ANNEX XVII

INTELLECTUAL PROPERTY

List provided for in Article 65(2)

INTRODUCTION

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as:

- preambles,
- the addressees of the Community acts,
- references to territories or languages of the EC,
- references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other, and
- references to information and notification procedures,

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

SECTORAL ADAPTATIONS

The specific mechanism set out in Chapter 2 (Company law) of Annex IV to the Act of Accession of 16 April 2003 shall apply between the Contracting Parties.

The specific mechanisms set out in Chapter 1 (Company law) of Annex V to the Act of Accession of 25 April 2005 shall apply between the Contracting Parties.

The specific mechanisms set out in Chapter 1 (Intellectual property law) of Annex IV to the Act of Accession of 9 December 2011 shall apply between the Contracting Parties.

ACTS REFERRED TO:


The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptations:

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(a) in Article 1(1)(c), the reference to Article 223 (1)(b) of the EEC Treaty shall be replaced by reference to Article 123 of the EEA Agreement;

(b) Article 3(6) to 3(8) shall not apply;

(c) Article 5(5) shall be replaced by the following:
"The exclusive rights to authorize or prohibit the acts specified in paragraph 1(b) shall not apply to any such act committed after the topography or the semiconductor product has been put on the market in a Contracting Party by the person entitled to authorize its marketing or with his consent."

2. **390 D 0510**: First Council Decision 90/510/EEC of 9 October 1990 on the extension of the legal protection of topographies of semiconductor products to persons from certain countries and territories (OJ No L 285, 17.10.1990, p. 29), as amended by:


The provisions of the Decision shall, for the purposes of the Agreement, be read with the following adaptations:

(a) in the Annex, the references to Iceland, Norway [ ][^7] shall be deleted;

(b) in addition, the following shall apply:
where a country or territory listed in the Annex does not give the same protection as provided for in that Decision to persons from a Contracting Party, the Contracting Parties will use their best endeavours to ensure that such protection is given by the said country or territory to the said Contracting Party at the latest one year after the date of entry into force of this Agreement.


(b) **390 D 0541**: Commission Decision 90/541/EEC of 26 October 1990 in accordance with Council Decision 90/511/EEC determining the countries to the companies or other legal persons of which legal protection of topographies of semiconductors is extended (OJ No L 307, 7.11.1990, p. 21).

(c)[^8] **393 D 0016**: Council Decision 93/16/EEC of 21 December 1992 on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America and certain territories (OJ No L 11, 19.1.1993, p. 20), as amended by:


(g) 394 D 0700: Council Decision 94/700/EC of 24 October 1994 on the extension of the legal protection of topographies of semiconductor products to persons from Canada (OJ No L 284, 1.11.1994, p. 61).


In addition to these Decisions, the following shall apply:

the EFTA States undertake to adopt for the purposes of this Agreement Council Decision 90/511/EEC and the decisions taken by the Commission in accordance with the said Council Decision, if their application is extended beyond 31 December 1992. Ensuing amendments or replacements are to be adopted before the entry into force of the Agreement.

4. [ ]


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(17) Last sentence as introduced by the Correction Protocol.

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) The following paragraphs shall be added to Article 7:

"6. Paragraph 5 shall not apply to the EFTA States.

7. Notwithstanding paragraph 4, for five years following the entry into force of Regulation (EC) No 1901/2006 in the EFTA State concerned, the application for an extension of the duration of a certificate already granted shall be lodged not later than six months before the expiry of the certificate."

(b) The following paragraphs shall be added to Article 21:

"3. An application for an extension of the duration of a certificate can only be granted in an EFTA State where the certificate expires less than 6 months prior to the entry into force of Regulation (EC) No 1901/2006 in the EFTA state concerned. In cases where the certificate expires prior to the entry into force of Regulation (EC) No 1901/2006 in the EFTA state concerned, the extension shall take effect only with respect to the time following after both such entry into force in the EFTA state concerned and the date of the publication of the application for the extension. However, paragraph 3 of Article 13 shall apply as to the calculation of the duration of the extension.

4. Notwithstanding paragraph 7 of Article 7, in cases where a certificate expires earlier than seven months after the entry into force of Regulation (EC) No 1901/2006 in the EFTA state concerned, the application for an extension of the duration of a certificate shall be lodged no later than one month after such entry into force in the EFTA state concerned. In these cases the extension takes effect only with respect to the time following the date of publication of the application for an extension. However, paragraph 3 of Article 13 shall apply as to the calculation of the duration of the extension.

5. An application for an extension of the duration of a certificate lodged in accordance with paragraphs 3 and 4 shall not prevent any third party who, between the expiry of the certificate and the publication of the application for an extension, has commercially used the invention or made serious preparation for such use, to continue such use."

(c) In view of the patent union between Liechtenstein and Switzerland, Liechtenstein shall not deliver any supplementary protection certificates for medicinal products as laid down in this Regulation.


- [22] 1 03 T: Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded adopted on 16 April 2003 (OJ L 236, 23.9.2003, p. 33),


The provisions of the Regulation, shall for the purposes of the present Agreement, be read with the following adaptations:

(a) In Article 3(1)(b), the following shall be added:

"; for the purposes of this subparagraph and the Articles which refer to it, an authorization to place the product on the market granted in accordance with the national legislation of the EFTA State shall be treated as an authorization granted in accordance with Directive 91/414/EEC or an equivalent provision of national law of an EC Member State."

(b) Article 20 shall not apply.

(c) As regards Iceland and Norway, this Regulation shall apply from 2 January 1998.

(d) The following paragraphs shall be added to Article 19:

"3. If a basic patent in an EFTA State lapses, due to the expiry of its lawful term, between 8 February 1997 and 2 January 1998, the certificate shall take effect only with respect to the time following the date of publication of the application for the certificate. However, Article 13 shall apply as to the calculation of the duration of the certificate.

4. In the case of paragraph 3, the application for a certificate shall be lodged within two months of 2 January 1998.

5. A certificate applied for in accordance with paragraph 3 shall not prevent any third party who, between the lapse of the basic patent and the publication of the application for a certificate, in good faith has commercially used the invention or made serious preparation for such use, to continue such use."

(e) In addition the following shall apply as regards Liechtenstein:

In view of the patent union between Liechtenstein and Switzerland, Liechtenstein shall not deliver any supplementary protection certificates for plant protection products as laid down in this Regulation. However, certificates for plant protection products delivered by Switzerland shall take effect in Liechtenstein as from the entry into force of the relevant legislation in Switzerland.


9. [27] [ ]


The provisions of the Directive, shall for the purposes of the present Agreement, be read with the following adaptations:

(a) In Article 2, the term "Community provisions" shall read "EEA provisions";

(b) Article 11(3) shall read:

"The term of any protection extended to databases by virtue of agreements concluded by a Contracting Party extending the right provided for in Article 7 to databases made in third countries and falling outside the provisions of paragraphs 1 and 2 shall not exceed that available pursuant to Article 10".


The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

Article 15 shall be replaced by the following:

“The rights conferred by a design right upon registration shall not extend to acts relating to a product in which a design included within the scope of protection of the design right is incorporated or to which it is applied, when the product has been put on the market in a Contracting Party by the holder of the design right or with his consent.”


The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

The EFTA States shall be invited to send representatives to the meetings of the Contact Committee.


The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

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In view of the patent union between Liechtenstein and Switzerland, Liechtenstein shall not deliver any patent as laid down in this Directive.


The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

The EFTA States shall be invited to send representatives to the meetings of the Contact Committee.


The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

(a) in Article 3(2), the term “trade mark law” shall be understood to be the trade mark law applicable in a Contracting Party;

(b) in Articles 4(2)(a)(i), (2)(b) and (3), 9 and 14, the provisions concerning the Community Trade Mark shall not apply to the EFTA States unless the Community Trade Mark extends to them.


The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptation:

(a) The EFTA States shall participate in the single publicly accessible online database established by the Office for Harmonization in the Internal Market referred to in Article 3(6). The EFTA States shall bear the costs of translation in the Icelandic and Norwegian languages, where necessary.

(b) For the EFTA States, the date of application referred to in Article 8 shall be the day of entry into force of Decision of the EEA Joint Committee No 29/2015 of 6 February 2015.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptation:

(a) In Article 32 of the Directive, the term “Articles 101 and 102 TFEU” shall read “Articles 53 and 54 of the EEA Agreement”.

(b) The EFTA States shall be entitled to participate fully in the work of the expert group established by Article 41 of the Directive and shall within it have the same rights and obligations as EU Member States, except for the right to vote.

(c) In Article 5(8), as regards the EFTA States, the words “10 October 2016” shall read “six months after the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017”.

(d) In Article 31, as regards the EFTA States, the words “10 April 2017” shall read “one year after the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017”.

(e) In Article 36(3), as regards the EFTA States, the words “10 April 2016” shall read “the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017”.

(f) In Article 38(3), as regards the EFTA States, the words “10 October 2017” shall read “18 months after the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017”.

(g) In Article 39, as regards the EFTA States, the words “10 April 2016” shall read “the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017”.

(h) In Article 43, as regards the EFTA States, the words “10 April 2016” shall read “the date of entry into force of Decision of the EEA Joint Committee No 186/2017 of 22 September 2017”.


The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In Article 2(5) of the Regulation, the term “Articles 56 and 57 TFEU” shall read “Articles 36 and 37 of the EEA Agreement”.

(b) In Article 9(2) of the Regulation, the words “2 June 2018” shall read “two months and one day after the date of entry into force of the EEA Joint Committee No 158/2018 of 6 July 2018”.


The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In Article 1(1), the term “TFEU” shall, for the EFTA States, be read as “EEA Agreement”

(b) The reference in Article 1(2)(a) and Article 5(a) to “the right to freedom of expression and information as set out in the Charter” shall, for the EFTA States, be read as “the fundamental right to freedom of expression and information”.

(c) In Article 1(2)(b) and (c), the term “Union or national rules” shall, for the EFTA States, be read as “EEA rules or national rules”.

(d) The reference in Article 1(2)(c) to “Union institutions and bodies” shall, for the EFTA States, be read as including “EEA EFTA institutions and bodies”.

(e) In Article 1(2)(c) and (3)(c), Article 3(2) and Article 5(c) and (d), the term “Union or national law” shall, for the EFTA States, be read as “EEA law or national law”.

(f) In Article 1(2)d and Article 3(1)(c), the term “Union law and national laws and practices” shall, for the EFTA States, be read as “EEA law and national laws and practices”.

\[40\] \[41\] \[42\]
The Contracting Parties take note of the content of the following acts:


[^44]: Point 10 (Council Resolution 92/C 138/01) renumbered point 1 by Decision No 29/2015 (OJ L 93, 7.4.2016, p. 44 and EEA Supplement No 21, 7.4.2016, p. 38), e.i.f. 1.10.2015.