

**“EU Support for Intellectual Property Rights System in Kosovo”
Service Contract N°2019/406-828**

Terms of Reference no. TOR-IPR 02 - 2019

Project Activity 1.1 – Support the Alignment of Kosovo IPR Legal Framework with the EU Acquis

Senior Non-Key Expert

Pristina, 16.10.2019

1. Description of the assignment	
1.1 Title of assignment	Technical assistance in full alignment of the IPR legislative framework (primary and secondary legislation) with the EU acquis.
1.2. Activity	Activity 1.1 – Support the Alignment of Kosovo IPR Legal Framework with the EU Acquis
1.3 Background	<p>The purpose of the Project “EU Support for the Intellectual Property Rights in Kosovo” is to strengthen legal, administrative and structural capacities of Kosovo institutions in charge of the development and enforcement of intellectual property rights (IPRs). The activities planned under Component 1 (Legislative and Policy Development) are aiming to fully align IPR legislative framework (primary and secondary legislation) with the EU acquis.</p> <p>The institution competent for industrial property rights in Kosovo is the Industrial Property Agency (IPA) within the Ministry of Trade and Industry (MTI). IPA is competent for drafting and initiating the legislative procedure in the field of industrial property rights. Laws are drafted in cooperation with the Legal department of MTI. IPA is competent for patents, trademarks, industrial designs and topographies of semiconductor products as well as geographical indications and designation of origin.</p> <p>Relevant national legislation implementing the EU acquis in the field of patents, trademark, industrial designs and topographies of semiconductor products are the following:</p> <ul style="list-style-type: none"> • 04/L-029 Law on Patents • 05/L-039 Law on amending and supplementing the law 04/L-029 on patents • 04/L-026 Law on trademarks • 05/L-040 Law on amending and supplementing law 04/L-026 on trademarks • 05/L-058 Law on industrial design • 05/L-051 Law on geographical indications and designations of origin • 03/L-165 Law on determining the rights and protection of topographies of integrated circuits <p>There are also relevant bylaws adopted, as follows:</p>



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	<ul style="list-style-type: none">• MTI-8/2016 Administrative instruction on early examination of applications for trademark protection• MTI-10/2016 Administrative instruction for administrative fees for industrial property facilities• MTI-11/2016 Administrative instruction on registration procedure of geographical indications and designations of origin• MTI-12/2016 Administrative instruction on registration of the industrial design• MTI-13/2016 Administrative instruction on the procedure for registration of patents• MTI-14/2016 Administrative Instruction on trademark registration• MTI-2/2017 Administrative instruction on the responsibilities, mandate and work of the appealing committee under the Industrial Property Agency• MTI-6/2018 Administrative Instruction on authorized representatives in the field of industrial property• MTI-9/2018 Administrative instruction on determining symbols for geographical indications, designation of origin and guaranteed traditional specialities. <p>Based on the findings of the "Gap Assessment Report" on Chapter 7 – Intellectual Property Rights – dated January 2018 (Gap Assessment Report on Chapter 7 – Intellectual Property Rights, prepared in implementation of Activity 1.2. of Twinning Project KS 14 IPA OT 02 16); existing laws and administrative instructions are to a large extent aligned with most of the <i>acquis</i> in the area of intellectual property; legislation in the field of industrial property concerning patents, topographies and industrial design are partially harmonized and therefore need amending, while in the field of trademarks, trade secrets and copyright some of the most recent EU legal acts are not yet implemented and new legislation is needed.</p> <p>Gap assessment Report briefly states that;</p> <ul style="list-style-type: none">• Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions ; analyses showed that the Law on Patents (in its entirety) is largely harmonized with the Directive. The Law is not fully harmonized, since the Biotechnological Directive (Art. 12.4.) stipulates the obligation to designate the authority or authorities responsible for granting the license. Apart from the translational inaccuracies, the rest of the provisions are harmonized with the Directive.• Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products and Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23
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	<p>July 1996 concerning the creation of a supplementary protection certificate for plant protection products. Analysis showed that only few minor objectives can be made, mostly in connection with the translation.</p> <ul style="list-style-type: none"> • Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems. Analyses showed that apart from usual translational inaccuracies, the Law on patents is harmonized with the Directive. • Directive 2004/48/EC of the European Parliament and of the Council of April 2004 on the enforcement of intellectual property rights. analysis showed this legislation was not fully harmonized with the Directive.
<p>2. Objectives and deliverables</p>	
<p>2.1. Objectives</p>	<p>Support the Kosovo IP Agency and the Project in drafting the amendments required in primary and secondary legislation for patents, aiming at the full harmonisation with the EU Acquis. Moreover, the Expert expected to draft amendments required for administrative instructions on (MTI) No. 06/2018 on Authorized Representatives in the field of Industrial Property, to introduce qualifying examination, as required by the IP Agency Kosovo.</p>
<p>2.2. Requested services</p>	<p>The Expert is expected to draft amendment for primary and secondary legislation on patents and administrative instructions on authorised representatives in the field of industrial property. The legal framework for patents should be aligned with the EU legislation on the basis of issues identified in the gap analysis by way of:</p> <ol style="list-style-type: none"> 1. reviewing developments and changes that may have occurred in the period since the gap analysis (Gap Assessment Report on Chapter 7 – Intellectual Property Rights, prepared in implementation of Activity 1.2. of Twinning Project KS 14 IPA OT 02 16) was performed with regards to relevant national primary and secondary legislation and evaluating their impact; This will include both checking concordance tables and reviewing the current relevant institutional IP framework proposing recommendations where necessary. 2. drafting of the necessary amendments for the primary and secondary legislation on patents and administrative instructions on authorised representatives in the field of industrial property. This will include consulting the relevant stakeholders on the legal amendments. 3. providing support to adoption of the amendments by the relevant authorities. 4. co-operating with experts appointed by the Kosovo IP Agency for legislation harmonisation.



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2.3. Outputs	<p>Mission Report with</p> <ul style="list-style-type: none"> - Updated review of design legislation of Kosovo. - A table with the necessary draft amendments for primary and secondary legislation on patents and amendments for administrative instructions on authorised representatives in the field of industrial property. - Tables of concordance between amended law and the relevant EU directives and regulations, proving the full harmonization of the legislation with the EU acquis.
3. Expert inputs	
3.1. Total working days	Up to 15 WDs in Pristina
3.2. Delivery period	November 2019 – January 2020
3.2. No of missions	Maximum 2 missions
3.3. Location	Pristina, Kosovo
4. Requested qualifications	
Expert profile required for this activity: Senior Non Key Expert	
4.1. Qualification	<ul style="list-style-type: none"> ▪ University degree (preferably a master’s degree) in law, economics, business administration, engineering, technical sciences or technology. ▪ A proven minimum of 5, but preferably 8 years of general professional experience in areas relevant to industrial property rights, especially patents. ▪ Experience in drafting of legislation and harmonisation with the EU acquis in the field of IPR.
4.2. General Professional Experience	<p>The non-key expert, who will be recruited to carry out this assignment, should have as a minimum the following profile:</p> <ul style="list-style-type: none"> ▪ Excellent communication and analytical skills. ▪ Excellent team working abilities. ▪ Proficiency drafting reports. ▪ Fluency in both written and spoken English. ▪ Previous experience of working in Kosovo is an advantage.
5. Reporting	
5.1. Language	English
5.2. Report type/content	Mission Report
5.3. Submission date	Not later than within 10 days after the mission



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6. Responsibility		
Proposed by	Arife Yilmaz Topal Key Expert 1	Date: 16.10.2019



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