



Republika e Kosovës
Republika Kosova - Republic of Kosovo

Qeveria - Vlada - Government

Zyra e Kryeministrit
Kancelarija Premijera - Office of the Prime Minister
Zyra Ligjore - Pravna Kancelarija - Legal Office

REFERENCË:	-2-2021
DATE:	12.08.2021
PËR/ZA/TO:	Rexhep Bllaca, Director of Legal Department – Ministry of Industry, Entrepreneurship and Trade
CC:	Irfan Lipovica , Deputy Secretary General / Ministry of Industry, Entrepreneurship and Trade
PËRMES/PREKO/THROUGH:	Arben Krasniqi, Deputy Secretary General / Office of the Prime Minister Mentor Borovci, Director of Legal Office / Office of the Prime Minister
NGA/OD/FROM:	Valon Hetemi, Senior Legal Officer / Division of EU Law / Legal Office / Office of the Prime Minister
TEMA/SUBJEKAT/SUBJECT:	Cover letter “Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products”

Honored Mr. Bllaca,

Pursuant to the Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, Regulation No. 13/2013 for the Government Legal Service and article 8 par 2.16 and article 12 par 1.1 of Regulation (OPM) No. 01/2020 on Internal Organization and Systematization of the Jobs in the Office of the Prime Minister, we forward the Legal Opinion on Compliance with EU *acquis* for the “Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products”.

Respectfully!



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LEGAL OPINION ON COMPLIANCE WITH EU LEGISLATION

12.08.2021

Legal Department of the Ministry of Industry, Entrepreneurship and Trade on 26 July 2021, , pursuant to Article 7, paragraph 1, sub-paragraph 1.2 of Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo and Article 13, paragraph 5 of Regulation No. 13/2013 on the Government Legal Service and in accordance with Article 12, paragraph 3 and paragraph 4, sub-paragraph 4.19 of Regulation No. 02/2021 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries has submitted for review to the Division of Law EU, in the Office of the Prime Minister the “*Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products*”.

1. SUBJECT

Legal opinion on compliance of “*Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products*” with EU *acquis*.

2. ATTACHED DOCUMENTS

At the request of the Legal Department of the Ministry of Industry, Entrepreneurship and Trade, for the Legal Opinion of Compliance with the EU *acquis*, the following documents were sent:

- Final draft of the Draft Law, in three languages (Albanian, Serbian and English);
- Statement of Compliance of the Draft Law with the EU *acquis*, in three languages (Albanian, Serbian and English);
- EU-Kosovo and Kosovo-EU Tables of Concordance.

3. PREAMBLE

Pursuant to Article 7 paragraph 3 of Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo, pursuant to Article 3 subparagraph 1.3, Article 13 paragraph 6, Article 21 paragraph 4 of Regulation no. 13/2013 on the Government Legal Service and Article 30 paragraph 4 of the Administrative Instruction no. 03/2013 on Standards for the Drafting of Normative Acts, the Division of EU Law in the Office of the Prime Minister, on 12 August 2021 issues the following:

4. LEGAL OPINION ON COMPLIANCE WITH EU LEGISLATION

The request for Legal Opinion with the EU acquis was sent electronically and in hard copy on 26 July 2021 with reference number 1922.

5. INTRODUCTION

The purpose of "*Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products*" ... is to determine the requirements, measures and procedures for the legal protection of topographies of semiconductor products and the implementation of the rights deriving from this law. This Draft Law contains a total of six (6) chapters and thirty nine (39) articles.

6. SUMMARY OF EU ACTS REGULATING THE FIELD OF THE DRAFT ACT

The scope of "*Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products*" is subject to regulation by the EU acquis. Consequently, this field is regulated by:

- Council Directive 87/54/EC of 16 December 1986 on the legal protection of topographies of semiconductor products (OJ L 24, 27.1.1987 p. 36-40)¹ dhe
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.04.2004; correction OJ L 195, 02.06.2004, p. 16-25).²

The purpose of Council Directive 87/54/EC is to protect topographies as the final or intermediate form of any product consisting of a material body which comprises a layer of semiconductor material and which is intended to perform exclusively or in combination with other functions, an electronic function, as well as Directive 2004/48/EC of the European Parliament and of the Council (April 2004) on the enforcement of Intellectual Property Rights, relating to the measures, procedures and remedies necessary to ensure enforcement of Intellectual Property Rights.

In the context of alignment with the EU acquis, the Stabilization and Association Agreement (SAA) sets out approximation obligations through Articles 77 and 78 of this Agreement.³

Article 77 of the SAA stipulates as follows:

ARTICLE 77

General aspects of intellectual property

1. Pursuant to this Article and Annex VII, the Parties confirm the importance that they attach to ensuring adequate and effective protection and enforcement of intellectual, industrial and commercial property right.
2. Kosovo shall take the necessary measures in order to guarantee no later than five years after entry into force of this Agreement a level of protection of intellectual,

¹ Accessible through <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:31987L0054>.

² Accessible through: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0048&from=EN>.

³ Law No. 05/L-069 on the Ratification of the Stabilization and Association Agreement between the Republic of Kosovo, on the one hand, and the European Union and the European Atomic Energy Community, on the other hand, Official Gazette, Publication Date: 01.12.2015, accessible: <https://gzk.rks-gov.net/actdetail.aspx?actid=11239>.

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

3. Kosovo undertakes to abide by the multilateral conventions on intellectual, industrial and commercial property rights referred to in Annex VII. The SAC may decide to oblige Kosovo to abide by specific multilateral Conventions in this area.

Whereas, Article 78 of the SAA stipulates as follows:

ARTICLE 78

Trade-related aspects of intellectual property

1. From the entry into force of this Agreement, the Parties shall grant to each other's companies, EU nationals and Kosovo citizens, in respect of the recognition and protection of intellectual, industrial and commercial property, treatment no less favourable than that granted by them to any third country under bilateral Agreement.

2. If problems in the area of intellectual, industrial and commercial property affecting trading conditions occur, they shall be referred urgently to the SAC, at the request of either Party, with a view to reaching mutually satisfactory solutions.

7. DESCRIPTION AND EVALUATION OF DOCUMENTS SUBMITTED WITH THE LEGISLATION PROPOSED BY THE LINE MINISTRY

From the legal analysis of the form and content of "*Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products*" it results that the draft of this draft act has been properly drafted as required by the applicable provisions for the standards of drafting normative acts.

8. OPINION ON COMPLIANCE

This opinion on compliance is based on the content of the draft of the Draft Law. The responsibility of the Division of EU Law, in the Legal Office of the Office of the Prime Minister, is noted in its opinion, while the Ministry of Industry, Entrepreneurship and Trade is responsible for completing the Statement of Compliance (SoC) and Tables of Concordance (ToC) when the Draft Law is related to the transposition of the EU acquis. The line ministries, in this case (MIET), are responsible for the policy they make and the level of harmonization with the EU acquis. Therefore, the preliminary periods from partial transposition to full transposition are the responsibility of the proposing body. In advance, completing and determining the level of compliance with the EU acquis is the responsibility of the line institutions, while the Manual for completing tables of concordance and statement of compliance and Practical Guidelines for the approximation of local legislation with the EU acquis contain practical guidelines for this process⁴.

⁴ Accessible through <http://www.mei-ks.net/sq/dokumente-udhezuese-mbi-procesin-e-perafrimit>

9. ASSESSMENT OF COMPLIANCE

Provisions of “*Draft Law on Defining the Rights and Protection of Topographies of Semiconductor Products*” are subject to regulation by the EU Acquis, namely Council Directive 87/54/EC of 16 December 1986 on the legal protection of topographies of semiconductor products and Directive 2004/48/EC of the European Parliament and of the Council dated 29 April 2004 on the Enforcement of Intellectual Property Rights. During the compliance analysis it results that the provisions of the Draft Law are fully in line with the provisions of the aforementioned Directives.

Respectfully,

Valon Hetemi

Senior Legal Officer
Division of EU Law
Legal Office/Office of the Prime Minister