

2. Border measures and civil remedies as implemented under the Enforcement Directive

Differently from civil measures and remedies set out in the Enforcement Directive, it should be noted that the EC Regulation 1383/2003 establishes administrative customs measures which application is not related to civil litigation regarding protection of the infringed IP rights. However, validity of customs measures, which are applied regarding goods infringing IP rights, depends on the fact if a right holder requests the court to apply those civil measures and remedies regarding to the same infringement⁹³⁶.

By virtue of Article 13 of the EC Regulation 1383/2003, if within 10 working days of receipt of the notification of suspension of release or of detention, the customs office is not notified that proceedings have been initiated to determine whether IP right has been infringed or certain provisional measures have been applied, release of the goods should be granted or their detention should be ended, as appropriate, subject to completion of all customs formalities. This does not apply in case of administrative or criminal liability. Hence, in order to ensure the validity of customs measures for longer period, civil, administrative or criminal proceedings are to be initiated by the right holders. In case such proceedings have been already initiated, the relevant documents such as a copy of the court decision, etc. are to be submitted to the customs authorities. In case a civil claim on the subject matter in question is rejected, customs measures are to be revoked as well.

The national customs authorities are to destroy goods which are found to infringe IP rights (which can be done by the court only) or dispose them outside commercial channels in such a way as to preclude damage to the right holder, without compensation of any sort and at no cost to the right holders. Other measures can be taken in order to deprive other persons from gaining economic profit from the transaction, e.g. removing labelling with protected trademarks from the counterfeit goods. Notably, subject to certain conditions which include the agreement of the right holder, Article 11 of the Regulation also allows the Member States applying a simplified procedure, i.e. when the goods infringing IP rights can be destroyed without a court decision on the subject-matter. Lithuania has chosen such possibility⁹³⁷.

The goods can be also transferred to the right holders or to persons indicated by them. Such possibility is also established in the Lithuanian Copyright Law. The court applies further civil remedies concerning the deterred goods infringing IP

936 Notably, in one of the cases Lithuanian Supreme Court argued that the courts should be more active and prompt IP right holders to choose not only destruction of illegal infringing IP items, but also other measures (transfer of items to the right holder, for instance), according to the circumstances of the case, see Decision 24 November 2003, Lithuanian Supreme Court, Civil Case No. 3K-3-1069/2003, *Italian Company "Diesel S.p.A." vs. UAB "Mita", Klaipėda Territorial Customs as a third party*.

937 The simplified procedure of destroying goods which infringe IP rights is also regulated under the *Order by the Chief Director of the Customs Department of the Republic of Lithuania No. 1B-288*.

rights, *i.e.* corrective measures⁹³⁸, or in case of administrative or criminal liability appropriate sanctions⁹³⁹.

III. Concluding remarks

By reviewing the national legislation and practice regarding administrative and criminal liability and sanctions for infringements of IP rights, the following aspects should be mentioned.

First, criminal liability for certain infringements of IP rights is established in all Baltic countries. Lithuanian and Latvian legislation also constitutes administrative liability for such infringements by establishing certain legal standards which allow to distinguish crimes and administrative offences. In the course of application of the provisions in the national Criminal Codes, also Codes of Administrative Violations, certain legislative discrepancies are however observed. This especially concerns Lithuania where the national provisions seem to be chaotic due to inconsistency and different interpretation of “*commercial scale*”, *i.e.* the clear line between administrative and criminal liability for copyright and neighbouring rights infringements is missing, which, in turn, necessitates tentative legislative improvements to be adopted⁹⁴⁰.

Second, application by both civil remedies, which are embodied in the implementing national legislation due to the Enforcement Directive, as well as the border measures as set out in the EC Regulation 1383/2003, can help the right holders to protect their rights more effectively. This is especially true if an IP right holder is active and involved into the custom procedures by providing the application to the custom authorities. The practical concerns, however, mainly refer to the competence of the customs authorities which are to detect goods infringing IP rights. The help from the right holders, *i.e.* timely applications to apply customs measures, which are submitted along with samples and description of legal and, if possible, illegal IP goods, or timely reaction in case such measure is applied *ex officio* by the customs authorities play a substantially important role in IP enforcement practice.

938 See examination of the provisions regarding application of corrective measures in *supra* § 5F.III.1.

939 See *refs.* to the national legislation on administrative or criminal liability for infringements of IP rights in *supra* § 5G.I.1.

940 As referred, the draft amendments regarding the Lithuanian Code of Administrative Offences on the issue are pending.