

Member States and their relatively young IP traditions and a legal heritage from the Soviet legal tradition was not taken into account.

Last, but not least, the obligations of the Member States to enforce the TRIPS standards regarding enforcement of IP rights prior to the Enforcement Directive have been not addressed as well. As rightly argued, instead of the possible revision on how the EU Member States implemented the TRIPS standards, the Enforcement Directive has been adopted by demonstrating the low-level *acquis* which can actually reduce its harmonizing effect. Such effect can be also reduced by leaving discretion for the national legislators to determine a scope of application of some provisions of the Directive on the basis of the applicable law. On the other hand, the national legislators of the Member States – also the national legislators of the Baltic countries – were obliged to adopt new enforcement provisions related to collection of evidence, damages, the right of information, etc., in view of the aims pursued by the Enforcement Directive. It deemed to be positive improvement in terms of comprehensive IP rights enforcement scheme in the Baltic region.

B. Implementing legislation of the Baltic countries

I. Legislative (formal) implementation

1. Prior-to-implementation provisions on IP enforcement, duration of the implementation and the implementing provisions

Already before the adoption of the Enforcement Directive on 29 April 2004, the Baltic IP legislation contained a number of provisions regarding enforcement of IP rights. The provisions were mainly embodied in the national special laws on IP rights as well as in the Civil Codes⁴⁵³ and Codes of Civil Procedure. The key provisions on civil enforcement remedies in both copyright and related rights as well as industrial property legislation, which were constituted before the adoption of the implementing amendments, are further examined.

a) Prior-to-implementation national IP enforcement provisions: key aspects

(1) Copyright legislation

The extensive list of provisions on enforcement measures and remedies regarding infringements of copyright, related and *sui generis* rights could be found in the Lithuanian Copyright Law. Importantly, since its initial adoption in 1999 and its later amendments in 2003⁴⁵⁴, Chapter VI of the mentioned law embodied the provisions

⁴⁵³ See also *refs.* regarding the national Civil Codes in *supra* § 3B.III.1.

⁴⁵⁴ The amendments to the Lithuanian Copyright Law in 2003 mainly covered the implementation of the provisions set out in the Copyright Directive. See also further *refs.* to the legislative acts in this section.

on compensation as an alternative method for reimbursement of actual losses suffered because of infringement of rights⁴⁵⁵. Compensation institute was one of the remedies listed together with a recognition of rights, an injunction, a redress of infringed moral rights, an exaction of unpaid remuneration, a reimbursement of losses or damage (material and (or) moral), including the lost income⁴⁵⁶ and other expenses.

Compensation instead of actual damages is to be considered as a key provision in terms of remedies for copyright infringements prior to the implementation of the Enforcement Directive. This is especially due to the fact that it was frequently applied in the Lithuanian judicial practice and, although it faced a lot of critique, the institute played an important role to assure the compliance with the protection of IP rights because of its evident deterrent effect⁴⁵⁷. As far as a computation of the compensation was concerned, it had to be determined according to the price of legal sale of an appropriate work or object of related rights, by increasing it up to 200 percent, or up to 300 percent, if the infringer has committed the infringement deliberately⁴⁵⁸. The latter provision of compensation was transposed from the similar provision embodied in the 1994 Law on Legal Protection of Computer Programs and Databases. The mentioned law along with the then valid Lithuanian Civil Code was applicable to infringements against author's rights to computer programs and database authors' rights⁴⁵⁹.

Besides compensation, the 1999 Lithuanian Copyright Law established a right to ask the court to order a seizure or destruction of infringing copies of copyrightable works and the devices or equipment used for their manufacture, as well as other devices and equipment used in connection with the infringement of rights and other provisional measures such as prohibition of the release into circulation of infringing copies of copyrightable works (corrective measures).

455 Arts. 77(1)(7) and 79 of the Lithuanian Copyright Law as of 2003.

456 By virtue of Art. 79(4) of the Lithuanian Copyright Law, also Art. 6.249 of the Lithuanian Civil Code the lost income covered the profits gained by the infringer from the infringing activities which could be reimbursed even if there was no culpability in the infringer's activities, as argued in *Mizaras, Study on the Implementation of the Enforcement Directive into the Lithuanian Copyright Law*, p. 39.

457 See examination of the court practice on the adjudication of compensation in copyright infringement cases in Lithuanian in *infra* § 5F.I.1.c).

458 The concept of "*a price of legal sale of an appropriate work or object of related rights*" has been examined in the judiciary practice and interpreted by the *Supreme Court of Lithuania, Consultation No. A3-64/2002*, see also further discussion in *infra* § 5F.I.1.c).

459 Art. 20 of the 1994 Law on Legal Protection of Computer Programs and Databases (not enforced as from 9 June 1999) provided that in cases when the plaintiff could not compute precisely the amount of losses suffered as a result of the infringement, the court, taking into account the complexity and significance of the program or the database, could award to the plaintiff from 500 to 10,000 Litas (ca from 145 to 2,898 Euro) for the use of each illegal copy, and in cases the rights have been infringed for enrichment, the court could order to increase the damages up to 50,000 Litas (ca 14,493 Euro).

Note: 1 Euro is 3.4528 Litas (fixed rate).

Moreover, at that time the Copyright Law already embodied the possibility to apply provisional measures, including those to preserve evidence, without informing the other party and without calling it to the court hearing (*inaudita altera parte*). The practical application of such provisional measures started before the adoption of the Directive in Lithuania⁴⁶⁰.

Along with new amendments in 2003, the list of enforcement measures and remedies was furthermore complemented in the Lithuanian Copyright Law. Civil liability for circumvention of TPMs and rights management information, also injunctions against intermediaries due to the implementation of the Copyright Directive was introduced. A list of the legal remedies has been also extended by: (1) adding a preventive claim (to stop infringing activities which might occur in the future), (2) elaborating on a seizure provision, and (3) introducing a right of information.

The provision on compensation was also amended and changed in 2003. A new wording of a compensation referred to an amount from 10 to 1,000 MLS⁴⁶¹ that could be computed by the courts. As regulated by the law, the courts had to determine the amount of compensation considering culpability of the infringer, his or her property status, causes of unlawful actions and other circumstances which were significant to the case, as well as the criteria of good faith, fairness and reasonableness. Such formulation provided the national courts with more discretion to assess the amount of compensation. The courts, however, tended to apply the legal interpretation and standards which had been already elaborated by the national court practice on the adjudication of damages and (or) compensation by virtue of the 1999 Lithuanian Copyright Law⁴⁶².

The Estonian Copyright Law which was adopted in 1992 and subsequently amended in 2000, 2001 and 2002, did not contain the provisions on compensation as an alternative computation of damages. According to the mentioned law, a compensation for moral and (or) economic damages which occurred due to illegal activities was to be calculated on the basis of the provisions of the Law of Obligations Act⁴⁶³. Brief provision on compensation could be found in the Latvian Copyright Law which was adopted in 1993, then newly revised in 2000 (last amended in December 2007), and which referred to a compensation of losses, including lost profits, or also a compensation which could be adjudicated based on the discretion of the court⁴⁶⁴. The law did not provide any guidelines how such compensation had to be adjudicated.

Similarly to the prior-to-implementation of the Directive Lithuanian legislation, both Estonian and Latvian Copyright Laws constituted the rights of the right holders to ask the national courts to recognize their rights, to discontinue the illegal activi-

460 The national court practice on measures preserving evidence is discussed in infra § 5D.I.

461 In 2003, also in 2004 MLS was 125 Litas (ca 36 Euro) in Lithuania.

462 See discussion regarding the national court practice on adjudication of damages in infra § 5F.I.

463 Art. 81(2)(1) of the Estonian Copyright Law which refers to Art. 1043 of the Law of the Obligations Act.

464 Art. 69(1)(4), the Latvian Copyright Law.

ties, to prohibit the use of the work, to pay damages, including moral damages, to confiscate and destruct the infringing copies, to terminate the contract, to delivery the assets acquired through an infringement⁴⁶⁵.

(2) Industrial property legislation

Enforcement provisions, which were embodied in the national industrial property legislation before the adoption of the Enforcement Directive, differed in the Baltic countries.

Contrary to the copyright legislation, the laws on industrial property rights, namely, the laws on patents, trademarks and designs, did not contain extensive enforcement provisions since their initial adoption in Lithuania⁴⁶⁶. The list of civil remedies for infringements of patent rights was rather limited to injunctions and adjudication of pecuniary damages in the prior-to-implementation Lithuanian Patent Law. More detailed provisions covered a legal standing (*locus standi*) in IP infringement proceedings⁴⁶⁷. The prior-to-implementation industrial property laws generally covered remedies such as declaratory judgments and preventive claims (in case of patent rights). However, the practical application of such remedies was very modest which is illustrated by the modest court practice regarding infringements of industrial property rights, especially patents or industrial designs⁴⁶⁸.

As far as damage adjudication was concerned, the provision on alternatively possible compensation was enacted in the Lithuanian Trademark Law, namely in its wording as of 2000. Similarly to the then Lithuanian Copyright Law, a compensation had to be determined according to the price of legal sale of a relevant good or service by increasing it up to 200 percent or up to 300 percent if the infringer has committed the infringement deliberately. Neither the previous wording of the Trademark Law as of 1993 nor the Design Law as of 2002 which changed the Law on Industrial Law contained such provision.

The provision on alternatively possible compensation was not embodied in the Estonian and Latvian laws on patents which were adopted prior to the adoption of the Enforcement Directive⁴⁶⁹. The Estonian Patent Law established, however, that a compensation for damage is to be assessed pursuant the Law of Obligations Act⁴⁷⁰.

465 The lists of civil enforcement remedies were embodied in Sections 69 and 70 of the Latvian Copyright Law and in Section 81 of the Estonian Copyright Law. See also the overview of the Estonian copyright legislation before the adoption of the Enforcement Directive in *Koitel, Gewerblicher Rechtsschutz und Urheberrecht in Estland*, pp. 1013-1015.

466 See *refs.* to the prior-to-implementation legislative acts on industrial property in *supra* § 3B.III.1.

467 *Locus standi* in IP infringement cases is further discussed in *infra* § 5C.V.2.

468 See statistics in *supra* § 3C.IV.3.

469 The Estonian Patent Law was adopted in 1994 (last amended in 2007), whereas the Latvian Patent Law was initially adopted in 1993, then newly adopted (except Chapter V) with an entry into force from April 1995. The enforcement measures and remedies were set forth in Chapter XI of the Estonian Patent Law and Chapter X of the Latvian Patent Law.

470 Art. 53(1)(1) of the Estonian Patent Law which refers to Art. 1043 of the Law of the Obligations Act.

Moreover, it provided that if a patented invention was used in good faith, a court could order compensation not exceeding damage caused within five years before the filling of the civil action⁴⁷¹. The latter laws additionally provided for other civil enforcement remedies which, *inter alia*, covered termination of illegal activities, seizure of the infringing material, and reimbursement of damage, including lost of profits and profits gained by the infringer as a result of the illegal use of the invention.

By virtue of the Estonian and Latvian legislation on trademarks and industrial designs, which had been adopted before the Enforcement Directive came into force⁴⁷², it can be observed that quite general enforcement provisions which were embodied in the mentioned laws provided for such remedies as a termination of illegal activities, reimbursement of damage and seizure of infringing items.

b) Duration of the implementation of the Directive

The Baltic countries adopted the implementing national laws by the end of 2006 and the beginning of 2007⁴⁷³. In the context of almost all other EU Member States, which adopted their implementing legislation later than the required implementation term under the Directive⁴⁷⁴, it can be observed that the Baltic countries did not fall far behind schedule.

Other new EU Member States, for instance, Hungary, Slovenia or Rumania implemented the Directive prior to the required deadline, as reported⁴⁷⁵. Some other countries such as Czech Republic, Cyprus or Malta adopted the implementing laws

471 Art. 53(2), the Estonian Patent Law (as amended in 2002); see also in *Koitel*, Gewerblicher Rechtsschutz und Urheberrecht in Estland, p. 1011.

472 The Estonian Trademarks Law was passed in October 1992, and then newly adopted in May 2002, whereas the Industrial Design Law was passed in November 1997 (entered into force in January 1998). The Latvian Law on Trademarks and on Industrial Design Protection was adopted in April 1993. It was changed in July 1999 by adopting the new Law on Trademarks and Indications of Geographical Origin.

473 See *refs.* to the implementing national legislation in the subsequent section. The national implementing legislation is also listed in the National Provisions Communicated by the Member States concerning the Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights (hereinafter – the “*National Execution Measures concerning the Implementation of the Enforcement Directive (2008)*”).

474 Note: even if the implementing legislation has been adopted prior to the deadline to implement the Directive (29 April, 2006 (Art. 20, Dir.)), in many EU countries it came into force later, see also *National Execution Measures concerning the Implementation of the Enforcement Directive (2008)*.

475 Hungary adopted the implementing legislation in 2005 which came into force on 15 April, 2006. Slovenia implemented the Directive by adopting amendments to Industrial Property Act and the Copyright and Related Rights Act in March, 2006, whereas the implementing legislation regarding industrial property rights came into force on 20 July 2005 in Rumania (prior to its accession into the EU from 1 January 2007), see *National Execution Measures concerning the Implementation of the Enforcement Directive (2008)*.

in 2006⁴⁷⁶. This also applies, for example, to Spain, Italy or Finland where the national legislators passed the implementing laws in 2006⁴⁷⁷.

However, not all EU Member States were diligent to draft the implementing amendments within the required implementation term under the Directive and to communicate the national implementation measures to the Commission. Countries such as France or Germany were especially late to implement the harmonized enforcement measures under the Directive. France, for instance, implemented the Directive by adopting the amendments to its national legislation on 29 October 2007⁴⁷⁸. In Germany drafted amendments had to overcome lengthy discussions at the Parliament and were finally adopted on 11 April 2008⁴⁷⁹. Such omission to implement the Directive within the required deadline could have turned into imposition of certain sanctions by the Commission to Germany and even the direct application of some of the provisions under the Directive which were deemed to be directly applicable⁴⁸⁰.

Considering the duration of the implementation of the Enforcement Directive in other countries (both new and old EU Member States), it can be pointed out that a relatively rapid incorporation of the harmonized provisions on enforcement of IP rights in the IP legislation was, *inter alia*, influenced by the following factors.

First, the necessary amendments were promptly drafted considering the accession of the Baltic countries into the EU on 1 May 2004. It followed the requirement to generally approximate all national IP legislation with the EU legislation in this field, which has been generally duly accomplished by the Baltic countries.

Second, the newly amended list on enforcement remedies and procedures⁴⁸¹ was to establish an exhaustive legislative framework aimed to assure the compliance with the protection of *all* IP rights⁴⁸² and to unify IP enforcement provisions which had already existed on the national level prior to the implementing provisions, but were different as far as copyright and industrial rights were concerned.

Third, many of the harmonized enforcement provisions under the Directive were almost literally transposed into the Baltic national legislation, in particular in Lithuania. This can be well observed while examining the Lithuanian implementing legis-

476 The implementing legislation came into force in May and June, 2006 in Czech Republic. Similarly, it came into force in July 2006 in Cyprus and in December, 2006 in Malta, see also *National Execution Measures concerning the Implementation of the Enforcement Directive (2008)*.

477 The implementing laws came into force on 7 June 2006 in Spain. Italy implemented the Directive by incorporating the amendments under the Decree enforced from 22 April 2006. Finland implemented the Directive by adopting the laws which came into force in September, 2006, see also *Ibid.*

478 The French law implementing the Directive came into force on 31 October 2007, see *Ibid.*

479 BT – Drucks. 16/8783; also GRUR Int. 2008, pp. 490, 629.

480 See more comprehensive discussion regarding the direct applicability (or direct effect) of the provisions of the Enforcement Directive in view of the German legislation in *Eisenkolb*, Die Enforcement-Richtlinie und ihre Wirkung, p. 387 et seq.

481 See overview in the subsequent section.

482 This has been especially due to high piracy and counterfeiting rate in the Baltic countries, as referred in *supra* § 4A.II.

lation. Prior to the draft implementing amendments there were in fact some studies accomplished, for instance, in Lithuania⁴⁸³, in relation to the assessment of the national copyright law provisions containing enforcement measures and remedies. They were focused on one specific group of IP rights (copyright), though. No comprehensive analysis has been made in the field of patents, trademarks or designs in order to implement enforcement provisions with more scrutiny. Social and economic factors that could be relevant while preparing the implementing amendments have not been taken into account as well.

c) Adoption of the implementing amendments on IP enforcement

(1) General remarks

Lithuanian legislator has chosen the “distributive” method of the implementation of enforcement provisions set out in the Directive⁴⁸⁴. Corresponding amendments have been adopted with regard to each national law on IP rights due to the fact that these laws, as it was examined in the previous sub-chapter, had already contained certain provisions on enforcement prior to the adoption of the Enforcement Directive.

Drafting new amendments to the then existing national legislation on copyright and related rights as well as industrial property rights generally coincided with the accession processes into the EU. Since the submission of the initial Draft Enforcement Directive in 2003, the Baltic national institutions responsible for drafting the laws started to revise the national legislation in order to assess the possible changes in IP enforcement area. Once the Directive has been adopted on 29 April 2004, such revision was shaped up to the constructive drafting of the necessary amendments.

While drafting the implementing amendments, it has been considered if each provision embodied in the Directive was mandatory or optional and if it required the implementation into the national legislation. Lithuanian legislator also followed the terminology which had been used in the Lithuanian laws prior to the implementation of the Directive, for instance, “*commercial purposes*” instead of “*commercial scale*”, provided that it did not contradict to the objectives pursued by the Directive and its general content⁴⁸⁵.

Some of the implementing amendments to the Latvian and Estonian IP legislation have already occurred before the accession into the EU on 1 May 2004 and were followed with the amendments to the national CCP. Notably, in Estonia the amendments, although not related to enforcement, to the Trademark, Industrial Design, also Patent and Utility Models Laws coincided with the accession date (1 May 2004).

483 The comprehensive analysis of the national copyright provisions in view of the provisions under the Directive can be found in *Mizaras*, Study on the Implementation of the Enforcement Directive into the Lithuanian Copyright Law, pp. 4-64.

484 See *Massa, Strowel*, The Scope of the Proposed IP Enforcement Directive, p. 252, also *supra* Ft. 383 herein.

485 Consideration regarding the legal terminology used in the Lithuanian laws and the Directive has been accordingly noted in *Mizaras*, Study on the Implementation of the Enforcement Directive into the Lithuanian Copyright Law, p. 41.

Further, as far as Latvia and Estonia were concerned, the implementing amendments were subsequently introduced to the national CCP⁴⁸⁶ and they stipulated new provisions regarding evidence, collection of evidence, precautionary and provisional measures (pre-trial measures) pursuant to the implementation of the Enforcement Directive.

(2) Copyright legislation

In 2005 the initial drafts to the Copyright Law and industrial property laws were submitted by the national Ministry of Culture and the Ministry of Justice in Lithuania⁴⁸⁷. The package of new amendments to the Lithuanian Copyright Law was subsequently adopted and enforced from 31 October 2006⁴⁸⁸. The implementing amendments to the Lithuanian Copyright Law were accomplished later than to the industrial property legislation. It was mainly related to the lengthy disputes at the *Seimas* on other amendments that came along with the newly drafted enforcement provisions set out in the Copyright Law. The last wording of amendments actually reflected the initially drafted texts by the mentioned ministries⁴⁸⁹.

The implementing provisions in the Lithuanian Copyright Law newly formulated and exposed the enforcement measures:

- (1) a right of information;
- (2) evidence and measures for preserving them;
- (3) corrective measures;
- (4) a publication of judicial decisions.

The new amendments also incorporated alternative measures and new wording on damages, in particular on a compensation institute. As far as the latter is concerned, a copyright, related or *sui generis* right holder, instead of requesting compensation of damage (losses), can nowadays ask the court to adjudicate a compensation in the amount of up to 1,000 MLS, which is ultimately set by the court, taking into consideration the same factors as established in the previous wording of the said law. Alternatively, a right holder can ask for royalties or fees which would have been due if

486 In Estonia the amendments to the Civil Procedural Code came into force on 1 January 2006, whereas in Latvia on 1 March 2007. The amendments mainly included new provisions on precautionary measures, as referred and discussed in *Harenko et al.*, Expedited Remedies For the Protection of IP in Finland and the Baltic States, pp. 31-34.

487 The amendments to the 2003 Copyright Law have been initially drafted by the Lithuanian Ministry of Culture in 2005 (published on 13 December 2005), later, in 2006, discussed at the Law Department and the Law and Legal Affairs Committee of the *Seimas*. Similarly, the amendments to the then industrial property laws have been drafted by the Lithuanian Ministry of Justice on 29 December 2005 and after the consideration in the *Seimas*, adopted on 8 June 2006.

488 Law No X-855 Amending Articles of the Lithuanian Copyright Law as from 12 October 2006, State Gazette, 31 October 2006 No. 116-4400.

489 This can be observed in the comments and opinions provided by the interested parties and listed in the official *Seimas* website on the draft amendments to the 2003 Copyright Law.

the infringer had requested authorisation to use the works or other objects of the rights protected under this Law, and where the infringer acted intentionally or with negligence – in the amount of up to two such royalties and fees. Although the amended Copyright Law included the provisions regarding the recovery of profits in cases when the infringer acted not knowingly or without reasonable grounds to know, it did not provide for pre-established damages in such cases.

Furthermore, under the amended Lithuanian Copyright Law, namely its Article 77, the list of remedies additionally includes a redress of the infringed moral rights (injunction to make appropriate amendments, to announce the infringement in the press, or any other way); an exaction of unpaid remuneration for unlawful use of a work, objects of related rights or *sui generis* rights; a payment of compensation by referring to other enforcement means such as a right of information, corrective measures, etc.

Importantly, due to the implementation of the Enforcement Directive, the amendments to the Lithuanian Copyright Law likewise covered: (a) an introduction of a definition of “*commercial purposes*”⁴⁹⁰ (Article 2(17) of the amended law); (b) a new provision regarding proof on the presumption of authorship (Article 12 of the amended law)⁴⁹¹.

The IP enforcement-related amendments have not been additionally introduced to the Estonian and Latvian copyright legislation after the adoption of the Enforcement Directive⁴⁹².

(3) Industrial property legislation

The implementing amendments to the Lithuanian Patent⁴⁹³, Design⁴⁹⁴ and Trademark Laws⁴⁹⁵, also the Law on the Legal Protection of Topographies of Semiconductor Products⁴⁹⁶ were finally adopted by the national Parliaments and enforced as from 28 June 2006. In 2006 the new amendments concerning enforcement provisions have been adopted in the Law on the Protection of Plant Varieties⁴⁹⁷ which

490 See further discussion in infra § 5C.II.

491 See further discussion in infra § 5C.IV.

492 As referred in previous sub-chapter, the amendments have been introduced into the Estonian and Latvian CCPs due to the Directive-based provisions on precautionary and preliminary measures.

493 Law No X-649 Amending Section VII of the Patent Law and its Annex as of 8 June 2006, State Gazette, 28 June 2006, No. 72-2668.

494 Law No X-650 Amending Section VIII of the Design Law and its Annex as of 8 June 2006, State Gazette, 28 June 2006, No. 72-2669.

495 Law No X-651 Amending Section X of the Trademark Law, its Article 56 and its Annex as of 8 June 2006, State Gazette, 28 June 2006, No. 72-2670.

496 Law No X-652 Amending Articles 1, 10, Section VI and Annex of the Law on Legal Protection of Topographies of Semiconductor Products as of 8 June 2006, State Gazette, 28 June 2006, No. 72-2671.

497 Law No X-862 Amending Articles 1, 2, 4, 5, 18, 19, 24, 26, 29, 37, X Section and Annex of the Law on the Protection of Plant Varieties as from 19 October 2006, State Gazette, 4 November 2006 No. 118-4453.

provided for more extensive enforcement means than those enacted before due to the implementation of the Directive.

The implementing amendments mostly changed the previous provisions on enforcement related to patent, trademark and design rights which were embodied in the prior-to-implementation legislation on industrial property in Lithuania. Since the amendments in June 2006, the industrial property laws in Lithuania contain the more extensive list of civil enforcement provisions⁴⁹⁸. The amended laws cover new enforcement institutes such as a right of information, evidence, measures for preserving evidence and provisional measures, corrective measures, publication of judicial decisions. Importantly, the provisions on adjudication of pecuniary damages, including the lost income and other expenses, have been specified in the Lithuanian industrial property laws as well.

In Lithuania each law on industrial property rights identically comprises the remedies such as a recognition of rights, an injunction with the aim of prohibiting the continuation of illegal activities, a prevention from carrying out acts because of which the rights may be actually infringed or damage may be actually caused, an application of other measures for defence of the rights, in case they are embodied in other national laws.

The adjudication of damage under the Lithuanian industrial property legislation can take more sophisticated form nowadays. It clearly established loss of profit, infringers' profits, other expenses occurred due to the infringement of industrial property rights in question. Similarly to the amended Lithuanian Copyright Law, instead of actual damage, the right holders can ask for a compensation which has been due in case an infringer would have used a patent, a trademark or a design with an authorization given by the owner, and where the infringer acted intentionally or with big negligence – in the amount of up to two such compensation. The amended industrial property laws likewise embody the provisions regarding the recovery of profits in cases the infringer acted not knowingly or without reasonable grounds to know, however, they do not provide for pre-established damages in such cases as pursuant in Article 13(2) of the Directive⁴⁹⁹.

As far as Estonian and Latvian legislation on industrial property rights is concerned, the reference is to be made to the amendments adopted in the Latvian Design Law which came into force on 7 February 2007⁵⁰⁰. The latter amendments specifically concerned the enforcement provisions in the previous wording of the Latvian Design Law⁵⁰¹ which, differently from other laws on industrial property rights in Estonia and Latvia, contained the new provisions regarding remedies for in-

⁴⁹⁸ The general lists on civil remedies are embodied in Art. 41 of the Lithuanian Patent Law, Art. 50 of the Lithuanian Trademark Law, and Art. 47 of the Lithuanian Design Law.

⁴⁹⁹ See examination of Art. 13(2) of the Directive in *supra* § 5A.II.1.

⁵⁰⁰ It is to be repeatedly noted that other industrial property laws have not been additionally amended in Estonia and Latvia after the adoption of the Directive, see also *refs.* to the mentioned laws in previous section.

⁵⁰¹ Law on Industrial Designs, as from November 18, 2004, substituted the previous “Rules on Industrial Design”, as of 15 April, 2004.

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