

fringements of design rights. This particularly refers to the newly amended provision on compensation for losses and moral injury. Section 48(1)(3) of the amended Latvian Design Law establishes that if the amount of actual compensation for losses may not be specified in accordance with the law, the amount of compensation shall be in conformity with such an amount as may have been received by the owner of the design in respect of a transfer of the right to use the design to a licensee.

## II. Concluding remarks

Considering the duration of the implementation of the Enforcement Directive by the Baltic countries as well as the new amendments on civil IP enforcement measures, procedures and remedies in view of the prior-to-implementation provisions in the same field, the following remarks and observations can be made.

*First*, the rapid implementation of the Directive in the Baltic countries, especially in comparison with other EU Member States such as France or Germany, depended on, *inter alia*, the fact that the national legislators almost literally transposed the harmonizing provisions in their national IP laws, also the national procedural laws as far as Latvia and Estonia were concerned. Some of the national laws, e.g. the Lithuanian Copyright Law, already contained the extensive list of provisions on civil remedies before the implementation of the Directive. However, the transposition of certain harmonizing norms, especially those related to preservation of evidence or provisional measures, also a right of information were newly formulated.

It can be particularly observed that, by implementing the provisions as embodied in the Directive, the Lithuanian legislator sought to unify the list of civil enforcement measures, procedures and remedies as far as *all* IP rights were concerned. This was especially due to the fact that before the implementation of the Directive national industrial property laws did not contain a similar list of civil enforcement means as they had been regulated under the Copyright Law. The unification of the civil enforcement measures, procedures and remedies has been achieved by the formal (legislative) implementation of the Directive.

*Second*, by implementing the Directive, the Lithuanian legislator amended and specified provisions on damages, especially what concerns the alternative computation of them. For example, in Lithuania it has been opted to leave the alternative method of computation of damages, *i.e.* compensation, together with “license analogy method”, which had been embodied in the national IP laws by virtue of Article 13(1)(b) of the Directive.

*Third*, by implementing almost a complete list of the civil enforcement measures, procedures and remedies as embodied in the Enforcement Directive, the Baltic national legislators were also to create more favourable position for IP right holders to protect their rights in the national courts. Almost full-scale enactment of civil enforcement measures and remedies, as set out in the Directive, especially in Lithuanian IP legislation, can be treated as positive in terms of the early formation of the IP legislation tradition in the Baltic countries, also the assurance of the compliance

with protection of IP rights and the “IP mentality” in the respective jurisdictions. It should be noted, however, that in practice the national courts are to apply those legislatively established civil enforcement means in proportionate, fair and reasonable manner, so that interests and rights of third parties are adequately considered in order to avoid any abuse of IP rights enforcement system.

### **C. General provisions of the Enforcement Directive in view of the implementing Baltic legislation and other Baltic national laws**

#### *I. Interpretation of the “subject-matter” under Article 1 of the Directive*

By virtue of the final wording on the subject matter as set out in Article 1 of the Enforcement Directive, the term “*intellectual property rights*” also comprises industrial property rights<sup>502</sup>. However, a certain uncertainty or, at least, a possibility for a wide interpretation has been still left in view of the list of rights regarding which the harmonized enforcement measures and procedures are to be implemented.

Article 1, which is to be read together with Article 2(1) and Recital 13 of the Enforcement Directive, does not make any distinction in terms of any substantive intellectual property rights, be they national IP rights or IP rights deriving from the Community legislation, including also acts of unfair competition, parasitic copies or similar activities. The Commission’s position is therefore further examined in order to assess the initial ideas regarding the scope of the subject-matter covered by the Directive. The subject-matter regulated under the implementing legislation and other national legal acts is subsequently discussed.

#### 1. The Commission’s position

In order to define the term “subject-matter”, as set out in Article 1 of the Directive, a reference to the initial Commission’s position is to be first made. In its Explanatory Memorandum<sup>503</sup>, the Commission expressed the view that the Directive had to be focused to at least the rights such as copyright, related rights, *sui generis* rights and rights regarding topographies of semiconductor products, trademarks, designs, patents, utility models, rights regarding geographical indications, plant varieties, rights to other trade (commercial) indications, provided such rights are protected under the

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502 Although it was suggested to exclude patents from the scope of the Directive, as referred in *Fourtou Report (2003)*, p. 6, the decision to comprise them under that scope has been finally taken.

503 See *Explanatory Memorandum of the Commission’s Proposal for a Draft Enforcement Directive (2003)*, pp. 4-5.