

§ 4 Considerations of the relevant social and economic factors which are important to the implementation of the Enforcement Directive

A. General considerations

I. Social changes in the Baltic countries in view of the accession into the European Union

Along with the examination of the legislative IP history, the recent developments and changes in this legal field as well as the corresponding IP regulatory infrastructure, it is important to consider social and economic changes in the Baltic countries which are in a close correlation with an actual implementation of the provisions on enforcement of IP rights. It can be observed that certain legislative changes together with other economic factors such as, for instance, the growth of IT industry, improvements of a local R&D sector²⁴⁷ and the spread of awareness of, especially, local right holders about the protection of IP rights, had an immediate effect on a reduction of the number of counterfeits and pirated products in the Baltic IP market and at the same time increasing local innovation and creation activities.

These IP-relevant economic factors as well as IP teaching which plays an enormous role for improvements in the local R&D sector cannot be considered without taking general social processes in the Baltic states after the declaration of their independence in 1990/1991 into account. The general social processes mainly mean the progressive social transformation (which is generally specific to the “post-soviet” world) substantially affected by the rapid approach of the Baltic states with the EU and other western countries which also was followed by the accession of the Baltic countries into the EU.

From the social point of view, although the discussion of whether Baltic identity is European or post-Soviet is still ongoing²⁴⁸, the EU integration processes led to very affirmative results, meaning the expeditious changes from the so-called “soviet mentality” to the western viewpoints in many fields, including intellectual property. From the economic point of view, it was presumed that the accession into the EU would positively affect the local markets²⁴⁹. However, notwithstanding the fact that

²⁴⁷ See overview in infra § 4B.III.

²⁴⁸ As observed in *Elsuwege*, State Continuity and its Consequences: The Case of the Baltic States, pp. 381-382.

²⁴⁹ Notably, before the accession to the EU it was presumed that the GDP in Lithuania would grow about ten (10) percent in 2009 due to the accession (comparing with the estimated numbers presuming non-accession), as observed in *Vilpišauskas*, Internal Market and Lithuania, p. 80. The growth rate of GDP, however, was generally declining at the end of 2008 due to other economic reasons, as provided by *Statistics Department of Lithuania (2008)*.

the Baltic people constantly demonstrate their approval for the accession in the EU²⁵⁰, which also indirectly means gradual acceptance and achieveless implementation of the EU legal provisions, some other opinions pointing to negative impacts because of the accession into the EU have been also expressed²⁵¹. This illustrates how difficult and variegated “westernization” processes in the Baltic states are and how divergent positions regarding interception and application of the European legal provisions can actually be.

In terms of intellectual property rights protection and enforcement in the Baltics, features of the rapid and at the same time ambiguous social transformation covering changes of “IP mentality” can be seen on various levels.

First, due to the geopolitical position of the Baltic countries²⁵² as well as their role in the EU as its sub-region, IP rights started to be gradually considered as an important innovative factor which can induce a competitive ability of their local markets in the Internal Market and in a trade with and also investment in other EU Member States and non-European countries, for instance, the big neighbouring markets such as Russia, Ukraine, Poland, or UK²⁵³, etc.;

Second, the changing “IP mentality” can be observed in public opinions and official positions of the Baltic national legislators as well as government institutions which emphasize that IP is to be considered as an immaterial property that should be adequately protected applying the European as well as worldwide standards of such protection and referring to the well-established legal notion that an infringement of IP rights is a theft, and that IP piracy is to be tackled using effective enforcement measures²⁵⁴;

Third, in context of the listed changes, the progressive views of consumers’ of IP products are also evident. The high standard of protection of IP rights and their effective enforcement can help to economically benefit from such property from both – IP right holders and consumers – perspective. Moreover, consumers started to be

250 E.g., in 2006, 69 % of the Lithuanian population was in favour to the EU membership, and only 17 % expressed its disapproval. In comparison with 1999, the assent to the EU membership grew 31 % in Lithuania, as referred in *Development of Public Opinion Regarding EU Membership (2006)*.

251 The negative impacts of the accession into the EU mainly concerned local small enterprises, consumers as well as the state institutions which were obliged to work in an effective, responsible and transparent manner, as observed in *Vilpišauskas*, Internal Market and Lithuania, p. 78.

252 See overview in *supra* § 3A.

253 As of 1 January 2008, Lithuanian enterprises’ FDI abroad made by 34,7 % more than on 1 January 2007. Most of all (29,4 %) was invested in Latvia, in Russia (12,7 %), then in Poland, Ukraine, Estonia, and UK. In 2007, the most obvious growth of Lithuanian enterprises’ FDI was observed in Latvia and UK, as provided by *Statistics Department of Lithuania (2008)*. From 2003 until 2006 the number of Lithuanian FDI increased 18 % in Ukraine, and 26 % in Russia; see *Statistics, FDI in LT (2006)*, p. 46.

254 Such attitudes and positions were explicitly embodied in the IP strategies prepared by the national Ministries of Culture, e.g., the Decision of the Government of the Republic of Lithuania No 1176 as of 29 September 2000 on “*Strategy of Protection of Copyright and Neighbouring Rights and Measures of its Implementation in 2000 – 2003*” (OV).

aware about healthy and safety risks that might occur while using counterfeited products, small and medium size companies were informed about the positive effects of using legal products²⁵⁵, etc.

The transformation of local “IP mentality” on business and state institutions level, progressive consumers’ views have an immediate connection to changing public standpoints regarding IP piracy and counterfeiting which rates can be reasonably considered as a signal indicator of an actual success of the local IP enforcement systems.

II. IP piracy in the Baltics: prevailing tendencies and impact on the national IP rights enforcement legislation

In view of the overall IP products piracy rate in the EU in general and in each of the EU member states, the piracy rate in the Baltic countries is still relatively high²⁵⁶. As the indicator to depict and to illustrate the actual IP enforcement situation in each and every country, the information regarding piracy level in the Baltic states can also demonstrate those legal issues due to which the fight against counterfeits and piracy in the local markets does not achieve expected results, although the EU-level legislation in those countries is in place²⁵⁷.

The piracy phenomenon in the Baltic countries has an immediate connection with the following factors:

First, piracy is highly influenced by the geographical position of the Baltic countries, meaning that in most cases they are so-called “cross-road” countries for the counterfeits which are imported from the neighbouring countries. The Baltic countries have a comparatively low level of domestic piracy; however, they suffer from the import of pirated goods from other, mainly Central European countries²⁵⁸, also transhipment of pirated and counterfeited goods from Asia, in particularly China²⁵⁹;

Second, local “IP mentality” and consumers’ attitude towards the use of IP products is very much influenced by the long-history of the suppressed protection of intellectual property rights during the Soviet occupation when such protection was on generally low level²⁶⁰;

255 As referred in *Datamonitor, Growth of the Software Industry in Lithuania (2001)*, pp. 11, 12.

256 See refs. to software piracy rates in supra Ft. 16 herein. As reported in *BSA/IDC 2007 Global Software Piracy Study*, in 2007 the software piracy rate in the Baltic countries is higher than the overall rate in the EU (35 %) and in other countries, for example, in Slovenia 48 %, Finland 25 %, Germany 27 %. According to *2008 Special 301 Report IIPA Special Mention: Lithuania*, pirated products of sound recordings and musical compositions amount to 80 % in Lithuania (it reduced only 5 % since 2003).

257 Note: the piracy rates, though, should be examined considering certain methodology used to estimate them, *i.e.* not all business sectors are covered by estimating illegal software used, as follows from *BSA/IDC 2007 Global Software Piracy Study*.

258 See *von Lewinski*, Copyright in Central and Eastern Europe, p. 59.

259 See also additional data and refs. in infra § 5G.II.

260 See overview in supra § 3B.II.