

PROTOCOL 28

ON INTELLECTUAL PROPERTY

Article 1

Substance of protection

1. For the purposes of this Protocol, the term "intellectual property" shall include the protection of industrial and commercial property as covered by Article 13 of the Agreement.
2. Without prejudice to the provisions of this Protocol and of Annex XVII, the Contracting Parties shall upon the entry into force of the Agreement adjust their legislation on intellectual property so as to make it compatible with the principles of free circulation of goods and services and with the level of protection of intellectual property attained in Community law, including the level of enforcement of those rights.
3. Subject to the procedural provisions of the Agreement and without prejudice to the provisions of this Protocol and of Annex XVII, the EFTA States will adjust, upon request and after consultation between the Contracting Parties, their legislation on intellectual property in order to reach at least the level of protection of intellectual property prevailing in the Community upon signature of the Agreement.

Article 2

Exhaustion of rights

1. To the extent that exhaustion is dealt with in Community measures or jurisprudence, the Contracting Parties shall provide for such exhaustion of intellectual property rights as laid down in Community law. Without prejudice to future developments of case-law, this provision shall be interpreted in accordance with the meaning established in the relevant rulings of the Court of Justice of the European Communities given prior to the signature of the Agreement.
2. As regards patent rights, this provision shall take effect at the latest one year after the entry into force of the Agreement.

Article 3

Community Patents

1. The Contracting Parties undertake to use their best endeavours to conclude within a period of three years after the entry into force of the Agreement relating to Community Patents (89/695/EEC) negotiations with a view to the participation of the EFTA States in that Agreement. However, for Iceland, this date will not be earlier than 1 January 1998.
2. The specific conditions for the participation of the EFTA States in the Agreement relating to Community Patents (89/695/EEC) shall be subject to future negotiations.
3. The Community undertakes, after the entry into force of the Agreement relating to Community Patents, to invite those EFTA States who so request to enter into negotiations, in accordance with Article 8 of the Agreement relating to Community Patents, provided they will have in addition respected the provisions of paragraphs 4 and 5.
4. The EFTA States shall comply in their law with the substantive provisions of the European Patent Convention of 5 October 1973.
5. As regards patentability of pharmaceutical and foodstuff products, Finland shall comply with the provisions of paragraph 4 by 1 January 1995. As regards patentability of pharmaceutical products, Iceland shall comply with the provisions of paragraph 4 by 1 January 1997. The Community shall however not address an invitation as mentioned in paragraph 3 to Finland and Iceland before these dates, respectively.
6. Notwithstanding Article 2, the holder, or his beneficiary, of a patent for a product mentioned in paragraph 5 filed in a Contracting Party at a time when a product patent could not be obtained in Finland or Iceland for that product may rely upon the rights granted by that patent in order to prevent the import and marketing of that product in the Contracting Parties where that product enjoys patent protection even if that product was put on the market in Finland or Iceland for the first time by him or with his consent.

This right may be invoked for the products referred to in paragraph 5 until the end of the second year after Finland or Iceland, respectively, has made these products patentable.

Article 4

Semiconductor products

1. The Contracting Parties shall have the right to take decisions on the extension of the legal protection of topographies of semiconductor products to persons from any third country or territory, which is not a Contracting Party to this Agreement, who do not benefit from the right to protection according to the provisions of this Agreement. They may also conclude agreements to this effect.
2. The Contracting Party concerned shall endeavour, where the right to protection for topographies of semiconductor products is extended to a non-Contracting Party, to ensure that the non-Contracting Party concerned will grant the right to protection to the other Contracting Parties to this Agreement under equivalent conditions to those granted to the Contracting Party concerned.
3. The extension of rights conferred by parallel or equivalent agreements or understandings or equivalent decisions between any of the Contracting Parties and third countries shall be recognized and respected by all of the Contracting Parties.
4. In respect of paragraphs 1 to 3, the general information, consultation and dispute settlement procedures contained in this Agreement shall apply.
5. In any case of different relations arising between any of the Contracting Parties and any third country, consultations shall take place without delay as set out in paragraph 4 concerning the implications of such a divergence for the continuation of the free circulation of goods under this Agreement. Whenever such an agreement, understanding or decision is adopted, despite continuing disagreement between the Community and any other Contracting Party concerned, Part VII of this Agreement shall apply.

Article 5

International conventions

1. The Contracting Parties shall undertake to obtain their adherence before 1 January 1995 to the following multilateral conventions on industrial, intellectual and commercial property:
 - (a) Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967);
 - (b) Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);
 - (c) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961);
 - (d) Protocol relating to the Madrid Agreement concerning the International Registration of Marks (Madrid 1989);
 - (e) Nice Agreement concerning the International Classification of Goods and Services for the purpose of the Registration of Marks (Geneva 1977, amended 1979);
 - (f) Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure (1980);
 - (g) Patent Cooperation Treaty (1984).
2. For the adherence of Finland, Ireland and Norway to the Protocol relating to the Madrid Agreement the date mentioned in paragraph 1 shall be replaced by 1 January 1996 and, for Iceland, 1 January 1997, respectively.
3. Upon entry into force of this Protocol, the Contracting Parties shall comply in their internal legislation with the substantive provisions of the Conventions listed in paragraph 1(a) to (c). However, Ireland shall comply in its internal legislation with the substantive provisions of the Berne Convention by 1 January 1995.

Article 6

Negotiations concerning the General Agreement on Tariffs and Trade

The Contracting Parties agree, without prejudice to the competence of the Community and its Member States in matters of intellectual property, to improve the regime established by the Agreement as regards intellectual property in light of the results of the Uruguay Round negotiations.

Article 7***Mutual information and consultation***

The Contracting Parties undertake to keep each other informed in the context of work within the framework of international organizations and within the context of agreements dealing with intellectual property.

The Contracting Parties also undertake, in areas covered by a measure adopted in Community law, to engage upon request in prior consultation in the above-mentioned framework and contexts.

Article 8***Transitional provisions***

The Contracting Parties agree to enter into negotiations in order to enable full participation of interested EFTA States in future measures concerning intellectual property which might be adopted in Community law.

Should such measures have been adopted before the entry into force of the Agreement, negotiations to participate in such measures shall begin at the earliest opportunity.

Article 9***Competence***

The provisions of this Protocol shall be without prejudice to the competence of the Community and of its Member States in matters of intellectual property.