

14 September 2006

Screening report

Croatia

Chapter 7 – Intellectual property law

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I. CHAPTER CONTENT

The *acquis* on intellectual property law specifies harmonised rules for protection of copyright and neighbouring rights, for industrial rights and contains provisions on enforcement.

In the area of **copyrights and neighbouring rights**, the objectives of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) are to adapt legislation on copyright and related rights to reflect technological developments and to transpose into Community law the main international obligations arising from the two treaties on copyright and related rights adopted within the framework of the World Intellectual Property Organisation (WIPO). Directive 93/83/EEC aims at facilitating the cross border transmission of audiovisual programmes, particularly broadcasting via satellite and retransmission by cable. The objective of the Directive on the resale right for the benefit of the author of an original work of art (2001/84/CE) is to provide a balance between the economic situation of authors of graphics and plastic works of art and that of other creators who benefit from successive exploitations of their works. The protection of semiconductor's topographies is harmonised through Directive 87/54/EC. The Directive 96/9 EC on the legal protection of Databases creates a new *sui-generis* right for database producers, to protect their investment. Directive (93/98/EEC) harmonises the terms of protection of copyright and neighbouring rights for each type of work and each related right in the Member States. Directive 92/100/EEC harmonises the provisions relating to rental and lending rights as well as on certain rights related to copyright. The Directive 91/250/EEC harmonizes Member States' legislation regarding the protection of computer programmes.

In the field of **industrial property rights**, the *acquis* sets out harmonised rules for the legal protection of trademarks and designs, as well as a partially harmonised regime for patents. These include conditions for compulsory patent licensing. An important element of the EU-wide patent system is the accession to the European Patent Convention and European Patent Organisation. Other specific provisions apply for biotechnological inventions, pharmaceuticals and plant protection products. The *acquis* also establishes a common playground for the protection of industrial designs, and a Community trademark and Community design system. Moreover, provisions exist concerning supplementary protection certificates (SPCs) for pharmaceuticals and plant protection products, which serves to provide inventors with additional protections, when the subject matter of the patent is subject to an administrative marketing authorization and therefore they could not benefit from the protections of a patent, for the entire period for which the patent was granted.

The Directive 2004/48/EC on the **enforcement** of intellectual and industrial property rights such as copyright and related rights, trademarks, designs or patents requires all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting of goods and piracy and so create a level playing field for right holders in the EU. Customs Administrations play an important role in preventing the circulation of products infringing copyright or industrial property.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Croatia and the discussion at the screening meeting.

Croatia indicated that it can accept the *acquis* regarding intellectual property rights and that it will have no difficulties in implementing the *acquis* by accession.

Croatia presented a National Strategy for the development of the intellectual property system of Croatia 2005-2010 which assesses the present degree of alignment with the acquis in all areas covered by the present chapter, a description of the administrative bodies, and contains an indicative timetable for alignment with the acquis and development of the administrative capacity, dividing between short-medium and long term measures. Long term measures cover the time span until accession.

II.a. Copyright and neighbouring rights

The main legal references for copyright and neighbouring rights in Croatia are the Copyright and Related Rights Act (CA) adopted and entered into force in October 2003.

In the area of copyright, Croatia has adhered to the Berne Convention for the protection of literary and artistic works, and the Rome Convention on the protection of performers, producers and phonogram and broadcasting organisations, with three reservations to the Rome Convention, namely (on article 5.1(b) 5.3, 16.1(a)iii and iv)¹.

The right of reproduction and distribution rights in the Information Society Directive are regulated, while communicating to the public is not defined *expressis verbis*, but includes a number of subsequent rights. The exceptions include temporary acts of reproduction, reproduction for private use, or other personal use, including reprography and ephemeral recordings. The exceptions and limitations to copyright and neighbouring rights need to stand the so-called three step test: they have to be specifically foreseen in the legislation, the use may not conflict with regular use of the protected subject matter, and such use may not unreasonably prejudice the legitimate interest of the author. The Croatian law does not differentiate between equitable remuneration and fair compensation (taking into account the application of technological measures to protect rights). However, general provisions of the CA contain the criteria to define an appropriate level of remuneration. Circumvention of technological measures to protect rights constitutes an infringement of the right. If technological measures are in conflict with exceptions (public interest exceptions and private copying), right holders shall ensure that the beneficiaries of exceptions can make use of them. The regulation concerning the enforcement of exceptions foreseen in the law is not yet drafted.

Provisions on terms of protection for author's rights guarantee protection for 70 years from the death of the author, or from the death of the last surviving author, in the case of joint ownership. Rights of the authors of compound works are calculated separately for each author.

Computer programs are protected as per the Berne Convention. Protection is granted to Croatian nationals and EU citizens on the basis of reciprocity. National exhaustion also applies to provisions protecting computer programs. The exceptions to the exclusive rights regard acts necessary for the use of the program by the legal acquirer (including correction of errors), back-up copy, and reverse engineering. Decompilation is also allowed under strict

¹ Croatia is also contracting party to the Universal Copyright Convention (Geneva and Paris Acts), Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Geneva 1971), Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels 1974), WIPO Copyright Treaty (Geneva, 1996), WIPO Performances and Phonograms Treaty (Geneva 1996), WTO TRIPS Agreement.

conditions and the 3 step test has to be complied with. The duration of protection is 70 years from the death of the author.

Rental right is the exclusive right of the authors, the performers and the producers of phonograms or videograms for the rental of their respective works. In case of assignment from an author to a film or phonogram producer, the author retains the right of equitable remuneration. The author can have this right exerted by a third person/organisation, but cannot renounce it. This right can be managed individually or through collecting societies. The public lending right is granted in the form of a right to remuneration for lending of works in public libraries. Compulsory collective rights management is foreseen for the rental right concerning recorded works of music and for the public lending right. Right holders of public lending rights have not established collecting societies. Therefore, in practice, the legal provisions are not implemented.

In the area of rights related to copyright, the CA grants an exclusive fixation right to performers and broadcasting organisations. Performers, phonogram producers, film producers and broadcasting organisations enjoy exclusive reproduction and distribution rights. The right of communication to the public is regulated as an exclusive right for performers, and for broadcasting organisations when the event carries an entrance fee. Phonogram producers enjoy a remuneration right when a phonogram published for commercial purpose is used for communication to the public.

Broadcasting by satellite and retransmission by cable. The law foresees that exclusive rights on non-stage musical and literary works and right of remuneration for phonogram producers may only be managed collectively. A contract between the Collecting Societies and the broadcaster, would also determine the remuneration of the right holder. The rights belong to authors for their work, to performers for their performances, and to producers of phonograms for the items produced. Remuneration is fixed depending on whether the right is acquired for profit making. In the first case, the right will be calculated as a percentage of the income obtained by the broadcaster. Cable retransmission is managed by collecting societies, excepted if the right holder has notified a different intention to the collecting management society. If the parties cannot find an agreement on the remuneration for the right holder, then each party may request the mediation of the Council of experts. Its decisions are not binding.

The legislation on artists' resale rights defines the rights protected and specifies that artists have a right to remuneration when their production is sold by art dealers or galleries within three years from the first sale. The royalty rates are determined by law. The rights are inalienable, unassignable and cannot be seized. The right can be managed individually or through a collecting management society.

In the legislation on protection of semiconductors topographies the rights belong to the physical individual persons or collectively, or to legal persons. The design of the topography alone is protected, not the information possibly stored. The law grants the rights to allow or prohibit the reproduction, the import and the sale of the topography, or products incorporating protected rights. Exceptions include the right of reproduction for evaluation, analysis, teaching, etc. Terms of protection foresee 10 years of protection from the first commercial exploitation or from the registration of the topography. Croatia considers that the Croatian legislation is aligned except for the provision of Article 3 (4) of the Directive which applies to Member States only.

The CA protects both electronic and non-electronic databases. The protection is accorded to the database and not to its content. The CA distinguishes between original databases, which require an intellectual creation, and non-original databases protected by the *sui generis* right.

Provisions exist concerning the right of making available of the database to the public, right of distribution and rental right. Exhaustion of distribution right is limited to the domestic market. Exceptions to the *sui generis* right are foreseen to allow acts necessary for the normal use of the database, for private use of non-electronic databases, pedagogical purposes and in judicial procedures. The term of protection under the *sui generis* right covers 15 years from the making of the database and is renewed after every substantial change.

The Copyright and related right Act defines that certain rights, such as public lending, broadcasting by satellite and retransmission by cable must be managed through collecting management societies (CMS). For others the right holders may chose individual management. Collecting societies have the national monopoly for the rights they manage, upon authorisation of State Intellectual Property Organisation. They have a domestic competence alone, and the deductions on the remuneration to right holders may not exceed 30% of the amount collected. Foreign right holders may be represented through a Croatian CMS either directly or via a reciprocity agreement concluded with a foreign CMS. Foreign CMS cannot grant multi-territorial licences that cover Croatia. In the case of disagreement between a CMS and right holders, parties may request the appointment of a Council of experts, who will try to mediate and propose an agreement. Its conclusions are not mandatory. Distribution and accounting must take place at least once a year.

Concerning implementation, in the area of copyright and neighbouring rights rightholders of public lending rights have not established collecting societies. Therefore, in practice the legal provisions are not implemented. Authors and performers assign the exercise of their rights to phonogram producers. Also, there are no phonogram renting shops in Croatia, and therefore the rights on phonograms are not implemented. For videograms, individual contracts are concluded between the producer and individual rental shops. Also, 30% of operations of broadcasting and retransmission by cable are performed without contract. Collecting societies rather apply General Licence Agreements, where lump sums were agreed. Only one satellite broadcaster operates from Croatia.

II.b. Industrial property rights

Concerning trademarks, Croatia is party to the Madrid protocol and the Madrid Agreement, as well as to the Nice agreement and Vienna agreement. The Croatian legislation on trademarks consists of the Trademark Act of 2003, in force since 1 January 2004, the Regulation on Trademarks of 2003 and the Act of ratification of the Madrid Agreement.

The Trademark Act contains the list of signs which can be protected as trademarks. To the examples listed in Directive 89/104, the Croatian Trademark Act adds three-dimensional forms and colours. Sounds and smells are not explicitly mentioned and registration of more recently applied sound mark has been refused on the ground of non-distinctiveness and not due to inadequate graphical representation. Articles 5 and 6 of the Croatian Trademark Act include lists of absolute and relative grounds for refusal. A registered trademark grants to its owner the absolute right to make use of it and to prevent others from using it without his consent. Certain limitations to this absolute right are laid down in Article 10 of the Croatian Trademark Act, for example, use to indicate the intended purpose of the product in accordance with established and honest practices. Exhaustion of rights is foreseen at national level, but would be extended by force of membership to international agreements, including EU accession. The proprietor of the mark may not oppose its use, if the products have been put onto the market with his consent. The trademark must be used within 5 years or else can be revoked. Where a trademark holder has acquiesced for five years in the use of a later good faith trademark, he can no longer oppose the use of that trademark or file a request for its invalidity.

The registration procedure foresees that the application is made to the State Intellectual Property Organisation (SIPO), which checks the formalities as well as the absolute grounds for refusal ex officio and relative grounds for refusal if an opposition is made. If SIPO intends to refuse the application, the applicant has the opportunity to give counter arguments. In case of favourable assessment, the application is published in the SIPO gazette, and if there are no oppositions within 3 months, the mark is registered. Protection is granted for 10 years. Collective trademarks can also be registered.

No internal recourse within SIPO is yet possible, and appeals in the form of administrative lawsuits must be lodged with the Administrative Court of the Republic of Croatia. However, the validity of the industrial designs can be challenged (in pending infringement cases) at the Commercial courts. Internal administrative recourses will be available in SIPO by 2007.

Croatian provisions concerning patents are contained in the Patent Act of 2003 and the Patent Regulation of 2004, both in force since 2004. Croatia is party to the main international agreements in the area of industrial property².

To request a patent, an application is lodged to SIPO. After 18 months it is published in the SIPO gazette. No search report is made at this stage. After publication the applicant may request a patent with substantive examination, or a consensual patent, i.e. without substantive examination. Substantive examinations may be performed by SIPO or by another patent office, on the basis of an agreement.

Patents are granted for 20 years, to any invention in any field of technology which involves an inventive step and is susceptible to industrial applications. Consensual patents' duration is limited to 10 years. Opposition to granting the consensual patent may be filed by any interested person within six months from the publication. There are limitations provided, as well as the exceptions to the exclusive rights. A request for nullification of the patent may be introduced by a State Attorney, a legal or physical person if the conditions for its release were not fulfilled.

The cooperation and extension agreement between Croatia and the European Patent Offices (EPO) is in force since 2004. It allows the extension of the same protection granted to full members of the EPO in Croatia. As a consequence of the entry into force of the extension agreement, the number of national patent applications has reduced significantly. Croatia has undertaken the necessary steps for full accession to EPO, to be realised in 2007.

Concerning biotechnological invention/protection of plant varieties, Croatia is a member of the International Union for the Protection of New Varieties of Plants Convention (UPOV) since 2001, and has adopted legislation in this area implementing Directive 98/44. Patents may be granted to new inventive products which have industrial applications. The law defines in detail the conditions for patentability and for exclusion. The conditions classifying an invention as contrary to public morality, and therefore preventing it from being patentable, are also defined in the law.

² Paris Convention for the Protection of Industrial Property; Convention Establishing the World Intellectual Property Organization; Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement) in force since 30 November 2000; Patent Cooperation Treaty (PCT, Washington, 1970) in force since 1 July 1998; Strasbourg Agreement Concerning the International Patent Classification; Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the Purposes of Patent Procedure Cooperation; Extension Agreement between the Government of the Republic of Croatia and the European Patent Organization ("EPO Extension Agreement") in force since 1 April 2004; Patent Law Treaty in force since 28 April 2005.

Croatia has introduced legislation on Supplementary Protections Certificates (SPC) in 2004, through the Patent Act and the Patent Regulation. The Croatian legislation is intended to align with the EC Regulations, and covers human and veterinary pharmaceuticals as well as plant protection products. However, according to the Patent Act the entry into force of the implementing provisions concerning SPCs is delayed until 2010 or to Croatian accession to the EU. SPCs are granted to products protected by a patent, and the request for an SPC needs to be filed within 6 months of obtaining the market authorization. SPC takes effect at the end of the patent duration. Administrative law suits are the only possible appeal procedures.

Compulsory licensing of patents may be obtained in Croatia. It must be provided by a Court upon request either by the Government of Croatia or by any other person. It may be granted if the patent owner has not exploited the patent, or has not undertaken serious preparations for its exploitation, within 4 years from the date of filing of a patent application or within 3 years from the date on which the patent was granted. Moreover, the person requiring the compulsory licence must have tried to obtain the authorisation from the legitimate patent owner. If the legitimate owner can provide good reasons for not exploiting the patent the compulsory licence is not granted. In case of compulsory patent because of extreme urgency, or to remedy practices due to anti-competitive behaviour, it is not necessary to request the legitimate owner the right to use the patent. Compulsory licence may also be obtained for biotechnological invention, and in particular in the case of cross licensing. The licence does not allow unlimited use of the patent. It is limited to the scope for which it was granted and for the national territory unless it has been granted to remedy practice determined to be anti-competitive. When the conditions for which the compulsory licence was granted disappear, the licence is withdrawn. The owner of the licence has the right to compensation, depending on the economic value of the license.

The provisions related to the acquis on industrial designs have been introduced into the Croatian legal order, namely in the Industrial Design Act of 2003 and the Regulation on industrial designs. Croatia is party to the Hague Agreement and the Geneva Act of the Hague Agreement³. In order to benefit from protection, an industrial design has to be new and present an individual character. The holder of a design has the exclusive right to prevent others from using the design. Exhaustion is limited to the national territory. International/Community exhaustion can be realised with accession of Croatia to international agreements and EU accession. Multiple applications are possible, provided that they belong to the same class of the Locarno classification. When an application for a design is made, the SIPO checks formalities and a limited number of absolute grounds for refusal, (as defined in the Article 33 (1) of the Croatian Industrial Design Act). If the formalities have been complied with and no absolute grounds for refusal exist, the design is published in the Official journal. Duration of protection is 5 years, renewable up to 25 years.

The State Intellectual Property Organisation (SIPO) is in charge of receiving applications for the registration both of designs and patents, and for implementing supplementary protection certificates. Croatia indicated the main difficulty of SIPO in the area of patents to be the insufficient human resources and lack of training. This has caused a significant backlog, which is expected to be absorbed through increased resources and additional accompanying measures, as well as an expected reduction of applications in the future.

³ Croatia is also contracting party to other main international agreements in the field of industrial designs: Paris Convention for the Protection of Industrial Property (1883), Locarno Agreement Establishing an International Classification for Industrial Designs (1968), WTO TRIPS Agreement

II.c. Enforcement

The provisions corresponding to the Enforcement directive 2004/48/EC are distributed over several pieces of legislation, in particular in the Copyright and Related Rights Act, Patent Act, Trademark Act, Industrial Designs Act, Act on protection of topographies of semiconductors, and on geographical indications and designation of products and services, as well as in the Civil Proceedings Act, the Execution Act and the Civil Obligations Act. The reorganisation of these provisions and alignment with the directive is foreseen for IVth quarter of 2007.

The pivotal administration responsible for the management of issues related to intellectual property rights is the State Intellectual Property Office (SIPO).

Five procedures are possible to enforce intellectual property rights. These include civil procedures, dealt with by commercial courts which include courts specialized in intellectual property rights, criminal procedures, dealt with by municipal courts, misdemeanour procedures, dealt with by misdemeanour courts and administrative procedures dealt with by the customs. The last procedure is the administrative procedure for the grant of the rights, dealt with by SIPO.

For Civil procedures, there are four civil courts in Croatia specialised in the protection of intellectual property rights (the Commercial Courts in Zagreb, Rijeka, Ozijek and Split). These are competent for protection and the exploitation of inventions, patents, designs and trade marks, brand protection and copyright. The Court in Zagreb is the most solicited one. When dealing with infringement of trademarks, the four commercial tribunals specialised in intellectual property rights cannot judge on the substance of the validity of a trademark. Criminal cases can be dealt with by the Police, Attorney's offices, who would address either the Criminal courts (105 municipal, 13 county, Supreme Court of the Republic of Croatia) or the Misdemeanour Courts. There are 110 misdemeanour courts, and a High Misdemeanour Court). Administrative procedures can also be lodged to SIPO. Appeals must be lodged to the Administrative Court. A second level of jurisdiction exists for all jurisdictions, and the Supreme Court remains the last appeal.

The four Commercial courts competent for intellectual property rights are also competent for designs in a first instance, the high commercial court in second instance. These courts may also decide on the substance of the claim and the validity of the design. An increasing number of designs are also registered through the Hague system, i.e. through international registration.

When dealing with intellectual property rights cases, the commercial courts can issue provisional measures. This can be done before, during or after the discussion, including a oral hearing, to prevent the continuation of the infringement rights brought to their attention, and as foreseen in the legislation specific to each protected right. Corrective measures are also applicable, such as recall, removal and destruction of the infringing goods or material used to infringe the rights. They can also grant injunctions.

When courts have to take decisions on requests for damages or compensation concerning intellectual property rights matters, they will look at the available evidence, in the perspective of its economic effects. The courts can also swiftly adopt provisional measures, also *inaudita altera parte*, and corrective measures. However, the use of samples in court cases, compared to full scale evidence, is still limited. Croatia is aware of the shortcomings of this requirement. Medium and long terms measures contained in the National strategy address the matter, at latest by 2010.

The damages are calculated on the basis of the actual and economic loss or moral prejudice. Criminal sanctions include imprisonment, fines and reprimand. Rightholders prefer to trigger penal action, which has the advantage of being cheaper and allowing for rapid measures to stop damages.

Customs protection of intellectual property rights is ensured by the Customs Act and two implementing regulations. Customs provisions concerning protection of IPR dealt with in the screening report for chapter 29, Customs Union.

The State Inspectorate has a role of supervision in trafficking of goods as well as in other areas unrelated to the present chapter. In the area of IPR, the State inspectorate is competent for the monitoring of circulation and reproduction of musical and cinematographic works recorded on sound-carriers and video cassettes, computer programs and books, protection of industrial design and protection of trade marks. Its actions are regulated by the State inspectorate Act. It has headquarters in Zagreb and 5 regional offices. State inspectors conduct *ex-officio* supervision activities, or on the basis of applications by the right holders, and can trigger misdemeanour procedures.

Croatia indicates that the main challenges on enforcement in the area of intellectual property rights concern the uneven application of the provisions and the administrative capacity of the bodies in charge, including practical aspects such as warehousing of the goods seized. Also, the high number of jurisdictions causes uneven judgments, and the four civil courts show a consistent backlog, which is decreasing rapidly. The National strategy describes the actions undertaken, including the ongoing work for the re-concentration of jurisdictions to avoid the recurrence of these problems in implementation, to provide appropriate capacity, including training of judges and IT structures, to diffuse information and promote alternative dispute resolutions. Also, there are a number of bodies involved in the implementation of intellectual property rights, and in particular an excessive number of jurisdictions. Croatia indicated the need for overall coordination and for a consistent approach. Steps in this direction are contained in the National Strategy for Development of the Intellectual Property System.

Croatia recognises that the main difficulties encountered by the customs administration, concerning specifically implementation of designs provisions are insufficient administrative capacity and in particular the lack of training and expertise, knowledge of appropriate risk management systems, insufficient IT support, and insufficient cooperation with other enforcement bodies. The means to address these difficulties are contained in the national strategy and consist of a new Regulation implementing customs measures to goods suspected of infringing certain intellectual property rights, due to enter into force in 2006, as well as training and development of adequate administrative capacity. Despite these difficulties, there has been a significant increase in seizures between 2004 and 2005.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Croatia has a high level of legislative alignment with the community acquis in the area of intellectual property rights, and while it possesses a certain enforcement capacity, this needs further improvement.

Croatia has produced a National Strategy for the development of the Intellectual Property System. Its implementation would allow further alignment with the acquis, and adequate reinforcement of administrative capacity. However, the latter involves substantial investments and reforms, including in the judiciary, and needs to be monitored carefully.

III.a. Copyright and neighbouring rights

The provisions in the area of copyright and related rights are aligned with the Community *acquis* to a large extent.

Concerning the Information Society Directive, the Croatian Law is in line to a large extent. National exhaustion is expected to be changed to Community exhaustion by accession. The Regulation concerning the relation between technical protection measures and exceptions (Article 6 paragraph 4 item 2) is outstanding. It should be promulgated by the competent Minister. Further clarification or fine tuning might be required concerning the notion of fair compensation for private copying and reprography.

Provisions on the term of protection are in line with Directive 93/98/EEC.

Concerning computer programs, the Croatian Law is in line to a large extent. National exhaustion is expected to be changed to Community exhaustion by accession.

Concerning the Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright the Croatian Law is partially in line. National exhaustion is expected to be changed to Community exhaustion by accession. Compulsory collective rights management for public lending is not foreseen in the Directive.

Concerning satellite broadcasting and cable retransmission, the Croatian Law is partially in line. Article 1 paragraph 2 item d regarding communication to the public in third countries is expected to be implemented upon accession. Compulsory collective rights management for satellite broadcasting is not foreseen in the Directive.

Provisions on the artists' resale right are in line with Directive 2001/84/EC.

Concerning the protection of semiconductor topographies, the Croatian Law is in line to a large extent. Article 3 paragraph 4 is expected to be implemented upon accession.

Concerning the protection of databases, the Croatian Law is in line to a large extent. National exhaustion is expected to be changed to Community exhaustion by accession.

Concerning collective rights management, the Croatian Law is partially in line. Compulsory collective rights management goes further than in the *acquis* (e.g. broadcasting and public lending). Fine tuning or further clarification might be required concerning the freedom to provide services for collecting societies of other Member States in Croatia.

III.b. Industrial property rights

The Croatian legislation on industrial property rights is aligned to a large extent with the Community *acquis*, including exceptions and limitations. Certain differences compared to the *acquis* exist on trademarks, namely those conditioned to EU membership, and exhaustion. The list of signs which can be protected as trademarks is in line with Article 2 of the First Council Directive to approximate the laws of the Member States relating to trade marks (89/104). The list of absolute and relative grounds for refusal is also in line with Directive 89/104. In this context it should, however, be noted that upon accession to the European Union the Croatian Trademark Act will have to include Community Trade Marks in the definition of 'earlier rights'.

The provisions concerning patents are to a broad extent in line with the *acquis*, including limitations, as well as the exceptions. The necessary steps to participate to the European

Patent Convention and European Patent Office have been undertaken, and should be completed.

The provisions concerning biotechnology invention and protection of plant varieties are by and large in line with the Community acquis and UPOV Convention.

The legislative framework for Supplementary Protection Certificates is in place, but the delay of the entry into force until EU accession will need to be addressed.

Provisions concerning compulsory licences are largely aligned with the acquis.

Provisions on designs are aligned to a large extent with the Community acquis, including exceptions and limitations. Certain differences exist compared to the acquis on designs, namely those related to exhaustion.

III.c. Enforcement

The essential provisions concerning enforcement exist in the Croatian legislation. In order to reach a level comparable to enforcement in the EU, the National Strategy for the development of the intellectual property system foresees improvement to legislation and its implementation. Overall, Administrative capacity of enforcement bodies, including customs, prosecutors and tribunals remains insufficient and the legal procedures to implement intellectual property rights legislation need to be reviewed. The period until accession should be used to reinforce administrative capacity, in order to ensure the enforceability of the legal framework.

The National strategy for the development of the intellectual property system in Croatia describes the means to correct the difficulties in the sector.

The legal framework for the functioning of Customs is to a large extent in line with the requirements of the enforcement Directive. Nevertheless, the administrative capacity of the Customs will need to be upgraded.