

Last, on 10 February, 1999, Latvia was the first to join the WTO, by adhering to one of its pillars, the TRIPS Agreement. In November, 1999, Estonia joined the WTO without recourse to any transition period<sup>147</sup>. Lithuania is a member of the WTO since 31 May, 2001. Since signing of the TRIPS Agreement, which Section III directly embodies the provisions concerning the enforcement of IP rights<sup>148</sup>, new tasks to revise and adopt the provisions in IP laws have fallen to the national legislators as well. From an IP rights enforcement perspective, the implementation of the provisions of the WIPO Treaties and the TRIPS Agreement was very much applauded by the local and foreign right-holders wishing to protect their rights more effectively. The implementation also coincided with the reforms relating to the accession into the EU processes after the 1998 EU Association Agreements with the Baltic countries had been signed<sup>149</sup>.

#### IV. *Substantial reforms in the field of enforcement of IP rights regarding the implementation of *acquis communautaire**

In the bilateral EU Association Agreements, the governments of the Baltic states stressed the importance of improvements in the field of adequate protection of IP rights<sup>150</sup>. Importantly, the mentioned agreements, also called the third generation agreements<sup>151</sup>, obliged the Baltic countries to adapt their IP legislation as a result of the harmonization directives and other legal measures which were already in force by that time.

Along with the formal objectives to improve IP protection in the Baltic countries, to amend the IP laws with obvious discrepancies and weaknesses and to speed up the presupposed integration into EU processes, some internal processes, which had

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Latvian Criminal Code (wording as from 17 October 2002), see *refs.* and overview regarding criminal liability for IP infringements in the Baltic countries in *infra* § 5G.I.

147 See *Pisuke*, Estonia: Copyright and Related Rights, p. 114.

148 The very provisions of the TRIPS Agreement (Section III), referred in view of the Enforcement Directive, are further explored in *infra* § 5A.I.2.a).

149 The EU Association Agreements entered into force on 1 February 1998 in all three Baltic countries. It should be mentioned that during the preparation for the accession into the EU the Baltic countries formulated their direction which, as believed, formed the position in regard with IP legislation and improvements as well. *E.g.*, the Estonian Government formulated the so-called ‘*Northern Dimension*’ by stressing IT networks and infrastructure as one of the most important development fields in the Baltic region; see more in *Estonian Government’s European Union Policy for 2004 -2006*, p. 37. The same political direction has been repeated in *Estonia’s European Union Policy for 2007 – 2011*, p. 41.

150 Art. 67 of the EU Association Agreements establishing an association between the European Communities, their Member States and the Republic of Estonia, also Latvia and Lithuania explicitly stated the obligations to create the level of IP protection which existed in the EU and stressed the need to improve efficient measures in the field of enforcement of the IP rights.

151 The mentioned agreements, “the most advanced and far-reaching”, envisaged the preparation of the Baltic countries to enter the EU, as referred in *von Lewinski*, Copyright in Central and Eastern Europe, pp. 47-48.

clearly influenced the IP-related situation, such as the growing IT industry<sup>152</sup> and, at the same time, a high level of piracy and counterfeiting products<sup>153</sup> in the Baltic markets, should have also been taken into consideration. All those factors and processes reflected a progressive approximation of the national IP laws by mainly focusing on a creation of new export markets rather than on an imposition of certain sanctions for not ensuring adequate IPR protection under the bilateral or multilateral international agreements in the Baltic region<sup>154</sup>. As referred to by some authors, for example, in Estonia the national legislative amendments were influenced not only by the desire for a speedy integration into the EU, but also by the internal development in the legal system, in particular, by the drafting and adoption of new General Principles of Civil Law, a Criminal Code, a Customs Act, etc. and, additionally, by some pressure from abroad, especially from countries like Finland and the USA<sup>155</sup>.

At the time the actual negotiations with the EU started, the Baltic countries already had a full range of national IP legislation<sup>156</sup> which, due to the accession process, had to be accordingly approximated. By the time the Enforcement Directive was to be implemented<sup>157</sup>, the Baltic countries had in general adopted the substantial amendments to the national copyright legislation on the basis of the provisions of previous EU directives and also the requirements of the TRIPS Agreement. Amendments also followed in the area of industrial property, *i.e.*, patents, trademarks, designs, layout designs of integrated circuits, and geographical indications<sup>158</sup>, however, many legislative discrepancies remained.

As far as the enforcement provisions were concerned, the Directive 2001/29/EC of the European Parliament and of the Council of 22 May, 2001, on the harmonisation of certain aspects of copyright and related rights in the information society<sup>159</sup>, namely, its Articles 6, 7, and 8 should be mentioned. The provisions, as embodied in the aforementioned articles of the Directive, have been adopted in the national copyright legislation<sup>160</sup>. However, they have not yet been actually applied. Importantly, the provisions in regard with the liability of ISPs as embodied in Article 8 of the Di-

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152 See *Datamonitor, Growth of the Software Industry in Lithuania (2001)*.

153 *E.g.*, it has been reported in *Infobalt Press Releases (2000)* that the percentage of pirated goods (protected under copyright and neighbouring rights) used to reach approx. 85% in Lithuania in 2000.

154 See *von Lewinski, Copyright in Central and Eastern Europe*, p. 46.

155 See *Pisuke, Estonia: Copyright and Related Rights*, p. 106.

156 See *refs.* to the national laws in *supra* § 3B.III.1.

157 Until 29 April, 2006 (Art. 20, Dir.).

158 *Note*: as a rule, the national legislative act lists the directives which have been accordingly implemented by this very act.

159 Directive 2001/29/EC of the European Parliament and of the Council of 22 May, 2001, on the harmonisation of certain aspects of copyright and related rights in the information society, OJ 2001, L 167/10 (hereinafter – the “*Copyright Directive*”).

160 Arts. 74, 75 of the Lithuanian Copyright Law (as amended on 5 March, 2003, enforced as from 21 March, 2003); Art. 68(1)(3) and (4) of the Latvian Copyright Law (amended on 22 April, 2004); the provisions were not, however, explicitly implemented in the 1992 Estonian Copyright Act (amended on 16 October, 2002).

rective are to be highlighted due to growing internet piracy as well as a strong IT sector and its ongoing development in the Baltic countries<sup>161</sup>.

Further, the new amendments to the 2003 Law on Copyright and Related Rights, which came into force in Lithuania on 12 October 2006, implemented the provisions of the EU Enforcement Directive. In Estonia, the Enforcement Directive was implemented while adopting the extensive amendments to the Estonian Code of Civil Procedure and in Latvia by adopting new amendments to the Civil Procedure Law<sup>162</sup>.

While referring to the implementation of *acquis communautaire*, the Council Regulation (EC) No 1383/2003 of 22 July, 2003<sup>163</sup>, concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights should also be mentioned. The EC Regulation 1383/2003 is substantial in terms of effective actions as applied *ex officio* by the customs authorities or on the basis of applications by IP right holders due to a high number of piracy incidents at the borders of the Baltic countries. However, those actions (measures and procedures) are strictly regulated by the EC Regulation 1383/2003 and do not fall under the scope of the regulation of the Enforcement Directive<sup>164</sup>.

## V. Concluding remarks

Following the scheme of geopolitical functions that could be performed by the Baltic countries, a parallel could be drawn in terms of promoting and protecting IP rights: due to its “cross-road” position, the East-Baltic could be the outpost for the expansion or barrier of external innovations, and, moreover, they could actively contribute to the expansion of IP in this sub-region by involving the “Eurasian” core and become an arena of innovation exchange.

On the other hand, while exploring some rudiments of the creation of the modern IP systems during the interwar period in the Baltic countries, the IP “mentality” and related regulatory system during the Soviet occupation and, finally, referring to the rapid legal changes after the declarations of the independence of the three Baltic states in 1990/1991, it is evident that such discontinuous historical circumstances

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161 See further *refs.* in *infra* § 4A.II.

162 See *Harenko et al.*, Expedited Remedies for the Protection of IP in Finland and the Baltic States, pp. 31-32; also see the implementing amendments in the field of IP rights enforcement regulation in the Baltic countries in *infra* § 5B.I.1.c).

163 Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ 2003, L 196/7 (hereinafter – the “EC Regulation 1383/2003”). Since 1 May, 2004, when the latter regulation became directly applicable to the Baltic countries, the national legislation regarding the import and export of IP goods that was in force until the accession date is no longer applicable.

164 See more discussion about border measures and civil remedies in *infra* § 5G.II.