

AD 26/24

LIMITE

CONF-ME 12

**ACCESSION DOCUMENT**

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Subject: EUROPEAN UNION COMMON POSITION  
– Chapter 7: Intellectual Property Law

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## **EUROPEAN UNION COMMON POSITION**

### **Negotiating Chapter 7: Intellectual property law**

This position of the European Union is based on its general position for the Accession Conference with Montenegro (AD 23/12 CONF-ME 2) and is subject to the negotiating principles endorsed therein, in particular:

- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements - even partial agreements - reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established;
- the requirements set out in points 24, 28, 41 and 44 of the Negotiating Framework.

The EU encourages Montenegro to continue the process of alignment with the EU *acquis*, noting that additional *acquis* may enter into force before accession, to ensure its effective implementation and enforcement, and develop already before accession, policies and instruments as close as possible to those of the EU. As requested in the EU Common Position (AD 10/14 CONF-ME 6) Montenegro acceded to the European Patent Convention and joined the European Patent Organisation in 2022.

The EU notes that Montenegro, in its position AD 13/13 (CONF-ME 11) and its addendum AD 13/13 ADD 1 (CONF-ME 11) accepts the *acquis* under chapter 7 as in force on 12 December 2024, and that it declares that it will be ready to implement it by the date of its accession to the European Union.

## Copyright and neighbouring rights

The EU notes the significant progress made by Montenegro in aligning its legislation on copyright and related rights with the EU *acquis*.

The EU notes that Montenegro introduced *Community exhaustion of rights*<sup>1</sup> in Montenegro's Law on copyright and related rights (Official Gazette of Montenegro, No. 37/11, 53/16, 145/21 and 48/24) which contains a provision on the Community exhaustion of rights, with effect from the date of Montenegro's accession to the European Union.

The EU notes and welcomes Montenegro's alignment with the following directives: Council Directive 93/83/EEC applicable to satellite broadcasting and cable retransmission; Directive 96/9/EC on the legal protection of databases; Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society; Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art; Directive 2004/48/EC on the enforcement of intellectual property rights; Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property; Directive 2006/116/EC and Directive 2011/77/EU on the term of protection of copyright and certain related rights; Directive 2009/24/EC on the legal protection of computer programs; Directive 2012/28/EU on certain permitted uses of orphan works, Directive (EU) 2017/1564 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled.

As regards collective management of rights, the EU takes note that Montenegro has improved its legislative framework by harmonising its national legislation with Directive 2014/26/EU which together with awareness raising campaigns contributed to an increase in the number of collective management organisations.

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<sup>1</sup> This concerns exhaustion of rights in the territory of the EU/EEA. While the *Community* as such is an old term, it is used throughout the document to reflect the terminology of the closing benchmark.

The EU welcomes the alignment achieved with Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products, through the Law on the protection of topographies of semiconductors (Official Gazette of Montenegro, No. 40/16), whereby the terminology in the English translation was modified as requested by the EU Common Position (AD 10/14 CONF-ME 6).

The EU takes note of achieving full alignment with Directive (EU) 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market, through amendments to the Law on copyright and related rights, adopted by Montenegrin Parliament on 10 October 2024 (Official Gazette of Montenegro, No. 100/24).

The EU notes that the adoption of the above-described legislative provisions fulfils the requirements of the first and second closing benchmarks set in document AD 10/14 CONF-ME 6.

The EU invites Montenegro to keep it regularly informed of the developments and steps undertaken as regards further alignment of its legislation on copyrights and related rights to the EU *acquis*.

### **Industrial property rights**

The EU welcomes Montenegro's accession to the European Patent Convention and joining the European Patent Organisation in 2022.

The EU notes the introduction of *Community exhaustion of rights* in Montenegro's legislation, with the entry into force as from its date of accession to the EU<sup>2</sup>.

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<sup>2</sup> Idem.

The EU welcomes the adoption of legislation on trademarks, industrial design, patents (biotechnological inventions, supplementary protection certificates, compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems), and trade secrets in line with the *acquis*. Recent changes to the Montenegrin law concern the adoption of the Law on protection of trade secrets in 2021 (Official Gazette of Montenegro, No. 145/21) and the adoption of the Law on amendments to the Law on patents (Official Gazette of Montenegro, No. 42/15, 2/17, 146/21 and 3/23) for alignment with the EU industrial property *acquis* concerning supplementary protection certificates (including alignment with the SPC waiver under Regulation (EU) 2019/933), the Law on amendments to the Law on trademarks (Official Gazette of Montenegro, No. 72/10, 44/12, 18/14, 40/16, 2/17, 3/23), and the Law on ratification of the Singapore Treaty on the Law on trademarks in December 2022 (Official Gazette of Montenegro - International Treaties 2/23). In May 2024 Montenegro adopted the Law on ratification of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Official Gazette of Montenegro - International Treaties 5/24).

The EU notes the introduction of provisions in the Law on trademarks related to the concept of “well-known/reputation”, as well as the removal of terminological discrepancies between the terms *author* and *designer* and the introduction of relevant procedural provisions on appeals. The EU welcomes the inclusion of provisions on the EU trademark and the Community design with effect from the day of accession.

The EU, in line with standard practice, will adopt relevant changes to the *acquis* in order to take into account Montenegro’s accession. This may in particular concern provisions related to the enlargement of the EU in existing pieces of legislation. The Commission further recalls the specific mechanism, which has been established in several acts concerning the conditions of accession.

The EU notes that the adoption of the above-described legislative provisions fulfils the requirements of the first and third closing benchmarks set in document AD 10/14 CONF-ME 6.

The EU invites Montenegro to keep it regularly informed of the developments and steps undertaken as regards further alignment of its legislation in the field of industrial property rights to the EU *acquis*.

## **Enforcement**

The EU takes note of the harmonisation of Montenegro's legal framework with the EU *acquis* on the protection of intellectual property rights. The EU welcomes the alignment of Montenegro's IP laws with Directive 2004/48/EC on the enforcement of intellectual property rights.

The EU notes that the enforcement and administrative capacities are adequate and thus fulfilling the requirements of the fourth closing benchmark set in document AD 10/14 CONF-ME 6.

The EU welcomes the notably improved track record of the Customs Administration and enhanced revenue collection within the competence of the market inspectors.

The EU commends the performance and competence of the Commercial Court to adjudicate in IP matters.

The EU notes the low number of criminal cases over the last years. The EU recommends that Montenegro adopts provisions in its criminal law amendments to the Criminal code and other related pieces of legislation, clearly differentiating misdemeanours and criminal offences regarding IP infringement. The EU takes note of Montenegro's commitment to amend its legislation to this effect by the end of 2024.

## **Strengthening institutional and administrative capacity**

The EU welcomes the progress made by Montenegro within the last years in strengthening its administrative and institutional capacities of the relevant institutions.

The EU expects Montenegro to continue strengthening the administrative capacities of the relevant bodies involved in the protection and enforcement of intellectual property rights and coordination amongst the relevant institutions, pertaining in particular to improvement of police cooperation, as well as the training of police officers, prosecutors and judges. The EU welcomes the adoption of the Intellectual Property Strategy of Montenegro for the period 2023-2026 and encourages Montenegro to continue its implementation and to utilise TAIEX support where possible.

The EU welcomes the significant improvements made by Montenegro related to statistical reporting and encourages Montenegro to continue submitting detailed statistics on enforcement on an annual basis and in accordance with a standard format, until the day of accession.

The EU welcomes the improvement of IT tools made within the last years and the re-establishment of fully functional online search registers in November 2024. The EU further takes note of the commitments undertaken by Montenegro on making additional changes to the website of the Ministry of Economic Development, the provision of further trainings for prosecutors, police officers, market inspectors and customs officers, as well as the allocation of storage facilities. The EU encourages Montenegro to continue reporting on the commitments made.

The EU encourages Montenegro to continuously provide required trainings to the relevant bodies involved in the protection of intellectual property rights, and to continue awareness raising activities in the field of IP. The EU underlines the importance of the fight against counterfeiting and piracy and expects Montenegro to continue to allocate adequate resources to the institutions responsible for the effective enforcement of IP rights. The EU encourages Montenegro to continue the implementation of its Intellectual Property Strategy and to submit regular reporting to that end.

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In view of the above considerations, the EU notes that, at this stage, this chapter does not require further negotiations.

Monitoring of progress in the alignment with and implementation of the EU *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Montenegro's administrative capacity, its capacity to enforce the *acquis* in this chapter and the completion of the legislative alignment concerning the exhaustion of rights, copyright and neighbouring rights and supplementary protection certificates. In relation to the latter, the EU also underlines the importance that products protected by a valid basic patent in the EU at the date of Montenegro's accession – including pharmaceutical and plant protection products – are eligible for Supplementary Protection Certificates (SPCs); as well as of measures ensuring the unitary character of the EU trademark and of the Community design. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. A final assessment of the conformity of Montenegro's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter, and which is to be provided to the Conference, the EU invites Montenegro to provide regularly detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the EU will, if necessary, return to this chapter at an appropriate moment.

The EU notes that Montenegro, in its position AD 13/13 (CONF-ME 11) and its addendum AD 13/13 ADD 1 (CONF-ME 11) accepts the *acquis* under chapter 7 as in force on 12 December 2024, and that it declares that it will be ready to implement it by the date of its accession to the European Union. The EU furthermore notes that Montenegro declares that it will continue the alignment process with the *acquis* and that it will be ready to implement it by the date of its accession to the European Union.

Furthermore, the EU recalls that there may be new *acquis* between 12 December 2024 and the conclusion of the negotiations.