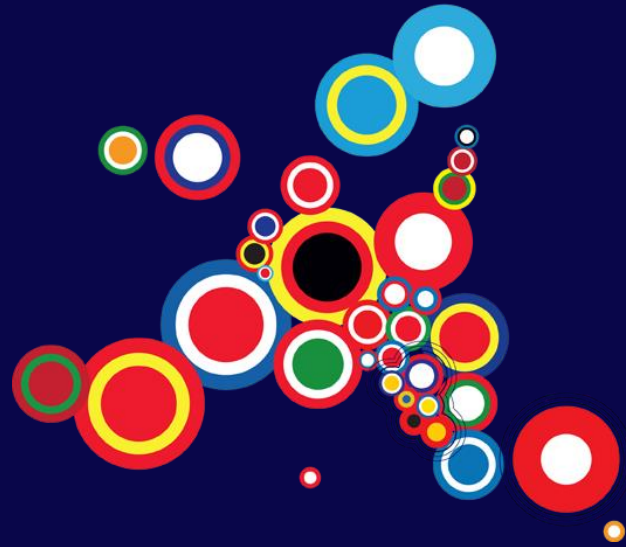




## INSTRUMENT FOR PRE-ACCESSION ASSISTANCE (IPA II) 2014-2020

### KOSOVO\*

#### EU Support for Intellectual Property Rights System in Kosovo



#### **Action summary**

The aim of the Action is to further support the role of Kosovo on economic governance through effective regulatory functions in line with SAA obligations by supporting Kosovo to meet the SAA requirements in the field of Intellectual Property Rights.

This shall be achieved by making sure that: the IPR legislative framework (primary and secondary legislation) is fully in line (aligned) with the EU acquis; the law enforcement authorities in charge of Intellectual Property Rights are able to ensure adequate and effective protection and enforcement of intellectual, industrial and commercial property rights; the importance of IPR protection is well-understood and spread out to and by the business community and the public at large.

\*This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

<b>Action Identification</b>	
<b>Action Programme Title</b>	Annual Action Programme for Kosovo for IPA 2017 – Part I
<b>Action Title</b>	EU Support for Intellectual Property Rights System in Kosovo
<b>Action ID</b>	IPA 2017 /040505./ 05/Kosovo/ Intellectual Property Rights
<b>Sector Information</b>	
<b>IPA II Sector</b>	Competitiveness and Innovation
<b>DAC Sector</b>	43010
<b>Budget</b>	
<b>Total cost</b>	EUR 2.0 million
<b>EU contribution</b>	EUR 2.0 million
<b>Budget line(s)</b>	22.020101
<b>Management and Implementation</b>	
<b>Management mode</b>	Direct Management
<i>Direct management:</i> <b>EU Delegation</b> <i>Indirect management:</i> <b>National authority or other entrusted entity</b>	<i>European Union Office in Kosovo</i>
<b>Implementation responsibilities</b>	<i>European Union Office in Kosovo</i>
<b>Location</b>	
<b>Zone benefiting from the action</b>	<i>Kosovo</i>
<b>Specific implementation area(s)</b>	<i>Kosovo</i>
<b>Timeline</b>	
<b>Final date for concluding Financing Agreement(s) with IPA II beneficiary</b>	31 December 2018
<b>Final date for concluding delegation agreements under indirect management</b>	N/A
<b>Final date for concluding procurement and grant contracts</b>	3 years following the date of conclusion of the Financing Agreement, with the exception of cases listed under Article 189(2) of the Financial Regulation
<b>Final date for operational</b>	6 years following the conclusion of the Financing Agreement

<b>implementation</b>			
<b>Final date for implementing the Financing Agreement (date by which this programme should be de-committed and closed)</b>	12 years following the conclusion of the Financing Agreement		
<b>Policy objectives / Markers (DAC form)</b>			
<b>General policy objective</b>	<b>Not targeted</b>	<b>Significant objective</b>	<b>Main objective</b>
Participation development/good governance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Aid to environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender equality (including Women In Development)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trade Development	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Reproductive, Maternal, New born and child health	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>RIO Convention markers</b>	<b>Not targeted</b>	<b>Significant objective</b>	<b>Main objective</b>
Biological diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Combat desertification	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climate change mitigation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climate change adaptation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **Glossary of Acronyms**

AI	Administrative Instruction
CCI	Cross- cutting issues
CMO	Collective Management Organization
EC	European Commission
EPO	European Patent Office
GI	Geographical Indication
IP	Intellectual Property
IPRs	Intellectual Property Rights
IPAS	Industrial Property Automation System
MCYS	Ministry of Culture, Youth and Sports
MTI	Ministry of Trade and Industry
MEI	Ministry of European Integration
MI	Market Inspectorate
OCRR	Office of Copyright and Related Rights
SAA	Stabilization and Association Agreement
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## 1. RATIONALE

Kosovo is at an early stage in developing a functioning market economy and in building the capacity to cope with competitive pressures and market forces within the Union. Some progress has been made, however, further alignment is required in order to fulfil the SAA criteria. Enforcement and implementation of legislation remains a challenge.

On 27<sup>th</sup> of October 2015 the Stabilization and Association Agreement (SAA) between the European Union and Kosovo was signed which entered into force on 1<sup>st</sup> of April 2016.

As per the SAA, both parties have confirmed the importance attached in ensuring adequate and effective protection and enforcement of intellectual, industrial and commercial property rights. Kosovo has agreed to take the necessary measures in order to guarantee no later than 5 years after entry into force of this Agreement a level of protection of intellectual, industrial and commercial property rights similar to that existing in the EU, including effective means of enforcing such rights.

Pursuant to Article 77 and Article 78 of the SAA, Kosovo is obliged to take the necessary measures in order to guarantee protection of the intellectual property rights. Following Article 109, Kosovo shall cooperate to promote the audio-visual industry and encourage co-productions in the sectors of cinema and audio-visual media.

The Industrial Property Agency as the main institution to deal with industrial property applications has managed to reduce the backlog of applications from the previous years after its establishment. However, the Agency needs to advance its policies and capacities to cater to the needs of the SMEs, in relation to requests for the protection of different types of IPRs.

On copyright and related rights, the law amending and supplementing the law on copyright and related rights was adopted in October 2016. Mechanisms for determining the fees for usage of copyrighted material between collective management organizations and broadcasters must be determined.

Although substantial work has been done in the past years by Kosovo IPR institutions in establishing a proper IPR system comparable with the EU Member States, this particular sector is of high importance and needs significant improvements, thus, following the requirements arising from the SAA.

## PROBLEM AND STAKEHOLDER ANALYSIS

Kosovo has managed to establish administrative and enforcement institutions that are in charge of the management, development and enforcement of the Intellectual Property Rights. In addition, it has completed the initial primary and secondary legislation and has provided the legal means for the protection of IPRs.

The two main Kosovar authorities in charge of the administration of IPR are:

Industrial Property Agency– is an administrative central body of the Ministry of Trade and Industry which is responsible for legal protection of the innovation, trade mark, industrial design, and designation of origin, geographic indications and topographies of integrated circuits, and other issues arising from international agreements the signatory of which is Kosovo.

The Office of Copyright and Related Rights (OCRR) – is an administrative body within the Ministry of Culture, Youth and Sports (MCYS) which is responsible for the legal protection of copyright and related rights in Kosovo, grant and remove licenses and supervise activities of the Collective Management Organizations (CMOs); monitor of the international legislation and making recommendations regarding the field of copyright and related rights.

From the enforcement point of view, the institutions are as follow:

Market Inspectorate, Ministry of Trade and Industry – is an executive organ within the Ministry of Trade and Industry, which carries out market supervision in Kosovo. According to Article 9 of Law No. 03/L-181 on Market Inspectorate and Inspective Supervision the market inspectorate is competent to “protect industrial ownership rights in the market and the right of the author and other similar rights in the market”.

The IPR Sector within Kosovo Customs – is part of the Ministry of Economy and Finance. The responsibilities of IPR Sector include preventing the import and export of goods which infringe IPR. All customs officers are authorized to act ex-officio to intercept goods which they suspect infringe an IPR in accordance with the Law on Custom Measures for the Protection of IPRs.

Kosovo Police – is part of the Ministry of Internal Affairs. All police officers can act ex-officio to prevent IPR infringements. However, complaints concerning tangible goods, that require investigation, should be referred to the Directorate for Investigation of Economic Crimes and Corruption. Conversely, complaints concerning IPR infringements on the Internet should be referred to the Cyber-Crime Unit.

Other institutions in charge of the implementation of legislation are the Judiciary, the Basic Court in Prishtina – the Department for Commercial Matters and Administrative Matters, and the Prosecutors’ Offices.

Other stakeholders which directly or indirectly are part of the IPR system in Kosovo are: Agency for Managing of Sequestered or Confiscated Assets, Ministry of Justice; The Food and Veterinary Agency (in accordance with Law No.04/L-187 on Geographical Indications and Designations of Origins); Ministry of Agriculture, Forest and Rural Development (in accordance with Law No.04/L-187 on Geographical Indications and Designations of Origins); Medicines Agency; and Independent Media Commission.

In addition to these, Kosovo has established two Coordination Bodies.

1. "State Intellectual Property Council" (SIPC) – that delivers advice and assistance to the Kosovo and other stakeholders involved in the protection of IPR.
2. Task Force against Piracy and Forgery in the Field of Copyright and Related Rights – which is a mechanism for combating counterfeiting and piracy to improve Kosovo’s image and economy.

In terms of legislation, Kosovo has completed the primary and secondary legislation covering all rights arising from the intellectual property.

The following laws, followed by the relevant by-laws, were approved:

- Law No. 04/L-029 on Patents as amended by the Law No 05/L-039;

- Law No. 04/L-026 on Trademarks as amended by the Law No 05/L-040;
- Law No. 05/L-058 on Industrial Designs;
- Law No. 04/L-065 on Copyright and Related Rights;
- Law No. 05/L-051 on Geographical Indications and Designations of Origin;
- Law No. 03/L-170 on Custom Measures for the protection of IPRs;
- Law No. 02/L-098 on Protection of Plant Varieties; and
- Law No. 03/L-165 on Determining the Rights and Protection of Topographies of Integrated Circuits.

Consequently, Kosovo's progress towards the European path has led to the harmonisation of Kosovo IP legislation with the EU *acquis* in order to ensure a level of protection and respect for IPR equivalent to that which exists in the EU. This is in accordance with the commitment assumed by Kosovo under Article 77 of the Stabilisation and Association Agreement (SAA).

In the Kosovo 2016 Report, the European Commission stated "overall, the legislative framework is partially aligned with the *acquis* and further action is needed to approximate legislation with the latest developments in this sector."

Due to the fact that Kosovo is not recognized by several countries it has been unable to join the main international IP organizations, such as the World Intellectual Property Organization (WIPO), or ratify international IP treaties<sup>1</sup>. However Kosovo has continued to strengthen its IP legislation in line with international norms and there are now substantive IP Laws.

The actual challenges faced by the Intellectual Property Rights System in Kosovo are the following:

1. The Primary and Secondary Legislation in force is not fully in line with the EU *acquis*. There is a need for further amendments to this legislation. In addition, the legislation governing the enforcement hasn't been updated to the latest developments.
2. There is a lack of cooperation between policy making institutions with the enforcement institutions such as judiciary and prosecutors' office. The IPR main policy making institutions have good cooperation with Market Inspectorate, Customs and Police. Consequently, there is a need for the enhancement of cooperation between the IPR main policy making institutions with the judiciary and the prosecution.
3. The issues of counterfeit good and digital piracy have been constantly emphasized by the EU and there are no adequate measures taken in order to fight the counterfeit goods, in particular the digital piracy.
4. Industrial Property Agency and OCRR lack of capacities and resources to cater to the needs of the market economy. No administration reform has been done in these two institutions.

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<sup>1</sup> To become a member of the WIPO, a state must deposit an instrument of ratification or accession with the Director General. The WIPO Convention provides that membership is open to any state that is: a member of the Paris Union for the Protection of Industrial Property, or member of the Berne Union for the Protection of Literary and Artistic Works; or a member of the United Nations, or of any of the United Nations' Specialized Agencies, or of the International Atomic Energy Agency, or that is a party to the Statute of the International Court of Justice; or invited by the WIPO General Assembly to become a member state of the Organization.

5. Although many activities were organized to raise awareness of the importance of intellectual property, yet, the business community lacks of knowledge in this field. Most of the industrial property applications at the Industrial Property Agency are foreign companies.
6. IPAS (Industrial Property Automation System) database of the IPA is being used for internal purposes of the Industrial Property Agency only. This database is supposed to be publicly accessible for the purposes of the search of different industrial property applications and decisions.
7. Kosovo had a National Strategy in Intellectual Property Rights for the period of 2010 to 2014. Currently, there is no IPR Strategy.
8. The system of Geographical Indications (GI) is in place. However, yet there is no product being protected as GI.

In order for Kosovo to tackle the abovementioned issues, a technical assistance is needed. The Action should focus on strengthening legal, administrative and structural capacities of the institutions that deal with IPRs, mainly focusing on the Industrial Property Agency and the Office for Copyright and Related Rights – as main beneficiaries, as well as Customs, Market Inspectorate, Police as secondary beneficiaries.

## **OUTLINE OF IPA II ASSISTANCE**

The need for support to the Intellectual Property Rights System in Kosovo is highly relevant. Strengthening of the capacities of the Industrial Property Agency, lack of the cooperation of the relevant institutions for enforcement of legislation and amendment of the secondary legislations are the key challenges identified in the Kosovo Report. During 2016, the Industrial Property Agency worked on the drafting of a number of administrative instructions that have been approved by the Ministry of Trade and Industry but there are still number of laws and secondary legislations that need to be amended. The Intellectual Property Right Council has taken the decision to form the working group which will work on the development of an IPR Strategy and its detailed implementation plan. The aim of the strategy is to tackle above mentioned challenges that are consistent in the last couple of years.

The relevant institutions of IPR (Industrial Property Agency, OCRR, Kosovo Courts, Kosovo Customs, Kosovo Police and Market Inspectorate) will be involved in all the activities supported by the Action, respectively on the drafting of the legislation, participating in the training and organization of the awareness raising campaigns. Depending on the activity, other institutions might benefit from the IPA Action.

The implementation of activities foreseen in this document are expected to produce immediate results and changes in the current situation, as well as, long-term sustainable results to be introduced in the form of legal implementation, improved performance of relevant institutions and overall increased awareness among the business communities and consumers on IPR.

The Action should focus on strengthening legal, administrative and structural capacities of the institutions in charge of the development and enforcement of the IPRs. The Action should focus primarily in strengthening the capacities of the Industrial Property Agency under the Ministry of Trade and Industry and the Office for Copyright and Related Rights under the Ministry of Culture, Youth and Sport – as main beneficiaries. Additionally, the Action should support the implementation and enforcement of the IPRs legal framework and provide assistance to fight the counterfeiting and piracy.



Therefore, assistance is also required for the enforcement institutions e.g. Customs, Market Inspectorate, Police as secondary beneficiaries.

Consequently, the results to be achieved are as follow:

- The legislation in the field of IPR shall be implemented accordingly and effectively by all stakeholders; exclusive rights of the right-holders shall be guaranteed by the means of legislation and enforcement,
- The new organizational structure of the Industrial Property Agency and the OCRR shall be in place and both offices shall function properly – independent from each other as at the moment or merged into a single office – the so called “Intellectual Property Office” if deemed necessary;
- The coordination among IPR stakeholders shall be improved significantly. Additionally, the working group and other representatives of the GI system in Kosovo shall be trained and coordinated.
- The Market Inspectors from the Market Inspectorate of the MTI shall be adequately trained and equipped with the legal basis and internal regulations on procedures on how to handle the administrative procedures in cases of counterfeiting goods. Additionally, the Market Inspectorate along with the Police and Customs shall strongly support the actions on behalf of the Task Force against Piracy and Counterfeiting. Market Inspectors shall be trained to fight digital piracy and sale of counterfeit goods online.
- Judges and Prosecutors shall be able to enforce the legislations in place.
- The development of the Awareness Programme for the IPR Institutions shall oblige IPR stakeholders to actively participate in different awareness activities. Consequently, the business community, business representatives, SMEs, university, high schools, lawyers, and the society, women and men, shall be aware of the importance of IPRs, thus, the business competitiveness, economy, cultural and social aspects of life shall be developed.

## **RELEVANCE WITH THE IPA II STRATEGY PAPER AND OTHER KEY REFERENCES**

The relevance of proposed interventions is closely linked to the objectives and results foreseen in the "National Plan for Implementation of the Stabilisation and Association Agreement" (NPISAA).

Furthermore, with regard SAA Obligations, the Indicative Strategy Paper for Kosovo acknowledges the need in the foreseeable future for Kosovo to build the necessary capacities and to secure the resources to be able to address the key challenges arising from the EU approximation process, in require all ministries and other relevant institutions. Therefore, it is imperative that Kosovo continues the reforms of the administration through ensuring professional recruitment of the civil servants, including a gender balance of women and men. Needless to mention, this is also linked to the Enlargement Strategy which recognizes the need for Kosovo to further improve the service delivery by strengthening the civil service, since its professionalism and the presence of a certain degree of political interference still need to be address.

In implementing the SAA, Kosovo has to ensure adequate and effective protection and enforcement of intellectual, industrial and commercial property rights and Kosovo should take the necessary measures in order to guarantee no later than 5 years after the entry into force of the SAA Agreement a level of

protection of intellectual, industrial and commercial property rights similar to that existing in the EU, including effective means of enforcing such rights.

The "National Development Strategy "(2016-2021) addresses a number of factors that currently are limiting economic growth and improvement of living standard and which treats development as a multi-faceted enterprise. In this sense, it was emphasized that Kosovo is not lacking of strategies and specific initiatives that aim addressing the development barriers separately. In fact, there are numerous and detailed sectoral strategies or specific initiatives but their implementation is rather difficult because of limited capacities.

Supporting the IPR System is also in line with the needs and the action plan that was foreseen in the Private Sector Development Strategy and Action Plan 2013-2017. One of the key features is the improvement of trade policies to further improve Kosovo's trade balance. IPRs play a crucial role in the trade related issues and the free movement of goods, thus, having in mind the counterfeiting goods. Among the main challenges for private sector development in Kosovo is the lack of creative entrepreneurship, and innovation capacity.

IPA II support is expected to be essential for increasing the capacities of the Industrial Property Agency, the Office of Copyright, Kosovo Customs, Kosovo Police, Market Inspectorate, Judiciary and other enforcement agencies in order to ensure better coordination and implementation of the legislation in the field of IPR and also to meet the requirement derived from the SAA.

Efficient and effective public administration is crucial to fulfil the Copenhagen criteria and has a key role to play in improving governance through more stable institutions and the implementation of the PAR agenda. Support to public administration and governance will therefore continue to be a priority as far as the IPA II is concerned.

## **LESSONS LEARNED AND LINK TO PREVIOUS FINANCIAL ASSISTANCE**

The Industrial Property Agency at the Ministry of Trade and Industry and the Office for Copyrights and Related Rights (OCRR) at the Ministry of Culture, Youth and Sport benefited of a 29-month technical assistance funded under IPA I (2011) which ended in November 2015.

The TA provided assistance to further alignment of Kosovo legislation on Intellectual and Industrial Property Rights with EU acquis. The primary legislation on Patents, Trademarks, Industrial Design and Geographical Indications and Design of Origin were reviewed against the EU directives and regulations. The secondary legislation was also reviewed. The Law on Customs Measures for Protection of IPR was reviewed and at the request of the Customs a new Law on Customs Enforcement of IPR was drafted along with the necessary concept document. The articles of the Kosovo Criminal Code related to intellectual property were also reviewed against international standards and a proposal for their amendment was made.

Capacity building of the Industrial Property Agency was provided with a new organisation structure of the agency and a plan for development; the guidelines on patents, trademarks and industrial designs were updated. Capacity building of the enforcement institutions (police, prosecutors, customs and market inspectorate) was provided with the drafting of a manual titled "IP Crime Investigation Manual" for the police. An awareness strategy was drafted and implemented.

Furthermore, a support to IPR has been approved under the Action Document "EU Approximation Facility" financed under IPA II (2016). The purpose of the Action is to support Kosovo to further develop its institutional capacity to create the basis for a sustainable environment for private sector development in line with the EU acquis and the SAA requirements. A small component targeting the protection of Industrial Property Rights and its enforcement has been forecasted within a trade project. It will mainly address the most important challenges faced by the Industrial Property Agency: backlog of applications, further alignment of the secondary legislations related to Industrial Property Rights with the EU acquis and support to access to the EU IP Office database. The technical assistance is intended to start in September 2017, will be very limited in time and budget, and will not overlap with this Action.

It has become increasingly evident that whereas EU assistance can contribute to building capacities in one particular sector, it does not always contribute to overall PAR. In fact, the past EU assistance has sometimes contributed to creation of sectorial isolated 'islands of excellence', which are rarely sustainable in the overall administrative environment. This has notably been criticised by the Court of Auditors (e.g. draft Meta Audit on IPA I assistance).

A general lesson learned is that despite substantial technical assistance (TA), twinning and TAIEX support provided for acquis alignment, the beneficiaries continue to suffer from poor implementation and enforcement record of laws and policies. This is to a large extent due to the fact that support (including by the Commission services) focuses on technical alignment (content) but does not pay sufficient attention to the poor quality of the law-and policy-making processes, which largely define whether new laws and policies can be implemented and enforced. The common problems are weak or non-existing (regulatory/fiscal) impact assessments of proposed laws and policies, poor inter-ministerial coordination and external (public) stakeholder consultations.

Integration of the key Principles of Public Administration<sup>2</sup> and the approach advocated by the EU Better Regulation agenda will contribute to ensure more implementable laws and policies, more streamlined administrative structures and procedures and more sustainable results.

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<sup>2</sup> The Principles of Public Administration have been developed by OECD/SIGMA in close cooperation with the European Commission for the enlargement countries (2014) and adjusted for the ENP countries (2016). They define in detail the six core areas that the Commission considers to be an integral part of PAR. See <http://www.sigmaweb.org/publications/principles-public-administration.htm> and <http://www.sigmaweb.org/publications/public-governance-baseline-measurement-reports.htm>

## 2. INTERVENTION LOGIC

### LOGICAL FRAMEWORK MATRIX

OVERALL OBJECTIVE	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	
To further support the role of Kosovo on economic governance through effective regulatory functions in line with SAA obligations	Full implementation of articles 77 & 78 of the SAA	Kosovo Reports, "National Plan of implementation of SAA" (NPISAA)	
SPECIFIC OBJECTIVE	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	ASSUMPTIONS
To strengthen legal, administrative and structural capacities of Kosovo institutions in charge of the development and enforcement of intellectual property rights (IPRs).	Full enforcement of Intellectual Property Rights in Kosovo	Kosovo Reports Official Data from the IPR Stakeholders Official trade statistics	Kosovo committed to implement the SAA requirements
RESULTS	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	ASSUMPTIONS
<b>Result 1</b> The IPR legislative framework (primary and secondary legislation) is fully aligned with the EU <i>acquis</i>	Primary and secondary IPR legal framework developed according to an inclusive and evidence-based process, approved and fully aligned with EU <i>acquis</i>	Publication of the laws and Regulations in the Official Gazette	Political stability in Kosovo; Political will to adopt the EU standards in the IPR domain; Proper understanding of the importance of the development of a strong IPR system
<b>Result 2</b> The law enforcement authorities in charge of Intellectual Property Rights are able to ensure adequate and effective protection and enforcement of intellectual, industrial and commercial property rights	Number of Industrial Property Applications examined Number of counterfeit goods and copyrighted seized	Annual Report of Industrial Property Agency; Annual Report of the Task Force against Piracy	Industrial Property Agency and OCRR staff, Police, Custom officers, market inspectors, and other officers from enforcement institutions are motivated to learn and evolve in IPR domain
<b>Result 3</b> The importance of IPR protection is well-understood and spread out to and by the business community and the public at large (awareness raising)	Number of copyrighted and counterfeit goods seized and adjudicated Number of Industrial Property Applications filed	Annual Report of the Task Force against Piracy Annual Report of Kosovo IP Council	Public and business community understand the importance and the positive effect of the IPR protection in their daily life

## DESCRIPTION OF ACTIVITIES

Result 1: The IPR legislative framework (primary and secondary legislation) is fully in line (aligned) with the EU *acquis* - Advice and support in the revision of the current Kosovo IPR legal framework to increase alignment 1 legislation with international best practice, including the EU *acquis*. In accordance with the Law on Gender Equality all should be reviewed from a gender perspective.

In addition to the EU *acquis*, Kosovo will also have to monitor international legal developments that may impact its legislation in the field of IPRs.

Activities to Achieve Specific Objective 1 are as follow:

- Review of the Primary Legislation and Secondary Legislation to be aligned with the EU *acquis*
- Alignment of the Kosovo legislation with the new Directive (EU) 2016/943 on the Protection of Trade Secrets
- Draft the Internal Regulation on the functioning of the Industrial Property Agency (in line with the Patent Law and Kosovo Law on Administrative Authorities)
- Draft the Internal Regulation on the functioning of the Office of the Copyright and Related Rights (in line with the Patent Law and Kosovo Law on Administrative Authorities)
- Amendment of the legislations for the enforcement institutions such as the Criminal Code, Law on Market Inspectorate, Law on Cyber Crime

Result 2: The law enforcement authorities in charge of Intellectual Property Rights are able to ensure adequate and effective protection and enforcement of intellectual, industrial and commercial property rights – The Industrial Property Agency and OCRR are central to Kosovo IP System. Consequently, it is essential they have the resources to ensure Kosovo IP System is efficient and effective. The IPR enforcement authorities should be capable of ensuring adequate protection and proper implementation of the IPR legal framework - Kosovo has already established two coordinating bodies to supervise the IP System - the "State Intellectual Property Council" and the Task Force against Piracy and Counterfeit. This is commendable but the effectiveness of these bodies must be leveraged to ensure the implementation of the "National Intellectual Property Strategy "and subsequent the development of an effective IP System.

Activities to Achieve Specific Objective 2 are as follow:

- Advice and support in order to optimize the new organizational structure for the Industrial Property Agency and OCRR (independently)
- Assessment of the IT infrastructure of the Industrial Property Agency and support in completion and update of the database
- Review of internal examination procedures for patents, TM, ID and GIs
- Training sessions for Industrial Property Agency and OCRR
- On the job training on formal and substantial examination of industrial property applications for the Industrial Property Agency Examiners and staff
- On the job training in the field of Geographical Indications for the GI stakeholders
- On the job training for the OCRR staff
- Support to the functioning of the CMO System
- Support to establishing the right-holders CMO for visual rights and authors/publishers' rights
- Seminar for CMO, mediators and IPR Authorized Representatives
- Strengthening of coordination and reporting capacities of the "State Intellectual Property Council";
- Strengthening of coordination and reporting capacities of the Task Force against Piracy and Counterfeiting;

- Training for the Market Inspectors, Custom Officers, Police, Judges and Prosecutors on the seizure of counterfeit goods and prosecution procedures in cases of IPR infringement cases
- Training for the working group on Geographical Indications in Kosovo

Result 3: The importance of IPR protection is well-understood and spread out to and by the business community and the public at large (awareness raising) - according to latest reports a society with a high level of culture in the IP field, who understands and respects intellectual creation, is moving towards stability, which allows not only its sustainable economic development, but also develop inventions and innovations to solve problems threatening the whole society, present and future generations, thereby contributing to the prosperity of all mankind.

Measures to Achieve Specific Objective 3 are as follow:

- Developing an Awareness Programme for the IPR Institutions
- Developing and designing training programme (train-the-trainer) for the Industrial Property Agency, OCRR and enforcement institutions promotion officers
- Developing IP materials for the businesses
- Organizing world IP day
- Organizing Conferences and Seminars
- Support on adequate awareness raising activities for the SMEs, Universities
- Informing society at large on the role of IPR for increasing business competitiveness, economic, social and cultural development

## **RISKS**

The SAA provisions constitute that Kosovo IPR institutions should provide first of all the legal framework aligned with the directives and regulations of the EU, and secondly, provide the same legal protection of IP rights in Kosovo with those of the EU. Thus, Article 77 and Article 78 of the SAA requires Kosovo to take all necessary measures in order to guarantee protection of the intellectual property rights, including effective means of enforcing such rights.

The potential risks that may arise are the following:

- ⇒ Possible limited absorption capacity from the administrative bodies and enforcement institutions

The risk is linked to the current human resource capacities and a possible staff turn-over. Difficulties may arise with regard to absorption capacities of protection and enforcement of IPR.

However, Industrial Property Agency and OCRR plan to address it by increasing the coordination of activities among beneficiaries for the process of designing and implementing the training programs on IPR for the available staff. In addition, Industrial Property Agency and OCRR plan to engage as much as possible Young Cell Scheme (YCS) graduates in key positions (within the foreseen conditions based on the YCS contract) in order to make the coordination and the design of training programs more effective.

- ⇒ Failure to achieve the SAA objective in 5-year time.

Kosovo has agreed to undertake the necessary measures in order to guarantee, no later than 5 years after entry into force of SAA, a level of protection of intellectual, industrial, and commercial property rights similar to that existing in the EU, including effective means of enforcing such rights.

Considering the approval process of the Action and the procurement process as well as the effectiveness of the implementation, there is a risk that the impact might not emerge within the 5 years' objective set by the Kosovo.

Nevertheless, the activities under the proposed Action are in line with the measures and the schedule of the "National Program for Implementation of the Stabilization and Association Agreement" (NPISAA). This will ensure an effective implementation under the 5 years' objective, enough to ensure entry into force of SAA and a level of protection of intellectual, industrial and commercial property rights similar to that existing in the EU, including effective means of enforcing such rights.

⇒ Lack of effective implementation of the legislative framework (primary and secondary legislations, guidelines, rules, procedures) in the field of IPR.

Political instability might translate into delays and ineffectiveness of the Kosovo Assembly that might also hinder the activities of the institutions as it used to be in the past. This can hamper the design and implementation process of the legislative framework in the field of IPR closely related to the activities of the Action.

The main assumptions for the implementation of this action are the following:

The legal framework (laws and by laws) in the field of Intellectual Property Rights, Copyrights and other related rights should be aligned with international agreements and EU law of this field.

Kosovo should propose a structure which will allow an adequate functioning of the administrative bodies of the IPR in Kosovo which then will ensure full protection and enforcement of intellectual, industrial and commercial property rights. Additionally, improve coordination and effectiveness with other line institutions dealing with enforcement.

Kosovo institutions are to make sure that the required legislative framework is in place and it is being implemented accordingly. Eventually, the proper functioning of Kosovo Assembly is crucial for the adoption of primary and secondary legislation.

Commitment of all stakeholders shall focus on a better regulation approach, which emphasizes that all policies and legislations should be prepared in an inclusive process, backed up by the best available evidence and that institution-building will ensure effective lines of accountability between institutions (agencies and line ministries).

The adequate number of competent staff working in the beneficiary institutions, the turn-over staff and adequate absorption capacities are important for the implementation of the Action.

Kosovo should ensure the coordination of activities between stakeholders involved in the Action. The implementation of the Public Administration Reform is important for the smooth implementation of the Action.

In order for the IPR system to be fully functional, the organizational structure of the Industrial Property Agency and OCRR should be evaluated and a new structure, regionally comparable, should be proposed. Merging two offices into one is an option, however, the aim is to come up with such a structure which will enable both institutions to ensure better protection and enforcement of intellectual, industrial and commercial property rights. Also, improve coordination and effectiveness with other line institutions of enforcement.

## **CONDITIONS FOR IMPLEMENTATION**

There are no preconditions for implementation of this action.

### 3. IMPLEMENTATION ARRANGEMENTS

#### ROLES AND RESPONSIBILITIES

The Action will be managed by the EU Office in Kosovo and coordinated by the NIPAC office at the Ministry for European Integration.

As the Action will mainly target the Industrial Property Agency under the Ministry of Trade and Industry and the Office for Copyright and Related Rights under the Ministry of Culture, Youth and Sport, these two institutions should be the main beneficiaries.

Having in mind that the Action should support the enforcement and implementation of the IPRs legal framework and provide assistance to fight the counterfeiting and piracy, assistance to the enforcement institutions is also required. Consequently, the secondary beneficiaries are: Customs, Market Inspectorate, Police, Judiciary and Prosecutors' Office. Other beneficiaries are: Agency for Managing of Sequestrated or Confiscated Assets, Ministry of Justice; The Food and Veterinary Agency; Ministry of Agriculture, Forest and Rural Development; Medicines Agency; and Independent Media Commission.

Table of Kosovo Authorities:

PRIMARY BENEFICIARIES	1. Industrial Property Agency – Ministry of Trade and Industry 2. Office for Copyright and Related Rights – Ministry of Culture, Youth and Sport
SECONDARY BENEFICIARIES	3. Customs – IPR Sector 4. Market Inspectorate 5. Police a. Directorate for Investigation of Economic Crimes and Corruption and b. Cyber-Crime Unit 6. Judiciary – Courts and Prosecutors' Offices
OTHER BENEFICIARIES	7. Agency for Managing of Sequestrated or Confiscated Assets, Ministry of Justice; 8. The Food and Veterinary Agency 9. Ministry of Agriculture, Forest and Rural Development 10. Medicines Agency; and 11. Independent Media Commission 12. Women, men, girls and boys in Kosovo

#### IMPLEMENTATION METHOD(S) AND TYPE(S) OF FINANCING

The action will be implemented through a service contract (technical assistance). The Timetable of implementation is: September 2018 to December 2020 (28 months)

### 4. PERFORMANCE MEASUREMENT

#### METHODOLOGY FOR MONITORING (AND EVALUATION)

The European Commission may carry out a mid-term, a final or an ex-post evaluation for this Action or its components via independent consultants, through a joint mission or via an implementing partner. In case a mid-term or final evaluation is not foreseen, the European Commission may, during



implementation, decide to undertake such an evaluation for duly justified reasons either on its own decision or on the initiative of the partner. The evaluations will be carried out as prescribed by the DG NEAR guidelines for evaluations, including gender analysis. In addition, the Action might be subject to external monitoring in line with the European Commission rules and procedures set in the Financing Agreement.

Overall coordination of monitoring the financial and technical progress of the Action will be obtained by the EU Office for Kosovo (EUO) as Contracting Authority.

## INDICATOR MEASUREMENT

Indicator	Baseline 2016 (value + year) (2)	Target 2020 (3)	Final Target 2022(year) (4)	Source of information
ISP indicator (impact/outcome)....(1) To further support the role of Kosovo on economic governance through effective regulatory functions in line with SAA obligations				
To support Kosovo to meet the SAA requirements in the field of Intellectual Property Rights				
<b>PRIMARY AND SECONDARY LEGISLATION aligned with the <i>acquis</i></b>	Primary and secondary IPR legal framework – partially aligned with <i>acquis</i>	Primary and secondary IPR legal framework approved and fully aligned with <i>acquis</i>	Primary and secondary IPR legal framework in place implemented accordingly and fully aligned with <i>acquis</i> , and SAA obligations fulfilled	Official Gazette, Transposition Tables
<b>EXAMINATION OF INDUSTRIAL PROPERTY APPLICATIONS</b>	Patents: 68 decisions (2016) Trademarks: 1414 decisions (2016) Industrial Designs: 0 decisions (2016) Geographical Indications: 0 decisions (2016) Designations of Origin: 0 decisions (2016)	+20%  +40 %  +60 %  +60%  +60%	+20%  +40 %  +60 %  +60%	Industrial Property Agency Annual Report IPAS database verification
<b>NUMBER OF COPYRIGHTED AND COUNTERFEIT GOODS SEIZED AND ADJUDICATED</b>	<b>Counterfeiting:</b> Number of Cases: 336 (2016)	Counterfeiting: 20%	Counterfeiting: 30%	Annual Report from Kosovo Customs (IPR Sector) Market Inspectorate

	Quantity of Goods: 465.719 pc (2016) <b>Piracy:</b> Copyrighted material 1716 pc (2016)	Piracy: 30%	Piracy: 40%	Police Task Force against Piracy
<b>NUMBER OF INDUSTRIAL PROPERTY APPLICATIONS FILED</b>	Applications filed: Trademarks - 1583 Patents - 49 Industrial Design -18 Geographical Indications – 0 Designations of Origin - 0	+30% +20% +20% +10% +10&	+40% +30% +30% +20% +20&	Industrial Property Agency Annual Report IPAS database verification

## 5. SECTOR APPROACH ASSESSMENT

Kosovo had the first "National Strategy on Intellectual Property of Kosovo 2010 – 2014". This IPR strategy was a political document which determined the mission and vision of Kosovo in the field of intellectual property and the aim was to establish proper reliable institutions and to stimulate system for protection of intellectual property rights through the development and enhancement of legislative framework and institutional capacities, all these oriented towards more efficient protection, maintenance, enforcement and exploitation of intellectual property.

Additionally, Kosovo has approved a "National Strategy against Piracy and Counterfeiting 2012 – 2016". This strategy provided that during the period 2012-2016 Kosovo should establish a Task Force to fight pirated goods and counterfeiting. Completion and implementation of the current legislation and the strengthening of relevant institutions were the main objectives. As a result, the Task Force against piracy was established and the implementation of legislation is going well.

As it can be seen, both strategies have expired and at the moment there is no " strategy on the development of the IPR system in Kosovo. It is one of the reasons to acquire assistance from the EU and it has been incorporated as an activity to be achieved through the life-time of the Action.

The Industrial Property Agency and OCRR in cooperation with other IPR relevant institutions have identified the needs and specified actions that shall be taken by the respective institutions. Consequently, an IPR Plan on implementation of SAA has been developed internally, thus, to make sure that the IPR legal framework and the institutions provide the same legal protection as the ones in the EU Member States and in other countries in the region.

Despite the lack of strategy, Kosovo has established institutions in charge of the administration and management of IPRs. The Industrial Property Agency and the OCRR as the two main stakeholders are equipped with staff.

The Industrial Property Agency is under the Ministry of Trade and Industry and has an establishment of nine, including a Director, two lawyers, three engineers and three economists. In addition, there are 6 temporary staff hired to deal mainly with the backlog cases. The Industrial Property Agency is responsible for the legal protection of industrial property such as inventions, trademarks, industrial designs, designations of origin, geographic indications and topographies of integrated circuits.

The OCRR is an administrative body within the Ministry of Culture, Youth and Sports (MCYS) and has an establishment of five, including a Director, administrative assistant, promotion officer, CMO supervisor and lawyer.

Both Industrial Property Agency and OCRR and other IPR institutions in Kosovo are funded from Kosovo budget. Therefore, the activities of all IPR relevant institutions are within the activities foreseen in the "Kosovo National Law on Budget" and therefore are within the budgetary system reporting.

The Kosovo IPR authorities are aware that strengthening legal, administrative and structural capacities is crucial, not only to achieve the objectives and obligation arising from SAA, but to provide an adequate and efficient IPR System.

IPR stakeholders have emphasized that further alignment of Kosovo primary and secondary legislations is a must in order for Kosovo to provide the same level of protection of the intellectual property, commercial and other related rights, as in the EU Member States.

Additionally, coordination bodies are committee to achieve the main objectives. Regular meetings of the "State Intellectual Property Council" considered to be essential for the other coordinating bodies of the IPR System in Kosovo. Consequently, the mandate of the Task Force against Piracy shall be extended, having in mind that the "National Strategy on Piracy and Counterfeiting" has expired. This shall be included into a single IPR Strategy.

The implementation of activities foreseen are expected to produce results and changes in the current situation, as well as, long-term sustainable results to be introduced in the form of legal implementation, improved performance of relevant institutions and overall increased awareness among the business communities and consumers on IPR.

## **6. CROSS-CUTTING ISSUES**

### **GENDER MAINSTREAMING**

Even though the gender gaps remain in many areas as well as in the labour market, women will be supported through different projects and programs and encouraged to participate in activities of EU funded projects. In job openings and all bodies involved, this action will seek to ensure equal gender representation, defined as 50% by the Law on Gender Equality. Their equal rights in Kosovo are guaranteed with the Law No. 05/L -020 on gender equality. Businesses owned by women will be prioritized in getting the benefits from this Action; in addition, women being employees of businesses will be treated in priority while being selected to attend trainings provided by this Action. Female entrepreneurs and IPR holders will be encouraged to protect their IPRS. Certain projects in cooperation with Innovation Centre Kosovo shall be organized to support women in business as well as new innovative ideas.

### **EQUAL OPPORTUNITIES**

Based on the fundamental principles of promoting equality and combating discrimination, participation in the Action will be guaranteed on the basis of equal access regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Equal access to all benefits of the Action will be promoted. More specifically, training and other capacity building activities in this Action (timing and schedule) will be fully adjusted to the needs of women with children, training and meeting premises will be fully adapted to the needs of persons with disabilities, equal opportunities principles and concrete measures will be embedded in all strategic documents that will be produced under this Action.

Equal opportunity will be taken into account in the preparation of all tender documents and in the recruitment of personnel through the placement of appropriate wording, equal opportunity will be granted while in the implementation of the Action.

Inclusion of disadvantaged groups is the primary focus of the proposed activities. The design and implementation will ensure gender equality and the full participation of communities; long term unemployed persons, in particular women and persons with disabilities, minorities etc.

In addition, all planned interventions should take into account the specific impact they have on women, as part of the overall gender mainstreaming agenda. Gender-sensitive budgeting should also be applied throughout programming cycles to ensure proper division of support for men and women, and ensure results and consequent impact with both of them.

## **MINORITIES AND VULNERABLE GROUPS**

Minorities will be treated equally, as guaranteed by Amendment No. 59 to the Constitution of Kosovo. The alignment to the EU acquis will take into consideration minorities and vulnerable groups.

In all activities related to planning and implementation, all necessary steps will be undertaken to ensure that rights of minorities and vulnerable groups are appropriately considered. Special efforts will be made to include RAE population and RAE enterprises in the activities, through close communication with local and international organisations already active in the area of entrepreneurship promotion and support among the RAE communities. Close cooperation with programs aiming at creating linkages between minority and majority businesses will strongly be encouraged, and at the same time, the most underserved categories amongst our midst, will be provided care.

## **ENGAGEMENT WITH CIVIL SOCIETY (AND IF RELEVANT OTHER STAKEHOLDERS)**

Specific attention will be paid in the framework of this action to ensure that civil society and other social stakeholders are consulted in the right time of the legislative and policy-making process and that the decision-makers are informed about the outcomes of the consultations.

Civil society/stakeholder involvement will be taken into consideration in all aspects of EU-funded activities in order to support civil society organisations to strengthen their capacities and professionalism, allowing them to engage in an effective dialogue with public and private actors and to monitor developments in different areas including free movement of goods.

As a result, representatives from the Trademark and patent agent, lawyer's chamber, and other IPR related stakeholders shall be invited to attend training and actively participate in the majority of the activities.

## **ENVIRONMENT AND CLIMATE CHANGE (AND IF RELEVANT DISASTER RESILIENCE)**

Environmental considerations will be duly reflected in all IPA financed activities. This Action however doesn't foresee any activity in relation to the environment and climate change issues.

## **7. SUSTAINABILITY**

Sustainability of the action will be ensured through the involvement of all relevant actors, at local and central levels, and clear structures and roles for the implementation and monitoring. The technical assistance will ensure the transfer of know-how during the implementation of the Action (on-the-job training) and will involve all actors during the entire implementation phase of the activities. Internal and external monitoring and evaluation tools will be developed to ensure that objectives are met and intended impact on the targeting groups is achieved.

The proposed priorities under this component strive to address some of the main challenges of the Intellectual Property Rights System in Kosovo. The activities foreseen are expected to develop systemic structures and strengthen existing ones and provide for sustainability of results to be achieved. Furthermore, given that most activities foreseen in the IPR System are expected to generate long-term impact in increasing the competitiveness of the economy based on development of IPRs, the sustainability of interventions is significant. Continuous training of staff of the Industrial Property Agency and OCRR as well as IPRs enforcement institutions to increase the absorption capacities of the ministry also represent

a key sustainability measure that ensures that proper know-how transfer has taken place and that responsible institutions are able to adapt to the process changes.

Results oriented planning initiated by this document, and to be followed throughout further planning and delivery of support will be key to ensuring an adequate IPR system and high efficiency of implementation of the IPR primary and secondary legislation.

Sustainability of the interventions will also be ensured through the involvement of all relevant actors, at local and central levels, and clear structures and roles for the implementation and monitoring. The cooperation between various stakeholders is essential as it is virtually impossible to achieve an enabling environment that fosters innovation and growth without proper synchronization of efforts between various stakeholders responsible.

Adequate planning of resources, allocation of appropriate staff and capacity development to foster smooth change management will ensure that the results are sustainable in the long run.

Development of new legislation/amendments will be carried out respecting all procedures, especially those related to (fiscal/ regulatory) impact assessments, public consultations, inter-ministerial coordination. Fast-track adoption procedures shall be avoided. The development of legislative outputs will be mainly done by the beneficiaries; prior to supporting the beneficiary institutions with legislative drafting support, assistance will start by providing support to the beneficiaries with 'options analysis', regulatory impact assessments, concept papers, etc. Drafting support will be paired with capacity building of the beneficiaries (introduction of international examples, detailed explanation of proposed texts etc.). All public stakeholders' consultations shall be done in language(s) recognised in Kosovo to enable participation of all relevant stakeholders.

In order to avoid further fragmentation and politicisation of Kosovo administration and to ensure rationality and value for money of its organisation, assistance related to re-organisation of Industrial Property Agency and OCRR will take the general regulation for Kosovo administration and the organisation of the necessary structures into consideration. In addition, the action will pay particular attention to the fact that accountability lines towards parent ministries are clear. Moreover, the Action will verify that these structures have the sufficient legal powers, resources and staffing necessary to discharge their mandate. Finally, whenever job descriptions or internal procedures manuals are developed, they shall be consistent with the formal decrees setting the organisational structure and job requirements for the organisation (often approved by the authorities) and any by-laws that exist for all bodies in relation to job-descriptions and written procedures.

Training activities will be coordinated with the Kosovo Institute for Public Administration and, where possible, be carried out in cooperation with them.

Finally, whenever written procedural manuals or guidelines are developed, these shall be simple enough to be regularly updated and changed by the staff of the respective organisations without external support. Any guidelines or procedures developed shall contradict with any existing legal provision.

## **8. COMMUNICATION AND VISIBILITY**

Communication and visibility will be given high importance during the implementation of the Action. The implementation of the communication activities shall be funded from the amounts allocated to the Action.

All necessary measures will be taken to publicize the fact that the Action has received funding from the EU, in line with the Communication and Visibility Manual for EU External Actions. Additional Visibility Guidelines developed by the European Commission (DG NEAR) will have to be followed. Communication and visibility tools will be tailored to a wide and diverse audience which constitutes women, men, boys and girls. Communication and visibility tools will be tailored to meet the potentially differing communication needs of diverse women, men, boys and girls.

Visibility and communication actions shall demonstrate how the intervention contributes to the agreed programme objectives. Actions shall be aimed at strengthening general public awareness and support of interventions financed and the objectives pursued. The actions shall aim at highlighting to the relevant target audiences the added value and impact of the EU's interventions and will promote transparency and accountability on the use of funds.

The European Union Office in Kosovo has developed clear visibility guidelines and ensures that all projects which are implemented in Kosovo are fully in line with these guidelines. Project visibility is also clearly stipulated in all contractual documents whereby the contractors/implementers are obliged to adhere to all EU visibility requirements. Awareness campaigns are included within the activities. Visibility materials will be produced (brochure, leaflets, newsletters).

It is the responsibility of the beneficiary to keep the European Union Office fully informed of the planning and implementation of the specific visibility and communication activities.

The beneficiary shall report on its visibility and communication actions in the report submitted to the IPA monitoring committee.



**Sector:** Competitiveness and Innovation: Strengthening the Intellectual Property Rights System in Kosovo

