are also product categories for which SMEs are less at risk, such as leather articles (7% versus 15%) and electronics (3% versus 9%). This reflects differences in the importance of SMEs in the different production sectors. For instance, the relatively significant role played by watches in the counterfeit goods trade affecting SMEs is partly linked to the strong presence of SMEs in the Swiss watchmaking industry.

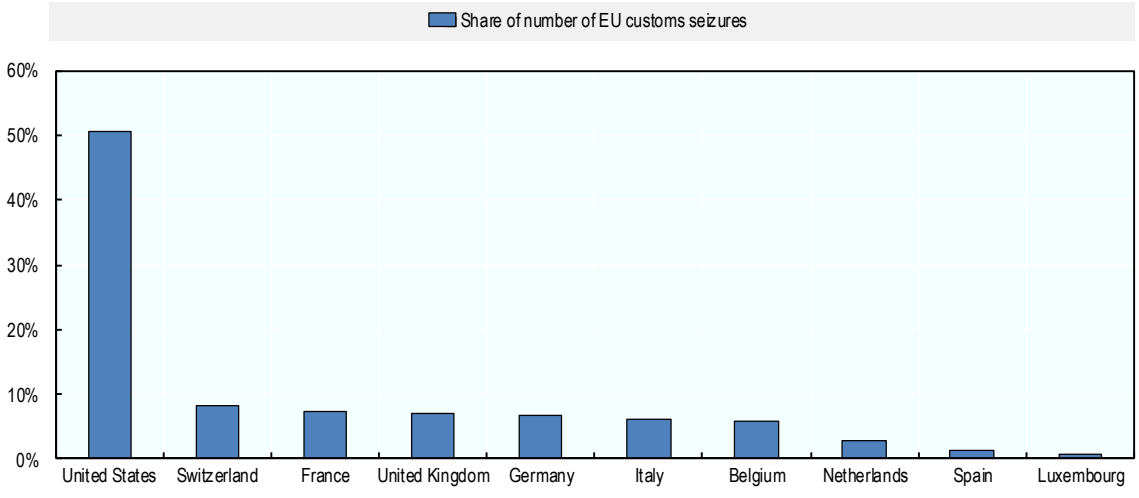
Figure 3.13. EU seizures of goods infringing large companies' IPR, by product category, 2011-19



Source: OECD/EUIPO global customs seizures database.

More than half of EU customs seizures were for goods infringing the IPR of SMEs from the United States during 2011-19 (Figure 3.14). After American SMEs, Swiss, French and British SMEs suffered the most from IPR violations over that period.

Figure 3.14. EU seizures of goods infringing SMEs' IPR, by country of IPR owner, 2011-19

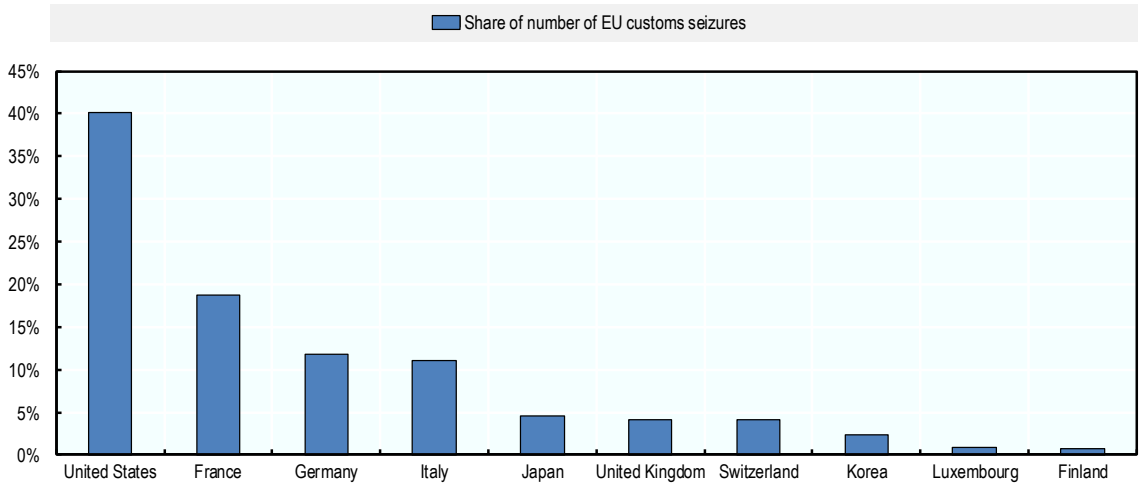


Source: OECD/EUIPO global customs seizures database.

In contrast, the countries most affected by seizures related to non-SMEs' IPR infringement were somewhat different (Figure 3.15). After the United States, France, Germany and Italy were the countries suffering

most. Comparing Figure 3.14 and Figure 3.15 indicates that US, Swiss and British SMEs were relatively more exposed to counterfeiting threats, with these countries accounting for a greater share of EU customs seizures related to the infringement of SMEs' IPR than those involving the infringement of non-SMEs IPR. This is similar to the pattern found in the global seizures data (Figure 3.7).

Figure 3.15. EU seizures of goods infringing large companies' IPR, by country of IPR owner, 2011-19



Source: OECD/EUIPO global customs seizures database.

The role of e-commerce in counterfeit trade

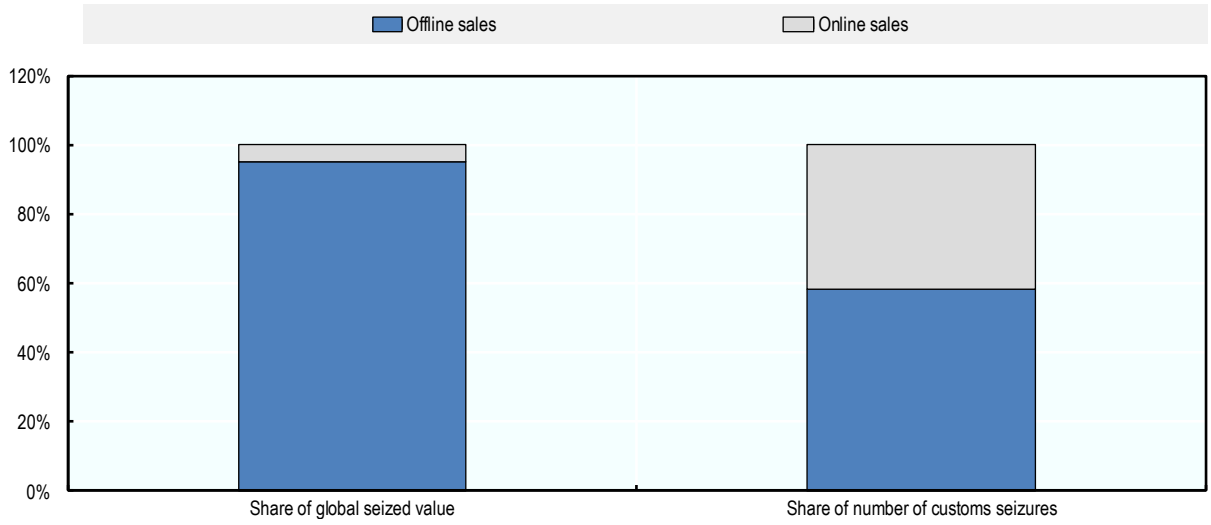
As noted in Chapter 2, the pandemic has accelerated the rise of e-commerce, including among SMEs, making online sales an increasingly significant part of international trade.

Interviews with the industry confirm the intensity of abuse of e-commerce as a channel of sales of counterfeits. It is reflected in a wide range of fakes that infringe IPRs of small firms, and that can be found on online platforms, as well as in a large volume of illicit listings.[9] A good example is Stylideas, a UK-based SME that offers innovative beauty care electrical appliances. Between January and October 2022, 2462 illicit listings of fakes infringing Stylideas' IP on 42 different platforms were identified. Most of them were removed on the grounds of intellectual property infringement. Another example is Icebreaker, an SME offering innovative products to make ice cubes – in the analysed period, a total of 4626 listings with fakes were identified. Last, for Buster and Punch, an innovative SME producing high-quality electrical appliances and hardware, a total volume of 4640 illicit listings was detected.

Regarding enforcement statistics, some seizures recorded by custom offices of the EU Member States also contain information about whether they were related to online sales of goods. The link with online sale of goods is determined by custom officers on a case-by-case basis, taking documentation accompanying the shipped goods into account. In practice the collection and provision of online sales data is uneven across EU Member States. In some countries, the majority of seizures are associated with online sales, whereas in other countries no seizures at all have been associated with online sales in the entire 2017-19 period.[10] To reduce the impact of this unevenness, the analysis that follows has not included data from countries which do not report any seizures related to online sales or where the share of detentions related to online sales is lower than 5%.

As Figure 3.16 shows, around half of the seizures of counterfeit products infringing the IPR of SMEs destined for the EU were purchased online between 2017 and 2019. However, despite representing 50% of customs seizures in this category, online sales only accounted for a small share (7%) of seizures by value.

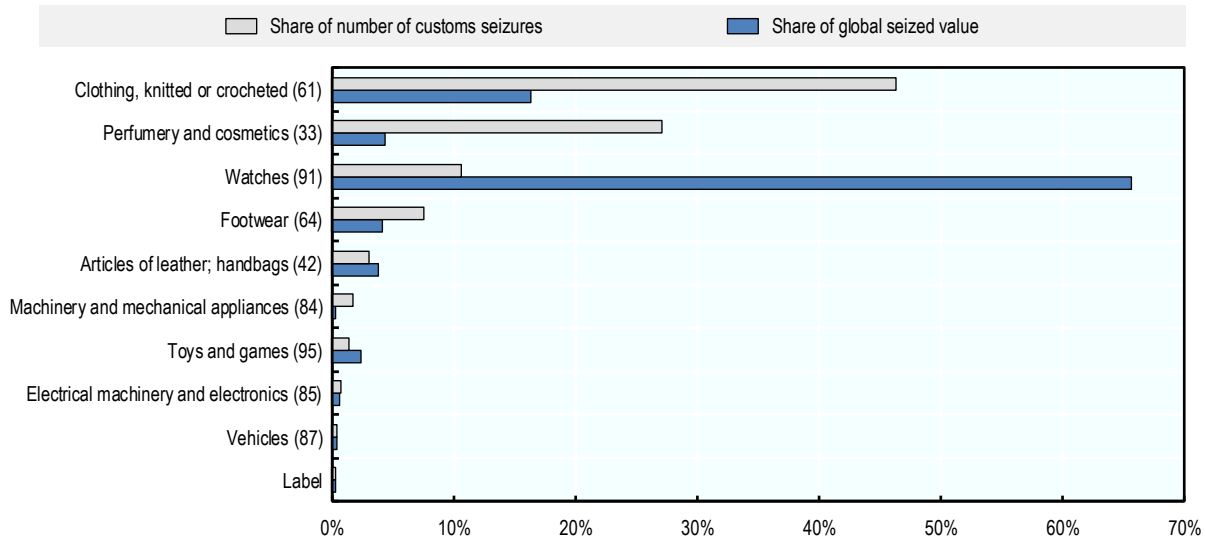
Figure 3.16. EU seizures of goods infringing SMEs' IPR, by mode of purchase, 2017-19



Source: OECD/EUIPO global customs seizures database.

From 2017 to 2019, clothing was the most frequently seized product category among goods infringing SMEs' IPR purchased on line (Figure 3.17). Clothing items accounted for 46% of such seizures, followed by cosmetics (27%), watches (11%) and footwear (8%).

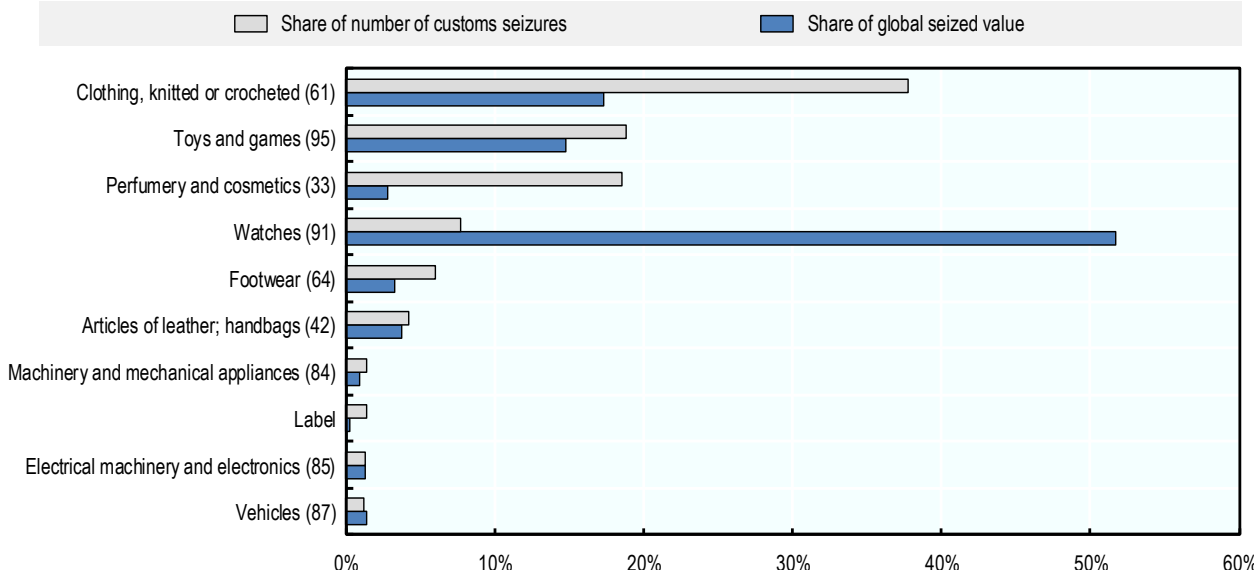
Figure 3.17. EU seizures of goods infringing SMEs' IPR purchased on line, by product category, 2017-19



Source: OECD/EUIPO global customs seizures database.

Overall, the main categories of products infringing the intellectual property of SMEs are quite similar whether the purchases were made on line or on site. However, for counterfeit toys and games, on-site sales were relatively more important than online sales (Figure 3.18). For such sales, toys and games were the second largest category of products, accounting for almost 20% of seizures of goods infringing SMEs' IPR.

Figure 3.18. EU seizures of goods infringing SMEs' IPR purchased off line, by product category, 2017-19

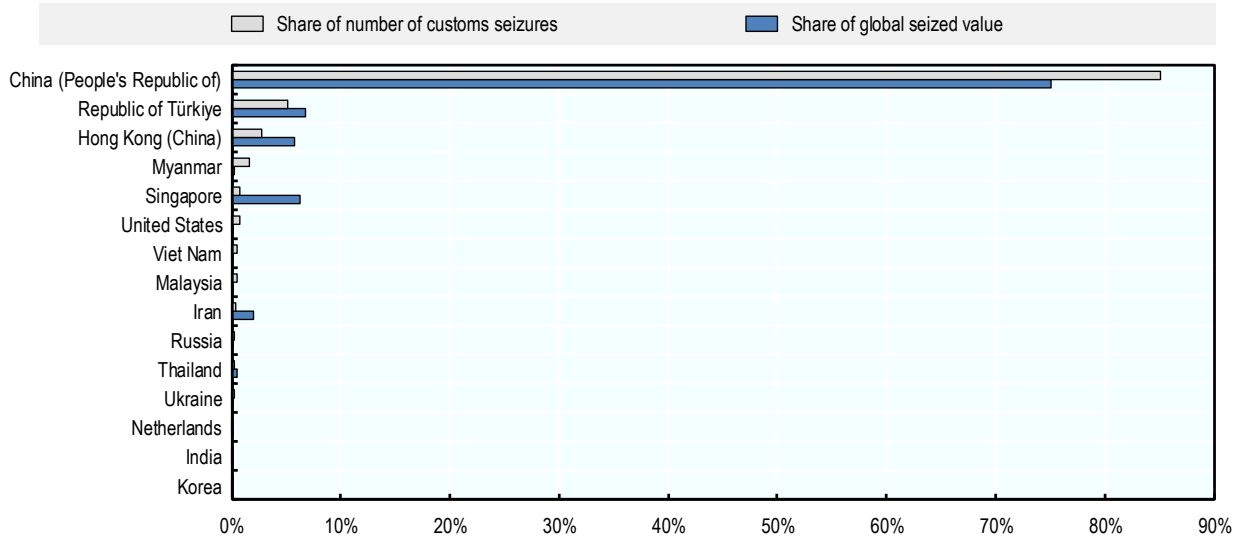


Source: OECD/EUIPO global customs seizures database

China was by far the most important source of products infringing SMEs' IPR for both online and on-site purchases, representing 85% of seizures related to online sales (Figure 3.19) and 51% of global seizures of offline sales (Figure 3.20). It was followed by the Republic of Türkiye and Hong Kong (China) in both cases (online and offline sales).

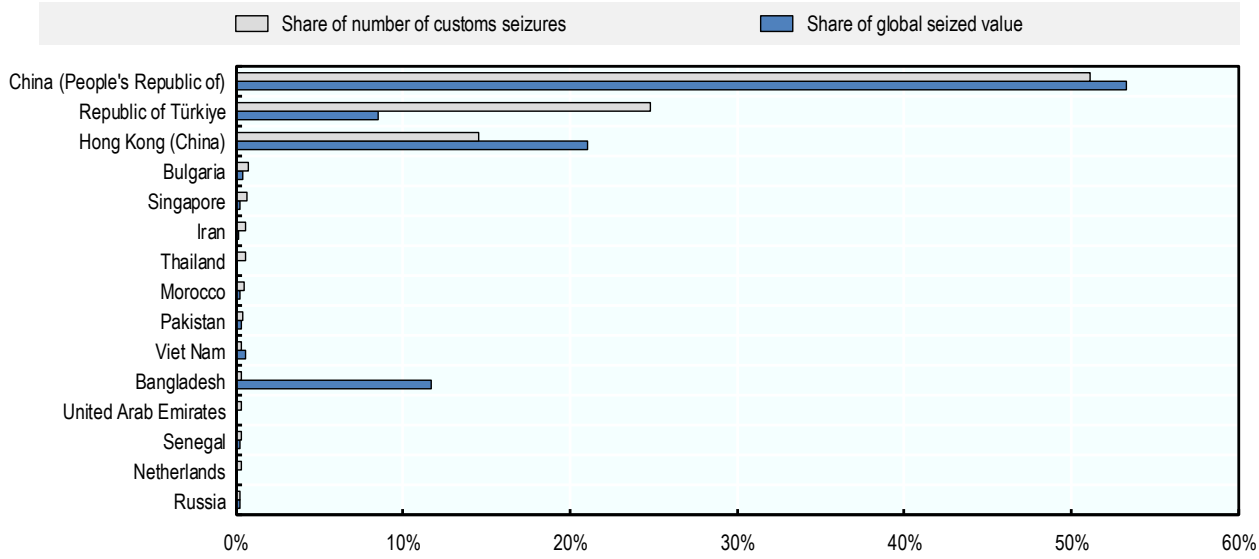
There are some unusual countries of origin in the case of fake goods purchased on line that infringe the IPR of SMEs, such as Myanmar and the United States. It is important to note, however, that their role is very limited, with Myanmar accounting for only 1.6% of such seizures and the United States just 0.7% (Figure 3.19).

Figure 3.19. EU seizures of goods infringing SMEs' IPR purchased on line, by provenance economy, 2017-19



Source: OECD/EUIPO global customs seizures database.

Figure 3.20. EU seizures of goods infringing SMEs' IPR purchased off line, by provenance economy, 2017-19

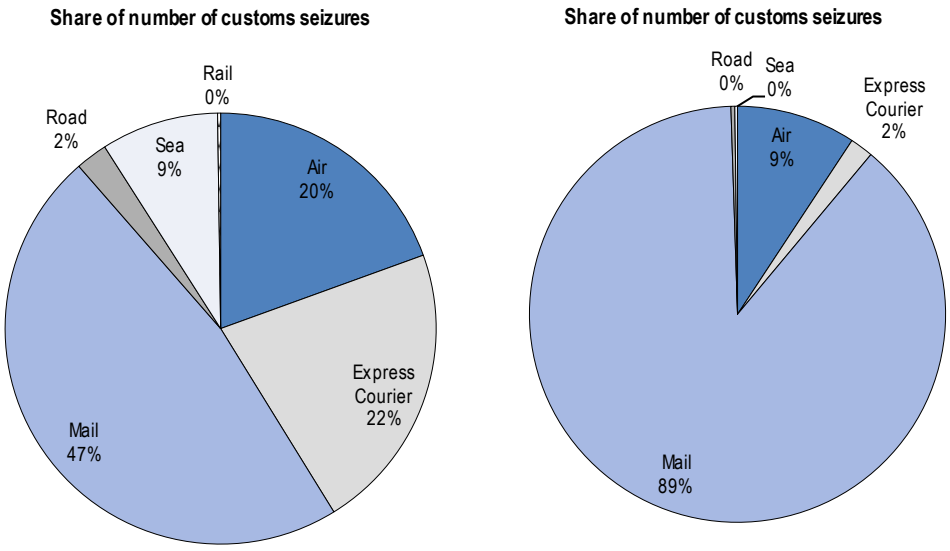


Source: OECD/EUIPO global customs seizures database.

The postal service is the dominant transport mode in terms of the number of seizures of fakes infringing SMEs' IPR, whether the counterfeit goods were bought on line or not (Figure 3.21). However, mail was the transport mode in almost 90% of seizures of online purchases, compared to 47% of seizures of offline ones. All other modes of transport play a far smaller role in the shipment of online sales of counterfeit goods than in the case of offline sales. Air was the second most important transport mode associated with online sales, at around 9% of seizures.

Figure 3.21. EU seizures of goods infringing SMEs' IPR, by conveyance method and mode of purchase, 2017-19

Left hand figure shows the data for offline purchases and right hand figure online purchases



Source: OECD/EUIPO global customs seizures database.

Counterfeiting and SMEs – specific patterns

There are several SME-specific patterns related to infringements of their IP rights. These patterns refer to the types of goods infringed, economies of origin, and the transport modes abused by infringers.

First, seizures of goods that infringe SME IPRs are less concentrated than for large companies, meaning that for an SME risk of counterfeiting depends less on the sector of activity. Counterfeits affect SMEs in all industries, focusing on fashion, watchmaking, and machinery.

Second, regarding provenance economies, China and Hong Kong (China) dominate on a much larger scale than the seizure statistics overall. In addition, the role played by important hubs of illicit trade, such as the Republic of Türkiye and Singapore, is less pronounced in the case of goods infringing SMEs' IPR than for non-SMEs.

Last, counterfeit goods infringing SMEs' IPR are frequently shipped directly from source economies to destination markets, then through transit economies. In addition, sea and air are more often used to send counterfeit goods that infringe SMEs' IPR; the abuse of mail and express courier is much lower than for the broader trade in counterfeit goods

Altogether, seizure statistics suggest counterfeiters perceive SMEs and their IP as lucrative targets. In addition, counterfeiters adopt relatively aggressive strategies and devote fewer efforts to reduce the risk of customs seizures, compared to fakes infringing large firms' IP. This could be related to limited measures SMEs take to monitor the markets for potential infringements and to limited resources devoted to countering this threat.

4 IPR Infringement and Enforcement among EU SMEs

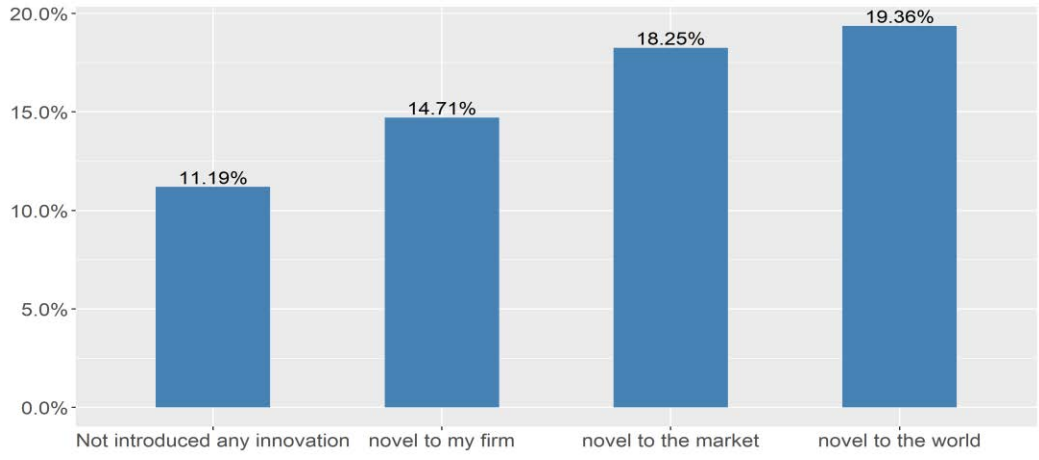
This chapter presents insights from additional analysis carried out for the EU only, based on the SME Scoreboard dataset from the EUIPO and the ORBIS database from Bureau van Dijk.

Rate and type of IPR infringed

Among SMEs which have registered intellectual property rights, 15% have experienced an infringement of any type of IPR they own. However, as Figure 4.1. shows, this infringement rate is related to their degree of innovation overall. IPR owners that had introduced improvements in the previous three years that were novel to the world reported an infringement rate that was over 8 percentage points higher (19.4%) than those that had not introduced any innovation (11.2%) over that period. The rate of infringement among the IPR owners that introduced improvements novel to their market is also markedly higher than among firms that did not introduce any innovation, or implemented changes that were only novel to their firm.

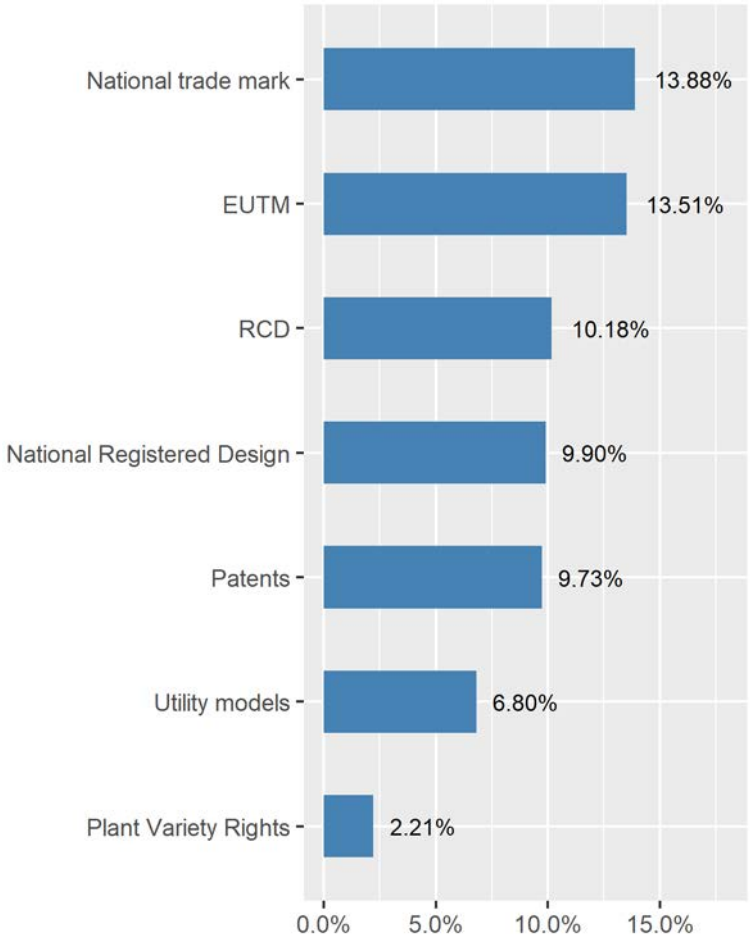
National and EU trademarks are the types of IPR most prone to infringement. As Figure 4.2 shows, over 13% of the SMEs owning either of these two types of trademarks suffered their infringement. The rate for registered designs is approximately 10%, whether registered community designs or national registered designs. The infringement rate reported by the owners of patents is only slightly lower than for national registered designs, at 9.7%. The lowest infringement rates are for utility models and plant variety rights, with the latter barely exceeding 2%.

Figure 4.1. Infringement rates among SME IPR owners, by degree of innovation, 2022



Note: N=3985 SMEs which confirmed having registered IPR and reported the type of innovation introduced in the previous three years, if any. Based on Q15: "Has your company ever suffered from IP infringements for any of the following IP types?"
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Figure 4.2 Infringement rates among SME IPR owners, by type of IPR, 2022



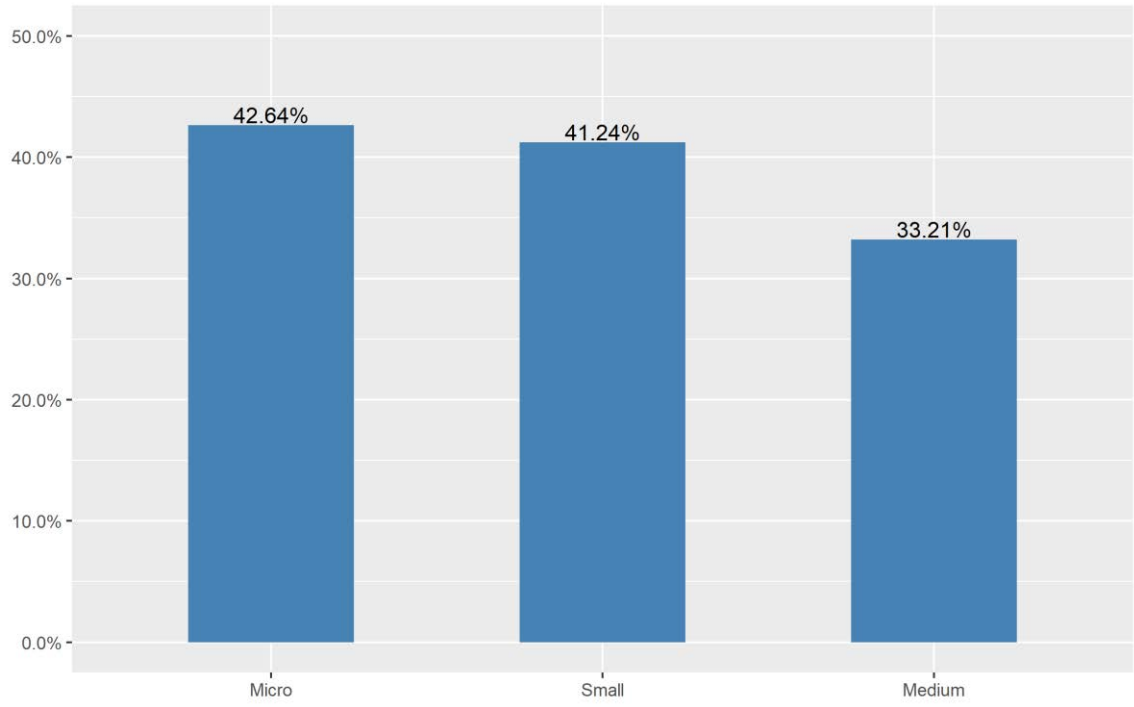
Note: N=4278 SMEs which confirmed having registered IPR. Based on Q15: "Has your company ever suffered from IP infringements for any of the following IP types?"
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Market monitoring for infringements

Market monitoring is an important first step in the discovery and remedy of potential infringements of registered IPRs. Nevertheless, as Figure 4.3. shows, as many as 40% of SMEs do not monitor their markets for potential infringement of their IPR, or rely only on incidental information on infringement such as customer feedback or information from business partners. The share of firms not employing more systematic monitoring measures is highest among micro firms and lowest among medium-sized firms, with a difference of over 9 percentage points. The share of SMEs not systematically monitoring their IPRs is highest among trade mark owners (40%) and plant variety rights owners (37%). It is somewhat lower among design owners (35%) and utility model and patent owners (34%). This suggests that firm size and resources, and to a lesser degree the type of IPR owned, may be important elements in decisions over whether to engage in systematic monitoring for potential IPR infringements.

Figure 4.3. Monitoring of IPR infringements among SMEs, by firm size, 2022

Percentage of SMEs with registered IPR which do not systematically monitor for infringements

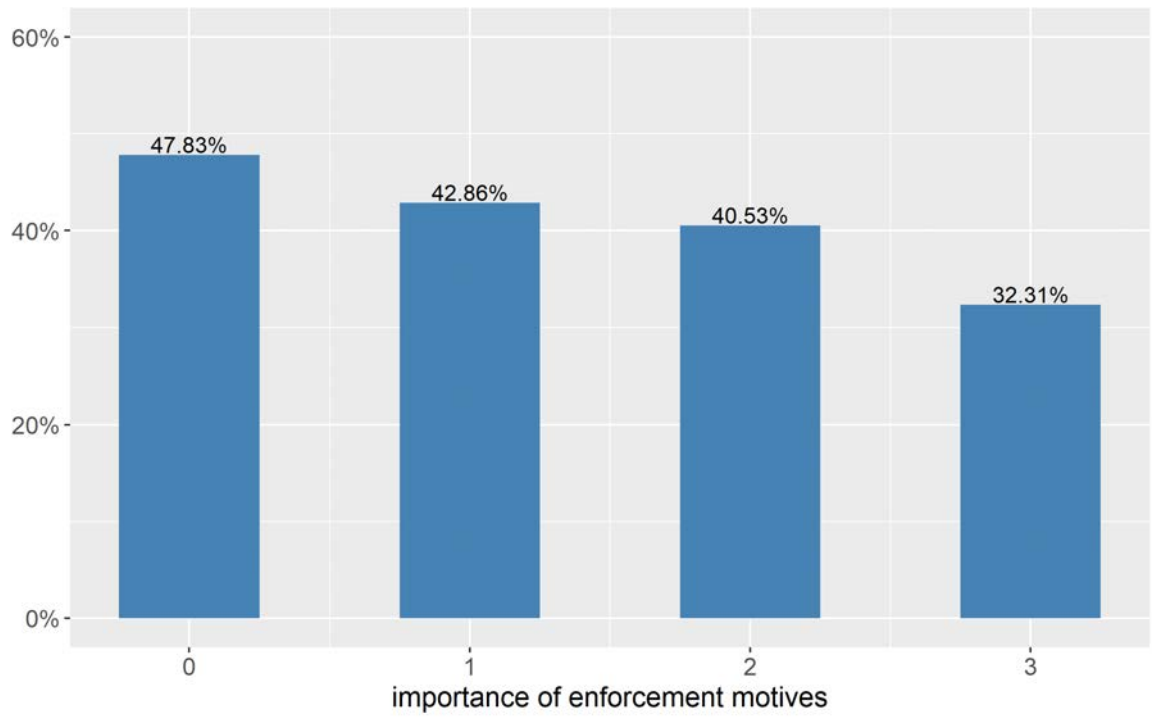


Note: N=4278 SMEs which confirmed having registered IPR. Based on Q14: "How does your company monitor the market for possible infringement of its IP?" Only firms that chose Option 3 (I rely on the incidental information I receive from my business partners), Option 4 (Customer feedback) or Option 7 (I do not monitor the market) were counted.
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Another potentially important factor behind firms deciding to systematically monitor for IPR infringements is whether they feel registration is useful in discouraging infringement or enforcing their rights. To assess the strength of such awareness as the motive behind IPR registration, we devised a quantitative measure based on Question 8 of the SME IPR survey. This measure considers the number of "enforcement" motives chosen by a firm among the reasons behind its registration of IPR. Three out of the nine possible options in response to this question were related to enforcement: Option 1 (it guarantees better legal certainty of extent of protection); Option 2 (it helps me prevent others from copying my solutions, products or services) and Option 3 (it increases the chances of effective enforcement). How many of these options a firm chose was translated directly into a score for the importance of enforcement motives, as shown on the x-axis of Figure 4.4.. As the figure shows, firms citing more enforcement motives for registering their IPR are less likely to rely on incidental market monitoring or not monitor potential infringements at all.

Figure 4.4. Monitoring of IPR infringements among SMEs, by importance placed on enforcement, 2022

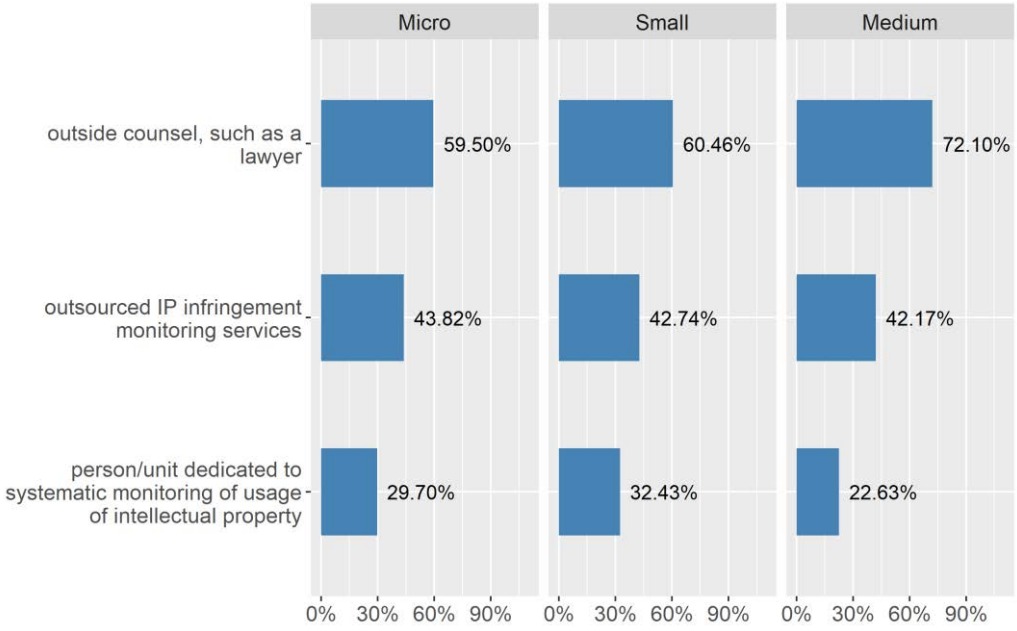
Percentage of SMEs with registered IPR which do not systematically monitor for infringements



Note: N=4278 SMEs which confirmed having registered IPR.
Based on Q14: "How does your company monitor the market for possible infringement of its IP?" Only firms that chose Option 3 (I rely on the incidental information I receive from my business partners), Option 4 (Customer feedback) or Option 7 (I do not monitor the market) were counted.
The x-axis measures a proxy for the importance of "enforcement" reasons behind the decision to register IPR registration, as explained in the text.
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

These analyses suggest that firm size and registration motivations are related to how firms monitor the market for potential infringement of their IPR. The larger the firm, or the more important enforcement motives were in deciding to register IPR, the more effort it will put into market monitoring for potential infringements, employing measures that go beyond simple incidental information from clients or business partners. However, the analysis did not find any strong relationship between the degree of novelty of firms' innovations and their infringement monitoring efforts.

Figure 4.5. Market monitoring methods among SMEs, by firm size, 2022

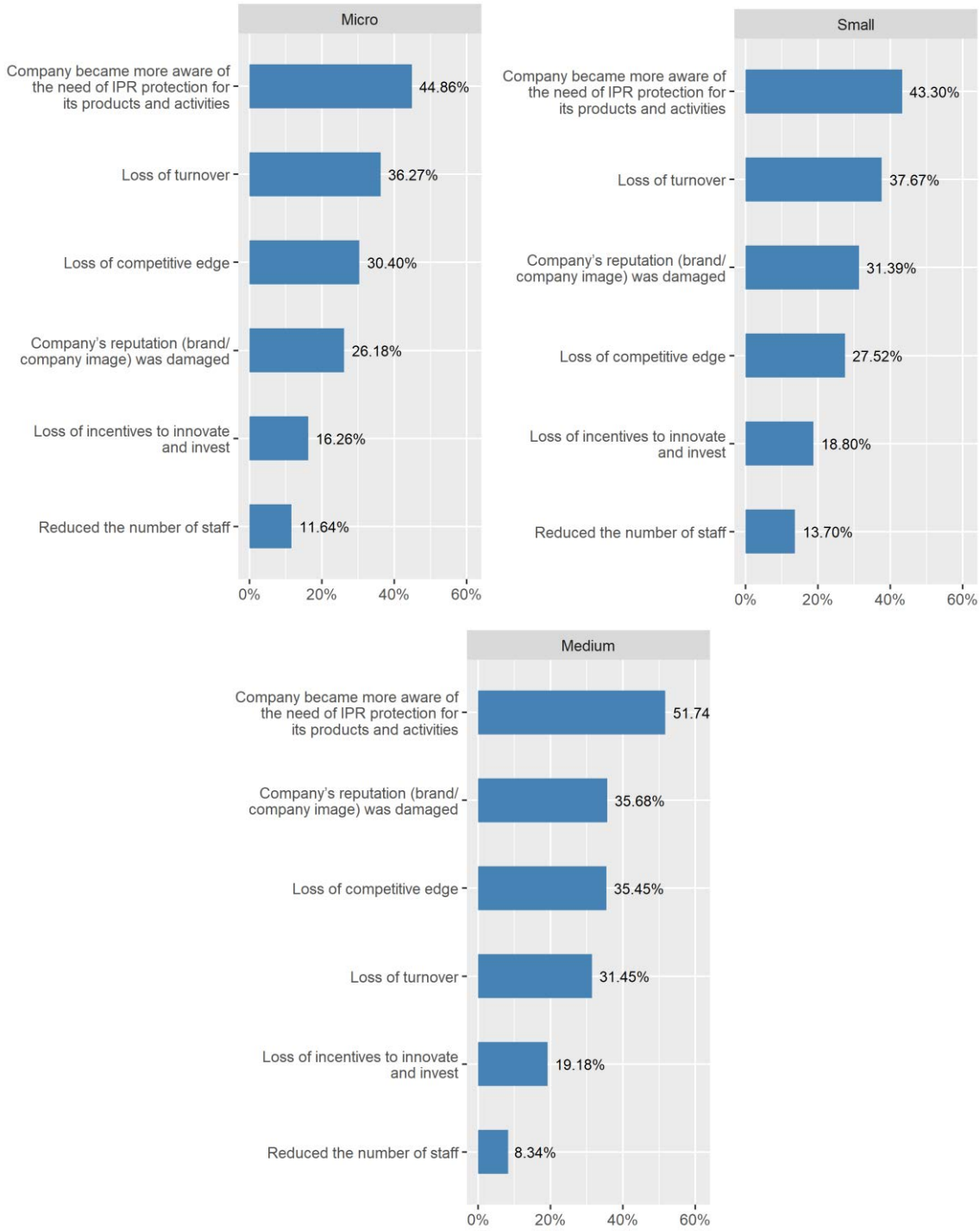


Note: N=2574 SMEs which confirmed having registered IPR and at least one of the options shown on the plot for Q14: "How does your company monitor the market for possible infringement of its IP?"
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

As Figure 4.5. shows, use of outside counsel is the commonest systematic measure employed to monitor markets for potential infringements. Approximately 60% of micro and small SMEs with registered IPR which do not rely only on incidental information for detecting IPR infringements reported using this option. Among medium-sized firms, the share exceeds 72%. Slightly over 40% of those SMEs employing systematic monitoring measures used outsourced infringement monitoring services, with little difference across size groups. The least popular way of monitoring the market for all sizes of firms is to appoint a dedicated employee. The ranking of monitoring measures looks the same among the owners of all types of IPRs, with only slight differences in the share of firms employing each measure.

Impact of infringement

Figure 4.6. Impact of IPR infringement on SMEs, by firm size, 2022



Note: N=1226 SMEs which confirmed having registered IPR, declared being a victim of infringement and provided information on the novelty of implemented innovation, if any.
Based on Q16: "How did the infringement affect your company? Please indicate all options that apply."
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

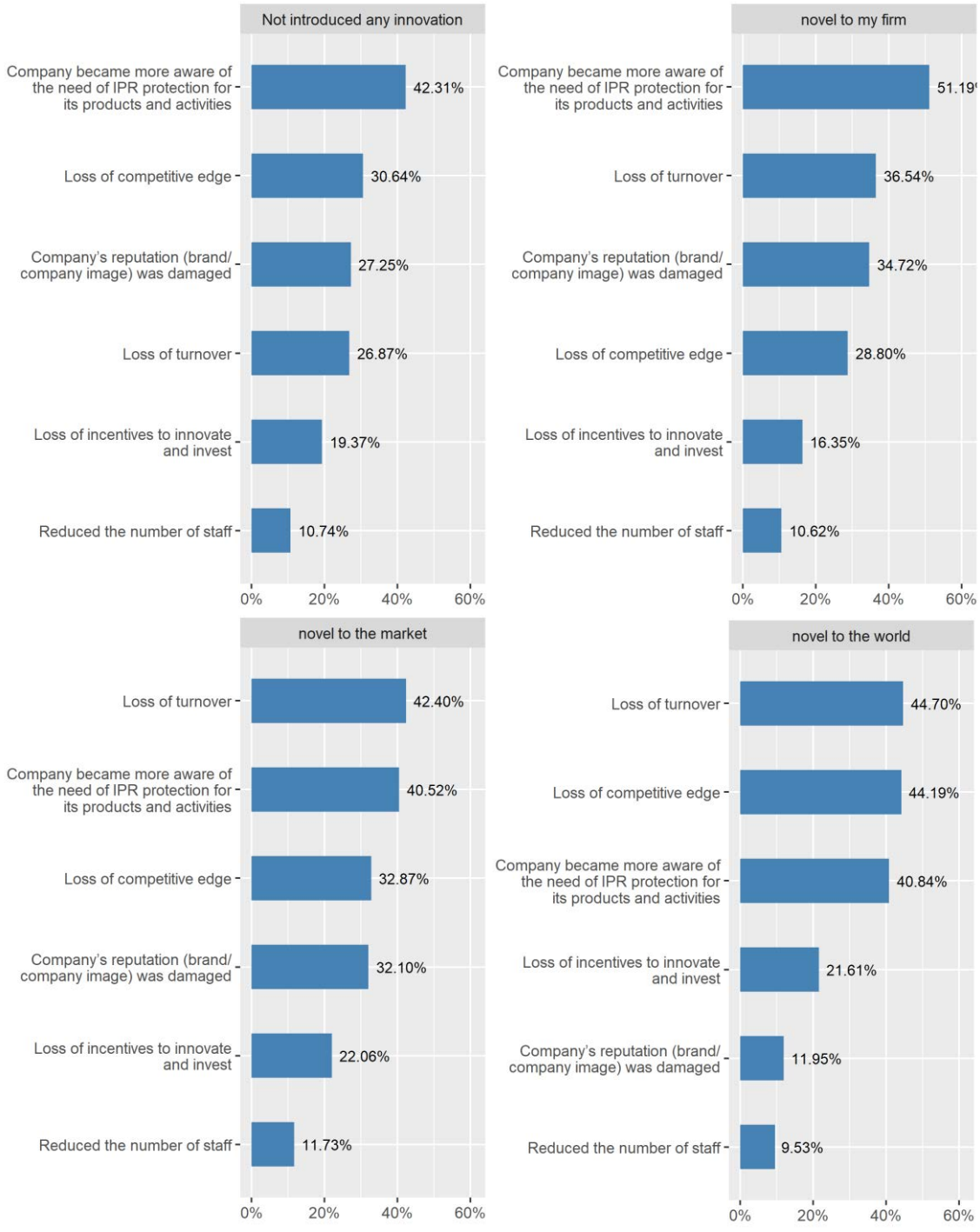
Among SMEs in all size classes, the dominant impact of infringement was greater awareness of the need to protect IPR Figure 4.6. Concerning understanding, many industry experts highlight aspects related to the low quality of counterfeits and the legal risks associated with health and safety threats posed by fakes to unaware consumers. Put differently, for many SMEs presence of counterfeits on the markets increases the probability of being sued by consumers who had problems with fakes and who have bought them believing they were genuine. For SMEs, such potential legal actions from unhappy consumers imply a risk of high costs and significant reputational damage.

The second most frequent impact among micro and small firms was the loss of turnover, but strikingly, this was only ranked fourth among medium-sized SMEs. Instead, these relatively larger firms were more likely to cite reputational damage and the loss of their competitive edge as the impact of IPR infringement.

The notion of the damaging impact of counterfeiting on the innovativeness and competitive edge of SMEs was highlighted in an interview by an owner of an innovative startup, who noted: “We would be much bigger and would have developed three other lines of products if we did not have to compete with all the copy products.”

As Figure 4.7. shows, the impact of IPR infringement varies more according to the innovativeness of the firm than its size. Among firms that did not introduce any recent improvements or only those novel to the firm, the dominant impact remains greater awareness. But for the firms that implemented more radical innovations, the main impact was loss of turnover. Over 40% of firms that introduced improvements at least novel to the market and suffered from IPR infringements indicated that they experienced the loss of turnover as a result. In addition, for the SMEs that introduced improvements that were new to the world, loss of competitive edge was the second most frequently reported outcome.

Figure 4.7. Impact of IPR infringement on SMEs, by degree of innovation, 2022



Note: N=1139 SMEs which confirmed having registered IPR, declared being a victim of infringement and provided information on the novelty of implemented innovation, if any.
Based on Q16: "How did the infringement affect your company? Please indicate all options that apply."
Source: EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

Enforcement of IPR

According to the survey results, direct negotiation with the infringer is the most popular way to enforce IPR for all SMEs, regardless of size. According to the industry delegates, this way works only in the case of patents infringements. In the case of counterfeiting, submitting takedown notices to Internet platforms is the most popular form of enforcement among micro and medium-sized firms.

Interestingly, when submitting takedown notices, SMEs often do not recall their registered trademark, but highlight potential infringement of other IPs such as copyrights or patents. For copyrights, it happens for example when an infringing offering uses an image on the packaging that was pirated from a genuine one, pirated instructions, or pirated advertising images. In such case for an SMEs relying on copyright infringements is more effective, since the protection of copyrights is global, while trademark protection is economy specific. In cases when an SME does not have its trademark registered in the economy of operation of a given on-line platform operates, the legal costs of action that relies on trademark infringement might be too long and risky, and the outcome uncertain. In such cases relying on copyright infringement promises a higher rate of success and take-down of the infringing listing from the platform.

Patents infringement are used to combat counterfeiting, in case of specific solutions provided by on-line platforms to combat IP infringement and attract innovative companies. Such programs (e.g. Amazon's Neutral Evaluation Program) provide innovative SMEs with a simplified path to fight sellers offering IP infringing products. In many cases these programs are more effective than other ways to enforce SMEs rights. In addition, successful enforcement of SMEs rights, strengthens its reputation with the on-line platform, as an innovative and trusted business.

However, approximately 11% of firms whose IPR has been infringed do not enforce their rights. When asked about most salient reasons for not doing so, the most frequent answer was that enforcement procedures are too lengthy (Figure 4.8). Over one-quarter of the firms that did not decide to enforce their rights explained that the legal fees would be too high, and slightly less than one-fifth indicated the barrier was high court fees. Structured interviews with industry experts re-confirm these findings. SMEs perceive the existing enforcement methods as very costly (in terms of time and resources) and uncertain. In addition, SMEs often lack appropriate information about ways their IP rights can be enforced.

Figure 4.8. Reasons for not fighting IPR infringements among SMEs, 2022

Note: N=135 SMEs which confirmed having registered IPR, declared being a victim of infringement and declared that they were not fighting the infringement.
Based on Q18: "Why did you decide not to fight the infringement? Please indicate all reasons why you would refrain from court procedures."
EUIPO (2022), *2022 Intellectual Property SME Scoreboard*, https://data.europa.eu/doi/10.2814/28513.

IPR infringement affecting SMEs. Focus on survival

So far the analysis has looked at existing SMEs that have suffered from counterfeiting but are still active on the market. However, as noted in interviews with industry delegates, in many cases counterfeiting pushes small companies out of the market, either by forcing the owners to close the business, or, in some cases, by leading to bankruptcy.

This section aims to quantitatively verify the hypothesis that counterfeiting can indeed push SMEs to quit the market. The main research question is therefore: *Are SMEs that suffered from infringement of their intellectual property rights less likely to survive than those that did not experience IPR infringement?*

The existing academic literature focuses much more on the survival of newly created firms than of mature ones. Nevertheless, it provides some interesting conjectures that may also inform investigation of relationship between IPR infringement and probability of survival of SMEs in general. (Geroski P., 1995[11]) hypothesised that small firms may face relatively low barriers to entry. Therefore, every year large numbers

of new firms are set up. However, a substantial number of those firms face high barriers of survival. The barriers are particularly high in first few years after entry and become somewhat lower once firms mature, however the risk of market failure is higher for SMEs than larger firms.

Smaller companies suffer from many disadvantages in comparison to larger firms. They are particularly constrained regarding access to finance (European Commission, 2013[12]). Limited access to finance means they cannot afford to offset risks by pursuing the sort of diversified strategies their better-endowed larger competitors can employ. Their relatively smaller scale of activity also means that SMEs can barely exploit any economies of scale. One of the most viable ways for ambitious SMEs to increase their odds of success is to experiment with new combinations of features (Stam E. et al., 2012[13]) distinguishing their offer from competitors, often by tailoring their products and services to specific market niches (Brüderl J. et al, 1992[14]); (Heirman A. and Clarysse B., 2006[15]). This strategy requires investment in market research and the development of new technologies or creation of new appealing designs. The temporary exclusivity offered by IPRs may be especially important for financially constrained SMEs to help them recover the resources invested in those innovating activities. As seen in Chapter 2, innovative SMEs are more likely to use IPR than their non-innovating counterparts. Intellectual property infringement may be an additional blow to an SME's market prospects that may tip the balance towards exit.

Data

To test this hypothesis, data from the 2016 edition of SME scoreboard have been merged with data from the Bureau Van Dijk Orbis dataset, reflecting the status in 2021 of firms that took part in the 2015 survey.[11].

Dependent variable

The dependent variable *survival* has been developed based on Orbis. This database contains information about the 2021 status of the firms, including firms that took part in 2015 survey. However, this variable can have 15 different values describing various active statuses and various reasons for ceasing activities. Therefore, the original Orbis variable has been converted to the dummy variable *survived,* which was given the value *true* for all firms whose last-known status was "active" and *false* for firms with other statuses such as "dissolved", "inactive", "bankrupt" or "in liquidation".

Main independent variable

The infringement variable has been calculated based on the answers to Question 6.2 (*Has your company ever suffered from infringement of your IP?)* and question 6.3 (*What kind of IP was infringed?*).

The infringement variable takes the value *true* for those firms that reported that a specific IPR had been infringed and that the firm had previously registered at least one IPR of the same type based on its answers to the Question 2.2 (*You previously indicated that your company has registered IPRs. Could you please indicate which type of IPR and how many of each you registered?*)

Control variables

Presumably, a firm has better chances of survival if it is linked to the larger and more experienced parent company. It may count not only on its know-how and expertise but also better access to financial resources in case of need.

Orbis includes information on whether a firm is independent or is part of a larger economic group. Based on this information a new variable has been created, taking the value of *true* where a firm's Orbis record has been associated with information about a domestic or global ultimate owner, and *false* where no such information has been associated with a firm's record.

The positive correlation between survival rates and both age and firm size has been documented in several studies (Audretsch D. B. and Mahmood T., 1995[16]); (Geroski P., 1995[11]). Therefore, our main control variables are the size and age of SMEs.

Size

This variable has been defined based on the most recent information about a firm's turnover available up to 2015 – the year when the survey took place. The values of this variable have been transformed logarithmically before plugging into models.

Age

Age was defined as difference in years between the year in which the firm was set up and 2015, the year when the survey took place.

Innovative

Innovative was a dummy variable, based on the answers to Question 1.2 (In the last 3 years, did your enterprise introduce new or significantly improved products, processes, organisational changes, marketing changes, other*)*. It takes the value *true* if the firm reported it had introduced any innovation and *false* if it did not.

NACE division

Based on Orbis information on the main economic activity of the company, this uses the two-digite European Classification of Economic Activities (NACE) division in which it operates.

Country of seat of a firm

Based on address information stored in Orbis.

Descriptive statistics

As Table 4.1 shows, the overall weighted survival rate within the entire sample of SMEs that took part in the 2016 SME Scoreboard is high, at 93.5%. However, there is a 13.5 percentage point difference in the survival rate between subsidiaries of other firms and fully independent firms, as shown in Figure 4.9.

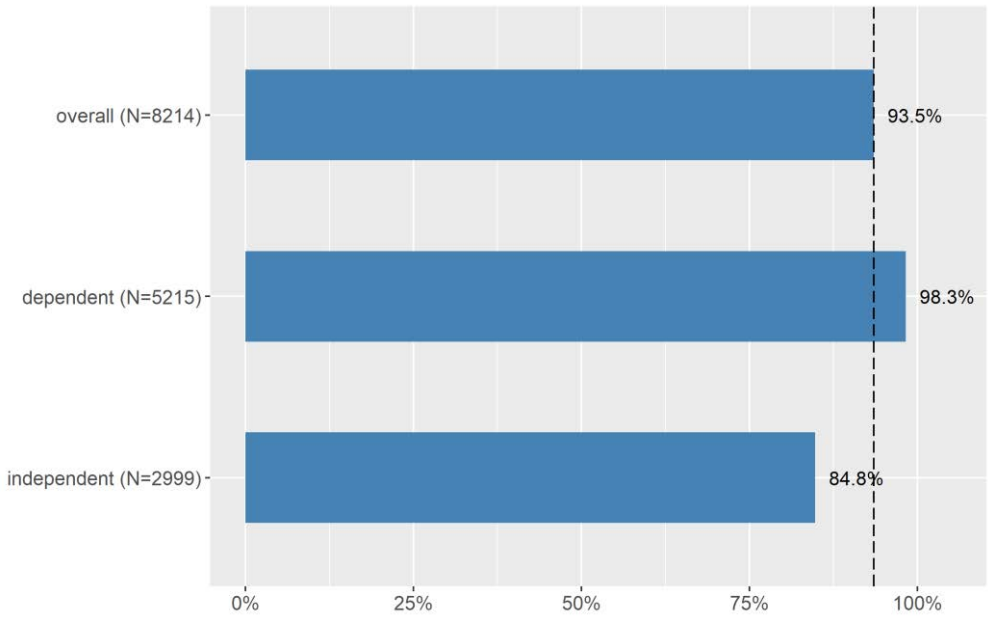
Table 4.1. Descriptive statistics

Variable	N	Mean	St. Dev.	Median
Suffered any IPR infringement	8214	0.096	0.295	0
Patent infringement	8214	0.024	0.154	0
Trade mark infringement	8214	0.066	0.248	0
Design infringement	8214	0.013	0.115	0
Survived	8214	0.937	0.243	1
Dependent firm	8214	0.635	0.481	1
Innovative	8214	0.619	0.486	1
Age	7996	21.2	16.2	18
Size (last turnover in the Euro)	6868	5985	22710	2048

Table 4.2. Variables correlation matrix

	any infr	pat infr	tm infr	des infr	survived	dep	inno	age	log size
Any IPR infringement	1								
Patent infringement	0.48	1							
Trade mark infringement	0.81	0.08	1						
Design infringement	0.35	0.11	0.15	1					
Survived	0	0	-0.01	0.01	1				
Dependent	0.06	0.05	0.04	0.01	0.26	1			
Innovative	0.14	0.11	0.08	0.05	0.03	0.06	1		
Age	0.07	0.05	0.04	0.05	0.02	0.04	-0.04	1	
Size (log)	0.11	0.06	0.09	0.05	0.07	0.24	0.07	0.26	1

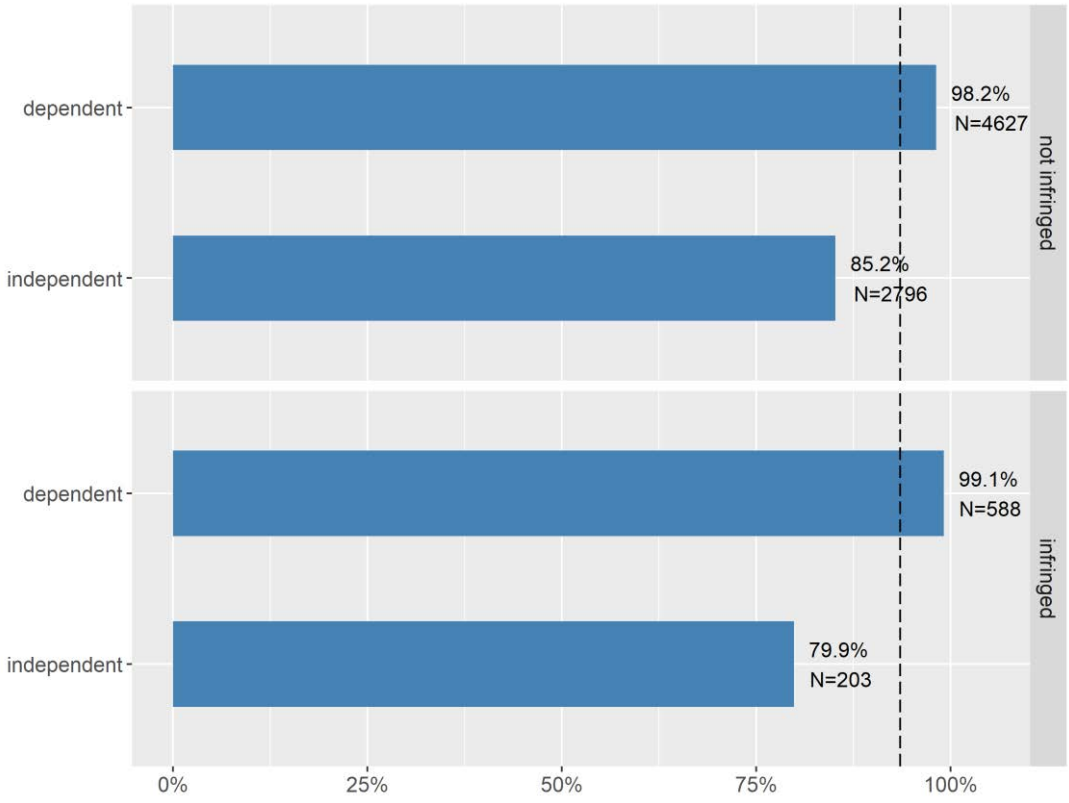
Figure 4.9. Survival rates within the sample



Note: Share of firms with 'active' status in 2021 among the firms that took part in the 2015 SME scoreboard survey. Dashed line set at the mean for entire sample. Shares are calculated as weighted averages taking original weights from SME Scoreboard

Figure 4.10 shows that this large difference in survival rates extends to sub-groups identified by their IPR infringement status. However, while the difference in the survival rate between dependent and independent SMEs that did not suffer from infringement amounts to 13 percentage points, this difference rises to over 19 percentage points among the firms that did suffer infringement. It is also worth noting that the independent SMEs that suffered from IPR infringement have an over 5 percentage-point lower survival rate than their counterparts that did not.

Figure 4.10. Survival rates among infringed and non-infringed firms

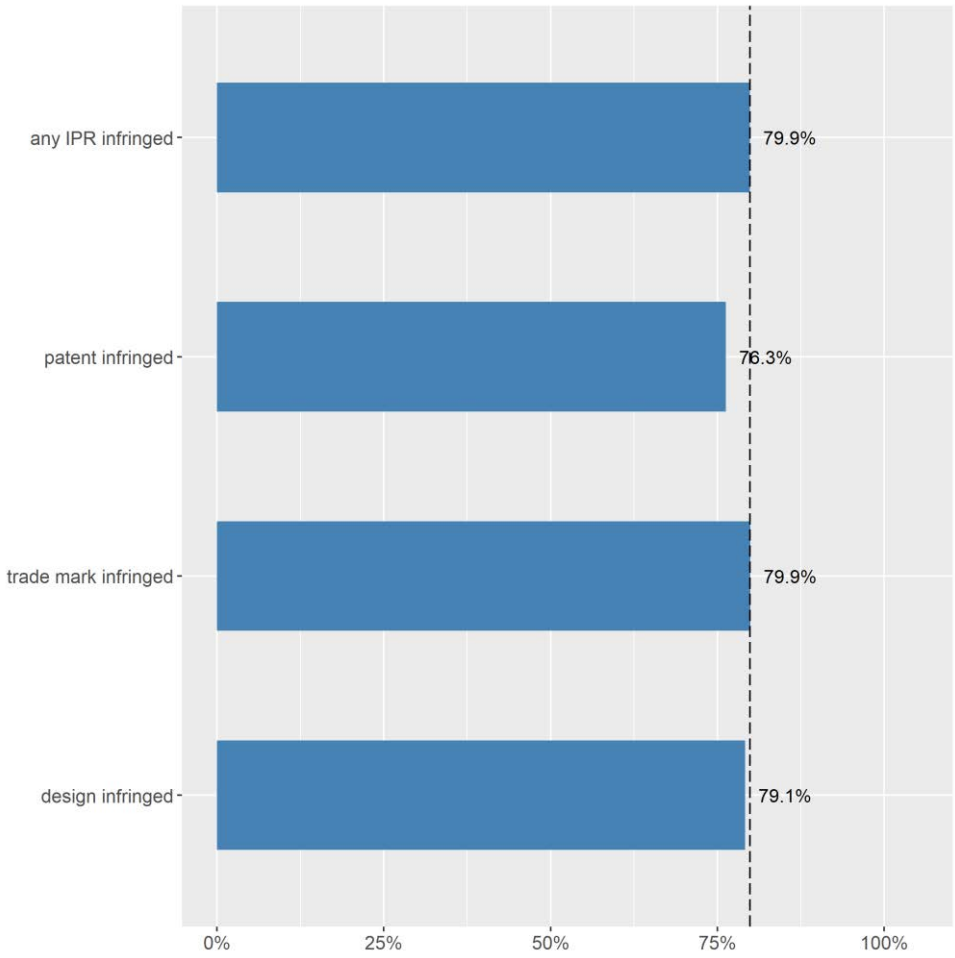


Note: Share of firms with "active" status in 2021 among the firms that took part in the 2016 SME scoreboard. Infringed status established based on any IPR infringement. The dashed line is the mean for the entire sample. Shares are calculated as weighted averages taking original weights from SME Scoreboard

Focusing on independent SMEs that suffered from IPR infringement, Figure 4.11 leads to the conclusion that the biggest reduction in the survival rate is associated with firms that suffered from patent infringement. Their survival rate is over 3.5 percentage points lower than that of independent SMEs that suffered from trademark infringement and almost 9 percentage points lower than that of independent SMEs that did not experience any infringement. For SMEs that own patents, the patented invention usually denotes significant investment and risk associated with bringing new technology to the market, and failure to protect such an invention can be particularly costly.

Finally, the survival rate of independent SMEs that suffered from design infringement is almost 1 percentage point lower than SMEs that suffered from trademark infringement, and slightly over 6 percentage points lower than independent SMEs that had not suffered from IPR infringement.

Figure 4.11. Survival rates within independent SMEs with infringed IPR



Note: Share of firms with "active" status in 2021 among the firms that took part in the 2016 SME Scoreboard. The dashed line is the survival rate for the entire group of independent SMEs with any IPR infringement. Shares are calculated as weighted averages taking the original weights from the SME Scoreboard.

Figure 4.12. Sectorial infringement and exit statistics for patent owners

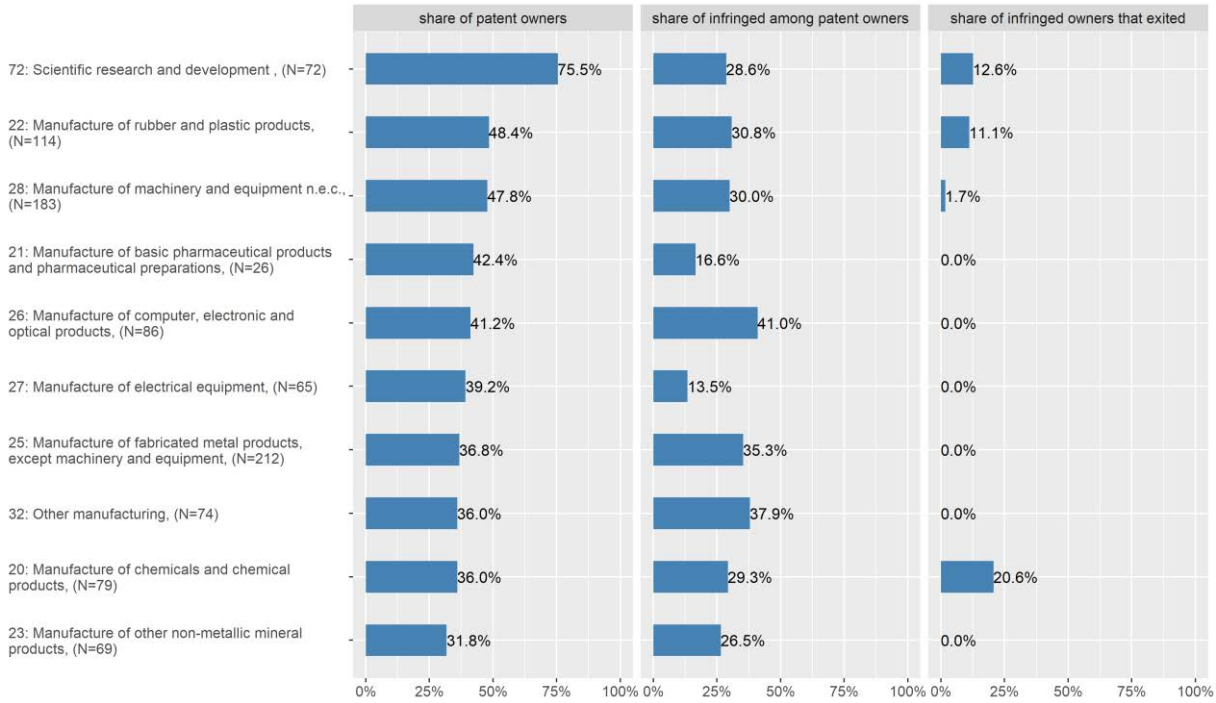
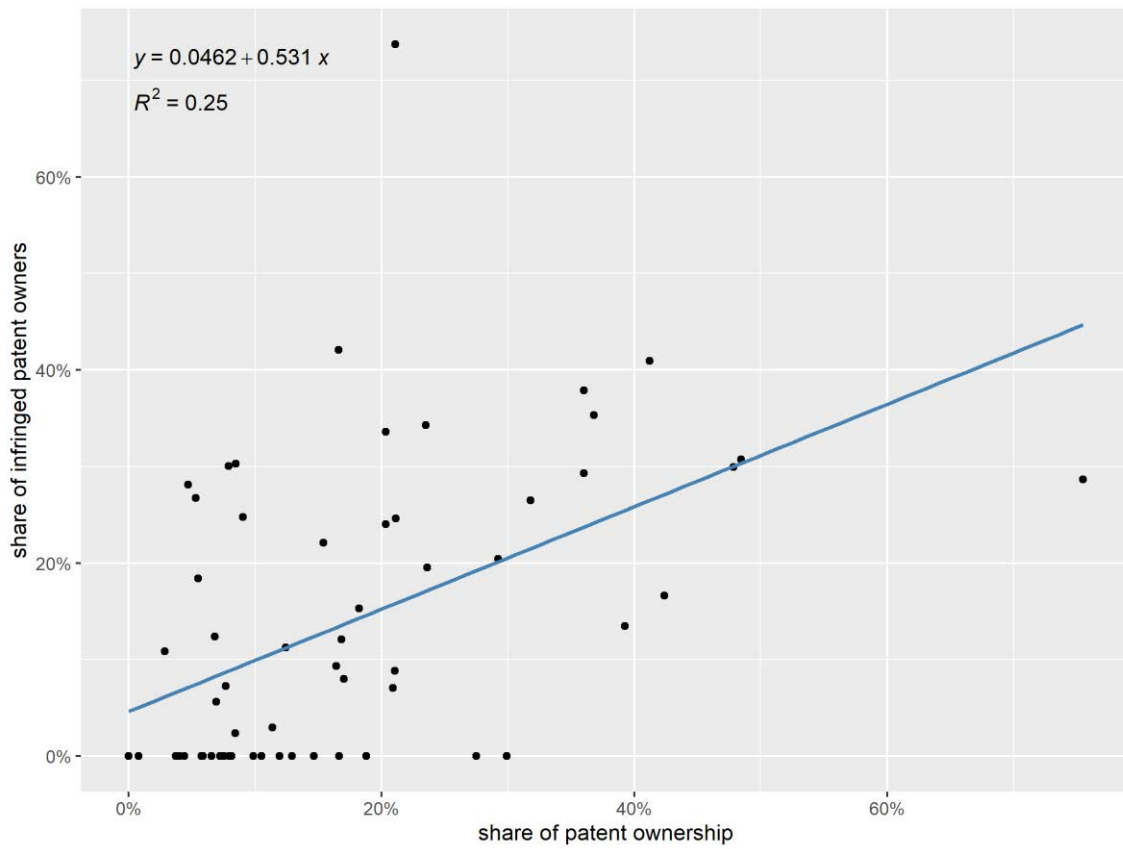


Figure 4.12 presents the statistics for the 10 NACE divisions with the highest shares of patent ownership in the sample (among divisions with at least 20 firms in the sample)[12]. Panel 1 presents share of patent ownership among SMEs representing each NACE division. Panel 2 shows the rate of infringement among those patent owners, and panel 3 shows the share of infringed patent owners that did not survive until 2021. The shares are calculated as weighed averages taking the original weights from the 2016 SME Scoreboard.

The figure indicates that patent infringement is particularly damaging to SMEs in the sectors Scientific research and development, Manufacture of rubber and plastic products, and Manufacture of chemicals and chemical products.

Figure 4.13. Relationship between patent ownership and patent infringement rate



Note: the figure presents the relationship between share of patent ownership and patent infringement rates calculated for NACE divisions with at least 20 firms in the sample. Both shares are calculated as weighed averages taking the original weights from the 2016 SME Scoreboard.

As shown in Figure 4.13, patent infringement rate is positively correlated with the share of patent ownership in the industry. It indicates that patent infringement poses greater challenges in industries where patent protection plays a bigger role in SMEs competitive strategies.

Econometric specification

The descriptive statistics presented in the previous section suggest that infringement may have some negative relationship with survival, especially among independent firms which cannot rely on assistance from their parent company.

As the dependent variable is a dichotomous variable indicating whether a firm had survived until 2021, the standard ordinary least squares model is not adequate for model estimation (Pampel F. C., 2020[17]); (Kennedy P., 2008[18]). Instead, a logistic regression model was used to model the association between the IPR infringement suffered by SMEs and the probability of survival. This method models the logarithm of the odds of survival as a linear combination of infringement event and a set of other crucial control variables.

Results of econometric models

Table 4.3 presents the results of logistic regression models explaining survival of the SMEs in the sample. As can be seen in the first column, where there is no control for the independent status of a firm, the coefficient of IPR infringement is negative, but not statistically significant. It becomes statistically significant once a control for the links with other companies is introduced – as in Models 2, 3 and 4. Its absolute value is 0.419 in Model 3, where the full range of control variables is implemented, including firms' economic links, size, country of seat, the industries in which they are active, their innovative status and age.

The absolute value of the IPR infringement coefficient is the highest in Model 4 where the observations are restricted to independent firms only, confirming that the negative association between IPR infringement and odds of survival are the strongest for independent SMEs. The values of the IPR infringement coefficients in Models 2 to 4 are statistically significant at the 95% confidence level.

Table 4.3. Results of logistic models (full sample)

	Dependent variable:			
	Survived			
	(1)	(2)	(3)	(4)
suffered infringement	-0.105 (0.166)	-0.373** (0.181)	-0.419** (0.209)	-0.581** (0.239)
dependent firm		2.800*** (0.143)	2.685*** (0.165)	
Size (log turnover)			0.057 (0.038)	0.011 (0.044)
Constant	18.453 (2,662.857)	17.048 (2,456.959)	16.196 (2,746.500)	16.489 (3,762.424)
Country control	Yes	Yes	Yes	Yes
NACE division control	Yes	Yes	Yes	Yes
Innovative	No	Yes	Yes	Yes
Age	No	Yes	Yes	Yes
Observations	8,031	8,031	6,739	2,209
Log Likelihood	-1,654.347	-1,362.812	-997.916	-707.188
Akaike Inf.Crit.	3,526.694	2,947.623	2,221.831	1,630.377

Note: * p < 0.1; ** p < 0.05; *** p < 0.01

Table 4.4 shows the results of logistic regression models run on the subsample of independent firms. For ease of reference, Column 1 reproduces the results of the same model as reported in Column 4 in Table 4.3. The independent variable of interest in this model represents any IPR infringement. The subsequent models replace any IPR infringement variable with specific variables representing infringement of a patent (Column 2), trademark (Column 3) and design (Column 4). The value of infringement coefficients therefore represents the change in the (log) odds of survival for firms suffering infringement of these specific IPRs compared with other independent SMEs that did not suffer such infringement. These models show that the reduction in survival odds is the highest for independent SMEs that suffered patent infringement. The value of the patent infringement coefficient is statistically significant at the 95% confidence level.

The value of the coefficient for trademark infringement is also negative confirming that, all other things being equal, independent SMEs that suffered from trademark infringement have lower chances of survival than independent SMEs that did not suffer from trademark infringement. This coefficient is however only statistically significant at the 90% confidence level. Finally, the model of design infringement (4) does not allow us to reject the hypothesis that survival chances of independent SMEs that suffered from design

infringement are different from the odds of survival than independent SMEs that did not suffer from design infringement, holding other factors constant.

Table 4.4. Results of logistic models (independent SMEs)

	Dependent variable:			
	Survived			
	any IPR (1)	pat (2)	tm (3)	des (4)
suffered infringement	-0.581** (0.239)	-1.238** (0.481)	-0.509* (0.272)	0.184 (0.656)
Size (log turnover)	0.011 (0.044)	0.004 (0.044)	0.010 (0.044)	0.004 (0.044)
Constant	Yes	Yes	Yes	Yes
Country control	Yes	Yes	Yes	Yes
NACE division control	Yes	Yes	Yes	Yes
Innovative	Yes	Yes	Yes	Yes
Age	Yes	Yes	Yes	Yes
Observations	2,209	2,209	2,209	2,209
Log Likelihood	-707.188	-706.954	-708.316	-709.935
Akaike Inf.Crit.	1,630.377	1,629.908	1,632.631	1,635.869

Note: * p < 0.1; ** p < 0.05; *** p < 0.01

The models presented in Table 4.3 and Table 4.4 compare survival chances of SMEs affected by infringement to other SMEs, regardless of whether they are IPR owners or not. However, as shown in Figure 2.3, IPR ownership is correlated with higher innovativeness. This may increase the odds of better performance but also increases risks related to uncertain market reception of new products or services. This higher risk profile of IPR owners may therefore also be correlated with lower odds of survival. To control for these aspects, another set of regressions explaining survival odds was run, only within the group of owners of specific IPRs. The results of this analysis are presented in Table 4.5 below.

Table 4.5. Results of logistic models (IPR owners only)

	Dependent variable:		
	Survived		
	pat (1)	tm (2)	des (3)
suffered infringement	-1.510*** (0.581)	-0.010 (0.292)	-0.631 (0.847)
dependent firm	4.891*** (0.805)	3.818*** (0.350)	5.222*** (0.880)
Size (log turnover)	-0.038 (0.118)	-0.042 (0.071)	-0.097 (0.152)
Constant	Yes	Yes	Yes
Country control	Yes	Yes	Yes
NACE division control	Yes	Yes	Yes
Age	Yes	No	No
Observations	1,035	2,516	840
Log Likelihood	-80.332	-300.276	-72.935
Akaike Inf.Crit.	358.664	814.552	345.870

Note: * p < 0.1; ** p < 0.05; *** p < 0.01

All models were run within the subsample of patent, trademark and design owners. The infringement variable is defined as an infringement affecting respectively their patents, trademarks or design rights.

While all the coefficients related to IPR infringement have the expected negative signs, only the coefficient of the patent infringement in model 1 is negative and statistically significant at 99% confidence level. Model 1 confirms that patent owners that suffered from patent infringement have lower odds of survival than patent owners that did not suffer from patent infringement.

The infringement coefficients in models 2 and 3 have the expected negative sign, however they are not statistically significant. Thus, the null hypothesis that survival odds of the trademark or design owners that suffer from infringement of their IPRs are not significantly different from the survival odds of trademark or designs owners that did not suffer from infringement cannot be rejected based on the available data.

Discussion

With proper controls for other important factors that may be related to a firm's survival odds, such as age, size, innovativeness or industry, the econometric analysis confirmed the initial intuitions from the descriptive analysis in the first section. Results from the full sample model (Column 3 of Table 4.3) indicate that an SME whose IPR is infringed has 34% lower odds of survival than one that did not experience infringement. Because the probability of survival in the entire sample is relatively high, this translates into a 3 percentage point lower probability of survival for an average SME.

The odds of survival are relatively lower for the subgroup of independent SMEs. Their odds of survival associated with IPR infringement are 44% lower than non-infringed independent SMEs. This translates into a much larger reduction in survival probability than in the general sample, amounting to almost 10 percentage points. The reduction in predicted probability of survival in comparison to an average independent SME is lower for independent SMEs that suffered from trademark infringement (almost 8 percentage points) but much higher for SMEs whose patents were infringed (over 20 percentage points).

Further analysis conducted within the subsample of IPR owners confirmed that patent owners that suffered from patent infringement have lower odds of survival than patent owners which did not experience infringement. In the case of trademark and design owners, the hypothesis that SMEs that suffered infringement have lower odds of survival than trademark and design owners without a history of infringement, has not found sufficient support in the data.

To summarise, in general, this analysis confirms the correlation between IPR infringement and the survival odds of SMEs: IPR infringement is associated with higher risk of market exit in comparison to average SME. This risk is particularly elevated for the most vulnerable, independent SMEs that cannot rely on the expertise or financial help of a parent company. The data did not allow us however to confirm that this lower survival risk for infringed trademark or design owners is different from survival risks of trademark or design owners that did not experience infringement.

Results are clearer in case of patent infringement. Patent owners that suffered from patent infringement have lower odds of survival both in comparison to the average SME as well as to the average patent owner that did not suffer from infringement. The lower odds of survival of infringed patent owners may be related to the high level of investment needed to develop and protect new patented technologies. Infringement of such patents may damage the entire business model of smaller firms.

The analysis presented in this chapter is not without limitations. The most salient of these are as follows.

First, the information about the infringement suffered was self-reported. Our dataset may include cases where the respondents' belief about infringements suffered might not be confirmed by an objective assessment, such as a judge's verdict.

Second, the responses in the survey do not allow the exact economic impact of the infringement to be assessed. The impact of the use of a trademark that may be similar to one already registered by an SME may be quite different from the infringement of a vital patent protecting a novel technology or the counterfeiting of a successful new line of products introduced by an SME.

Third, the assessment of the relationship between IPR infringement and survival relies on cross-sectional data from the 2016 SME Scoreboard. This information reflects their infringement status as of 2015. Some firms that were not aware of infringements of their IPR at the time of the survey, or that suffered infringement in subsequent years, may be treated as being unaffected by infringements. This may introduce biases into the analysis, most likely underestimating the relationship between infringement and survival odds.

Fourth, the main focus of the present analysis was a relationship between IPR infringement and the most serious outcome of IPR infringement, namely survival of the firm. Results of the successive SME scoreboard analyses show that infringement may be correlated with other negative consequences affecting performance of SMEs, while not necessarily leading to their demise. Future analyses, focusing on other potential negative aspects related to IPR infringement may shine more light on those complex relationships.

Finally, information in Orbis about firms' current status may not always be up to date. There are cases of firms that suddenly stop reporting their turnover and/or employment but are still recorded as active. Information about the cessation of activities may be reported to the business register after some delay. Some firms may stay dormant for many years before they officially dissolve.

5 Conclusions and Next Steps

Small and medium-sized enterprises (SMEs) play a vital economic role in many countries; many of them are innovative, and dynamic. Despite this, only a small share of SMEs register intellectual property rights; for example only 7% of small enterprises and 15% of medium-sized ones have registered trademarks. Those SMEs that have done so report that registration improved their reputation or image, that it provided them with better IP protection and gave them better long-term business prospects.

The SMEs that register IPRs tend to be the most innovative and dynamic, actively looking for ways to improve their existing products, services and business processes. SMEs that own IPR have 68% higher revenue per employee than those that do not. One of the most important reasons why SMEs decide to register IPR is to prevent other firms from copying their products or services.

Counterfeiting and other types of IPR infringement remain a big threat for SMEs, and market monitoring is an important first step in the discovery and remedy of potential infringements. However, as many as 40% of SMEs do not monitor their markets for potential infringement of their IPR, or only rely on incidental information, such as customer feedback or information from business partners to discover infringements.

For these and other reasons, SMEs are more exposed to the risk of IPR abuse than large firms. SMEs do not have sufficient resources and capacity not just to monitor the threat, but also to develop effective countermeasures. In addition, enforcement actions are often biased towards big companies, as they are often triggered by applications for actions, which are more commonly made by larger companies with the resources to do so.

The quantitative analysis provided in this report employs large datasets to provide more detailed and precise information about the scale of illicit trade in counterfeits affecting small and medium-sized enterprises.

Among EU SMEs which have registered intellectual property rights, 15% have experienced an infringement of any type of IPR they own. The dominant impact these SMEs reported from this infringement was greater awareness of the need to protect their IPR, followed by loss of turnover for smaller firms. Strikingly, loss of turnover was only ranked fourth among medium-sized SMEs, however. Instead, these relatively larger firms were more likely to cite reputational damage and the loss of their competitive edge. Either way, the impact can be a matter of life and death for a small business: data comparing the survival rates of SMEs found that those that had reported suffering from infringement of their IPR in 2015 were 34% less likely to still be trading by 2021 than those that had not. The greatest reduction in survival rates was among firms without the resources of a parent company to fall back on, and which had suffered a patent infringement

Despite the potential seriousness of the impact, more than 10% of EU SMEs whose IPR has been infringed do not enforce their rights, pointing to the complexity, length and costs of enforcement procedures. Among those that do, direct negotiation is the most popular way to enforce IPR, regardless of firm size. Submitting takedown notices to Internet platforms is the second most popular form of enforcement among micro and medium-sized firms, while small firms were slightly more likely to resort to court procedures.

Customs seizure data show that, globally, the SMEs most frequently targeted by counterfeiters were operating in the electrical machinery and electronics (30% of global seizures), fashion (18%), perfumery

and cosmetics (10%), and toys and games (10%) sectors. However, SMEs across a wide range of industries are affected, with seizures less skewed towards a few key sectors than is the case for large companies. This may reflect the fact that SMEs, as the predominant form of innovative business in many countries, are present in many economic sectors, and counterfeiters target all type of innovative goods.

Seizures data also highlight that counterfeit goods infringing SMEs' IPR are frequently shipped directly from source economies to destination markets, rather than through transit economies as is the case more often with fakes impacting larger firms. This suggests that counterfeiters targeting the brands of small and medium-sized firms are not making as much effort to reduce the risk of customs seizures, for example through document cleansing by shipping their fakes through transit points.

SMEs have significantly increased their online presence in recent years. This pattern is also reflected in the trade in fakes – between 2017 and 2019, half of the seizures of counterfeit products infringing the IPR of SMEs destined for the EU were purchased online. The COVID-19 pandemic, and related government measures in response to it, have accelerated the rise of e-commerce, making online sales an increasingly significant part of international trade and thus exposing all companies, including SMEs, to the threat of IPR infringement.

Issues for further consideration

The quantitative analysis presented in this report lends itself to the formulation of some areas for stakeholders to consider. It also identifies several research areas that might merit further investigation to help develop efficient enforcement and governance frameworks to counter the risks posed to SMEs by the trade in counterfeit goods and other IPR infringements.

Improving SMEs' access to enforcement and monitoring. The magnitude and scope of the problem of illicit trade have captured the attention of governments, with many initiatives launched to combat it. Although progress has been made, current enforcement techniques may still not be readily enough available to SMEs that suffer from this problem.

In addition, criminal elements have been quick to adapt to changing circumstances, finding new ways to elude detection and restriction of their illegal activities. The recent COVID-19 crisis has also reshaped this already complex situation by suddenly changing existing trade routes and redefining enforcement priorities. This creates additional challenges for SMEs, as they often do not have adequate resources to effectively monitor for IPR infringement.

To enhance SMEs' access to enforcement and monitoring, policy makers might revisit and co-ordinate their existing SME policies to take into account the threat of counterfeiting, and the potential challenges that SMEs face when it comes to effective monitoring and enforcement. This could include such elements as: providing SMEs with consistent and comprehensive information about the threat and possible solutions; offering guidance on IP registration, domestic and abroad, including possible enforcement-related elements (e.g. registration in enforcement-related databases); and streamlining enforcement procedures when infringement is detected.

These findings reinforce the calls made in the OECD Recommendation on SMEs (Annex A) that calls on adherents to co-ordinate and align SME policies across government entities and levels through effective governance mechanisms and place-based approaches, as well as setting up robust monitoring and evaluation mechanisms. Most recently, in September 2022, the European Commission presented an SME Relief Package as part of the Single Market Emergency Instrument designed to preserve the functioning of the Single Market in times of crisis (Annex B).

Awareness. Many SMEs are not aware of the threat of counterfeiting. In fact, greater awareness of the threat is one of the main effects reported by SMEs of infringement their rights. Policies need to focus on

raising awareness of the existence of counterfeiting and the associated harm it can cause to SMEs that use IPR as part of their business models. At the same time, SMEs could be educated on how to monitor markets for potential risks, and how to seek assistance from enforcement authorities.

Strengthening supply-chain resilience. Innovative SMEs actively participate in global supply chains, by contributing to value-added of exports. Policies should focus on strengthening the resilience and integrity of supply chains, to limit their vulnerability to the threat of counterfeiting. This could include policy efforts to enhance transparency and engagement with key intermediaries (e.g. container ship companies, express delivery firms and e-commerce platforms). It could also include engaging with public procurement authorities and procurement bodies to help them understand the integrity of their supply chains.

Enhancing information collection and deepening the analysis. There are numerous areas where counterfeit products can have a damaging effect on SMEs. However, these areas may differ according to the size of an SME, its location and the industry in which it operates. A more systematic and extensive approach for developing data with a focus on SMEs is therefore needed. This could include deepening the preliminary analysis presented in this report and gradually expanding it to take into account additional socio-economic factors.

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Annex A. Recommendation of the Council on SME and Entrepreneurship Policy

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the standards developed by the OECD in the area of Small- and Medium-sized Enterprises (hereafter "SME") and entrepreneurship, regulatory policy, public governance, corporate governance, innovation, digitalisation, green growth, multinational enterprises, responsible business conduct and public procurement;

RECOGNISING the importance of SMEs and entrepreneurs for economic growth, job creation, regional and local development, sustainability and social cohesion;

CONSIDERING the drastically changing environment in which SMEs and entrepreneurs operate through digitalisation, climate change and internationalisation, and the need for policies to address these;

RECOGNISING that SME and entrepreneurship policies have a broad and varied scope, ranging from measures specifically targeted to SMEs to strengthening framework conditions and supporting the wider business community, and involve a variety of actors across governments at central and sub-national level;

RECOGNISING the need for effective and comprehensive SME and entrepreneurship policy frameworks to ensure coherence and synergy across the different policies and actors, and for considering the diversity of the SME and entrepreneurship population;

RECOGNISING the role of diverse stakeholders in the SME and entrepreneurship ecosystem, including SME representatives and business associations, large firms, financial institutions, civil society, academia and research organisations, and the value of social dialogue and public-private sector cooperation for effective policy design and implementation;

RECOGNISING that, through the work of the OECD, international co-operation on SME and entrepreneurship data, analysis and policies has become an essential building block for effective, efficient and coherent SME and entrepreneurship policies;

RECOGNISING that Members and non-Members having adhered to this Recommendation (hereafter the "Adherents") have different approaches to SME and entrepreneurship policies depending on legal, institutional and cultural contexts as well as differing ways in which they address the need for coherent, effective and efficient SME and entrepreneurship policies.

On the proposal of the Committee on Small- and Medium-Sized Enterprises and Entrepreneurship:

I. RECOMMENDS that Adherents promote and implement effective, efficient and coherent policies for SME and entrepreneurship to foster their contribution to inclusive and sustainable growth and for the benefit of all. To that effect, Adherents should:

1. Put in place cross-cutting and coherent approaches to SME and entrepreneurship policy design and implementation by:

a. Co-ordinating and aligning SME and entrepreneurship policy across government entities and levels through effective governance mechanisms and place based-approaches, in line with each country's institutional setting, circumstances and needs.

b. Ensuring that implications for SMEs and entrepreneurs are considered across the diverse policy areas that influence their prospects and outcomes in order to enhance policy synergies, address potential trade-offs and reduce administrative burdens, including through increased attention to their specificities and circumstances in policy and regulatory design, SME tests and evaluations, consultation mechanisms, streamlined processes and user-centric approaches in implementation.

c. Taking account of the diversity of SMEs and entrepreneurs throughout policy making, by assessing implications for different types of SMEs, entrepreneurs and self-employed, adopting policy relevant typologies and collecting granular data on SME and entrepreneur key features, performance and behaviour.

d. Setting up robust monitoring and evaluation mechanisms that systematically assess policies for their SME and entrepreneurship impacts, using relevant data and methodologies and feeding results in new policy initiatives.

2. Facilitate the transition and resilience of SMEs and entrepreneurs by:

a. Supporting the adoption of digital technologies, services and data by all SMEs and entrepreneurs in line with their needs, digital maturity and aspirations by enhancing access to digital infrastructure; strengthening digital skills, data literacy and management of digital security risk; and ensuring open and well-functioning markets for digital goods and services.

b. Encouraging and enabling SMEs and entrepreneurs to transition to sustainable business models, practices and technologies, and to drive green innovations, taking into account their specificities and needs in environmental policies; fostering their access to resources, including sustainable finance; and supporting their adoption of circular economy strategies.

c. Enhancing SMEs and entrepreneurs participation in international trade and global value chains through open markets; conducive regulatory frameworks; trade facilitation and trade finance; and by strengthening their access to services and networks, including with foreign partners and multinationals.

d. Enabling entrepreneurship by reducing barriers to entry, exit, business transfer and business succession, and by easing possibilities to re-start for entrepreneurs who fail; and ensuring that policies and the regulatory environment support competition and provide incentives and support for innovative entrepreneurs to scale up.

e. Encouraging and supporting under-represented or disadvantaged groups to participate in entrepreneurship, by taking into account structural barriers and specific challenges and needs through appropriate targeted measures, where necessary, and through equal access to wider entrepreneurship support programmes.

f. Facilitating the transition from informal to formal entrepreneurship, easing access to resources where needed; and ensuring a level playing field and enabling conditions for productive employment and decent work for the self-employed and for all kinds of entrepreneurship, including in the platform economy.

g. Promoting responsible business conduct and the engagement of SMEs and entrepreneurs in avoiding and addressing adverse environmental and social impacts and improving social outcomes associated with their activities and business relations along value chains and within their local communities.

3. Enhance SMEs and entrepreneurs' access to resources by:

a. Providing adequate incentives for SMEs and entrepreneurs to innovate and fostering their capacity to benefit from innovation diffusion, through conducive market conditions; robust and inclusive innovation ecosystems, local networks and infrastructure; and appropriate targeted measures, where necessary.

b. Enhancing SMEs and entrepreneurs' access to a diverse range of financing instruments, sources and channels that are adapted to their needs in terms of development, growth and sustainability, by implementing evidence-based policies and regulatory approaches conducive to transparent and resilient SME finance markets; leveraging the role of new technologies; encouraging timely payments; and strengthening SME financial skills and vision.

c. Encouraging the development of an entrepreneurial mindset throughout society, and creating adequate incentives for SMEs and entrepreneurs to invest in skills; in particular promote the development of and access to skills that are transversal across jobs and contexts, such as management, problem-solving and digital skills.

d. Strengthening entrepreneurial ecosystems at national and local level, including by developing networks and linkages along supply chains, between SMEs and with large firms, within and across sectors; and by enhancing SME access to and participation in public procurement.

II. INVITES the Secretary-General to disseminate this Recommendation.

III. INVITES Adherents to disseminate this Recommendation at all levels of government.

IV. INVITES non-Adherents to take account of and adhere to this Recommendation.

V. INSTRUCTS the Committee on SMEs and Entrepreneurship to:

a. Serve as a forum for exchanging information and experience with respect to the implementation of this Recommendation through a multi-stakeholder and interdisciplinary dialogue on SME and entrepreneurship;

b. Support the efforts of Adherents to implement this Recommendation through the development of a toolkit;

c. Report to Council on the implementation, dissemination and continued relevance of this Recommendation no later than five years following its adoption and at least every ten years thereafter.

Annex B. A "Relief Package" for SMEs: Statement by Commissioner Thierry Breton, 19 September 2022

Today we have presented a Single Market Emergency Instrument to preserve the functioning of our Single Market and of our supply chains in times of crisis – including the provision and purchasing of essential products and services by Europe's SMEs.

The pandemic has shown us how much SMEs were exposed to disruptions across supply chains and the ensuing solvency issues. We must also put SMEs at the centre of our focus for all policies we design in more "regular" times – times that are tough but do not qualify as a crisis. Our competitiveness depends on it.

Our roughly 25 million European SMEs employ almost 100 million people and are the backbone of our industry and economy. This employment is essential, and SMEs have always put their employees first – even and especially in times of crisis.

For Europe to recover, SMEs need to recover. After suffering the consequences of the COVID crisis, SMEs are now particularly affected by soaring energy prices, inflation, and supply chain bottlenecks.

That is why Commission President Ursula von der Leyen was spot on in offering our SMEs a lifeline by announcing in her 2022 State of the European Union address that the Commission will put forward an SME "Relief Package".

Europe has not stood by idly, offering advice and support to SMEs as they, too, are embarking in the twin green and digital transition.

But we need to do more. I believe that the SME Relief Package should deliver much-needed support in at least three key areas.

1. Combating late payments once and for all

First, secure cash flow. Late payments threaten the survival of SMEs. And yet, with the pandemic and now spiralling energy and raw materials costs, the number of invoices paid late increases markedly. The EU Late Payment Directive, which has been in place for over a decade, is not fit for the challenge. Despite this legislation, less than 40% of payments in the EU – be they by public authorities or businesses – are made within the contractual deadline.

Late payments put the liquidity of SMEs, and sometimes their existence, at risk. 1 out of 4 bankruptcies are due to invoices not being paid on time. And late payments prevent SMEs from investing in their sustainability and green performance and hiring more employees. We cannot accept this situation any longer.

We will revise the Late Payment Directive to provide SMEs with a modern and strong legal framework. A European standard on responsible business conduct across the Single Market. A stronger framework could – for example – look into setting caps for B2B payments, as we do for the public sector,

stronger enforcement with sanctions and monitoring obligations, providing SMEs with effective dispute resolution and mediation tools, preventing abuses and unfair practices.

Transparency on payment discipline is critical. It could build on the Observatory on Late payments, and its pilot in the construction ecosystem, to closely monitor payment performance across industrial ecosystems with regular data. I also want to explore how digital tools could allow creditors to get paid as soon as an invoice is issued.

2. Making it easier to do business in the Single Market

Second, **simplify**. Administrative burden remains a major issue for SMEs. One striking figure: on average, where a big company spends €1 per employee to comply with a regulatory duty, a medium-sized enterprise spends around €4 and a small business up to €10.

Entrepreneurs need legislation that is clear, easy to implement, and avoids disproportionate costs. We have committed ourselves to removing red tape and lowering costs without compromising our policy objectives. Better regulation remains a key priority for the Commission, and I will strengthen our work on reviewing legislation with the 'fit for future' platform and on filtering initiatives regarding their relevance for SMEs.

The President announced, as part of the SME Relief Package, a proposal for a single set of tax rules for doing business in Europe, called BEFIT. I fully support this proposal prepared by my colleague Paolo Gentiloni, which will have a profound effect on the ability of SMEs to do business in the EU. It will provide one single rulebook to cut red tape, reduce compliance costs and boost EU jobs and investment.

Much potential lies also in harnessing the power of digital and data for SMEs. For example, the Single Digital Gateway — a network of national portals, accessible via the Your Europe portal[13], for EU citizens and businesses — has to be SME-friendly.

SMEs need easy online access to information, procedures and assistance services regarding all their queries linked to doing business across borders, including advice on public procurement and sources of funding. A lot of time could be saved if businesses are asked to supply data only once to a public administration, for example through the Gateway.

Our efforts to provide SMEs with an enabling business environment should also aim to facilitate access to finance and to a workforce with the right skills.

3. Facilitating access to finance and skills

Third, to invest and grow. The Recovery and Resilience Facility makes unprecedented levels of funding available for greening, digitalisation, and upskilling in SMEs. **€44 billion** of measures to support SMEs directly in 22 national plans. And SMEs can benefit from broader measures worth **€109 billion**, such as loans or equity support open to all companies. Now we need to make sure that this money reaches SMEs on the ground.

InvestEU[14] will help SMEs access loans and equity. It aims to mobilise over €370 billion in investment. We build on the success of EFSI where over 1.4 million SMEs benefitted from investment projects. It will also include guarantees for Solvency Support to tackle solvency risks and also support SMEs that are going public or intend to do so. This will attract additional private investments to help SMEs scale-up and grow. I am happy to announce that the call under the SME window of InvestEU has been oversubscribed. This means that the support it provides is tangible to economic actors.

But we need to be vigilant. Access to finance is expected to tighten. According to the latest ECB survey on the access to finance of enterprises, businesses felt that changes in the general economic outlook had a strong negative impact on their access to finance (-29%, down from 8% in 2021).

I think we should explore gaps and obstacles in SME funding in the current environment, including looking at demand tools like public procurement. This can include contributing to a design of a new European Sovereignty Fund that the President announced to make sure the future of industry — and thus of our SMEs — is made in Europe.

Finally, SMEs are increasingly **challenged by a lack of skilled employees**. They often do not have the same resources as large companies to compete for and invest in the training of their employees. I think there is space to see how our tools — such as the Pact for skills, digital crash courses, digital volunteers and others — could further help SMEs hire, train and keep skilled workforce.

STATEMENT/22/5653

Notes

[1] An application for action (AFA) is a preventive measure designed for companies that want to protect their business from counterfeiting. The information provided by a company in an AFA helps customs authorities to identify IP infringing goods. An AFA filed by a company also allows customs authorities to temporarily impound goods suspected of violating the company's IP, giving them some time to launch a legal action and to defend their rights.

[2] Information of trademark infringed is included in the dataset.

[3] See: https://orbis.bvdinfo.com/.

[4] See, for example, the EU definition introduced in the in the EU recommendation 2003/361, available here: http://data.europa.eu/eli/reco/2003/361/oj.

[5] Amazon, Small Business Success in Challenging Times: 2020 Amazon European SMB Impact Report, https://assets.aboutamazon.com/bf/78/0bfc1dda40b181b7dcc91638b351/amazon-eu-smb-report-2020.pdf.

[6] Facebook, Global State of Small Business: Insights into Women-Led and Minority-Led Businesses in Early 2021, https://about.fb.com/wp-content/uploads/2021/04/Global-State-of-Small-Business-Report-March-2021.pdf.

[7] That is: it guarantees better legal certainty of extent of protection; it helps me prevent others from copying my solutions, products or services; it increases the chances of effective enforcement.

[8] See https://euipo.europa.eu/ohimportal/en/web/observatory/ip-enforcement-portal-home-page.

[9] The illicit listings were identified by SnapDragon, a company that offers on-line brand protection solutions. See: https://snapdragon-ip.com In many cases one listing corresponds to an illicit offer of several counterfeit products.

[10] This corresponds to the most recent period, for which seizure data were available.

[11] While the SME Scoreboard report was published in 2016, the underlying field work was carried out in 2015.

[12] Note that IPR owners are overrepresented in the SME Scoreboard sample.

[13] See Practical guide to doing business in Europe - Your Europe (europa.eu).

[14] See InvestEU Fund (europa.eu).

Illicit Trade

Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms

Illicit trade in counterfeit goods causes economic damage by reducing sales and profits as well as innovation incentives in legitimate industries. This study looks at damages caused by illicit trade in counterfeits to small and medium-sized enterprises. The robust evidence on the magnitude, scope and trends of this risk informs policy makers about the need to include anti-counterfeiting elements in policy packages designed to support SMEs.

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