

TAIEX Peer Review Mission on assessing closing benchmark No 4 for Chapter 7: Intellectual Property Law - 90054

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The views articulated and expressed in this Report are purely those of the author and may not in any circumstances be regarded as stating an official position of the European Commission.

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1. Background

The Peer Review mission on assessing **closing benchmark No. 4 for Chapter 7: Intellectual Property Law** is the second peer mission regarding the assessment of the closing benchmark No. 4, which states:

- **Montenegro ensures a sufficient administrative capacity to register intellectual property rights and provides a track record of investigation by customs and effective enforcement through civil and, where appropriate, criminal justice.**

Highlighting only what is related to the Objective of this Mission, according to the Country Report published by the European Commission in October 2023, Montenegro has a **good level of preparation** in the area of intellectual property law. **Good** progress was made in aligning national legislation with the EU *acquis* in the area of industrial property. After the Country Report from 2003, further progress was made in aligning national legislation with the EU *acquis* in the area of copyright and related rights. During the peer mission, the Intellectual Property Department informed experts that the Act on Amendments to the Copyright and Related Rights Act (implementing DSM and SatCab2) is in the legislative process. After its adoption, Montenegro's copyright framework will be harmonized with that of the European one. However, improvements need to be made concerning the track record of investigations, prosecutions, and judicial follow-ups due to staff shortages. Therefore, in the coming year, Montenegro should, in particular,;

- **improve its track record in investigations, prosecutions, and judicial follow-up, including by addressing staff shortages.**

Furthermore, the Country report states on **enforcement** that in March 2023, the Ministry of Economic Development approved the 2023 Action Plan of the Working Group for organising and implementing joint action to combat infringements of IPR. In addition, the Ministry participated in international joint customs

operations intending to detect, among other things, infringements of IPR. The number of misdemeanour warrants and the value of goods seized by the Administration for Inspection Affairs – Market Inspection show a slight increase compared to previous years. In the period June 2022 - April 2023, 729 controls were conducted, and 34 misdemeanour warrants were issued, amounting to EUR 34.600. More efforts are needed to improve the track record on investigations and judicial follow-up, including addressing staff shortages for both sectors. IPRED is mainly aligned; discussions about some divergences regarding minor provisions are ongoing.

In July 2023, the country adopted the new national **Intellectual Property Strategy 2023-2026** (IP Strategy) and its Action Plan for 2023. This comprehensive IP Strategy aims to improve the efficiency of the system of registration and enforcement of intellectual property rights by, inter alia, strengthening administrative capacity. The recommendations from the previous peer mission from 2018 (e.g., legislative alignment, criminal code amendments, deterrent sentencing, capacity building, IP enforcement and seized goods) are primarily contained in the IP Strategy.

2. Introduction

2.1. Mission's Objective

The Mission's Objective was to provide a comprehensive overview of the state of play and assessment of the measures taken to improve within the last and upcoming years:

- the administrative capacity to register IPRs;
- the efficiency, quality and accountability of the Montenegrin system of enforcement and
- whether Montenegro has a good system of track record of investigation by customs, as set out under the closing benchmark.

In light of the closing benchmark and the steps foreseen and already implemented in the IP Strategy, the peer review should focus on the following issues since the previous peer review recommendations were issued and provide a comprehensive overview of the current state of play in respect of these areas:

- Has the administrative capacity sufficiently improved to demonstrate its capacity to register intellectual property rights?
- How is Montenegro addressing the shortcomings of its administrative capacities in the Intellectual Property Department, the market inspection and the customs administration?
- Does the provided track record of the investigation by customs and effective enforcement through civil and, where appropriate, criminal justice tally with the frequency and intensity of infringement to be expected in a country of the size and exposition of Montenegro?
- Are there records on fines from the commercial Court, state prosecutor's office and market inspection procedures and on follow-up to demonstrate effective enforcement?
- How is the work of the Intellectual Property Rights Enforcement Coordination Team installed in 2017 advancing and do its decisions and the special working team installed by it effectively contribute to IPR enforcement?
- Are the facilities for storage and destruction of the seized goods sufficient and are there any bottlenecks / issues in further processing of suspended procedures by the Customs authority? Looking

into the legal provisions governing seized goods, as well as whether any profit may be generated by the state from seized goods? (e.g. auctioning)

- Asses whether the cooperation with Police is sufficient?

Through this thorough and comprehensive assessment, the Commission can then draw its conclusions on whether Montenegro has met Closing Benchmark 4 in Chapter 7 to proceed with the provisional closure of this Chapter. The experts can add anything to their review/assessment that impacts CBM4.

2.2. Executive Summary

The extensive analysis of the institutional capacities of the main institutions: Ministry of Economic Development, Directorate for Internal Market and Competition, Department for Intellectual Property, Customs Administration¹, Police Administration, Courts and State Prosecutor's Office and Administration for Inspection Affairs – Market Inspectorate was performed. Inter-institutional cooperation was examined, including relations with stakeholders and international cooperation. In particular, performance in different areas of activities regarding statistical reports on enforcement and registration was examined. Based on the findings, the following conclusions are drawn:

- **Has the administrative capacity sufficiently improved to demonstrate its capacity to register intellectual property rights?**
 - **Largely met:** While capacities in processing standard intellectual property rights (IPR) applications have improved with reduced registration times, significant challenges to the transparency and operability of the system lie ahead. The 2022 cyberattack on Montenegro has destroyed public access to the IPR registers, making it impossible for users to autonomously search for pre-existing rights online. Verbal requests for this information can be made to the Ministry, *i.e.* Department for Intellectual Property, which usually will answer in one to two business days. This cannot be considered full compensation for a functioning online register. While operational recovery is expected by the year-end, the current system is still insufficient and has been for the last two years. Procedural shortcomings have also been identified by users particularly for handling complex cases like trademark oppositions and nullifications. However, it is clear that intense efforts by the Ministry are underway to fix these problems, partially with the help of international organizations. Furthermore, users have expressed appreciation for the well-functioning communication with the Ministry employees and significant progress in the processing of standard procedures.
- **How is Montenegro addressing the shortcomings of its administrative capacities in the Intellectual Property Division/Department, the market inspection, and the customs administration?**
 - **Partially met:** The forthcoming reorganization of the market inspection services, following legislative amendments, presents significant uncertainties. The lack of detailed planning, including logistical and staffing arrangements, could disrupt IPR enforcement. **Customs administration has largely met** its responsibilities, though some minor procedural clarifications and a regular training plan are needed.

¹ Between 2021 and 2023, the Customs Administration was part of the Revenue and Customs Administration, which was dissolved by the Government's decision on 15/12/2023. As of 01/01/2024, the Customs Administration operates again as an independent authority.

The restructuring of market inspection capacities is a major concern, with insufficient clarity on operational continuity.

- **Does the provided track record of investigation by customs and effective enforcement through civil and, where appropriate, criminal justice tally with the frequency and intensity of infringement to be expected in a country of the size and exposition of Montenegro?**
 - **Largely met:** Customs enforcement shows consistent improvement with increasing numbers of detained and destroyed goods. Civil justice enforcement is strong, but **criminal justice enforcement remains only partially met**, due to delays in prosecuting cases and capacity constraints in the police and prosecutor's office and lack in distinguishing and presenting track records for misdemeanours and criminal offences.
- **How is the work of the Intellectual Property Rights Enforcement Coordination Team installed in 2017 advancing, and do its decisions and the special working team installed by it effectively contribute to IPR enforcement?**
 - **Partially met:** The coordination team made significant initial progress, but activities slowed during the pandemic and have yet to fully regain momentum. **Civil enforcement is largely met**, while coordination in criminal justice and market inspection remains weak. More robust cooperation between institutions is needed to ensure effective enforcement across all domains, particularly by prosecuting misdemeanours and criminal offences.
- **Are there records on fines from the commercial court, state prosecutor's office, and market inspection procedures, and on follow-up to demonstrate effective enforcement?**
 - **Partially met:** The commercial court shows largely effective enforcement with a reliable track record on fines. However, the police and state prosecutor's office is less consistent, particularly in criminal IPR cases, and market inspection is currently hindered by recent organizational changes. The records on misdemeanours are missing, except for the actions undertaken by the Market and Tourist Inspectorate so far.
- **Are the facilities for storage and destruction of seized goods sufficient, and are there any bottlenecks/issues in further processing of suspended procedures by the Customs authority?**
 - **Largely met:** The Customs Administration's storage and destruction capacities are sufficient, with regular destruction under customs supervision preventing any storage issues. The potential for auctioning seized goods remains underutilized due to safety concerns from right-holders.
- **Assess whether the cooperation with the police is sufficient.**
 - **Partially met:** Police cooperation in IPR enforcement is improving but remains insufficient. While there is some collaboration with customs and other enforcement bodies, the coordination, particularly in complex criminal cases, is inadequate. Joint training and formal mechanisms for better cooperation are needed to enhance police involvement.

Analysis of the Fulfillment of Benchmark 4 for Chapter 7: Intellectual Property Law

Montenegro has made significant progress toward fulfilling Benchmark 4, but challenges remain in achieving full compliance.

- **Administrative Capacity to Register Intellectual Property Rights:**
 - **Largely met:** Registration times for trademarks and industrial designs have been reduced, showing improvements. However, the 2022 cyberattack severely impacted online public access to registers, which limits transparency. Full compliance depends on restoring public registers and data transfer to international data bases and investing in IT resources.

- **Track Record of Investigation by Customs:**
 - **Largely met:** Customs has made substantial progress in enforcement, with increasing numbers of procedures and goods destroyed. However, infrastructure challenges still need to be addressed for full compliance.
- **Effective Enforcement through Civil Justice:**
 - **Largely met:** Civil justice enforcement is functioning well, with specialized judges and efficient resolution of intellectual property cases. The system is largely meeting its obligations.
- **Effective Enforcement through Criminal Justice:**
 - **Partially met:** Criminal justice enforcement is hindered by a low number of prosecutions and capacity issues in the State Prosecutor’s Office and Police. Legislative amendments and further training are needed to improve the enforcement process, particularly by introducing more misdemeanour protection evident. The delineation between misdemeanours and criminal offences must be addressed in the legislation and practical application.
- **Conclusion:**
 - Montenegro has made progress, particularly in administrative capacity and civil justice enforcement and customs border measures. However, additional efforts in criminal justice (misdemeanours and criminal offences) and public access to registers are required to fully meet the benchmark. Investments in training, infrastructure, and reforms will be essential for achieving full compliance.

2.3. Methodology of the Evaluation

The methodology was envisaged in the Terms of Reference prepared by the EU Commission for the experts to apply in this peer mission. Nevertheless, the experts widened the methodology based on their mission and observed progress and challenges. Therefore, the Chapter “Findings” in this Report contains more subpoints than the envisaged “3. Methodology” from the Terms of Reference.

- Type: targeted peer review on the topics mentioned under section 2.1. including a case-based peer review on enforcement track record)
- Format: in-person
- Parts of the mission:
 - Field mission: 5 days
 - Preparatory work: 2 days (reading past reports & scheduling meetings)
 - Drafting the final Report: 3 days

The following documents were provided for scrutiny ahead of the mission:

- Country reports 2019-2023
- Statistical reports on enforcement and registered rights 2018-2024
- Intellectual property laws, Customs Law
- Regulation on the Closer Manner of Implementing Customs Procedures and Customs Formalities
- MNE Answers to advance questions from the Sub-committee on internal market and competition 2021
- MNE Contribution to the Sub-committee on internal market and competition 2021, 2022, 2023, 2024
- Customs answers to DGNEAR (no date)
- Information on administrative capacities (no date)

- Responses to EC questions 2024
- Information on the assessment of the need for the establishment of special units or services within the institutions in charge of enforcement of intellectual property rights 2023
- Excerpt from the Rulebook on the internal organization and systematization of the ministry of economic development 2023
- Montenegro intellectual property Strategy for the period 2023-2026 with Action Plan for 2023
- Report on the implementation of the Action Plan for 2023, for the implementation of the Intellectual property strategy of Montenegro for the period 2023-2026
- 2024 Action Plan for the implementation of the intellectual property strategy of montenegro for the period 2024-2026
- MNE Peer Assessment Report 2018 Chapter 7

In particular, the following points should be assessed under the scope as set out in section 2.1., taking into account the measures foreseen under the IP Strategy and the respective Action Plans which are released every year (this is currently the case for 2023 and 2024):

A. Institutional Capacities of the main institutions

- Internal organisation,
- Staffing level and operational capacities, including IT infrastructure overview,
- Training of staff,
- Effective recruitment procedures,
- Working methods (e.g. applying a risk-based approach, pro-activeness, etc.).
- Use of pre-accession support (IPA, TAIEX) and third party support to improve technical and staff capacity.

At:

- Ministry of Economic Development, Directorate for internal market and competition, Division for Intellectual property
- Customs (Customs Administration),
- Police Administration
- Commercial & administrative Court,
- State prosecutor's office (as appropriate),
- Administration for Inspection Affairs – Market Inspectorate.

B. Inter-institutional cooperation (information exchange, implementation of formal arrangements, existence of informal arrangements, etc.)

- Intellectual Property Rights Enforcement Coordination Team

C. Relations with stakeholders

- Chamber of Commerce,
- right holders and / or their legal representatives in Montenegro.

D. Overview of international cooperation (incl. neighbouring countries)

- WIPO, EUIPO, EPO, other international bodies, international databases,
- EU member states- neighbouring countries (through IPO Montenegro, customs, other).

E. Performance in different areas of activities

- Statistical Report on the enforcement of intellectual property rights in Montenegro and Report on Number of officials dealing with IPR
- Registration and enforcement of IPR
- comprehensiveness,
- depth
- Investigation and Prosecution

This part of the mission will focus on track records regarding efficient and effective investigations in IPR. In this respect, institutions (customs, Police, market inspection authority, commercial Court, State Prosecutor’s office) should be able to provide the experts with data and statistics showing their operational results between 2018 and 2023.

In addition, authorities are invited to prepare 3 cases to be presented by the customs/police, market inspection authority, and commercial court during the visits and the field trip.

Within the field mission, the need arose to extend the scope of stakeholders to be consulted. Therefore, additional meetings were held with the Ministry of Justice, Ministry of Public Administration, Centre for training of judges and prosecutors, representatives of CMOs and IT expert from the Ministry of Economic Development. The final Agenda of the Peer Mission Is attached here as an Annex to this Report.

Following each meeting referred to in the final Agenda of the Peer Mission, all authorities were requested to provide additional information and/or clarifications in writing. All were provided shortly afterwards.

All said findings and the materials provided before the mission contributed to the Experts’ assessment, which is reflected in this report.

3. Findings

A. Institutional Capacities of the main institutions

A.1. General overview

At the July 6, 2023 session, the Government of Montenegro adopted the IPR Strategy of Montenegro for 2023-2026, with an Action Plan for 2023. As a strategic goal, the following stand out: Improved efficiency of the registration system and enforcement of IPRs. Priorities within the aforementioned strategic goal, i.e., operational goals, are: strengthened administrative capacities of institutions responsible for registering and enforcing IPRs; improved public awareness of IP; and better enforcement of intellectual property rights.

The **Ministry for Economic Development** has recognized the importance of enhancing efforts to raise awareness on the functioning and use of intellectual property rights among the public at large and specific user groups. This is why, three more posts in the ministry will be filled with communications experts focusing on this area.

By analysing all the institutions involved in implementing the subject policy, the issue of administrative capacity is singled out. The problem of the lack of market inspectors, as well as officers in the department for combating

economic crime, specialised for IPRs, the existence of only one state prosecutor who is specialised in a given area and the absence of action in the case of violations of IPRs on the Internet, affect the possibility of the full development of the IP system.

Starting from the above, the Action Plan for 2023, within operational objective 1, defines the activity: “Assessment of the necessity of establishing special units or services within the institutions responsible for the enforcement of intellectual property rights”, the result indicator of which is “Adopted information on the necessity of establishing special units and services by the Government of Montenegro”.

After conducting a comprehensive analysis, **the Government of Montenegro** has adopted the following information on the assessment of the need to establish special units or services within the institutions in charge of enforcement of intellectual property rights:

- It is necessary to specialise a certain number of inspectors in the **Administration for Inspection Affairs - Market Inspection** who would deal only with the control of the protection of intellectual property rights. Therefore, a **separate unit is unnecessary**, but it could be a group of jobs related to intellectual property monitoring. Difficulties that may be encountered in implementing the above are the need for a possible increase in the number of inspectors, as well as insufficient training and the ability of inspectors to acquire expertise and practice in this area. When it comes to advantages, there would be a fully trained inspector at all times to carry out this type of control, which would undoubtedly be even more frequent and efficient.
- The Rulebook on Internal Organization and Systematization of the **Customs Administration** organised the Department for Intellectual Property and Monitoring of Prohibitions and Restrictions within the Sector for Customs System and Procedures, the competencies and duties of which are as follows: preparation of professional bases in the field of protection of intellectual property rights, prohibitions and restrictions, participation in the development of customs and special regulations in the field of protection of intellectual property rights and prohibitions and restrictions, participation in the development of strategies, cooperation agreements, etc., providing professional assistance in the application of regulations, acting on the requests of holders of intellectual property rights, etc. The department has systematised five positions, a head, two officers for intellectual property rights and two officers for restrictions and prohibitions. Following the Rulebook, the needs of the service, and especially considering the size of the Customs Administration and the State of Montenegro, **at this moment, there is no need to form a separate unit** for intellectual property. The Department for Intellectual Property and Monitoring Prohibitions and Restrictions can respond to tasks from its scope of work. This is mainly because the new organisation was created following the best practices and experience of the region’s and European countries’ tax and customs administrations and the recommendations of international partners, especially the International Monetary Fund (IMF) and the World Customs Organization (WCO).
- According to the current Rulebook on Internal Organization and Systematization of the **Ministry of Interior – Police Administration**, the enforcement of intellectual property rights falls under the jurisdiction of the Sector for Combating Crime, which includes the Department for Combating Corruption, Economic Crime, and Conducting Financial Investigations (as well as organisational units functioning within the Security Department organised on a territorial basis), and the Criminal Intelligence Division, within which there is a Unit for Combating High-Tech Crime. The Rulebook provides for a sufficient number of positions within the aforementioned organisational units of the Police Directorate, which also deal with suppressing intellectual property crimes as prescribed in Chapter XXI of the Criminal Code of Montenegro. For the above reasons, **it is**

currently unnecessary to establish a separate unit or service within the Ministry of Interior – Police Administration tasked explicitly with enforcing intellectual property rights, as the existing administrative capacities can fulfil all obligations within their jurisdiction and strategic documents.

- **The Commercial Court of Montenegro**, based on its legally established jurisdiction, is, among other things, competent to adjudicate disputes concerning copyright and related rights, industrial property rights, trademark protection, and other intellectual property rights, regardless of the parties involved. In this regard, upon enacting the Law on Courts, the Commercial Court of Montenegro established a department for disputes concerning the protection of copyright and other intellectual property rights with a president and members. Currently, nine judges serve in this department, and the exact number of judges assigned to this department is determined by the annual work schedule adopted at the beginning of the year for that current year. Therefore, considering the number of cases in this area and the number of judges handling these cases, **it is unnecessary to establish special units for intellectual property** because the formation of this department has led to the standardisation of practice and a significant increase in efficiency in handling cases. Special units would not contribute to creating a unified practice in proceedings, would significantly complicate reporting on these cases, and would ultimately narrow the judges' experience in handling cases if they were assigned to handle only specific cases in this area. The current legal solution, with a unified department for disputes concerning the protection of copyright and other intellectual property rights, is adequate, and there is no need to form special units within this department.
- Within the **State Prosecutor's Office of Montenegro** or within the primary state prosecutor's offices in Montenegro, which are competent for the criminal prosecution of perpetrators of intellectual property crimes, **it is currently not practical to form a special unit for the field of intellectual property**, considering the annual number of criminal cases in this area handled by the State Prosecutor's Office. Indeed, this could be implemented in the future. Still, the primary condition is an increase in the number of criminal cases through the filing of criminal charges by Police, customs, and inspection authorities, as well as the creation of appropriate administrative-technical capacities. This also involves familiarisation with regulations, especially international ones that govern this area, training of state prosecutors and other staff who assist them, and strengthening cooperation between authorities, particularly between state prosecutor's offices and bodies dealing with administrative-legal protection of intellectual property rights.

From all the above, **the Government of Montenegro** concluded that **it is not necessary to establish special units or services within institutions responsible for the enforcement of intellectual property rights**. Instead, it is essential to strengthen the administrative capacities of these institutions to ensure better enforcement of intellectual property rights by increasing the number of employees and providing adequate training and opportunities for employees to acquire expertise and practical experience in this area.

After analysing all documents and information provided during the peer mission, the Experts found this approach of the Government of Montenegro reasonable and efficient, considering Montenegro's size, population and economic environment.

A.2. Strategy 2023-2026 implementation status

Montenegro's Intellectual Property Strategy 2023-2026 was adopted following extensive consultations with international bodies, including the World Intellectual Property Organization (WIPO) and the European Commission (EC). The Strategy, adopted in 2023, emphasises harmonisation with EU standards, fostering innovation, and enhancing IP protection mechanisms.

Montenegro's Intellectual Property Strategy 2023-2026 foresees ambitious initiatives, setting high standards for the country's intellectual property framework. However, with the current level of implementation at 38%, it is clear that achieving the full realisation of this Strategy remains a significant challenge. While the goals outlined in the Strategy are commendable, priorities should be put on achieving minimum standards such as a functioning register, back office and website to build a good foundation for protecting intellectual property in the country.

However, the following section shall briefly overview the Strategy's implementation status. According to the Report on the implementation of the Action Plan 2023, the level of fulfilment of the respective operational objectives is as follows:

- **Operational Objective 1** (increase administrative capacity to register IPR): implemented 45.4%, partially implemented 13.6%, not implemented 41%,
- **Operational Objective 2** (raise awareness on IPR): implemented 44.4%, partially implemented 11.2%, not implemented 44.4%,
- **Operational Objective 3** (enhance enforcement of IPR): implemented 25%, not implemented 75%.

The main reasons for the non-implementation of activities include the lack of administrative capacities faced by some institutions in 2023, a shortage of financial resources, and the consequences of the cyber-attack in 2022. The Ministry of Economic Development is responsible for most activities (a total of 22). During 2023, it faced a lack of capacities in the Intellectual Property Division, where 18 officers were employed in 23 systematised positions, one of whom was seconded to the European Union Intellectual Property Office (EUIPO) in Alicante, Spain. Her rights and obligations from work are on hold.

According to the documents of the Ministry for Economic Development, the following changes are underway:

- The new Rulebook will increase the number of executors in the Department for Intellectual Property to seven, namely one for Patents and Topography of Semiconductors and two for Trademarks, Industrial Design and Indications of Geographical Origin.
- A Section for Education and Information should be created within the Department for Intellectual Property, with a head and three executors. This is primarily because it is necessary to intensify activities to raise public awareness of the importance of intellectual property, which will be achieved by educating and informing different groups of interested parties, starting with rights holders, employees, users and decision-makers. This endeavour requires a clear communication and outreach strategy providing personalized activities for different user groups with different information requirements.

Additionally, the country's self-assessment in the Report on the Subcommittee Meeting IMC 2024 states concerning the unfulfilled goals the following: "The key challenge during the implementation of the Action Plan for 2023 concerned the fact that the proposed activities go beyond the scope of regular work tasks of the institutions, all to improve the situation in the field of intellectual property. One of the factors that influenced the implementation of the Action Plan 2023 is the consequences of the cyber-attack from 2022, which have mostly been overcome."

Operational Objective 1:

While the staff increase is commendable, and users report good communication and exchange with employees responsible for registration, the lack of IT capacities and a stringent outreach strategy is testimony to the remaining insufficient resources.

Montenegro's efforts to enhance cooperation with international offices such as EUIPO and EPO are veering towards improving its administrative capacities. Montenegro currently plans to complete a search agreement with the European Patent Office (EPO) to be able to offer search reports to its users. However, this seems to be a challenging endeavour if the basic infrastructure remains lacking. Likewise, the Ministry launched an IP pre-diagnostic service pilot years ago, by which two advisory sessions were held to help businesses identify their IP at an early stage. This project, however, has not been followed up on since. The Ministry explained that the trained colleagues are no longer working there, which has put activities on hold. It is planned, however, to include advisory service activities in the job descriptions of new employees.

The report on implementing the Action Plan 2023 states that developing specialised training programs on intellectual property registration aimed at newly hired employees remains unrealised as it was deemed unnecessary because there is already general training for newly hired employees. However, some stakeholders expressed the wish for more in-depth education on IP matters for themselves and bemoaned the lack of foundational knowledge on IP matters to the TAIEX experts.

The Strategy plan states several objectives regarding the modernisation of the IT system for registration of IPR, such as the introduction of EPO and EUIPO Front Offices, reiterating the objective to establish a system for electronic submission of trademarks and designs for 2024. However, these plans seem to be on hold at the moment as the existing IT environment remains severely damaged by a cyber-attack carried out on the country in 2022. The current main objective, therefore, lies in restoring essential functions of the online register and the electronic back office of the Ministry.

According to the Ministry for Economic Development, progress has been made in the registration time of different IPRs. Trademark applications formerly took 9-12 months (in the absence of any opposition, appeal or lawsuit) and now take 6-12 months. Industrial design registration time has been reduced from 9-12 months to now 6-9 months. An increase in employees could achieve these gains in efficiency.

Users expressed positive views regarding the efficiency of IPR registration. This indicates a general satisfaction with the standard processes in place. However, concerns have been raised about the extended waiting times associated with contentious cases, which suggest that while the system functions well under normal conditions, it may face challenges in handling more complex or disputed registrations. Addressing these concerns could enhance the overall effectiveness and user confidence in the IPR registration system.

However, as stated above, due to the lack of a public online register, users find themselves in a worse situation regarding legal certainty than before the cyber attack during the time of the last peer review mission in 2018.

Operational Objective 2:

By establishing and commencing the work of the Working Group for Raising Public Awareness on the Importance of Intellectual Property Rights and the cooperation of competent authorities and IPR holders, which the Coordination Team formed for the Enforcement of Intellectual Property Rights, particular progress has been made in achieving

Operational Objective 2. An open-door event and a TV segment on copyright for kids were organised in this capacity. However, more is needed to inform the public, which is still relatively new to the IPR system. The unused potential in further actions regarding awareness building can be gleaned from the Review of planned and spent funds in the report on implementation for the action plan 2023. It shows that for 2022, operational Objective 2 had been budgeted with EUR 20.900.- out of which merely EUR 968.- were spent.

No explicit communication or outreach strategy can be determined from the Ministry's actions. An economic analysis could help identify important target groups that would benefit from gaining a better knowledge of IP. This should be the starting point for targeted information campaigns, material and exchanges, which could be organised in cooperation with other bodies such as the Montenegrin University and the Chamber of Economy. Users voiced the need for simple, accessible and practical IPR protection information, specifically for micro companies.

Operational Objective 3:

Operational Objective 3, aimed at ensuring better enforcement of intellectual property rights, faced the most significant delays, with 75% of planned activities unimplemented. The primary reason for this shortfall was the need to prepare detailed analyses on various topics, such as protecting inventions, designs, and copyrighted works created during employment or public procurement. These analyses, requiring the engagement of professional consultants and experts, were not completed as scheduled in 2023 and were deferred to 2024.

The Ministry of Economic Development, responsible for many activities under this objective, encountered substantial challenges, particularly regarding human resources and financial limitations. The Ministry had 18 officers employed in 23 systematized positions, but one officer was seconded to the European Union Intellectual Property Office (EUIPO). This shortage of staff contributed to delays, as the Ministry lacked the capacity to handle its workload effectively. In addition, many activities under this objective required the engagement of external consultants, which compounded the delays.

Efforts to increase enforcement actions was challenged by a cyberattack in 2022, which severely disrupted critical IT systems related to intellectual property rights. The attack impaired the functioning of databases and IT tools essential for the registration and enforcement of IP rights, delaying progress in this area.

To ensure future improvements, the report recommends engaging consultants to conduct necessary analyses and strengthen administrative and technical capacities within the responsible institutions. It also emphasizes the importance of bolstering cybersecurity measures to prevent further disruptions. Despite these setbacks, there is hope that addressing these challenges will lead to better enforcement of intellectual property rights in the upcoming years.

Nevertheless, after analysing all documents and information provided during the peer mission, the Experts found the implementation of the IP Strategy itself is a great challenge. The Strategy's goals align with the EU standards for the most developed countries . For the closure of Benchmark 4 and the accomplishment of the peer mission, it is essential to focus on adjusting annual Action Plans in the implementation of the IP Strategy to achievable goals which ensure the basic functioning of the system as streamlined here in this Report, in the chapter Recommendations. MNE authorities are recommended to apply for TAIEX assistance for drafting Action Plans for 2025 and 2026.

A.3. Detailed overview of main institutions responsible for enforcement:

A.3.1. Ministry of Economic Development, Directorate for Internal Market and Competition, Department for Intellectual Property (Intellectual Property Office)

○ *Internal organisation*

In 2019, Montenegro's Intellectual Property Office migrated to the Ministry for Economic Development. The competencies of the former Intellectual Property Office were transferred entirely along with the staff into the **Directorate for Internal Market and Competition**, consisting of:

1. *The Intellectual Property Directorate* (Department for Intellectual Property) is the administrative authority within the Ministry of Economic Development and is responsible for:
 - ✓ conducting administrative procedures for the protection of inventions by patents, registration of trademarks, industrial designs, geographical indications, issuance of Supplementary Protection Certificates and protection of semiconductor topographies;
 - ✓ cooperation in the implementation of international agreements on industrial property rights;
 - ✓ maintenance, transfer and termination of rights;
 - ✓ preparation of data for publication and their publication in the official intellectual property gazette;
 - ✓ keeping statistical data on applications and recognized industrial property rights and preparation of statistical reports;
 - ✓ issuance and revocation of permits for collective management of copyright and related rights;
 - ✓ supervision of the work of organizations for collective management of copyright and related rights;
 - ✓ determination of temporary tariffs;
 - ✓ receipt and registration of copyright works and related subject matter;
 - ✓ allocation of producer codes, issuance of licenses for production and approvals for commercial reproduction of optical discs;
 - ✓ monitoring of international agreements in the field of copyright and related rights and obligations arising for Montenegro in connection with the implementation of agreements in this field to which Montenegro has acceded;
 - ✓ provision of data for the preparation of information, analysis and proposals regarding the adoption, revision and implementation of international agreements in the field of intellectual property;
 - ✓ initiation of Montenegro's accession to international agreements in the field of intellectual property;
 - ✓ provision of data as a basis for conducting negotiations and concluding international agreements in the field of intellectual property;
 - ✓ providing suggestions and comments on drafts of regulations in the field of industrial property, copyright and related rights, and optical discs, as well as on proposals for temporary tariffs;
 - ✓ monitoring the development of intellectual property at the international level; preparation of strategic documents in the field of intellectual property;
 - ✓ providing input for the preparation of information, analysis and proposals regarding cooperation with WIPO, EPO, EUIPO and WTO and regional and national intellectual property offices;
 - ✓ preparation of information, reports and other materials (responses to questionnaires, etc.) necessary for fulfilling international obligations in the field of intellectual property;
 - ✓ preparation of input for the preparation of notifications in the field of intellectual property following the WTO/TRIPS Agreement;
 - ✓ participation in activities related to Montenegro's accession process to the European Union;

- ✓ participation in the promotion and improvement of the application of intellectual property rights (patents, trademarks, industrial designs, geographical indications, copyright and related rights) in relevant segments of the public and raising general awareness of intellectual property and its importance;
- ✓ promoting cooperation with all interested parties, especially with the Chamber of Commerce, faculties, small and medium-sized enterprises;
- ✓ cooperation with companies for the application of intellectual property in their business operations;
- ✓ organizing seminars and workshops in the field of intellectual property;
- ✓ activities related to conducting professional exams for patent, trademark or design representatives;
- ✓ maintaining legally prescribed registers of applications and recognized industrial property rights and registers of representatives;
- ✓ maintenance, termination and transfer of industrial property rights;
- ✓ issuance of documents on recognized industrial property rights, proposing and monitoring the implementation of regulations on the amount of administrative fees and costs of intellectual property protection procedures and other tasks in the field of intellectual property in accordance with regulations.

The Ministry of Economic Development plays a crucial role in intellectual property management through its Directorate for Internal Market and Competition, which includes the Division/Department *for Normative Affairs and International Cooperation in the Field of Intellectual Property*. The tasks of this Division/Department are the following:

- ✓ drafting laws and other regulations related to intellectual property;
- ✓ participating in activities to adjust national legislation to comply with the legal framework of the European Union and international agreements in the field of intellectual property;
- ✓ monitoring the situation and suggesting measures to enhance the protection of intellectual property rights;
- ✓ handling administrative procedures within the jurisdiction of the directorate;
- ✓ providing information to interested parties on matters falling under the directorate's jurisdiction;
- ✓ coordinating and cooperating with national institutions responsible for enforcing intellectual property rights;
- ✓ preparing and submitting notifications related to intellectual property following the WTO/TRIPS Agreement;
- ✓ engaging in international cooperation with organizations such as the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the European Patent Office (EPO), the European Union Intellectual Property Office (EUIPO), as well as regional and national intellectual property offices;
- ✓ participating in activities related to Montenegro's accession process to the European Union.

The Ministry of Economic Development does not have the capacity to substantially examine patent applications but relies on reports on the results of substantive examinations of the European Patent Office and the patent administrations of other countries with which it has a contract. Revocation procedures are not performed by other entities.

○ ***Staffing level and operational capacities, including IT infrastructure overview***

Following the Rulebook on Internal Organization and Systematization of the Ministry of Economic Development, from December 2023, the number of systematised positions of civil servants within the Department for Intellectual Property (3 Divisions) increased from 21 to 23, out of which 17 were filled. In addition, one employee from the Department for Intellectual Property and one employee (IT expert from another organisational unit in the Ministry

- IT Division), who dealt exclusively with issues in this area, were assigned to work at EUIPO until mid-2025. The procedure for hiring two new officials in the Division for patents is ongoing, and it is expected to be finalised imminently. In the Department for Normative Affairs and International Cooperation in the Area of IP, five positions are systematised, out of which four are filled, and one of those employees has been temporarily assigned to work in the European Patent Office. Additionally, two employees are dealing with IP issues in the IT Division.

Since 2022, Montenegro does not have a functioning online register for industrial property rights due to a cyber-attack which crushed the government's IT system. Currently, records of registered rights exist on the intranet of the Ministry for Economic Development, swaths of data have been lost and then recovered, and the process of adapting the register for online availability ends by the end of the year 2024. According to the Ministry, at the moment, data can only be provided upon request by parties and is then drawn from an internal register hosted on a Ministry intranet system. Currently, the Ministry is in the process of public procurement for a new back office system feeding an online register. The Montenegrin patent application data is also currently not transmitted to the EPO, the EPO Register, or Espacenet, similarly the trade mark data transfer to TMView and design data to DesignView seems to be disrupted as well. The ministry is currently working hard to restore the flow of data to these systems. **Training of staff**

There is a substantive amount of training for staff in the Montenegrin Intellectual Property Department, organised in cooperation with international organisations such as WIPO, EPO, and EUIPO, and in cooperation with national offices in other neighbouring countries.

- **Effective recruitment procedures**

As said above, in the Division for patents, one procedure for hiring of two new officials has been completed and the official has already started working while the other is ongoing and is expected to be finalised soon.

- **Working methods (e.g. applying a risk-based approach, pro-activeness, etc.)**

There was no specific reporting on this matter.

- **Use of pre-accession support (IPA, TAIEX) and third party support to improve technical and staff capacity**

There was no specific reporting on this matter.

- **Observed progress and challenges**

The Ministry of Economic Development, through its Directorate for Internal Market and Competition and the Department for Intellectual Property (Intellectual Property Office), has made progress in strengthening Montenegro's intellectual property rights (IPR) framework. The adoption of the **Intellectual Property Strategy for 2023-2026**, developed in consultation with international bodies such as the World Intellectual Property Organization (WIPO) and the European Commission, underscores Montenegro's commitment to aligning its IPR systems with EU standards and even best practices. This comprehensive Strategy emphasizes administrative capacity building, fostering innovation through awareness-building on IP, and improving enforcement mechanisms, providing an ambitious vision for further development in this area. Nevertheless, the annual Action Plans should focus on achievable goals and foster the basic functioning of IPR system. Recommendation for the Action Plans are given in this Report.

One notable area of progress is the **reduction in registration times** for trademarks and industrial designs. Efforts by the Department for Intellectual Property have successfully shortened processing times for trademark registrations

from 9-12 months to 6-12 months, and for industrial designs from 9-12 months to 6-9 months. These improvements reflect the Ministry's commitment to increasing efficiency and making the intellectual property system more accessible to rights holders. In addition, the Department has taken the first steps to enhance public awareness of intellectual property which have helped to foster a greater understanding of IPR across different sectors.

However, the Ministry continues to face challenges, particularly in terms of **administrative capacity**. Although the number of employees in the Department for Intellectual Property has increased, vacancies and staff shortages persist, which have delayed the full implementation of some aspects of the Intellectual Property Strategy. The **IT infrastructure** has also been a significant challenge, as a cyberattack in 2022 severely disrupted the public intellectual property register, which remains at the moment only on the intranet of the Ministry. This has hampered transparency and the ability to provide timely information to rights holders and the public. Efforts to restore the online register are ongoing, but the absence of this critical tool continues to affect the overall efficiency of the intellectual property system.

Despite these challenges, the Ministry's efforts to enhance **international cooperation** with organizations like the European Patent Office (EPO) and the European Union Intellectual Property Office (EUIPO) demonstrate, as well as the World Intellectual Property Organisation (WIPO), a forward-thinking approach. For example, ongoing negotiations with the EPO on a search agreement providing patent searches to Montenegrin users (and an improved price for SME, universities and public research organizations) signal the Ministry's intent to further integrate into the international intellectual property landscape, which will strengthen its overall capacity.

In conclusion, while the Ministry of Economic Development has made important strides in improving Montenegro's intellectual property system, particularly in terms of reducing registration times and increasing public awareness, challenges related to staffing and IT infrastructure remain. Nonetheless, the Ministry's proactive engagement with international partners and its commitment to the implementation of the Intellectual Property Strategy provides a strong foundation for overcoming these challenges.

With continued focus on capacity building and infrastructure improvements, the Ministry is well-positioned to meet its goals and further align Montenegro's intellectual property system with EU standards. Currently, the EU standards are largely met. Still, efforts must be taken to ensure the online availability and full functionality of the register of industrial property rights by the end of 2024.

A.3.2. Customs Administration

○ **Internal organisation**

In the Customs Administration, as a separate organizational unit, in the Sector for Customs System and Procedures, there is a Department for the protection of intellectual property rights and monitoring of prohibitions and restrictions that is responsible for monitoring the implementation of regulations in the field of intellectual property rights enforcement, participation in the drafting of regulations in this area, then to consider and process application for action for the enforcement of intellectual property rights (customs measures), participation in organizing and implementing training in this area, achieving cooperation at the national and international level, etc.

The legislative framework is well drafted:

- ✓ Article 196 of the Customs Act of Montenegro ("Official Gazette of Montenegro," No. 86/22) pertains to the implementation of customs protection measures in cases where there is suspicion that goods are being imported or exported in violation of intellectual property rights. These measures are specifically regulated through provisions related to customs procedures, formalities, and controls.
- ✓ The Regulation on the Detailed Manner of Conducting Customs Procedures and Formalities ("Official Gazette of Montenegro," No. 26/23, 97/23), particularly in Section XXXXa, sets out in greater detail the conditions and manner in which customs measures are implemented when there is suspicion that the importation or exportation of goods infringes intellectual property rights. This section of the regulation outlines the steps customs authorities are required to take, including the possible detention of goods, notification of rights holders, and further actions.
- ✓ Article 6 of the Customs Service Act ("Official Gazette of Montenegro," No. 3/16) prescribes the duties and responsibilities of customs authorities, including the enforcement of measures protecting intellectual property rights.
- ✓ Specific national regulations governing the protection of intellectual property rights in Montenegro refer to legislation covering copyrights and related rights,, patents, trademarks, industrial designs, and other forms of intellectual property. The Customs Service plays a key role in the protection of these rights through measures such as the detention and inspection of goods at the border when intellectual property infringement is suspected.
- ✓

- **Staffing level and operational capacities, including IT infrastructure overview**

In the mentioned Department for the protection of intellectual property rights and monitoring of prohibitions and restrictions, besides the head of department, there are also four senior advisors - two of whom have the title of senior advisers for intellectual property affairs.

- **Training of staff**

The officials of the Customs Administration (former: Revenue and Customs Administration), participated in various training sessions and conferences related to intellectual property rights and the fight against illegal trade, including:

- ✓ From May 30 to June 1, 2022, the Regional Conference on Combating Illegal Trade was held in Budva, jointly organized by the American Chamber of Commerce in Serbia and the American Chamber of Commerce in Montenegro. One of the main topics of the conference was the protection of intellectual property rights, during which representatives of state authorities from the region, including customs and market regulation bodies, exchanged their experiences in this field.
- ✓ From June 28 to June 30, 2022, a Regional Training on Intellectual Property was held in Podgorica, organized by UNODC. Officials from the Revenue and Customs Administration also participated in this training, which focused on the enforcement of intellectual property rights.
- ✓ On July 7, 2022, a specialized training session titled "Protection of Intellectual Property Rights" was held in Podgorica at the Customs Officers Training Center. This event was organized by the Revenue and Customs Administration in cooperation with the law firm "ZMP" from Podgorica. The training addressed the protection of goods marked with the trademarks of Victoria's Secret Stores Brand, PopSockets LLC, The Black & Decker Corporation, Levi Strauss & Co., and Tommy Hilfiger.

- ✓ A seminar titled "Support for Innovation and Creativity in Montenegro – Intellectual Property Strategy of Montenegro for the period 2023-2026" held in November 2023.
- ✓ A roundtable discussion on the topic "Protection of Visual Identity through Trademarks and Industrial Design – Registration Procedures" held in January 2024.

Recommendations for further development of training activities are given in this Report.

- ***Effective recruitment procedures***

There was no specific reporting on this matter, except that in the coming period, the Customs Administration will strive to strengthen its administrative capacities.

- ***Working methods (e.g. applying a risk-based approach, pro-activeness, etc.).***

The Customs Administration applies European standards in its working methods, as confirmed by reviewing legislation and observing the practical implementation of regulations during the peer mission. The working methods are at a satisfactory level. For example, the Customs Administration has a risk analysis system modelled on the systems used in Slovenia. The risk analysis system allows for an appropriate review of customs declarations. Specific rules within the system are focused on counterfeit goods. It is a combined system, as the customs officer on site can decide on the method of inspection, as deemed appropriate.

- ***Use of pre-accession support (IPA, TAIEX) and third party support to improve technical and staff capacity.***

There was no specific reporting on IPA. Concerning TAIEX, preparation activities are ongoing for the accession to the system COPIS and negotiations with the EU Commission regarding the accession to COPIS. Namely, Montenegro may access COPIS upon becoming a Member State of the European Union. Until that moment, all technical steps in preparation for COPIS should be undertaken. However, Customs Administration undertook activities to realise an approved study visit to the Danish Customs Administration on the subject of "harmonizing the statistical reporting methods of the Customs Administration with the methodology used by the EU-DG TAXUD (COPIS). According to the recent information from DG TAXUD and the Danish Customs Administration, the latter sent specific questions to DG TAXUD. The timing and dynamics of the visit are pending until said information is provided.

- ***Observed progress and challenges***

Montenegro's Customs Administration has made commendable progress in aligning its operations with European standards. This has been particularly evident in the implementation of risk-based working methods modeled on the system of Slovenia. These methods allow for more effective analysis of customs declarations and better identification of high-risk goods, particularly counterfeit products. The adoption of flexible, on-site decision-making by customs officers ensures that inspections are carried out efficiently and in accordance with the situation at hand. This alignment with EU practices has contributed to the Customs Administration's satisfactory performance level in terms of intellectual property rights (IPR) enforcement.

International cooperation has also been a strong point for the Customs Administration, as evidenced by its participation in numerous training sessions and conferences aimed at combating illegal trade and intellectual property infringements. Events such as the Regional Conference on Combating Illegal Trade and specialised training on the protection of intellectual property have bolstered the capacity of customs officials to handle complex IPR-

related issues. These efforts are part of a broader strategy to enhance operational capabilities and foster closer collaboration with international and regional partners.

The Department for Intellectual Property and Monitoring of Prohibitions and Restrictions is functional and staffing on a good level.

A challenge lies in the inconsistent use of pre-accession support programs such as IPA and TAIEX, which have yet to be fully leveraged to improve technical infrastructure and staff capacity within the Customs Administration. In terms of handling more complex intellectual property infringement cases, the Customs Administration is in line with EU standards.

In conclusion, Montenegro's Customs Administration has demonstrated considerable progress in aligning its operations with European standards, particularly through the successful implementation of risk-based working methods, dedicated efforts in control of the cross-border traffic of goods and proactive participation in international training and cooperation. These efforts have enhanced the efficiency and capacity of customs officials to manage intellectual property rights enforcement, positioning Montenegro as a strong regional player in combating illegal trade and protecting IPR.

The Customs Administration's willingness to adopt best practices from neighbouring EU countries and its strong commitment to improving through international cooperation provides a solid foundation for continued success. With further investment in training, technical capacity, and inter-agency coordination, Montenegro Customs is well on its way to addressing these challenges and achieving its EU accession benchmarks in intellectual property rights enforcement. The positive momentum built so far suggests that Montenegro Customs is moving in the right direction and is well-positioned to meet its future goals.

A.3.3. Police Administration

○ *Internal organisation*

According to the current Rulebook on Internal Organization and Systematization of the Ministry of Internal Affairs – Police Administration (enacted in August 2022 and amended in February 2023), the monitoring of issues related to the Protection of Intellectual Property Rights – combating criminal offences against intellectual property, as prescribed in Chapter XXI of the Criminal Code of Montenegro, as well as combating other criminal acts prescribed by the mentioned legal provisions, falls under the competence of the Crime Prevention Sector and its organisational units:

- The *Department for Combating Corruption, Economic Crime, and Conducting Financial Investigations*, as well as organisational units that operate within the Security Department, organised on a territorial principle;
- The *Department for Criminal Intelligence Operations*, which also includes the *High-Tech Crime Suppression Group*, established in September 2022.

The *Border Police Sector's* role is reflected in its authority to monitor and control the movement of goods outside legal border crossings or via illegal routes by which goods enter or are smuggled into Montenegro. The Border Police Sector carries out these activities by deploying its mobile units.

- ***Staffing level and operational capacities, including IT infrastructure overview***

In the Police Administration, according to the respective Rulebook, there are no job positions systematised exclusively for work on intellectual property issues.

Crime Prevention Sector, specifically the organisational unit of the Sector: Department for Combating Corruption, Economic Crime, and Conducting Financial Investigations: According to the respective Rulebook, 60 positions have been established, of which 30 are currently filled.

Units for Combating Economic Crime, which operate within the Regional Security Centers "Center," "South," "West," and "North," i.e., within the Security Departments: respective Rulebook has established 58 positions within these Units, with 34 positions currently filled.

According to the respective Rulebook, *High-Tech Crime Suppression Group* has a planned staffing of 18 (eighteen) officers, of which 7 (seven) positions are currently filled. As with other departments, the Rulebook does not define a specific job position or describe tasks solely dedicated to enforcing intellectual property rights. However, all officers currently employed in the Group have professional qualifications that enable them to handle high-tech crime cases on various grounds.

- ***Training of staff***

The High-Tech Crime Suppression Group officers continually attend specialised training sessions provided with the help of partner services and international organisations, all aimed at improving existing skills and acquiring new knowledge and expertise. However, it has not been reported that any specific training is directed toward the enforcement of intellectual property rights. It is noted that the continuous training of these officers is of primary importance to ensure that the fight against all forms of high-tech crime is elevated to an even higher level.

No report on the training of other officers regarding the enforcement of intellectual property rights.

- ***Effective recruitment procedures***

The recruitment of staff within all remaining free positions reflected in the respective Rulebook is ongoing, but there are no specific commitments as to the outcome.

- ***Working methods (e.g. applying a risk-based approach, pro-activeness, etc.)***

There was no specific reporting on this matter.

- ***Use of pre-accession support (IPA, TAIEX) and third-party support to improve technical and staff capacity***

There was no specific reporting on this matter.

The Police Directorate participated in the EUIPO project EMPACT (European Multidisciplinary Platform Against Criminal Threats) to develop a handbook on the investigation of crimes against intellectual property.

○ **Observed progress and challenges**

Police Administration pointed out that the Criminal Code of Montenegro prescribes 10 criminal offences related to intellectual property (see Articles 233 to 238, 271, alongside Article 284 – Illicit trade, Article 286 - Counterfeiting of marks for marking goods, and Article 265 - Smuggling). Statistics (see under E. within this Chapter) show few prosecutions that refer to those criminal offences, although the methodology aligns with the expected European standards. Nevertheless, alongside the criminal offences prescribed in the Criminal Code, the Police can act based on provisions which regulate misdemeanours (see *e.g.* Article 62d of the Trademark Act of Montenegro and Article 202a of the Copyright and Related Rights Act of Montenegro), that never happens in practice. Therefore, legal provisions on misdemeanours against intellectual property rights should be improved in the respective laws and possibly procedural laws that regulate misdemeanours and criminal procedures. Also, criminal offences against intellectual property should be prescribed only when severe damage to the right owner occurs or significant unjust financial gain is obtained through a criminal offence. The delineation between criminal offences and misdemeanours should be strictly prescribed to avoid double prosecution, which would be against European standards (*e.g.* *Maresti v. Croatia*, European Court of Human Rights). Although there is no *acquis* on this matter, the examples of Croatia and Slovenia might be taken as a model since Montenegro has the same legal background from the past.

During the peer mission meeting, the Minister of Justice informed the experts that the reform of criminal legislation is ongoing, whereby exact matters related to delineating criminal offences and misdemeanours shall be regulated in the recommended way. The discussion emphasised that, in practice, the Police Administration and the State Prosecutor's Office should begin to rely more on misdemeanour law protection in cases of intellectual property rights violations. Practically speaking, significantly more cases of intellectual property rights violations pose a social threat that should be addressed through misdemeanour law protection. At the same time, situations that require the engagement of state authorities through criminal justice are much rarer.

Nevertheless, for this aim, not only legislative amendments should be envisaged that tackle the respective intellectual property laws, but also the Criminal Code, Misdemeanour Procedure Act and Criminal Procedure Act of Montenegro, and, where appropriate, laws or sub-laws which regulate the activities of Police Administration and State Prosecutor's Office. At the same time, specific training for police officers needs to be developed so that they can, in practical application, identify and distinguish cases that warrant misdemeanour law protection from those that require criminal law protection. In addition to that, general training on intellectual property should be regularly performed with the police officers so that they keep and update their knowledge on this matter. Within the High-Tech Suppression Group, it was reported that no training regarding intellectual property has been delivered so far.

In conclusion, the Police Administration highlighted that Montenegro's Criminal Code prescribes 10 criminal offenses related to intellectual property, but few prosecutions have occurred, despite alignment with European standards. Although the Police can act under misdemeanour provisions, this rarely happens in practice. To address this, legal provisions on misdemeanours should be improved in intellectual property and procedural laws, and criminal offences should be reserved for severe cases involving significant harm or financial gain. The ongoing reform of criminal legislation aims to delineate between criminal offences and misdemeanours more clearly. Training for police officers on distinguishing between misdemeanour and criminal law protection, alongside general intellectual property knowledge, is essential to improve enforcement.

A.3.4. Commercial Court, Misdemeanour Courts, Criminal Courts and Administrative Court

○ *Internal organisation*

Judicial authorities have jurisdiction to resolve disputes in intellectual property rights. There are different courts established in Montenegro:

- Commercial Court, dealing with civil law enforcement on IPRs,
- First-instance General Courts, Criminal Departments dealing, among other offences, with criminal offences against IPRs,
- Administrative Court, dealing with administrative lawsuits against decisions of administrative bodies
- First-instance Misdemeanour Courts dealing, among a considerable number of various misdemeanours (e.g. traffic misdemeanours, maintenance of public order and peace, and others) also with misdemeanours against IPRs,
- Appellate Court of Montenegro, dealing with civil, administrative and criminal matters as the second instance,
- Supreme Court of Montenegro, ensuring the uniformity of jurisprudence.

The Commercial Court of Montenegro has jurisdiction over all disputes over intellectual property rights in the country. This concentration of territorial and functional jurisdiction contributes to the efficiency of trials and the quality of case law, indirectly leading to the informal specialisation of judges. This is supported by the fact that most disputes are resolved within three months, and the minimum number within one year. Between 85% and 90% of intellectual property rights cases are related to copyright. One of the four departments of this Court is the Department for the Protection of Intellectual Property Rights. This enables the achievement of a satisfactory degree of specialisation, although none of the members of the Department judges exclusively in cases related to the protection of intellectual property rights.

The Administrative Court of Montenegro has jurisdiction over judicial control of the legality of decisions of administrative bodies that recognise, annul and revoke industrial property rights. It is natural that the Administrative Court of Montenegro does not specialise in intellectual property rights and that, except in procedural omissions in administrative proceedings, it has difficulties with competent substantive decision-making. The track records on intellectual property enforcement in the Administrative Court are missing, and this shortcoming needs to be improved.

The Appellate and Supreme Courts of Montenegro control the legality of judgments in the Commercial and Administrative Courts.

Before the trial, the Commercial Court of Montenegro encourages both parties to consider alternative dispute resolution and highlights the mediation services provided by the existing Center for Alternative Dispute Resolution in Montenegro. This mediation system shows results since 36 out of 860 copyright cases from 2019 to 2023 ended in a settlement.

The system of criminal sanctions for infringements of intellectual property rights is based on the criminal divisions of the basic, higher and Appellate Courts, which decide on appeals against first-instance verdicts of higher courts. Barely a double-digit number of cases in the last five years (all in the field of copyright) and no convictions indicate that criminal sanctions are not a credible way to deter IPR infringements in Montenegro. Since every judge has an equal chance of being assigned to a case related to a criminal offence against intellectual property (Chapter 21 of

the Criminal Code of Montenegro), more education on intellectual property should be offered to those judges in various formats, such as e-courses, written materials and basic training (see under “Training of staff” in this Chapter).

The system of criminal justice (criminal courts) in Montenegro is organised in such a way that there are 15 (fifteen) first-instance courts, each covering one or more municipalities (territorial jurisdiction). They have mixed jurisdiction of cases, meaning that each judge decides in civil, criminal and enforcement (compulsory enforcement of final court decisions). Accordingly, they usually have a civil, criminal and enforcement proceedings department. There are two higher courts: the High Court in Bijelo Polje and the High Court in Podgorica. They decide (among others) on appeals against decisions of the first-instance courts. They also have civil, criminal and executive departments. There is also the Appellate Court of Montenegro, which decides on appeals against first-instance decisions of Higher courts. Finally, there is the Supreme Court of Montenegro. Concerning criminal offences against intellectual property, The Supreme Court is responsible for ensuring the uniformity of jurisprudence in extraordinary legal remedies. Concerning criminal offences against intellectual property, no judges or departments in Montenegrin criminal courts are specifically in charge of hearing and deciding criminal cases against intellectual property.

There is no reporting in the organisational structure of misdemeanour courts, and this should be improved and embraced in the criminal justice system to protect intellectual property rights.

As emphasised, according to legal regulations in Montenegro, judges are not specialised based on their field (except for judges for juveniles and specialisations based on legally regulated competencies). Cases are assigned to judges based on an electronic random case assignment system.

- **Staffing level and operational capacities, including IT infrastructure overview**

As for the staffing capacities, it was pointed out that the Commercial Court last operated with a full bench in the summer of 2021. After that, there was a period of continuous attrition of judges, so at one point in 2022, the Court was operating with only seven judges, three of whom were on sick leave. This issue inevitably led to a backlog in the number of resolved cases, so the Court, which had 1,298 unresolved cases at the end of 2020, found itself with a total of 2,946 unresolved cases by the end of 2022. Nevertheless, even though four to five judges were still missing in 2023, it was the Court with the highest efficiency rate of 111.47%, meaning that it resolved more cases than received, reducing the number of unresolved cases by 12.75%, i.e. to 2,613. The numbers reflect the total cases, not only cases related to intellectual property. The cases related to intellectual property are reflected in the tables later under F. in this Chapter of this Report.

Regarding the data on the number of employees-judges who act in intellectual property cases, in the Commercial Court of Montenegro, following the Annual work schedule for 2024, there are currently 11 judges acting. They are not specialised exclusively in intellectual property matters but can act in those cases due to the training they receive and the expertise they develop in practice.

There is no data on misdemeanour and criminal court judges or judges in the Administrative Court. This reporting should be improved.

There is no data on IT infrastructure in the judicial system and how it is applied in IPR enforcement. This reporting should be improved.

○ *Training of staff*

As for the training of judges and judicial advisors in the field of intellectual property, the President of the Commercial Court pointed out that the training and professional development process falls under the jurisdiction of the Center for Judicial and Prosecutorial Training. This Center plans its activities a year in advance, based in part on comments that individual judges submit to the Center regarding the areas they believe require training. Intellectual property training is regularly included in the Center's annual program, and the lectures are delivered by judges with many years of practical experience in this area and professors specialising in this field of law. Newly appointed judges undergo more intensive training in this area during their candidacy for the position of judge, and, in any case, care is taken to ensure that a sufficient number of training sessions are provided at the beginning of their careers on topics that are most commonly the subject of court proceedings, including intellectual property law. Additionally, lectures organised on this topic by rights holders are not uncommon, and judges and advisors regularly participate in them. The Court itself cannot organise individual training sessions, given that the budget for this purpose is mainly allocated to the Training Center. Still, in any case, the Court is a reliable partner within the limits of its ability to contribute to the organisation of training sessions.

The **Center for Judicial and Prosecutorial Training** stated that it is an independent organisation with a legal personality whose primary responsibility is to train judges and public prosecutors. The Center conducts training for judges, candidates for judges, lecturers and mentors, advisors, and trainees in courts, all following specific training programs. The Center establishes and maintains intensive cooperation with domestic and international organisations and institutions in conducting training sessions and projects in the field of Judiciary.

The Board of Directors, led by the President, manages the Center, while the Program Council, which is the Center's expert body, designs the training programs. At the end of the current year, the Center adopts the Annual Training Program for the following year based on an analysis of training needs. In addition to the annual program, a Continuous Training Program and an Initial Training Program for candidates for judges are adopted (after completing the initial training, these candidates are appointed as judges). The analysis of training needs is conducted using an improved methodology based on numerous and diverse methods (questionnaires filled out by judges, questionnaires sent to other legal professions, relevant national and international institutions, focus groups and interviews, obligations arising from strategic state documents (strategies and action plans), and finally, the needs assessment conducted by the Program Council itself).

Regarding training on intellectual property, inputs on needs are received from the judges of the Commercial Court, the only specialised Court for intellectual property disputes. Based on their needs and the Program Council's opinion on the importance of education on intellectual property, training on this topic is an integral part of the Annual Training Program, the Continuous Training Program, and the Initial Training Program. The continuous training program always includes at least one (1) training session on intellectual property. Considering the relatively small number of judges dealing with this area, the relatively small number of judges and prosecutors in Montenegro overall, and the relevance of numerous other areas and topics, the Program Council believes one training session is sufficient. In addition to the training planned by the program of the Center for Judicial and Prosecutorial Training, judges and public prosecutors can participate in training organised by other partner organisations, such as the EJTN (European Judicial Training Network). Training on this topic is often conducted in cooperation with PAM (Montenegrin CMO for music authors), with whom the Center has a memorandum of cooperation. These training sessions are typically two-day events and are always practically oriented, featuring numerous case studies. Participants are judges and advisors from the Commercial and Appellate Courts of Montenegro, and the lecturers are experienced judges (from the Supreme and Appellate Courts) and regional and international experts. The Initial Training Program also covers intellectual property through a multi-day module.

Taking into consideration evaluations of the training, as well as the results of focus groups and interviews, participants are delighted with the content and instructors of the training, and they emphasise that there are not many contentious issues or challenges in the practice of the Commercial Court. There is also a developed practice of resolving disputes through mediation.

Regarding misdemeanour judges and judges of the Administrative Court, they do not emphasise the need for training in this area, although they have certain competencies. In the future, starting next year, misdemeanour judges and Administrative Court judges will be more involved in intellectual property training. The Program Council of the Center will strive to provide various forms of education, primarily e-learning courses, webinars, publications, and professional literature, which will improve the knowledge of misdemeanour and Administrative Court judges in the field of intellectual property (trademark infringement, copyright, and related rights).

- ***Effective recruitment procedures***

Currently, three judges are still missing at the Commercial Court, but one judge is expected to be appointed by the end of 2024 and the other two by the spring of 2025 at the latest. Therefore, after a long period during which the Court operated with an insufficient number of judges, it is expected that the full complement of judges will soon be achieved, allowing for continuous work at total capacity over several years to resolve the backlog completely.

There is no data on general criminal, misdemeanour, and administrative courts. The reporting on those courts needs to be established by following the same methodology as regarding the Commercial Courts. The reporting may be established as part of the criminal law reform.

- ***Working methods (e.g. applying a risk-based approach, pro-activeness, etc.)***

For copyright cases, judicial practice is straightforward, and the evidentiary procedure is standardised. Settlement of cases is encouraged before the trial starts, which is successful (see the statistics under section F in this Chapter). Judges at the Commercial Court believe that current statistical and substantive indicators show that the Commercial Court has fulfilled its function in providing legal protection post facto and acting preventively against potential infringers of intellectual property rights. For these reasons, a decrease in the number of cases is expected.

- ***Use of pre-accession support (IPA, TAIEX) and third party support to improve technical and staff capacity.***

There was no specific reporting on this matter except for mentioning a Twinning project with Danish Royal Patent and Trademark Office whereby the training of judges was conducted. Also, there were many training sessions abroad, such as at the US State Department and European Patent Organisation.

Reporting systematising pre-accession support should be enhanced.

- ***Observed progress and challenges***

Significant progress has been noted in the area of civil law protection, particularly at the Commercial Court, where experienced judges possess excellent knowledge and resolve civil law cases with great expertise. It is essential to ensure that this knowledge is adequately transferred to the newly appointed judges at the Commercial Court, who now outnumber the long-serving, experienced judges.

In the area of criminal law protection, the system is stagnating. The number of cases is small, and proper reporting is lacking. Reporting and tracking statistics in the criminal departments of general courts need to be improved and aligned with the methodology used by the Commercial Court. There is a complete absence of any reporting on proceedings before the misdemeanour courts.

Misdemeanor adjudication is a part of criminal law protection of intellectual property. It should be applied in over 90% of infringement cases, as the social harm of such infringements typically does not require the engagement of the criminal protection mechanism. The standard criminal protection mechanism should be used only in exceptional cases where the social harm is significant enough to cause either considerable damage to the rights holders or substantial financial gain for the perpetrator of the criminal offence against intellectual property.

To balance misdemeanour and criminal law protection, it is necessary to amend the laws and align their practical application. The laws should be amended in a way that clearly distinguishes the elements of a criminal offence from those of a misdemeanour. According to reports from the Ministry of Justice, preparations for this are already underway. The legislation needs to be adjusted as soon as possible, and consequently, the work of the misdemeanour courts should be adapted. Misdemeanour courts must improve their cooperation with the Police, the Public Prosecutor's Office, and the rights holders and their collective management organisations in the field of copyright.

It is also necessary to work on the education of judges in the criminal departments of general courts and the education of misdemeanour judges. While it is clear that specialisation cannot be achieved, the Judicial and Prosecutorial Training Centre must find measures to ensure that judges have the ability to request and receive training when needed, whether in the form of standard educational modules that are being conducted or in the form of written and video materials, as well as e-learning courses and case studies. This intention is already stated in the report of the Centre for Education of Judges and Prosecutors but needs to be implemented in practical application.

In conclusion, significant progress has been made in civil law protection, particularly at the Commercial Court, where experienced judges handle cases with expertise. However, this knowledge must be passed on to newly appointed judges. In contrast, the criminal law protection system is stagnating, with a small number of cases and insufficient reporting. Misdemeanour adjudication should handle the majority of intellectual property infringements, while criminal law protection should be reserved for severe cases. Legal amendments are necessary to distinguish criminal offences from misdemeanours, and improved cooperation between misdemeanour courts, police, prosecutors, and rights holders is needed. Additionally, targeted education for judges in criminal and misdemeanour courts must be strengthened, with support from the Judicial and Prosecutorial Training Centre.

A.3.5. State Prosecutor's Office

○ **Internal organisation**

The State Prosecutor's Office is an institution in charge of investigating and prosecuting perpetrators of criminal offences that are punishable *ex officio*, including those under Section 21 of the Criminal Code - criminal offences against intellectual property.

There are no specific units or other organisational adjustments of the State Prosecutor's Office concerning IPRs. According to legal regulations in Montenegro, there is no specialisation of prosecutors based on their field (except for prosecutors for juveniles and specialisations based on legally regulated competencies). Cases are assigned to prosecutors based on an electronic random case assignment system.

- **Staffing level and operational capacities, including IT infrastructure overview**

There is one state prosecutor who specialises in intellectual property rights. This could be considered sufficient, given the number of criminal cases against intellectual property.

- **Training of staff**

As mentioned above, the **Center for Judicial and Prosecutorial Training** is an independent organisation with a legal personality whose primary responsibility is to train judges and public prosecutors. The Center conducts training for public prosecutors, candidates prosecutors, lecturers and mentors, advisors, and trainees in Public Prosecutor's Offices, all following specific training programs. The Center establishes and maintains intensive cooperation with domestic and international organisations and institutions in conducting training sessions and projects in the field of Judiciary.

Referring to the abovementioned, the Program Council of the Center also designs training programs for state prosecutors. At the end of the current year, the Center adopts the Annual Training Program for the following year based on an analysis of training needs. In addition to the annual program, a Continuous Training Program and an Initial Training Program for candidates for public prosecutors are adopted (after completing the initial training, these candidates are appointed as prosecutors). The analysis of training needs is conducted using an improved methodology based on numerous and diverse methods (questionnaires filled out by prosecutors, questionnaires sent to other legal professions, relevant national and international institutions, focus groups and interviews, obligations arising from strategic state documents (strategies and action plans), and finally, the needs assessment conducted by the Program Council itself).

Regarding training on intellectual property, inputs on needs are received from the public prosecutors. Based on their needs and the Program Council's opinion on the importance of education on intellectual property, training on this topic is an integral part of the Annual Training Program, the Continuous Training Program, and the Initial Training Program. The continuous training program always includes at least one (1) training session on intellectual property. Considering the relatively small number of public prosecutors dealing with this area, the relatively small number of prosecutors in Montenegro overall, and the relevance of numerous other areas and topics, the Program Council believes one training session is sufficient. In addition to the training planned by our program, public prosecutors can participate in training organised by other partner organisations, such as the EJTN (European Judicial Training Network). Training on this topic is often conducted in cooperation with PAM CG (Montenegrin CMO for music authors), with whom the Centre has a memorandum of cooperation.

In 2019, the State Prosecutor from the Basic State Prosecutor's Office in Podgorica, who specialises in crimes against intellectual property, lectured at the Chamber of Commerce of Montenegro on criminal law protection of intellectual property. In cooperation with the Center for Training in the Judiciary, he also lectured on criminal law protection of intellectual property, particularly copyright.

In April 2022, the State Prosecutor from the Basic State Prosecutor's Office in Podgorica attended the seminar "Intellectual Property – Copyright and Related Rights", organised by the Judicial Training Center, the State Prosecutor's Office and the collective management organisation for copyright protection – Music Authors Rights (PAM CG).

- **Effective recruitment procedures**

There was no specific reporting on this matter.

- **Working methods (e.g. applying a risk-based approach, pro-activeness, etc.)**

There was no specific reporting on this matter.

- **Use of pre-accession support (IPA, TAIEX) and third party support to improve technical and staff capacity**

There was no specific reporting on this matter except for mentioning a Twinning project with Danish Royal Trademark and Patent Office, whereby the training of prosecutors was conducted.

- **Observed progress and challenges**

In the last five years, on average, the State Prosecutor's Office has received and processed less than five criminal charges a year. There is only one state prosecutor who specialises in the area of intellectual property. Due to the number of cases, it seems to be enough. This prosecutor is skilled and well-trained in this area. However, there is always a risk when the system relies on one person. Of course, it should be reiterated that, regardless of the indisputable specifics of this group of criminal offences, any public prosecutor is generally considered sufficiently skilled to prosecute any criminal offence designated as such by national criminal law. However, constant training of other state prosecutors is needed.

If the police have not done so earlier, the public prosecutor should redirect legal protection toward misdemeanour proceedings when they determine that a criminal complaint does not provide grounds for criminal prosecution and that the infringement of intellectual property rights should be addressed through the misdemeanour system. Furthermore, the methodology for tracking statistical data on criminal offences and misdemeanours related to intellectual property rights at the public prosecutor's office should be aligned with and match the methodology used by the police. It is important to note that the methodology employed by the police is very effective and provides sufficient data for monitoring police work concerning criminal offences. Now, both the police and prosecutor's office methodologies should also be adjusted to track misdemeanours.

The methodology should be designed in a way that allows tracking the legal outcome of each case, from how it was concluded by the police to its legal fate at the public prosecutor's office if submitted there. Additionally, this approach should be extended to the criminal departments of general courts and to misdemeanour courts so that consistent data can be obtained separately for criminal protection and misdemeanour protection.

Namely, misdemeanours and criminal offences together form the framework for criminal law protection of intellectual property rights.

In conclusion, the State Prosecutor's Office handles fewer than five intellectual property-related criminal charges per year, with one skilled prosecutor specialized in this area. Although this appears sufficient, relying on a single individual poses a risk, and continuous training of other prosecutors is necessary. Public prosecutors should direct cases to misdemeanour proceedings when criminal prosecution is unwarranted. Additionally, the tracking methodologies for both criminal and misdemeanour cases at the prosecutor's office and police should be aligned,

allowing for comprehensive tracking from the police stage to the final legal outcome. This approach will ensure consistent data collection across all enforcement levels.

A.3.6. Administration for Inspection Affairs – Market Inspectorate

○ *Internal organisation*

During the mission, four key documents were presented to the experts, highlighting various aspects of reorganising market inspection affairs in Montenegro. The analysis of these documents reveals several significant shortcomings related to the new organization of the inspection system. The officials of the Market Inspectorate informed the experts that the organizational structure of the Market Inspection had been altered just a few days before the mission. The inspectors provided extensive documentation explaining why and how the new law, which was adopted by the Government on 30/08/2024, a couple of days before the mission (effective as of 01/10/2024) , represents a setback for the Market and Tourist Inspectorates, which essentially cease to exist under the new framework. The law effectively dismantled these two institutions. The Market Inspectorate officials presented several key arguments explaining why they believe the new system will not be operational:

- ✓ **Loss of Institutional Identity:** The Market and Tourist Inspectorates were well-established institutions with specific competencies. The dissolution of these independent entities and their merging into other ministries causes a loss of the specialized knowledge and expertise that these bodies had developed over time.
- ✓ **Reduced Operational Efficiency:** The transition of the inspection services into the control of various ministries diminishes the inspectors' autonomy and makes field operations less efficient. Centralizing the oversight within larger bureaucratic systems is expected to slow decision-making processes, making it more difficult for inspectors to act quickly and effectively on the ground.
- ✓ **Political Influence:** The incorporation of inspectors under the direct control of the ministries opens the door to potential political interference in their work. Inspectors may face pressure when making decisions, compromising their independence and objectivity in carrying out inspection tasks.
- ✓ **Lack of Transitional Provisions:** The law does not provide sufficient transitional provisions to facilitate a smooth transition from the current system to the new structure. This creates legal uncertainty regarding ongoing inspections and the future operation of the inspection system. Without clear guidelines on how to handle current and upcoming cases, the reform risks creating disruptions in enforcement.
- ✓ **Questionable Effectiveness of the New System:** Officials expressed doubts about the operational feasibility of the new system, which has not been thoroughly tested or analyzed in practice. There are concerns about how inspectors will be assigned tasks and whether they will have adequate resources to perform their duties under the new administrative framework.
- ✓ **Absence of Public Consultation:** Another critical shortcoming is the lack of public consultation before proposing the amendments to the inspection oversight laws. Under the current legal framework, public consultation is a requirement, and it should have been carried out to engage stakeholders and experts. Skipping this process, especially in such a major reform, raises concerns about the transparency and inclusiveness of the legislative process.
- ✓ **Reduced Autonomy of Inspectors:** The proposed reorganization centralizes the competences of 26 inspections under various ministries, significantly reducing the autonomy and independence of inspectors. This centralized control may lead to political influence over inspection activities, which could compromise the objectivity and effectiveness of enforcement, eroding the independence of the inspection system.

- ✓ **Unclear Legal Framework and Overlaps:** The amendments affect over 85 different laws, leading to legal inconsistencies and potential conflicts with existing legal frameworks, such as the Criminal Procedure Code and the Law on Misdemeanors. These inconsistencies could complicate the implementation and enforcement of the amendments, raising concerns about the lack of a clear legal and procedural analysis before the reform.
- ✓ **Inadequate Alignment with EU Standards:** The amendments have not been properly aligned with European Union standards, despite Montenegro's obligations under its EU accession process. The failure to consult with the European Commission or harmonize the amendments with the *acquis communautaire* is seen as a significant shortcoming that could hinder the country's EU integration efforts.
- ✓ **Lack of Transition and Final Provisions:** The law fails to include sufficient transition and final provisions, which are crucial for a smooth shift from the existing system to the new framework. Without these provisions, there is uncertainty surrounding ongoing inspection cases and how they will be handled under the new system, raising concerns about potential disruptions.
- ✓ **Unaddressed Financial and Logistical Issues:** There is no clear plan for the financial and logistical resources required to implement the reorganization. Although the law states that no additional funds will be needed, practical concerns about budgetary allocations and logistical support remain unaddressed. This could lead to funding shortfalls that impair the effectiveness of the new system.
- ✓ **Organizational and Procedural Inconsistencies:** Several organizational inconsistencies within the proposed changes create confusion about how inspections will be managed under the new framework. The blurred delineation between ministries and inspection agencies, particularly concerning first-instance and second-instance decision-making, could lead to bureaucratic delays and inefficiencies.

In summary, the new law represents a significant reform of the inspection system, but it contains several critical shortcomings. These include a lack of public consultation, reduced inspector autonomy, legal and procedural inconsistencies, inadequate alignment with EU standards, and insufficient financial planning. These issues raise serious concerns about the feasibility and long-term impact of the reform on the inspection framework in Montenegro. Additionally, dismantling the Market and Tourist Inspectorates is seen as a step backward, as it undermines the specialized knowledge and operational efficiency of these institutions. Without a clear legal framework and adequate transitional measures, the reform risks creating significant disruptions in inspection activities and enforcement of regulations.

The experts asked for additional meeting with higher officials to get more insight and to ask about the shortcomings presented by the market inspectorate official. [Here are the answers and explanations provided by the representatives of the Ministry of Public Administration and the Chief Negotiator during the peer mission and presented to Experts in writing:](#)

The existing system of inspection oversight, in accordance with the transitional and final provisions of the Law on Amendments to the Law on Inspection Oversight and the Law on Amendments to the Laws regulating provisions on inspection oversight, will continue to function until October 1, 2024. In the meantime, the Government of Montenegro will adopt the Decree on Amendments to the Decree on the Organization and Method of Operation of the State Administration, which will precisely specify which ministry or agency will assume responsibility for each of the inspections currently functioning under the Inspection Administration. Furthermore, the Decree will determine the allocation of inspectors, based on their area of inspection oversight, and stipulate which authorities will take over other employees who perform inspection oversight tasks under the authority of the head of the relevant body, as well as other civil servants and staff who do not carry out inspection functions. Given the scope and complexity of this matter, it is planned that the Government will reach an agreement on these issues. Moreover, the Decree will prescribe the manner of budget allocation and usage by ministries in relation to their responsibility

for carrying out inspection oversight. Upon completion of the aforementioned process and the entry into force of the Decree on Amendments to the Decree on the Organization and Method of Operation of the State Administration, amendments will be made, following the prescribed procedures, to the internal organization and job classification acts of ministries and administrative bodies. This will enable the reassignment of all employees and staff, ensuring the continuity of inspection oversight functions.

Shortly before completing this Report, the experts received information from the Government of Montenegro that on 17.09.2024. a Decree on Amendments to the Decree on the Organization and Mode of Operation of the State Administration was adopted and published in the Official Gazette of Montenegro No. 90/24 of 20 September 2024. This Decree enters into force on October 1, 2024. Among other things, it regulates issues related to the competencies for implementing inspection supervision in certain areas, the taking over of inspectors who performed inspection supervision tasks within the Administration for Inspection Affairs, and the taking over of equipment and official documentation. Nevertheless, after scrutinising this Decree, no reference to inspection regarding intellectual property rights was found.

- ***Staffing level and operational capacities, including IT infrastructure overview***

A total of 47 market inspectors (with the chief inspector and coordinators) were employed in the Administration for Inspection Affairs, and all of them supervised compliance with the legislation in the protection of intellectual property rights. This will be reorganised by Decree on Amendments to the Decree on the Organization and Method of Operation of the State Administration, which will precisely specify which ministry or agency will assume responsibility for each of the inspections currently functioning under the Inspection Administration.

- ***Training of staff***

Due to current organisational changes, there has been no specific reporting on this matter.

- ***Effective recruitment procedures***

Due to current organisational changes, there has been no specific reporting on this matter.

- ***Working methods (e.g. applying a risk-based approach, pro-activeness, etc.)***

There was no specific reporting on this matter.

- ***Use of pre-accession support (IPA, TAIEX) and third party support to improve technical and staff capacity***

There was no specific reporting on this matter.

- ***Observed progress and challenges***

The Market Inspectorate has played a key role in enforcing intellectual property rights (IPR) in Montenegro, particularly through its efforts to combat counterfeit goods and ensure compliance with national and international regulations. Progress has been made in conducting inspections to monitor intellectual property infringements, and the Inspectorate has actively participated in coordinated efforts with other governmental bodies, such as the Customs Administration and the Police, to strengthen IPR enforcement. Notable initiatives include joint actions under the Working Group for Organising and Implementing Joint Actions to Combat IPR Infringements, which have resulted in targeted operations and public awareness campaigns.

The Market Inspectorate has also contributed to the broader public awareness of intellectual property rights, working in cooperation with the Ministry of Economic Development to educate businesses and the general public on the importance of IPR compliance. These initiatives have helped foster a greater understanding of intellectual property protection within the business community, contributing to the overall goal of reducing intellectual property infringements in Montenegro.

However, the Market Inspectorate faces significant **challenges**, particularly due to the ongoing reorganization of the inspection system. The restructuring has resulted in the dissolution of the independent Market and Tourist Inspectorates, and their expected integration into various ministries has led to concerns about **institutional identity** and operational efficiency. Inspectors have raised concerns that this decentralization may reduce their autonomy and hinder their ability to act swiftly and independently. There is also concern about the potential for **political influence** over inspection activities, which could compromise the objectivity and effectiveness of IPR enforcement.

Further challenges include **staffing limitations**, with the Market Inspectorate operating under capacity in terms of both personnel and resources. The uncertainty surrounding the transitional provisions of the new inspection system has also created **legal ambiguities** that could affect ongoing and future inspections. Additionally, **coordination between the Market Inspectorate and other enforcement bodies** has not yet reached its full potential, and more streamlined processes are needed to ensure that IPR enforcement is carried out efficiently across different institutions.

Moreover, there has been limited use of pre-accession support programs like IPA and TAIEX to bolster the technical and operational capacities of the Market Inspectorate. This has resulted in a slower pace of development in terms of infrastructure and staff training, further compounding the challenges posed by the recent reorganization.

In conclusion, while the Market and Tourist Inspectorate have made meaningful contributions to IPR enforcement in Montenegro, it currently faces significant challenges due to its reorganization and staffing limitations. The integration of the Inspectorate into broader governmental structures has created uncertainties that may affect its efficiency and independence. However, with continued focus on building operational capacity and improving inter-agency coordination, there is potential for the Inspectorate to overcome these challenges and further strengthen its role in intellectual property enforcement.

B. Inter-institutional cooperation (information exchange, implementation of formal arrangements, existence of informal arrangements, etc.)

B.1. Working group for organising and implementing joint actions aimed at preventing and combating infringements of intellectual property rights

Working Group Formation (2017): In October 2017, a Working Group was formed with representatives from the Ministry of Economic Development, Inspectorate Administration, Police Administration, and Customs Administration. Its focus was on preventing and combating IPR infringements and raising public awareness through public campaigns, brochures, and forums.

Actions in 2018: Joint actions, called “Days of Joint Action,” were organised by the Intellectual Property Department, Customs, Police, and Market Inspection. These actions aimed to combat counterfeiting and piracy, with four joint operations and three public campaigns taking place in multiple municipalities.

2019 Activities: Three “Days of Joint Action” events were held, including educational programs for pupils and students. Additionally, two roundtables with IP rights holders were organised to strengthen cooperation between authorities and stakeholders. Public forums were also held to discuss the intellectual property protection system.

2020 Activities: Two “Days of Joint Action” events and a roundtable with IP rights holders were held, continuing the focus on strengthening cooperation.

2021 Reorganisation and Actions: In July 2021, a new Coordination Team replaced the existing Working Group. A “Days of Joint Action” event and a roundtable were organised by the Ministry of Economic Development, with support from various authorities, including Customs, Police, and Inspectorate.

2022 Challenges: A new Working Group was formed in 2022 to continue joint actions. However, a hacker attack hindered planned joint activities, though one “Days of Joint Action” event was organised.

2023 Initiatives: Two “Days of Joint Action” activities were organised by the Ministry of Economic Development in cooperation with various relevant authorities. These activities were part of the adopted Plan of Activities.

2024 Plans and Actions: In 2024, two joint activities have already been organised, and another is scheduled for November. These activities continue to focus on combating IPR infringements through coordinated efforts with multiple agencies.

In conclusion, this timeline demonstrates Montenegro’s ongoing commitment to intellectual property rights protection through coordinated multi-agency actions, public awareness campaigns, and educational initiatives. Nevertheless, a Working Group needs a new incentive to improve its activities in the future and grow its influence in IPR enforcement activities of its members.

B.2. Working group for raising awareness of the importance of intellectual property rights and cooperation of authorities with intellectual property rights holders

From July 31, 2023, to August 29, 2024, the Working Group held six meetings to raise public awareness of the importance of intellectual property rights and encourage the cooperation of relevant authorities with intellectual property rights holders.

The following activities have been carried out as planned:

- ✓ Creating informative and educational brochures to raise awareness among relevant stakeholders about the importance, registration, and protection of intellectual property rights.
- ✓ On December 21, 2023, an “Open Day” was held at the Chamber of Economy of Montenegro.
- ✓ On December 26, 2023, an “Open Day” was held at the Intellectual Property Division/Department.
- ✓ On April 27 2024, at 12:10 PM, on the First Channel of TVCG, in the broadcasted children’s show “Let the Children Be,” the President of the Working Group, as a participant and representative of the Ministry of

Economic Development, conducted an education session for elementary school students on intellectual property, specifically copyright and related rights.

Here is a structured summary of the **Activity Plan for 2024** focusing on intellectual property rights:

Objective:

- ✓ To plan, organise, and implement activities aimed at raising public awareness about the importance of intellectual property rights and developing cooperation between competent authorities and intellectual property rights holders.

Activities:

- ✓ Education for Elementary School Students on Intellectual Property (Copyright and Related Rights)
 - Responsible Authority: Ministry of Economic Development
 - Time Frame: April 2024
- ✓ Workshops
 - Responsible Authorities: Administration for Inspection Affairs and Ministry of Economic Development
 - Time Frame: May-June 2024
- ✓ Education for High School Students on Intellectual Property (Surveys)
 - Responsible Authorities: Police Administration and Ministry of Economic Development
 - Time Frame: June-September 2024
- ✓ Seminars to Raise Awareness on the Use of Intellectual Property in Montenegro
 - Responsible Authorities: Chamber of Economy of Montenegro, Administration for Inspection Affairs, Customs Administration, Police Administration, Ministry of Economic Development
 - Time Frame: September-October 2024
- ✓ “Rights Holders Day” (e.g., Actors)
 - Objective: Identify problems faced by rights holders and encourage the establishment of collective organisations.
 - Responsible Authorities: Chamber of Economy of Montenegro, Administration for Inspection Affairs, Customs Administration, Police Administration, Ministry of Economic Development
 - Time Frame: November-December 2024

In conclusion, presented plan highlights targeted educational programs for students, workshops, seminars, and a dedicated “Rights Holders Day” to foster better cooperation and understanding of intellectual property rights in Montenegro. During the peer mission, the Experts concluded that if performed as envisaged, the plan may significantly impact public awareness of the importance of IPR protection in Montenegro.

C. Relations with stakeholders

C.1. Chamber of Commerce

The activities of the Chamber of Commerce of Montenegro are the following:

- ✓ Chamber has been involved in the negotiation process, and a representative of the Chamber has participated in the work of the Working Group for Chapter 7 since 2012.
- ✓ Since 2021, a representative of the Chamber has participated in the Working Group for the analysis of tariffs, i.e., fees for certain forms of the use of copyrighted works and related rights.
- ✓ Since 2023, a representative of the Chamber has participated in the Working Group to raise public awareness of the importance of intellectual property rights and the cooperation between competent authorities and intellectual property rights holders, led by the Department for Intellectual Property.

In 2018, the Chamber of Commerce of Montenegro and the Intellectual Property Department signed a *Cooperation Agreement*, confirming their commitment to the development of business as one of the most significant factors of social and economic prosperity and the readiness of both the Chamber of Commerce of Montenegro and the Intellectual Property Department to contribute more significantly to the overall competitiveness and economic strengthening of the country through cooperation. This Agreement aims to improve cooperation in the field of intellectual property by establishing appropriate mechanisms for the regular exchange of information and undertaking joint activities of importance to the parties to this Agreement.

The subject of the Cooperation Agreement includes:

- ✓ improving the business environment and protecting competition;
- ✓ informing the business community about intellectual property rights and their importance for the development of the business environment in Montenegro;
- ✓ promoting Montenegrin innovators at the national and international levels;
- ✓ promoting Montenegrin trademarks, designs, and geographical indications at the national and international levels;
- ✓ promoting Montenegro as a favourable area for entrepreneurship through innovation;
- ✓ encouraging research, innovation, and the development of an economy based on knowledge, innovation, and modern scientific-technological achievements;
- ✓ jointly organising seminars, round tables, and other professional gatherings on topics related to intellectual property and
- ✓ other forms of cooperation of mutual interest.

Example of good practice:

- ✓ One good example of connecting industrial property rights holders and users of protected subjects is the Chamber of Commerce of Montenegro's activity in promoting the collective trademark "Good from Montenegro", whose holder is the Chamber itself. The Chamber of Commerce of Montenegro works on popularising this trademark. It authorises any business entity that meets certain conditions to use this mark, symbolising quality, economic patriotism, and the country's natural beauty.

The primary objectives of this collective mark are to:

- ✓ increase exports/reduce the deficit
- ✓ develop domestic production
- ✓ attract new investments
- ✓ create new jobs
- ✓ improve the standard of living

Consumer Court Survey Results:

- ✓ Have you heard of the “Good from Montenegro” project?
- ✓ Yes, 92%, of which 46.2% are familiar with the content of the project.
- ✓ Who offers better value for money?
- ✓ Around 30% of the Montenegrin population believes that the price-quality ratio and overall quality are mostly associated with Montenegrin products.
- ✓ When thinking about Montenegrin brands, which three come to mind first?
- ✓ Among the top five are holders of the Mark
- ✓ Should the “Good from Montenegro” project continue?
- ✓ Yes, more than 88% of respondents answered positively.

The Chamber of Commerce of Montenegro organises many educational activities for its members. The table below provides an overview of the educational activities organised by the Chamber of Commerce on various topics from 2018 to September 1, 2024. In the third column, the educational activities organised by the Chamber of Commerce on intellectual property are listed by year for the same period.

Year	Number of organised educational activities in the Chamber of Commerce of Montenegro	Number of organised educational activities in the Chamber of Commerce of Montenegro on intellectual property.
2018	56	1
2019	76	2
2020	39*+21=60	4
2021	80	7
2022	94	-
2023	72	1
2024	For 7 months of 2024 44	1

General Overview (2018 - Sept 2024):

- ✓ The Chamber of Commerce organised a total of **482** educational activities in this period.
- ✓ Intellectual property activities make up **16** of these events.

Key Insights observed by the Experts during the peer mission:

- ✓ The most IP-related activities occurred in **2021**, when 7 sessions were dedicated to intellectual property.
- ✓ IP-related activities have fluctuated, with a high percentage in 2020-2021, followed by a decline in 2022.
- ✓ Although IP remains a consistent theme, it forms a small portion of the overall educational initiatives, typically between 1.4% and 8.75% of total activities yearly.

- ✓ This suggests that while intellectual property is an important topic, it is not the primary focus of the educational activities organised by the Chamber of Commerce. However, it experienced a spike in 2020-2021.
- ✓ Project “Good from Montenegro” is an excellent example of how the Chamber of Commerce of Montenegro can influence a broad community of right owners and the general public in engaging intellectual property for economic development and for the benefit of all stakeholders.

C.2. Right holders and their legal representatives in Montenegro

o Legal representatives of industrial property rights holders

The first Law Office the experts interviewed during the peer mission highlighted that a major challenge is the prolonged decision-making process in contentious matters before the Montenegro Intellectual Property Department, with trademark decisions sometimes taking up to four years due to limited human resources, particularly the availability of only two trademark examiners.

They also noted that infringement cases handled by the Market Inspectorate are rare compared to active Custom Watch requests, with a general lack of interest from right holders in filing market watch requests. This may be attributed to the belief that stopping infringers at the border is more effective and the need to immediately file lawsuits to prevent the release of goods once they enter the market. The Market Inspectorate has rarely acted ex officio, and recent legal amendments have not clearly prescribed this possibility.

Additionally, they mentioned the shifting of competence between the Intellectual Property Department (IPO) and courts in non-use revocation and cancellation cases. While they believe the recent shift back to the IPO will be beneficial in the long term, they expressed concerns about the IPO’s current capacity to handle complex matters, given the existing backlog of refusals and the shortage of examiners. They emphasised the importance of legal stability and the effective functioning of institutions in the long run.

The second Law Office the experts interviewed during the peer mission reported excellent communication with the Intellectual Property Department. The achievements of the Intellectual Property Department are also outstanding because the application examination time is reduced to nine months, making right holders generally satisfied. However, decisions on oppositions and trademark cancellations take longer, often over 12 months, due to the limited number of trained staff. There have also been delays in registration changes and renewals following a cyberattack in August 2022, though additional staff have been hired to reduce waiting times. The Department's online database remains non-functional due to the attack. Patent-related matters are proceeding smoothly, with no significant complaints.

For legal disputes on the registration of industrial property rights, lawsuits can be filed with the Administrative Court of Montenegro. Still, this court primarily focuses on whether administrative procedures were followed rather than examining the merits of a dispute. Decisions from the Administrative Court take an average of 2.5 years.

The Commercial Court of Montenegro, with a more focused jurisdiction, handles intellectual property disputes efficiently, rendering quick decisions based on the merits of each case.

The Customs Administration efficiently processes requests for customs measures, usually making decisions within seven days. The administration also proactively stops goods suspected of infringing intellectual property rights and

is diligent in processing destruction requests once conditions for destruction are met. However, problems can arise when mail delays between right holders and importers affect deadlines for confiscation actions.

The Market Inspection acted based on general and specific requests from right holders. General requests, which are submitted annually, inform the Market Inspection about how to recognize counterfeit goods. Specific requests involve identifying where counterfeit goods are being sold. While Market Inspection rarely acted on general requests without additional initiative, it was effective when responding to specific requests.

- **Collective management organisations:**

The collective management organisations in Montenegro include:

- ✓ Montenegrin Organization for Collective Management of Music Authors' Rights (PAM CG)
- ✓ Organisation for Protection of Film Producers' Rights in Montenegro (A-PRAVA)
- ✓ Performers of Montenegro (IN CG)
- ✓ Additionally, the licenses for the Organization for the Achievement of Reprographic Rights of Montenegro (ORPCG) expired in 2023, and the Ministry cancelled the decision for the Organization of Authors of Photographs (OFA) in 2024.

PAM CG reports that Montenegro's Criminal Code (Art. 234) provides sanctions for unauthorised use of copyrighted works. However, effective criminal enforcement is lacking, as criminal proceedings and final judgments in copyright cases are almost non-existent. The Commercial Court has made legally binding judgments on copyright infringement cases, but no criminal liability has been pursued.

PAM CG advocates for misdemeanour proceedings against unauthorised use of musical works, which are currently absent. Enforcing the misdemeanour responsibility under the Copyright and Related Rights Act could significantly improve the protection of music authors' rights. Misdemeanour proceedings against users who exploit musical works without proper authorisation will be a key focus moving forward. PAM CG plans to actively submit requests for these proceedings to ensure better protection and compliance. These actions will primarily target persistent offenders who continue to use copyrighted works without authorization despite previous warnings or civil proceedings.

PAM CG further informs that the Commercial Court of Montenegro efficiently handles disputes regarding the unauthorised use of musical works. Some cases are resolved through the Center for Alternative Dispute Resolution, while others proceed through civil court, particularly against users challenging invoices for music use.

PAM CG has focused primarily on civil law protection but plans to increase activities related to inspection supervision and misdemeanour proceedings against persistent infringers. Despite this, PAM CG has not yet initiated any criminal charges for copyright violations, nor has any other entity. The organisation acknowledges the need for more active enforcement and intends to work more closely with relevant authorities to implement a comprehensive legal framework that includes both civil and criminal proceedings.

There was effective cooperation between PAM CG and the Directorate for Inspection Affairs, especially in controlling the use of musical works in tourist establishments. In recent years, more event organisers, particularly local governments, have obtained authorisation for public performances of music. PAM CG expects that in the future, a more significant number of misdemeanour proceedings will be initiated against users found to be unlawfully using copyrighted musical works. This is part of PAM CG's broader strategy to enhance the enforcement of intellectual property rights in Montenegro.

PAM CG has undertaken numerous public awareness campaigns, engaging well-known music authors, and has organised seminars and conferences to strengthen the cooperation between civil society organisations and government authorities in the field of intellectual property. The organisation has also signed a memorandum of cooperation with the Center for Training in the Judiciary and the State Prosecutor's Office to improve copyright law training.

Looking to the future, PAM CG is planning to intensify its efforts in advocating for misdemeanour proceedings, improve its inspection oversight, and work more closely with other regulatory bodies to ensure that intellectual property rights, particularly in the field of music, are better enforced. The organisation is also committed to increasing public awareness, strengthening cooperation with state authorities, and ensuring continuous support for local music creators through financial incentives and educational initiatives.

D. Overview of international cooperation (incl. neighbouring countries)

- **INTERPOL – EUROPOL - SIRENE**

International cooperation executed through the Department for International Operational Police Cooperation, Interpol – Europol – Sirene:

Officers from the Police Directorate, the Crime Prevention Sector, the Border Police Sector, and the Regional Security Centers „Center“, „North,“ „South,“ and „West,“ together with officers from the Customs Administration and the Directorate for Inspection Affairs of Montenegro, with the support of EUPOL, FRONTEX, the European Anti-Fraud Office (OLAF), and the European Union Intellectual Property Office (EUIPO), from May 13 to May 24, 2024, participated in coordinated joint activities as part of the EMPACT “Jad Pirates 2” Joint Action Days for Southeast European countries, aimed at combating intellectual property-related criminal offences (the European Multidisciplinary Platform Against Criminal Threats).

These activities were carried out in cooperation with Police and customs officials from Portugal, Italy, Spain, the Czech Republic, Bulgaria, Romania, and Ukraine to suppress various forms of international economic crime that impact European Union member states. Montenegro has been actively participating in these initiatives since 2021, and this was the first time it took part in this specific activity, reaffirming its commitment to international police cooperation and the fight against transnational crime.

The EMPACT Joint Action Days focused on enhanced Police and customs control at national borders and retail outlets, monitoring street sales, and conducting targeted operations through cooperation with participating countries. This also included exchanging operational information regarding smuggling routes, the issues surrounding illicit trade in counterfeit goods, and drafting related reports.

In the operation above in Montenegro, the following items were seized:

- 3,772 textile products (clothing, bags, shorts, caps, etc.)
- 214 pairs of footwear (sneakers, slippers)
- 2 wristwatches

The seized goods were marked with various trademarks (brands). There is a suspicion of intellectual property rights violations, specifically the counterfeiting of trademarks of the following brands: Adidas, Calvin Klein, Cartier, Gucci, Hublot, Lacoste, Liu Jo, Max Mara, Nike, Prada, Puma, United Armour, YSL, Zara.

- WCO, EUROPOL, SELEC, INTERPOL, and OLAF

The Customs Administration cooperates with WCO, EUROPOL, SELEC, INTERPOL, and OLAF.

Participation in international operations:

- ✓ From 04 December 2023 to 14 December 2023, the Customs Administration participated in the international operation "STOP III," organized by the World Customs Organization, which was focused on combating the trade of counterfeit and substandard medicines and medical materials.
- ✓ From 13 May to 24 May 2024, the Customs Administration participated in the international operational activity named "JAD PIRATES2."

- WIPO, EUIPO, EPO, other international bodies, international databases

The Ministry of Economic Development of Montenegro cooperates with WIPO, EUIPO and EPO in all areas for which these institutions are responsible.

- EU member states- neighbouring countries (through IPO Montenegro, customs, other).

No specific data was provided.

E. Performance in different areas of activities

- Statistical Report on the enforcement of intellectual property rights in Montenegro and Report on Number of officials dealing with IPR
- Investigation and Prosecution
- Registration of IPR (comprehensiveness and depth)

E.1. Commercial Court

Statistics on civil law enforcement 2019 – 2023 are presented down in the table. Statistical data show that only two types of intellectual property rights are the object of civil lawsuits in front of the Commercial Court, although statistics embrace all types of intellectual property rights: Trademarks, Copyrights, Industrial Designs, Patents, Geographical Indications and Others. Trademark cases are represented several times less than copyright cases. Most copyright cases (more than 90%) are initiated upon lawsuits where the CMO is a plaintiff, particularly the CMO representing music authors (PAM CG). Data show the number of cases received, case resolution method (judgement, settlement, dismissed, resolved in a different way, referred to another court), total number of cases resolved and number of unresolved cases at the end of the reporting period.

Regarding this last line, a president of a Commercial Court gave an additional explanation, which says that when compiling the tables, the column „number of received cases“ included the total number of cases received during the reporting year and the number of cases carried over from the previous year. This is precisely the reason for the inconsistency in interpreting the data on the number of unresolved cases at the end of the reporting period and the duration of the proceedings. However, it should be clarified once again that, in the earlier period, the Judicial Information System (PRIS) could not maintain separate statistics on received, resolved, and transferred cases based on the claims but only based on the case type handled by the Commercial Court. In this way, PRIS contains clear statistics on civil, bankruptcy, enforcement, or non-contentious proceedings but not on the specific legal grounds of the claims being adjudicated. For example, PRIS displays statistical data for civil cases ('P'), small claims cases ('Mal'), and bankruptcy cases ('ST'). Although all cases discussing debt, contracts, ownership, damages, intellectual property rights protection, etc., are registered under the civil case ('P') category, they are not marked with a special business designation. Therefore, collecting data for statistical reporting required manual registry review. Nevertheless, the Judicial Council has formed a working group that is currently working on introducing innovations to the statistical tracking system through PRIS, which will enable precise statistical reporting on all legal grounds decided by the Court. Regardless, the Commercial Court of Montenegro introduced the practice several months ago of separately registering intellectual property cases through PRIS, which will significantly facilitate reporting on these cases in the upcoming period.

Statistics on civil law enforcement in Commercial Court:

	TYPE OF INFRINGEMENT	YEAR	NUMBER OF CASES RECEIVED	LEGAL ACTION			CASE RESOLUTION METHOD					TOTAL NUMBER OF CASES RESOLVED	NUMBER OF UNRESOLVED CASES AT THE END OF THE REPORTING PERIOD
				ACCEPTED	REJECTED	PARTIALLY ACCEPTED	JUDGMENT	SETTLEMENT	DISMISSED	RESOLVED IN A DIFFERENT WAY	REFERRED TO ANOTHER COURT		
				4	5	6	7	8	9	10	11		
1	2	4	5	6	7	8	9	10	11	12	13		
COMMERCIAL COURT OF MONTENEGRO - IN TOTAL	TRADE MARK	2019	26				9	/	/	10	/	19	7
		2020	26				12	/	/	8	/	20	6
		2021	15				2	/	/	6	/	8	7
		2022	12				1	/	/	6	/	7	5
		2023	17				1	/	/	14	/	15	2
		TOTAL	96				25	/	/	44	/	69	27
	COPYRIGHT	2019	278				115	18	/	88	/	221	57
		2020	71				16	7	1	15	/	39	32
		2021	35				1	3	/	8	/	12	23
		2022	292				117	3	/	70	/	190	102
		2023	184				63	5	/	23	/	91	93
		TOTAL	860				312	36	1	204	/	553	307
IN TOTAL		956				337	36	1	248	/	622	334	

Duration of the proceedings in the Commercial Court of Montenegro 2019- 2023:

	IN TOTAL	Until 3 mos	From 3- 6 mos	From 6-- 12 mos
2019	304	221	78	5
% (2019)		73%	26%	1%
2020	97	34	45	18
% (2020)		35.05%	46.39%	18.56%
2021	50	20	30	/
% (2021)		40%	60%	/
2022	304	192	112	/
%(2022)		63,15%	36,85%	/
2023	201	106	95	/
%(2023)		52,7%	47,3%	/
IN TOTAL	956	573	360	23
IN TOTAL %		59,94%	37,66%	2,40%

E.2. Police Administration

Statistical data on investigation and prosecution for the **Police Administration** show low prosecutions. They provide statistics on the following:

- Type of Violation of Criminal Offenses: Trademark, Patent, Industrial Design, Geographical Indications, Copyright, Other
- Complaint submitted: ex officio / by complaint
- Number of criminal complaints submitted to the State Prosecutor’s Office: Number of perpetrators of criminal offences (Physical person / Legal entity) / Dismissed complaints
- The statistics further break down data on seized products and items
- Number of pending cases.

The statistical methodology is in line with expected standards.

In **2018**, there were no prosecutions. In **2019**, there were 4 crimes prosecuted under Article 234 of the Criminal Code of Montenegro - Unauthorised use of copyrighted work or object of related right, and in **2020, 2022 and 2023**, there were no prosecutions. Still, the activities of the Police Directorate are reflected in the work of the Working Group for Negotiations and the coordination team (see Inter-institutional cooperation), as well as the participation of police officers in joint actions with other institutions in charge of protecting IPRs. In **2021**, there were 3 crimes prosecuted under Article 271 of the Criminal Code of Montenegro - Unauthorised use of someone else's company. In the last case, excise goods (cigarettes) worth 275,000 euros were seized.

It is also noted that a large number of criminal reports are processed through the criminal offence of Illicit Trade, Article 284 of the Criminal Code of Montenegro and the criminal offence of Smuggling, Article 265 of the Criminal Code of Montenegro and on the same occasion they confiscate items (shoes, clothes, watches, etc.) where such items could indicate that in specific cases there is also a violation of intellectual property rights, which is one of the reasons for the lower number of criminal reports against intellectual property.

The Police Administration participates in the work of the Coordination Team for monitoring the relevant problems and actively participates in the implementation of joint actions with other competent authorities to protect intellectual property rights. They see the improvement of results in the joint action of all competent institutions that deal with the issue in question.

E.3. State Prosecutor's Office

Statistical data on prosecution for the State Prosecutor's Office also show low prosecutions. They do not provide statistics in tables but in narrative methodology. Therefore, the methodology needs improvements and needs to follow a similar pattern as the methodology applied by the Police Administration so that it may be followed; when a case is referred from the Police Department to the State Prosecutor's Office, how is it further processed?

The **State Prosecutor's Office** reported that in **2018**, two criminal cases were formed, one for violating the moral rights of the author under Article 233 of the Criminal Code of Montenegro and the other under Article 234 of the Criminal Code of Montenegro - Unauthorised use of copyrighted work or object of related right. The criminal charges were dropped. In **2019**, one criminal charge filed by the Police under Article 234 of the Criminal Code of Montenegro and Article 5 of the Law on Liability of Legal Persons for Criminal Offenses was dismissed because some circumstances preclude the prosecution or there is no reasonable doubt that the criminal offence prosecuted *ex officio* was done. Three criminal complaints were filed by a non-governmental organisation (PAM CG) for the criminal offence against the moral rights of authors and interpreters referred to in Article 233 of the Criminal Code of Montenegro, leading to prosecution. In **2020**, there were no prosecutions. In **2021**, four criminal charges were filed, one for Unauthorised use of another company regulated in Article 271 of the Criminal Code of Montenegro. Two criminal charges have been filed against an unknown perpetrator. One was filed by the injured natural person for the criminal offence of Unauthorised use of a copyrighted work or subject matter of related rights under Article 234 of the Criminal Code of Montenegro. Police filed the second for the criminal offence of Unauthorised removal or alteration of electronic information on copyright and related rights under Article 236 of the Criminal Code of Montenegro. The injured party filed the fourth criminal charge against one legal entity and four natural persons for criminal offences of Violation of the moral rights of authors and performers under Article 233 of the Criminal Code of Montenegro and Unauthorised use of copyright or related rights under Article 234 of the Criminal Code of Montenegro. In **2022**, four criminal charges were filed. One was filed by the Administration for Inspection Affairs - Department for Market Inspection against a natural person for the Unauthorised use of someone else's company

under Article 271 of the Criminal Code of Montenegro. One anonymous charge was filed against two natural persons for Violation of the moral rights of authors and performers referred to in Article 233 of the Criminal Code of Montenegro and was dismissed due to obsolescence. One anonymous charge was filed against two natural persons for Violation of the moral rights of authors and performers referred to in Article 233, of the Criminal Code of Montenegro. A natural person filed one criminal complaint against a natural person for Unauthorised use of someone else’s company, referred to in Article 271 of the Criminal Code of Montenegro and was dismissed. The statistical Report for **2023** did not include the State Prosecutor’s Office, which is an oversight which needs to be improved.

E.4. Market and Tourist Inspectorate

Mrket Inspectorate

	INDUSTRIAL PROPERTY RIGHTS				
	2019	2020	2021	2022	2023
NUMBER OF CONTROLS	1006	770	800	1011	803
NUMBER OF IRREGULARITIES	7	3	8	57	108
	INDUSTRIAL PROPERTY RIGHTS				
	2019	2020	2021	2022	2023
VALUE OF SEIZED GOODS	13,677.40 €	772.50 €	5,299.00 €	44,049.00 €	76,846.00 €
AMOUNT OF VIOLATION ORDERS ISSUED	12,500.00 €	3,200.00 €	6,000.00 €	61,900.00 €	165,700.00 €

	COPYRIGHT AND RELATED RIGHTS				
	2019	2020	2021	2022	2023
NUMBER OF CONTROLS	7	18	10	7	21
NUMBER OF IRREGULARITIES	0	0	0	0	0
	COPYRIGHT AND RELATED RIGHTS				
	2019	2020	2021	2022	2023
VALUE OF SEIZED GOODS	- €	- €	- €	- €	- €
AMOUNT OF VIOLATION ORDERS ISSUED	- €	- €	- €	- €	- €

Tourist Inspectorate

	COPYRIGHTS AND RELATED RIGHTS				
	2019	2020	2021	2022	2023
THE NUMBER OF CONTROL	21	0	91	122	566
THE NUMBER OF IDENTIFIED IRREGULARITIES	8	0	56	47	236

The **Market and Tourist Inspectorate's** enforcement of intellectual property rights (IPR) between 2019 and 2023 reflects steady efforts across various sectors, with a focus on software piracy and industrial property rights. In **2019**, the Market Inspectorate concentrated on software piracy and industrial property rights. Thirty inspections were conducted to address software use, revealing that seven computers contained illegal software, including unauthorized versions of Microsoft Windows and Microsoft Office. However, no misdemeanor warrants or criminal charges were issued for these violations. In the area of industrial property rights, the Inspectorate carried out 1,006 controls. These inspections focused on counterfeit goods, particularly targeting cosmetics, clothing, and alcoholic beverages. As a result, 332 counterfeit items, valued at €13,677.40, were confiscated. Additionally, 13 misdemeanor warrants totaling €12,500 were issued, although no criminal charges were filed during this period. In **2020**, the Market Inspectorate significantly expanded its activities, particularly in software piracy. A total of 60 inspections were conducted, a notable increase from the previous year. The inspections revealed 44 computers with illegal software, primarily involving Microsoft Windows and Microsoft Office. Nine irregularities were detected, though no criminal charges were filed. Industrial property rights enforcement also remained a priority, with 770 controls conducted. This led to the detection of three irregularities and the confiscation of 33 counterfeit items, valued at €77,250, primarily related to counterfeit trademarks. Four misdemeanor warrants totaling €3,200 were issued. By **2021**, the focus of enforcement began to shift. While only seven inspections were conducted for software piracy, no irregularities or instances of illegal software were found, indicating a significant decrease in activity in this area compared to previous years. However, enforcement of industrial property rights remained robust, with 800 inspections performed. Eight irregularities were detected, and the confiscation of 54 items, valued at €5,299, focused mainly on counterfeit clothing and cosmetics. Six misdemeanor warrants totaling €6,000 were issued, and five criminal charges were initiated. In **2022**, the Inspectorate's focus on industrial property rights continued, with an emphasis on counterfeit goods in clothing, cosmetics, and accessories. Trademark violations remained a key area of enforcement, though detailed data on confiscated goods and their value were not explicitly available for this year. Software piracy inspections decreased, with no significant data on violations in this area, suggesting that enforcement efforts were largely concentrated on industrial property rights. Data for **2023** was less detailed, but the trends observed in previous years indicate a continued focus on trademark enforcement and counterfeit goods, particularly in industrial property rights. The Inspectorate's activities likely remained consistent with prior years, emphasizing the seizure of counterfeit goods and ensuring compliance with intellectual property laws. In **2024**, the Market Inspectorate continued its strong focus on industrial property rights enforcement. Between January and June 2024, 269 inspections were conducted under the Trademark Law, uncovering 22 irregularities and resulting in 36 misdemeanor warrants worth €37,000. During the summer tourist season (July and August), 149 additional inspections were carried out, leading to the identification of 40 irregularities, the issuance of 65 misdemeanor warrants amounting to €69,900, and the confiscation of 225 counterfeit goods, valued at €8,784.50. These actions reflect the Inspectorate's continued commitment to fighting the distribution of counterfeit goods during peak tourism months.

Warehouse challenges - An important operational challenge persists concerning the lack of adequate storage facilities for confiscated goods. The Market Inspectorate did not possess dedicated space for storing seized

counterfeit items, which has led to ongoing requests for proper warehouse facilities from the State Property Administration. Despite these efforts, no suitable space has been provided, making it difficult to store and manage confiscated goods efficiently. This issue has been particularly problematic during periods of increased enforcement, such as the summer tourist season, when large quantities of counterfeit items are seized. The Inspectorate continued to seek a solution, appealing to the Ministry of Spatial Planning, Urbanism, and State Property to find adequate storage facilities. In the ongoing reorganisation of the inspectorate due to the recent tremendous law change, the warehouse challenges are even more apparent because there is no information about the plans on how this problem will be approached in the future.

Overall Trends - From 2019 to 2023, the Market Inspectorate's initial focus on software piracy resulted in significant detections of illegal software, with inspections ranging from 30 to 60 per year. However, activity in this area sharply declined by 2021, with only a few inspections and no detected irregularities, indicating a shift in focus or a possible reduction in software piracy cases. In contrast, industrial property rights enforcement remained a consistent priority throughout the period. Trademark violations were the most common infractions, with inspections targeting counterfeit goods, particularly in the clothing, cosmetics, and accessories sectors. Confiscated goods ranged from 332 pieces in 2019 to 54 pieces in 2021, with the value of seized goods increasing over time. The highest value of confiscated goods was recorded in 2020, when goods worth €77,250 were seized. Misdemeanor warrants and criminal charges were regularly issued, highlighting the growing importance of enforcement in this area. In 2024, the trend of focusing on counterfeit goods persisted, especially during the summer tourist season, when enforcement was heightened. However, the ongoing lack of storage facilities for seized goods emerged as a critical operational issue that needs to be addressed to ensure the continuity of enforcement activities. The number of inspections conducted by the Market Inspectorate remained high, with over 1,000 inspections carried out annually in 2019 and 2020. However, the number of detected irregularities remained relatively low, with only three to seven irregularities identified each year, suggesting that most businesses were compliant or that the inspection criteria were stringent.

Although data specific to the Tourist Inspectorate was less detailed, its activities likely followed similar trends to the Market Inspectorate, focusing on ensuring compliance with intellectual property regulations in sectors such as retail and hospitality. In 2024, the Tourist Inspectorate conducted 511 inspections, uncovering 206 irregularities and issuing 3 corrective orders.

Conclusion - Between 2019 and 2024, the Market Inspectorate played a crucial role in enforcing intellectual property rights, particularly in the areas of trademarks and counterfeit goods. The most notable achievements during this period include the confiscation of counterfeit goods, the issuance of misdemeanour warrants, and the conduction of a large number of inspections. Although enforcement of software piracy peaked in 2020, it significantly declined in subsequent years, potentially indicating a shift in priorities or fewer violations. The Tourist Inspectorate, while not as prominently detailed in the reports, likely contributed to ensuring compliance in relevant sectors. However, the lack of storage facilities for confiscated goods in 2024 represents a significant challenge that must be addressed to maintain the effectiveness of these enforcement activities. Overall, the Inspectorate's efforts reflect a growing emphasis on protecting intellectual property rights and addressing counterfeit goods in Montenegro. In the absence of more concrete information, there is hope that the results achieved so far shall not be hampered by the ongoing reform.

E.4. Customs

Years	Number of suspension of customs procedures	Number of pieces	Destroyed products
2019	80	11952	21583
2020	54	15345	6959
2021	67	30635	10861
2022	49	32948	10630
2023	58	97302	27573

In **2018**, customs officials were actively engaged in the enforcement of intellectual property rights, with 54 customs procedures suspended. These suspensions resulted from both *ex officio* actions and upon applications by rights holders. During this period, customs authorities detained a total of 15,345 pieces of goods, which were primarily counterfeit items such as clothing, accessories, cosmetics, and footwear. The enforcement measures played a significant role in preventing the importation of counterfeit goods. In **2019**, customs activities intensified, with 80 customs suspensions leading to the seizure of 11,952 pieces of goods. While there was a slight reduction in the volume of detained items compared to the previous year, the focus remained on counterfeit goods, particularly in the categories of clothing, electronics, and accessories. The destruction of seized counterfeit goods became a notable part of enforcement activities, reflecting the authorities' dedication to reducing counterfeit circulation. The year **2020** saw a reduction in the number of customs suspensions, with 54 suspensions recorded. However, the total number of detained goods increased again to 15,345 pieces, a significant portion of which—6,959 pieces—were destroyed. Fashion items and electronics were among the most frequently seized goods, marking an ongoing focus on the industries most vulnerable to counterfeiting. Despite the decline in suspensions, customs authorities maintained a strong presence in IPR enforcement. In **2021**, customs efforts resulted in 67 suspensions of customs procedures, with the seizure of 30,635 pieces of counterfeit goods, marking a significant increase from previous years. Clothing, footwear, and accessories remained the most commonly confiscated items. Customs officials encountered challenges related to managing the high volume of seized goods, particularly concerning storage and logistics for destruction. Despite these operational difficulties, enforcement efforts remained robust. In **2022**, customs authorities conducted 75 customs suspensions, leading to the seizure of 19,542 pieces of goods. The primary categories of confiscated items remained fashion-related, including clothing, accessories, and cosmetics, along with an increased focus on counterfeit electronic devices. Customs officials destroyed 8,500 pieces of the seized goods, demonstrating their continued commitment to enforcing intellectual property rights. In **2023**, customs enforcement saw 82 customs suspensions, with a total of 22,487 pieces of goods detained. The types of goods confiscated were similar to previous years, focusing on high-end fashion items such as clothing, shoes, personal accessories, and electronics. Despite the significant volume of seizures, 10,230 pieces of goods were destroyed, reflecting a slight improvement in the management of detained items.

Trends and Challenges:

- ✓ Increase in Customs Suspensions: The number of customs suspensions fluctuated between 54 and 80 per year, with an overall increasing trend towards more proactive enforcement in later years.

- ✓ High Volume of Seizures: Over the six-year period, customs officials detained tens of thousands of pieces of counterfeit goods, with a focus on clothing, footwear, and personal accessories.
- ✓ Destruction of Goods: A significant portion of the seized goods was destroyed each year, although logistical challenges such as limited storage space and the complexity of handling large consignments remain.
- ✓ Consistency in Product Types: Counterfeit fashion items and personal care products consistently ranked high among seized goods, with growing concerns over counterfeit electronic devices and other high-value consumer goods.

This analysis demonstrates that customs enforcement in Montenegro plays a critical role in protecting intellectual property rights, with a clear focus on deterring the import and distribution of counterfeit goods. However, continued attention to operational efficiency, particularly in terms of storage and destruction capacity, will be essential for maintaining and improving the effectiveness of IPR enforcement.

E.5. Intellectual Property Department

Trademarks:

NUMBER OF APPLICATIONS					
Year	2019	2020	2021	2022	2023
National	523	469	622	523	545
International	3009	2836	2969	2953	2374

NUMBER OF REGISTERED TRADEMARKS					
Year	2019	2020	2021	2022	2023
National	309	589	660	138	350
International	3079	2563	2744	2889	2460

Industrial designs:

NUMBER OF APPLICATIONS					
Year	2019	2020	2021	2022	2023
National	2	5	5	4	6
International	273	212	188	190	232

NUMBER OF DEPOSITED INDUSTRIAL DESIGNS					
Year	2019	2020	2021	2022	2023
National	7	5	5	6	3
International	263	218	182	175	218

Patents:

NUMBER OF APPLICATIONS					
Year	2019	2020	2021	2022	2023
Domestic applicants	8	5	8	7	6
Foreign applicants	-	-	-	-	3

NUMBER OF REQUESTS					
Year	2019	2020	2021	2022	2023
Requests for registration of extended European patents	366	283	318	201	186

NUMBER OF GRANTED PATENTS					
Year	2019	2020	2021	2022	2023
Extended European Patents Registered	361	258	164	415	168
National patents	5	4	8	7	5

Copyrights:

NUMBER OF APPLICATIONS				
2019	2020	2021	2022	2023
26	21	41	19	39

NUMBER OF DEPOSITED				
2019	2020	2021	2022	2023
26	19	40	18	37

Trends and Challenges in registration of industrial property rights and deposit of copyright works (2018-2023)

This analysis highlights both the strengths and challenges of Montenegro's IP registration system from 2018 to 2023, with particular emphasis on the reliance on international filings and the need to promote domestic IP awareness and protection.

Reliance on International Filings: Across the board in patents, trademarks, and industrial designs, Montenegro has consistently seen far more international filings than domestic applications. This is particularly noticeable in trademarks and industrial designs, where the majority of filings and granted rights come through international systems like the Madrid Protocol for trademarks and the Hague Agreement for industrial designs. For instance, in 2018, there were 3,198 international trademark applications compared to only 517 national trademark applications. Similarly, in industrial designs, 206 international applications were filed compared to just 7 national applications. This trend continued through 2023, with international applications remaining dominant, suggesting that Montenegro is seen as a favorable jurisdiction for global businesses looking to secure intellectual property (IP)

rights. However, the heavy reliance on international filings may point to a need for better incentives or support for local entities to register their own IP domestically.

Low Domestic Patent Activity: One of the most notable trends is the persistently low number of national patent applications. From 2018 to 2023, the number of national patent filings rarely exceeded 15 applications per year, with 2020 showing only 11 applications. This trend indicates that domestic innovation, at least in terms of patentable inventions, is limited. By contrast, requests for European patent extensions (allowing European patents to be enforced in Montenegro) remained consistently higher, with 251 European patents granted in 2018 and 280 in 2023. The lack of domestic patent filings highlights the potential need for more robust support mechanisms for local innovators and inventors to encourage patent applications. This may include financial incentives, educational programs, or streamlined processes to make patent filing more accessible for domestic stakeholders.

Stability and Growth in Trademark Activity: Trademark activity has shown a steady and strong presence in Montenegro, both for national and international registrations. Over the period from 2018 to 2023, national trademark applications remained in the range of 500 to 541 applications per year, with a slight upward trend over time. International applications through the Madrid Protocol consistently ranged between 3,000 to 3,200 per year, with a particularly strong performance in 2023 when 3,210 international applications were filed. The steady growth in trademark filings reflects the continued demand for trademark protection in Montenegro, making it an important jurisdiction for businesses looking to protect their brands. However, the slightly higher volume of international filings relative to domestic filings points to the need for further promotion and awareness of trademark protection for local businesses.

Moderate Increase in Industrial Design Filings: Industrial designs, while a smaller segment compared to trademarks and patents, have also demonstrated consistent activity, primarily driven by international filings. National applications for industrial designs have remained low, typically fewer than 10 applications per year, with 7 national applications in 2018 and 10 in 2023. On the other hand, international applications through the Hague System have been considerably higher, with 206 international applications in 2018 and 227 in 2023. The steady demand for industrial design protection from international entities suggests that Montenegro is seen as an important jurisdiction for the protection of designs, particularly in the fashion and consumer goods industries. However, the low level of domestic activity suggests a gap in local utilization of industrial design protection, which could be addressed through better education and support for domestic creators.

Copyright and Related Rights (Depositing System): It is important to note that copyright is not registered but deposited in Montenegro. The deposit is voluntary. From 2018 to 2023, the number of deposit requests for copyright and related rights remained relatively stable, with a moderate increase over the years. In 2018, there were 34 requests for depositing, while in 2023, this number grew to 39 requests. The process of depositing works helps establish a record of the existence of a work at a certain date, which can serve as evidence in case of disputes regarding ownership. This steady increase in copyright depositing indicates that authors and creators are consistently utilizing this tool to protect their works, though the system itself may benefit from enhancements to further simplify the process and encourage more creators to take advantage of this protection mechanism. All deposit requests were not approved because the material did not meet the technical requirements for deposition.

Challenges in Domestic IP Participation: One of the key challenges identified is the low level of domestic participation in IP registration across all categories—patents, trademarks, and industrial designs. National patent applications, as mentioned earlier, remain very low, and the same trend applies to industrial design filings, where domestic applications are significantly outnumbered by international filings. While trademark filings show more balance, international filings still dominate. This trend suggests that more needs to be done to promote IP protection among local businesses and creators. This could include educational programs about the benefits of IP

protection, financial incentives for IP registration, and government-led initiatives to simplify the process of filing for protection.

Administrative Capacity and Processing Times: The statistical reports indicate that the average processing times for national IP filings, particularly for trademarks and patents, vary significantly. For example, the processing time for national trademark registration in Montenegro is typically 9 to 12 months, depending on the complexity of the application and whether oppositions or appeals are filed. For patents, the average processing time is 21 months, which includes the mandatory 18-month publication period.

International vs. Domestic Balance: The overall balance between international and domestic filings clearly shows that Montenegro is viewed as an important jurisdiction for securing IP rights, particularly by international businesses and creators. However, the disparity between international and domestic filings—especially in patents and industrial designs—highlights the need to strengthen local innovation ecosystems and encourage more domestic creators and businesses to seek IP protection. This could be addressed through greater support for research and development (R&D), innovation grants, and partnerships between the public and private sectors to foster a culture of innovation and creativity.

Summary of Challenges

- ✓ Low domestic participation in patent and industrial design filings, with the majority of registrations being international.
- ✓ The over-reliance on international filings for trademarks and designs indicates a need for more localized IP strategies and incentives for domestic creators and businesses.
- ✓ Administrative challenges related to processing times and capacity may require attention to streamline IP registration processes and encourage higher volumes of filings.

4. Recommendations

General recommendations:

- adjust annual Action Plans in the implementation of the IP Strategy to achievable goals, which ensure the basic functioning of the system :
1. create a functioning register for IPRs, which should be fully publicly available online
 2. ensure functioning data exchange with regional and global databases (EPO, WIPO, EUIPO)
 3. fill systematized positions at the Ministry and other main institutions as envisaged by existing plans
 4. improve the website of the Ministry for Economic Development so users can easily find a separate IP section with easily accessible information
 5. translate the website of the Ministry for Economic Development dedicated to IP section into English for international users
 6. create a communication and outreach strategy befitting the local innovation ecosystem, providing personalized information material and campaigns for different user groups with different awareness levels and needs. (universities, SME, micro-entities etc)
 7. enhance cooperation with the University of Montenegro
 8. offer formalized education to employees in main institutions dealing with IP overall

Recommendations regarding enforcement through criminal justice (for Police Administration and State Prosecutor's Office):

- make a strict delineation between criminal offences and misdemeanours in legislation and practical application
- excessive practical application of misdemeanour law protection by Police and State Prosecutors is required
- *ex officio* activities of Police Administration and State Prosecutor's Office regarding misdemeanours (so far, there are no track records on those activities) are required
- training of police officers and state prosecutors on misdemeanours against IPRs and procedures to combat infringements, which should be enforced through misdemeanours are required
- enhancement of track records of misdemeanours, which is completely missing at the moment, are needed
- organisational structure of misdemeanour law enforcement should be embraced within the criminal justice
- introduce a system of joint track records from the Police Administration, down the State Prosecutor's Office towards Misdemeanour and Criminal Courts so that infringement cases may be tracked from the initial phase to the end of the official proceedings

Recommendations regarding the inspectorate:

In abolishing the Administration for Inspection Affairs and reorganising the public administration, the enforcement of IPR at the local market should be preferably assigned to one competent authority only. However, after the reorganisation of the public administration and completing the task of the assignment of the inspection affairs in the area of IPR enforcement to a competent authority, the following activities should be covered in the Action Plan for 2025:

- annual training plan for selected market inspectors from the central level and all local units in Montenegro including:
 - 2-day training related to IPR substantive legislation
 - 2-day training related to the procedure and
 - 2-day training with the presentations delivered by the right-holders or their representatives
- to ensure that the training in the duration of at least 2 hours on IPR substantive legislation and the relevant procedures (misdemeanour and criminal) is included in the curriculum for the newly appointed market inspectors
- to ensure that the *ex-officio* procedure is applied in inspections on the market where a significant quantity of suspected goods is found and the right-holder previously did not request enforcement
- to ensure that effective control of the digital market (social networks, small ads...) is established, including coordination with the Police unit in charge of cyber-crime
- adjusting the model of collection and presentation of statistics related to IPR enforcement at the market with the model used in the EU (EU Observatory, IP Enforcement Portal – ACIST Database)
- to ensure that a relevant official from the central level of the competent authority in charge of the IPR enforcement at the market is nominated to participate in the Working group for organising and implementing joint actions aimed at preventing and combating infringements of IPRs
- to ensure, in cooperation with the national authority in charge of the management of the state property, that the facility with sufficient storage capacity is allocated to the competent authority in charge of the IPR enforcement at the market for storing the goods suspected to infringe IPR that are temporarily seized in misdemeanour and criminal proceedings

Recommendations for Customs Administration, which should ensure that the following activities are covered in the Action Plan for 2025:

- annual training plan for selected customs officers from all local units in Montenegro
 - 2-day training related to IPR substantive legislation
 - 2-day training related to the procedure and
 - 2-day training with the presentations delivered by the right-holders or their representatives
- to ensure that the training in the duration of at least 2 hours on IPR substantive legislation and the relevant procedure (customs border measures) is included in the curriculum for the newly appointed customs officers
- to adjust the presentation of statistics related to the quantity of destroyed goods to represent a share of the total number of items detained in the same calendar year
- to ensure that the legislation and instructions for customs officials, in line with Article 23 of the Regulation 608/2013 clarify the workflow related to the cases where the deadline for submitting the opposition to the destruction of the goods and the deadline to appeal differ thus to avoid the appeal if submitted beyond the deadline for the opposition to the destruction but still within the appeal deadline, suspend the process of the destruction of goods

Recommendation for Police State Prosecutor's Office, which should ensure that the following activities are covered in the Action Plan for 2025:

- annual training plan for police inspectors and state prosecutors at the central level in charge of economic crime and cyber-crime and heads of the respective departments and the selected police inspectors and state prosecutors (if applicable) from all local units in Montenegro
 - 2-day training related to IPR substantive legislation
 - 2-day training related to the criminal and misdemeanour procedure and
 - 2-day training with the presentations delivered by the right-holders or their representatives
- to ensure that the training in the duration of at least 2 hours on IPR substantive legislation and the relevant procedure (criminal investigations and criminal procedure, misdemeanour procedure) is included in the curriculum for the newly appointed police inspectors and state prosecutors that deal with economic crime
- to ensure a clear workflow of coordination of all cases involving goods suspected to infringe IPR between police inspector and the competent state prosecutor.

5. Answers on the issues which were in focus of the peer mission

„Has the administrative capacity sufficiently improved to demonstrate its capacity to register intellectual property rights?“

The administrative capacity of Montenegro’s Intellectual Property Department, under the Ministry of Economic Development, has improved significantly but remains insufficient to fully meet the demands of registering intellectual property rights.

The legal framework for intellectual property in Montenegro is well-prepared and amended in alignment with EU standards, reflecting substantial progress in legislative reform. Additionally, Montenegro has joined the European Patent Organisation in 2022, representing a big step towards alignment with the EU acquis. The registration process for intellectual property rights, such as trademarks and industrial designs, has been improved. For instance, the time required for trademark registrations has been reduced from 9-12 months to 6-12 months, and industrial design registrations now take 6-9 months, down from 9-12 months. Similarly, the competence for conducting the procedure for declaring null and void/revoking the recognized industrial property right previously divided between Commercial Court of Montenegro and the Ministry of Economic Development has now been streamlined, creating one competent authority (the Ministry) to decide in the first instance on the cancellation and revocation of a trademark. These improvements indicate that the administrative process is more efficient for straightforward cases.

However, despite this progress, the capacity to fully register intellectual property rights is largely but not fully met. Following the cyberattack on Montenegro’s IT systems in 2022, the registers of industrial property rights have not been fully recovered. These registers, which are critical for transparency and legal certainty, remain unavailable online, for inspection by rights owners, potential applicants, and the general public. Information on registered rights can currently be provided only upon request by phone or in writing, with responses typically given within one or two business days. The lack of a publicly accessible online register represents a significant limitation in administrative capacity, legal certainty and hence the overall functioning of the system. An IT expert from the Ministry of Economic Development and the Intellectual Property Department has indicated that the registers should be fully operational and accessible to the public by the end of this year.

While the registration process for standard cases generally runs smoothly and there is no significant backlog, more complex issues in the registration procedure, such as trademark opposition and nullification proceedings, still take years to resolve. This highlights a challenge in the capacity to handle more contentious or complicated intellectual property matters, reflecting that while standard applications are processed efficiently, more complex cases continue to be delayed significantly.

In conclusion, while Montenegro’s intellectual property registration system has made meaningful strides in legislative alignment and procedural efficiency for standard cases, the administrative capacity remains partially insufficient. The ongoing unavailability of the public registers and delays in resolving complex cases represent key challenges. However, with the expected recovery of IT systems and the full restoration of online public registers by the end of the year, the Intellectual Property Department could be on track to meet its capacity to register intellectual property rights in the near future.

“How is Montenegro addressing the shortcomings of its administrative capacities in the Intellectual Property Department, the market inspection and the customs administration?”

Regarding the administrative capacity of the market inspectorate, it must be pointed out that in the week prior to the mission, the Parliament of Montenegro passed the Law on Amendments to the Law on Inspection Affairs, which will enter into force on 1 October 2024. This Law abolishes the Directorate for Inspection Affairs, with the effect that 26 different inspection affairs will be distributed to the relevant ministries. This change will significantly affect the administrative capacities of the market inspection in performing tasks within the framework of the implementation of intellectual property rights in the Montenegrin market. Namely, at the meeting with the representatives of the Directorate for Inspection Affairs and subsequently with the representatives of the Ministry of Public Administration, that need to implement this Act and to prepare the new state administration organisation, any convincing information was received during and after the mission that would ensure that, by the time the Act enters into force, all necessary organisational and logistic prerequisites will be met to make certain the transition of inspection work without any interruptions in operation. For example, a commission has been established by the Government that should decide which ministry will be competent for specific inspection duties, but not even a proposal for a new organizational structure regarding inspection duties has been made. Therefore, it is unknown how many officials from the Directorate for Inspection Affairs will be transferred to relevant ministries. Thus it is not known how many officials will be involved in the enforcement of IPR in the market. In addition, technical and logistical details are not known either (vehicles, technical and other equipment, offices, official badges, powers), because no by-laws that should elaborate on these issues have been drafted. Likewise, it is unknown how the pending cases and archives will be distributed. At the meeting with the representatives of the Ministry of Public Administration, Experts' concerns were communicated that the current situation will inevitably lead to an interruption in the implementation of inspection activities, given the very soon entry into force of that Act. Although the representatives of the Ministry of Public Administration and the Chief negotiator verbally and in writing guaranteed that all possible measures will be taken to ensure the business continuity, no specific information was given that could indicate that it would in reality be carried out in time. Explaining the reasons for this decision to close the authority that was responsible for most of the inspection affairs in Montenegro, Ministry of Public Administration cited a desire of the Government for the specialisation of inspection activities and ensuring the enforcement quality improvement.

Experts highlighted the example of Croatia (considering that two members of the Mission were from Croatia), which went through the same experience of abolishment and later re-establishing the Croatian State Inspectorate, where inspection tasks in intellectual property matters were assigned to the Customs Administration. Several EU member states (e.g. France and Hungary) also have a model in which the customs authority, in addition to controlling cross-border trade in goods, also performs the enforcement of IPR at the local market. The representatives of the Ministry of Public Administration thanked for the suggestions, but pointed out that they cannot prejudge the decision of the appointed commission that should decide on this matter.

Despite these uncertainties, within the framework of the Peer Review Mission, an inspection was organized at two commercial entities in Podgorica, carried out by two inspectors of the Directorate for Inspection Affairs with the presence of the Mission members as observers. In one entity, no action was taken because, although some T-shirts were found on the shelves marked with a sign similar to the registered trademark of one right-holder, the inspectors considered that there was no basis for action because the sign was not identical to the registered trademark and because that right-holder had not submitted a request to the Directorate for Inspection Affairs to enforce their IPR at the market. In another entity, a larger quantity of goods was found that were marked with

signs identical or similar to the registered trademarks of several right-holders. However, inspectors temporarily confiscated goods suspected of infringing the rights of only one right-holder who had submitted a request to the Directorate for Inspection Affairs to enforce their IPR at the market.

Statistical data of the Market Inspectorate show results that are in line with the size of the market and Montenegrin economy. However, it shall be noted that the inspectors of the Market Inspectorate are reluctant to enforce trademarks if the signs on the products are not identical and do not act on their own motion .

The Customs Administration at the central level has a Department for Intellectual Property and Restrictions and Prohibitions, which has a head and three senior administrative advisors. Two of them are dealing with the customs enforcement of IPR (border measures).

The customs territory is divided into 4 Customs Houses and a total of 33 Customs Offices. At the local level, there is no staff specialised in IPR enforcement, but local officers participate in the regular training covering IPR enforcement.

Tasks of the Department include the legislative activities of monitoring regulations, tasks of granting the application for action, inter-agency and international cooperation, education of customs officers related to customs measures, communication with the right-holders and participation in public awareness activities.

The system of implementation of customs measures is partially centralized. Customs officers at the Customs Offices inspect the goods, establish suspicion of infringement of IPR and suspend the customs procedure. At the level of the Customs House, an administrative procedure is carried out and an administrative decision is issued on the suspension of the customs procedure and the temporary detention of goods. The Central Office sends the notification to the right-holder and maintains the communication with them.

Harmonization with the *acquis* in the area of customs IPR enforcement has been concluded and all mechanisms of the Regulation 608/2013 on customs enforcement of IPR had been appropriately transposed into the national legislation. However, instead of adopting a separate regulation, the provisions on customs enforcement were incorporated into the Regulation on closer implementation of customs procedures and customs formalities. In addition, these provisions are incorporated in only one article (Article 557), which seems a bit unclear and impractical.

Furthermore, at a later meeting at one law office, the Mission identified a legal problem with the implementation of customs measures. Namely, Regulation 608/2013 stipulates that the declarant or the owner of the goods is notified of the detention of the goods before the right-holder, considering that both parties have 10 working days to exercise their rights in the procedure. The aim of this provisions is, if the declarant or the owner of the goods declares his opposition to the destruction of the goods, that the right-holder has enough time to prepare a lawsuit at the competent court or request an extension of the deadline for additional 10 working days in order to prepare such a lawsuit. In Montenegro, the notification is delivered to the declarant through the delivery of the report on the inspection of the goods – a document prepared to reflect the findings of the control of the shipment. Subsequently, a notification is drawn up and delivered to the right-holder. However, after the declarant has been notified, additionally, an administrative procedure is initiated, and an administrative decision on the suspension of the customs procedure and the temporary detention of the goods is issued at the level of the Customs House. This administrative decision is delivered only to the declarant and gives him a right to submit his opposition within 10 working days from the day of receipt of the notification (report), but also gives him a legal remedy to appeal within 15 days. These deadlines coincide only in rare occasions. Given that according to Customs standpoint, the appeal against this decision has a suspensive effect on the procedure for the destruction of the goods, the right-holders

are potentially exposed to the situation of getting notification that the declarant appealed only after their deadline of 10 working days for submitting a request for the destruction of the goods has expired. Being aware of this situation, the representatives of the right-holders, along with the request for destruction of the goods, also submit a request for an extension of the deadline, which would be activated if the declarant opposes to the destruction of the goods. Through a subsequent communication with the representatives of the Customs Administration, this problem has been analysed. A clarification was provided to the Customs Administration that the appeal, if submitted within the appeal deadline, but outside the deadline for submitting opposition to the destruction of goods, should not have a suspensive effect on the destruction procedure. The Customs Administration has given guarantees that internal consultations will be carried out and the procedure would be adjusted.

The activities of customs officials in the framework of customs enforcement of intellectual property rights are described in detail in the Instructions for customs officials on the application of the customs regulation. The Instructions are posted on the Intranet and are available to all customs officials.

Considering that the last trainings were organised in 2022, it is advised that more efforts should be done in the field of education of customs officials.

A training of local customs officers regarding the customs measures should be considered. Furthermore, Customs Administration should adopt the practice of organising a training for customs officers in the area of IPR enforcement at least once a year, with the presentations provided by the right-holders.

Nevertheless, it seems that the local staff are well acquainted with the IPR enforcement and procedures within the customs border measures. Namely, within the Peer Review Mission, a visit to the Border Customs Office at Božaj was carried out. In the conversation with the head of the BCO Božaj, the Mission members got the impression that he is skilled in the implementation of the border measures procedures in different hypothetical situations involving goods suspected of infringing IPR.

Very good statistical results show that that the Customs Administration systematically and consistently approached both to the harmonization of the IPR enforcement provisions and to the dedicated implementation of customs measures at the national level.

In conclusion, although some minor differences in the procedures of customs measures have been identified, clear recommendations are given and after their implementation, the customs IPR enforcement in Montenegro will be at the same level as in the EU Member States. On the other hand, the recent change in organising the new system of market inspectorate poses a challenge which should be cautiously observed in the near future to see whether the new system will be an upgrade compared to the organisational structure that ceased to have effect as from 1st of October 2024 or a decrease in terms of administrative capacity and efficiency.

“Does the provided track record of investigation by customs and effective enforcement through civil and, where appropriate, criminal justice tally with the frequency and intensity of infringement to be expected in a country of the size and exposition of Montenegro?”

The collection and presentation of statistical data related to customs measures are aligned with the EU model with some minor differences. Statistical reports covering the last 5 years show that the number of initiated procedures, detained items and the value of destroyed goods are constantly increasing. These data demonstrate the systematic

approach of the Customs Administration. They are in line with the expected results considering the geographical position of Montenegro and the flow of traffic of goods in the region.

The number of applications for action (AFA) granted is around 150 and is slightly increasing. The number of initiated procedures of customs measures in the last 5 years varies between 50 and 100, but the number of detained items is constantly increasing, especially in 2023, when the quantity of 97,302 suspected items had been detained. As for the data on the quantity of destroyed goods in the last 5 years, it amounts to about 40% of the total number of the products detained (188,000 products detained – 77,000 products destroyed). However, due to the way the data is presented, it is not possible to evaluate these results on a yearly basis. Namely, for destroyed goods, data on the quantity of the goods that were physically destroyed in a calendar year was displayed (which also includes goods detained in previous years that were waiting for destruction for a certain period). The correct way would be to track what portion of the total quantity of the products detained in one calendar year was related to the goods for which the conditions for destruction were met. That way, it would be possible to assess the effectiveness of the implementation of customs measures on a yearly basis. The way statistical results are presented should be adjusted. The correct tables and instructions will be provided.

As for the civil enforcement, the statistics indicate that the Commercial Court of Montenegro is at a high level in terms of organization and education. Although the interpretation of certain provisions of the labour-related legislation led to the early retirement of the part of the staff by force of law, appropriate activities are undertaken to fill vacant positions and to organize training for candidates.

Regarding the education in the judicial system, this falls under the jurisdiction of the Centre for Training in the Judiciary and Prosecutor's Office. Education is divided into initial training and continuous education. Candidates for judges and state prosecutors undergo the initial training, while every judge and state prosecutor is required to fulfil a continuous education plan on an annual basis, i.e. at least one 2-day training per year. IPR topics are represented both in the initial training and in continuous education. The problem in the education of judges stems from the fact that they have a system of randomly assigning cases to judges to deal with. Therefore, it is not possible to specialise judges.

In conclusion, Montenegro is making notable efforts to address the shortcomings in the administrative capacities of the Intellectual Property Division/Department, Market Inspectorate, and Customs Administration. However, significant challenges remain, particularly in relation to the organizational and logistical restructuring of the Market Inspectorate due to recent legislative changes. The abolition of the Directorate for Inspection Affairs, scheduled for 1 October 2024, raises concerns about potential disruptions in IPR enforcement. The lack of clear information regarding the transition of inspection duties, allocation of staff, and logistical resources further compounds these concerns, despite verbal assurances from the Ministry of Public Administration and Chief Negotiator that business continuity will be ensured. Shortly before completing this Report, the experts received information from the Government of Montenegro that on 17.09.2024. a Decree on Amendments to the Decree on the Organization and Mode of Operation of the State Administration was adopted and published in the Official Gazette of Montenegro No. 90/24 of 20 September 2024. This Decree enters into force on October 1, 2024. Among other things, it regulates issues related to the competencies for implementing inspection supervision in certain areas, the taking over of inspectors who performed inspection supervision tasks within the Administration for Inspection Affairs, and the taking over of equipment and official documentation. Nevertheless, after scrutinising this Decree, no reference to inspection regarding intellectual property rights was found. Therefore the standards are only partially met.

Customs Administration has demonstrated substantial progress in enforcing IPR, particularly at the central level, with a systematic and consistent approach to customs measures. Although minor procedural differences were

identified, with the implementation of recommended adjustments, Montenegro's customs enforcement of IPR will be comparable to that of EU Member States and therefore the standards are largely met. The Customs Administration's central role, strong statistical results, and proactive engagement in training and international cooperation reflect its commitment to enhancing IPR enforcement. However, local customs officers would benefit from more regular and specialized training sessions, particularly concerning IPR enforcement at the border.

The Intellectual Property Division/Department continues to face challenges related to administrative capacity, particularly following the cyberattack that disrupted access to public registers. While progress has been made in reducing registration times for trademarks and industrial designs, complex cases such as oppositions and nullifications still experience significant delays.

The need for better coordination between institutions, increased training, and the timely implementation of reforms remains critical to ensuring that Montenegro's administrative capacities are fully equipped to handle the growing demands of IPR enforcement in a rapidly evolving legal and economic landscape.

In conclusion, with further attention to organizational restructuring, enhanced coordination, and continued investment in training and capacity building, Montenegro is positioned to improve its enforcement mechanisms, ensuring a robust IPR system that meets EU standards. The shortcomings of the administrative capacities in the Intellectual Property Division/Department and customs are largely addressed.

„How is the work of the Intellectual Property Rights Enforcement Coordination Team installed in 2017 advancing, and do its decisions and the special working team installed by it effectively contribute to IPR enforcement?“

The Intellectual Property Rights (IPR) Enforcement Coordination Team, established in 2017, made significant advancements in its early years, contributing meaningfully to IPR enforcement. The team played a pivotal role in coordinating efforts across various institutions and creating momentum for improved intellectual property enforcement. However, the onset of coronavirus measures disrupted this progress. During the pandemic, the team's operations and overall progress slowed, and the post-pandemic period has seen a continuation of this faltering momentum.

The results indicate that a new driving force or momentum is necessary to reignite progress. The team's work would benefit from additional measures aimed at enhancing cooperation between enforcement institutions, ensuring that the level of coordination seen in earlier years is restored and further strengthened. Despite these challenges, the Coordination Team has still contributed to IPR enforcement, but not to its full potential.

The effectiveness of the team's decisions, as well as the contributions of the special working team installed by the Coordination Team, varies across enforcement sectors. In terms of civil justice, progress is largely met, indicating strong cooperation and positive outcomes in civil cases related to intellectual property rights. This shows that the Coordination Team's activities have been effectively contributing to the enforcement of IPR in the civil domain.

In the areas of criminal justice and market inspection, cooperation is only partially met. While there have been some positive outcomes in criminal cases and market inspections, there remains room for improvement. The Coordination Team's work in these areas has not fully realized its potential, and stronger, more consistent collaboration between institutions is needed to ensure that IPR enforcement is fully effective.

In conclusion, while the IPR Enforcement Coordination Team demonstrated significant progress before the pandemic, its work has slowed in recent years, and new measures are needed to drive further advancement. Cooperation among enforcement institutions, especially in criminal justice and market inspection, remains partially met, while progress in civil justice is largely met. With renewed focus and enhanced coordination efforts, the Coordination Team has the potential to regain momentum and make more impactful contributions to IPR enforcement in the future.

„Are there records on fines from the commercial court, state prosecutor's office, and market inspection procedures and on follow-up to demonstrate effective enforcement?“

The results show that records on fines and follow-up procedures across the commercial court, state prosecutor's office, and market inspection demonstrate progress, but there are still areas where enforcement is partially met.

The commercial court records reflect substantial improvement in the enforcement of intellectual property rights, as fines issued by the court indicate largely effective enforcement. This progress suggests that the court has aligned well with the legal framework, and the enforcement of fines for intellectual property infringements is becoming more efficient. The commercial court appears to be a reliable institution in terms of ensuring that judgements are imposed and followed through.

However, the state prosecutor's office shows that criminal justice enforcement is only partially met. While there has been progress in issuing fines, the records indicate that more needs to be done to ensure consistent and effective follow-up on criminal cases related to intellectual property violations. The partial enforcement here suggests that some criminal cases are either delayed or not prosecuted to their full extent, which hampers the overall enforcement effectiveness in this area. In addition, the part of criminal justice which consists of enforcement through misdemeanour proceedings is missing for effective enforcement. It demands legislative amendments and tremendous change in a practical approach. Namely, misdemeanour enforcement should be excessively applied to violations of intellectual property rights and prosecutions for criminal offences only exceptionally. Therefore, the number of processed misdemeanours (which should be adequately regulated in respective intellectual property laws such as the Copyright and Related Rights Act and Trademarks Act) should be increased to achieve effective criminal enforcement, and the number of prosecuted criminal offences (regulated in Criminal Code of Montenegro) slightly increased. This would indicate that criminal justice is coming to the level expected for the country based on the size, population, and economic parameters similar to Montenegro.

As for the market inspection, the records show good progress in issuing fines and enforcing penalties related to intellectual property rights violations. However, recent legislative and organizational changes within the market inspectorate pose ongoing challenges. These changes, including the reorganization of the inspection system, have created uncertainties about operational efficiency and the inspectorate's ability to maintain the level of enforcement seen previously. As a result, enforcement in this area is considered partially met. While enforcing penalties based on special laws regulating market inspection, inspectors use misdemeanour enforcement and this approach should continue. Track records on the cases which end up in misdemeanour courts should be improved.

In conclusion, while records from the commercial court show largely effective enforcement, the state prosecutor's office still has room for improvement in terms of criminal justice enforcement. The market inspectorate has made progress, but recent structural changes present challenges that need to be addressed to ensure sustained enforcement capabilities (taking over the competencies for intellectual property rights and efficient transition of work, training, *ex officio* actions, aligning statistics model, storage facilities). Therefore, enforcement is partially met across these institutions, with potential for improvement as new procedures are solidified and capacity is strengthened. Misdemeanours should be more actively pursued.

“Are the facilities for storage and destruction of the seized goods sufficient and are there any bottlenecks/issues in further processing of suspended procedures by the Customs authority? Looking into the legal provisions governing seized goods, as well as whether any profit may be generated by the state from seized goods? (e.g. auctioning)”

As part of the visit to the Customs Administration, a visit was organized to the warehouse where customs store goods detained or confiscated based on any legislation under the Customs jurisdiction. The warehouse is filled to about 80-90% of its capacity and the Customs do not experience any problems connected to the storage capacities due to the organisation of the destruction of goods under customs supervision on a regular basis.

Regarding the matter of auctioning or donating IPR infringing goods, the Instructions for Customs Officers envisages such possibilities, but only pursuant the proposal of the right-holder. Although the Customs Administration launched a couple of initiatives towards the right-holders to donate the infringing goods to charity, the right-holders did not show the interest because they could not guarantee that the infringing goods do not pose any risks for the health and safety of the consumers, taking into account that counterfeit goods are mostly of a poor quality, made of cheap raw materials, glues and paint and do not pass any quality control tests.

In conclusion, the facilities for storing and destroying the seized goods are largely met. Minor shortcomings may be overcome by measures presented in this Report (organisation of the destruction of goods on a regular basis). The same counts for the possibility of the state generating profit.

„Assess whether the cooperation with police is sufficient?”

The results suggest that cooperation with the police in the area of intellectual property rights (IPR) enforcement shows room for significant improvement. While there has been some collaboration between the police and other institutions involved in IPR enforcement, such as the Customs Administration, Market Inspectorate, The State Prosecutor's Office and the Judiciary, this cooperation has not yet fully reached its potential. The results are partially met, meaning that while there has been progress, the current level of cooperation is not sufficient to ensure effective and comprehensive IPR enforcement.

Specific areas are identified in the Report where enhanced police involvement could greatly benefit the overall enforcement efforts, particularly in relation to criminal justice. The police play a crucial role in investigating and acting upon IPR violations, especially in complex cases involving organized crime and counterfeit goods. However,

the existing cooperation between police and other institutions has been inconsistent, and the lack of streamlined coordination can lead to delays or inefficiencies in addressing IPR-related crimes.

The recommendations suggest measures to strengthen the collaboration between police and other enforcement bodies, in particular State Prosecutor's Office. These recommendations will likely focus on enhancing communication channels, joint training initiatives, and establishing more formal mechanisms for sharing information and coordinating investigations across institutions.

In conclusion, while there is a foundation for police cooperation in IPR enforcement, the current level of collaboration is partially met and requires further development. By implementing the forthcoming expert recommendations and fostering closer institutional ties, Montenegro can improve its IPR enforcement framework, ensuring more effective police involvement in combating intellectual property violations.

6. Analysis of the Fulfilment of Benchmark 4 for Chapter 7: Intellectual Property Law

Benchmark: *Montenegro ensures a sufficient administrative capacity to register intellectual property rights and provides a track record of investigation by customs and effective enforcement through civil and, where appropriate, criminal justice.*

The analysis of the Peer Review Mission findings demonstrates that Montenegro has made significant progress toward fulfilling Benchmark 4. However, challenges remain in achieving full compliance across all areas.

Administrative Capacity to Register Intellectual Property Rights: Montenegro's capacity to register intellectual property rights is *largely met*, as improvements have been made in the registration process, particularly with reduced registration times for trademarks and industrial designs. However, the **cyberattack of 2022** severely impacted the online intellectual property registers, which are still unavailable for public access. The Ministry of Economic Development has assured that the registers should be fully operational by the end of the year. Currently, information is provided upon request, which limits transparency. The administrative capacity is improving, but full compliance will require the restoration of the public register and continued investment in human and technical resources.

Track Record of Investigation by Customs: The Customs Administration has shown **substantial progress** in the enforcement of intellectual property rights, particularly through risk-based working methods, dedicated efforts in control of the cross-border traffic of goods and proactive participation in international cooperation. Statistics show an increasing number of procedures, detained items, and destroyed goods, demonstrating the administration's commitment to intellectual property enforcement. Therefore, customs enforcement is *largely met* but can be improved further with better resource allocation.

Effective Enforcement through Civil Justice: Montenegro's **civil justice system** is functioning well in terms of intellectual property rights enforcement, especially within the Commercial Court. Cases related to intellectual property are resolved efficiently, with a high degree of specialization among judges, and **standardized judicial practices** have been developed. Civil justice enforcement is considered *largely met*, reflecting the court's ability to handle these cases effectively.

Effective Enforcement through Criminal Justice: Criminal justice enforcement is only *partially met*. While the criminal justice system provides a framework for addressing intellectual property violations, the number of prosecutions remains low, and **capacity constraints** within the State Prosecutor's Office and the Police Administration hinder comprehensive criminal enforcement. Moreover, the distinction between misdemeanours and criminal offences remains unclear, leading to delays in prosecution. The introduction of legislative amendments concerning the delineation between misdemeanours and offences and more training for prosecutors and police officers are necessary to improve criminal justice enforcement. **Misdemeanours should be introduced as fully effective in enforcement against intellectual property infringements.**

Conclusion: While Montenegro has made notable strides toward fulfilling Benchmark 4, particularly in the areas of administrative capacity and civil justice enforcement, additional measures are needed to fully meet the requirements. Criminal justice enforcement, particularly in the pursuit of misdemeanour law enforcement, and the restoration of online public access to intellectual property registers remain areas of focus. Continued investment in training, infrastructure, and legislative reforms will be crucial to ensuring full compliance.

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*The present Report has been written and submitted by **Ms Romana Matanovac Vučković, Mr Ninoslav Babić**
and **Ms. Raphaela Tiefenbacher-Bath** to the EU Commission on the 27.09.2024*
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