

ACT

No 486/2013 Coll.

of 29 November 2013

concerning customs enforcement of intellectual property rights

The National Council of the Slovak Republic has adopted the following Act:

PART ONE

RECITALS

§ 1

Subject matter

This Act sets out:

a) the conditions and procedure of customs enforcement of intellectual property rights by taking action against the infringement of intellectual property rights with respect to goods placed on the national market (hereinafter only referred to as “action in the national market”);

b) some relations related to customs enforcement of intellectual property rights by taking action against the infringement of intellectual property rights¹⁾ with respect to goods subject to customs supervision (hereinafter only referred to as “action with respect to the goods subject to customs supervision”);

c) the handling of goods suspected of infringing an intellectual property right,²⁾ or infringing an intellectual property right where the goods are subject to customs supervision or placed on the national market;

d) offences and other administrative delicts related to the infringement of intellectual property rights with respect to the goods subject to customs supervision or the goods placed on the national market.

§ 2

For the purposes of this Act

a) ‘right-holder’ means the holder of an intellectual property right or another person as

defined by a separate regulation;³⁾

b) ‘holder of the decision’ means

1. the person defined by a separate regulation⁴⁾ where taking action with respect to the goods subject to customs supervision is involved;

2. the person that is a holder of the decision for taking action in the national market where taking actions in the national markets is involved;

c) ‘goods subject to customs supervision’ means the goods in one of the situations defined by a separate regulation;⁵⁾

d) ‘national market’ is the market in the Slovak Republic where the goods that are not subject to customs supervision are placed;

e) ‘holder of the goods’ means

1. the person defined by a separate regulation⁶⁾ where taking action with respect to the goods subject to customs supervision is involved;

2. where taking action in the national market is involved, the person that owns, manufactures, offers for sale, sells, stores, moves or keeps the goods infringing an intellectual property right or the goods suspected of infringing an intellectual property right.

PART TWO

ACTIONS IN THE NATIONAL MARKET

§ 3

Application for action in the national market

(1) The right-holder may submit an application for action in the national market.

(2) The application for action in the national market shall be submitted by the right-holder to the

¹⁾ Article 2(1)(a) through (k) of Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29. 6. 2013).

²⁾ Article 2(7) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

³⁾ Article 3 of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

⁴⁾ Article 2(13) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

⁵⁾ Article 1(1) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

⁶⁾ Article 2(14) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

Financial Directorate of the Slovak Republic (hereinafter only referred to as the "Financial Directorate") in writing in two copies or by electronic means. Where the application is submitted by electronic means, it must be supplemented in writing not later than within three working days. The application that was not supplemented within this time limit is not taken into consideration. The application for action in the national market shall be submitted on a form to be specified by the Ministry of Finance of the Slovak Republic (hereinafter only referred to as the "Ministry") pursuant to § 40(a).

(3) Annexes to the application referred to in paragraph 2 are:

- a) a document proving that the applicant is the right-holder;
- b) where the application is submitted by means of a representative, a document evidencing that the person has powers to act as representative.

(4) By submitting the application under paragraph 2, the right-holder becomes liable, under the conditions specified in the application, for any damage that may be incurred by the holder of the goods with respect to actions in the national market, and undertakes to reimburse the costs incurred by the customs authorities in connection with taking action in the national market.

(5) The application under paragraph 2 shall be submitted in the state language;⁷⁾ the same shall also apply to the documents referred to in paragraph 3 and to any other data that the right-holder is required to provide to the Financial Directorate. If these documents and data are available in a language other than the state language, the right-holder shall attach their officially authenticated translation in the state language.

(6) If the application under paragraph 2 is submitted by a natural person, the application must contain the following personal data: title, name, surname, permanent residence, telephone number, fax number and e-mail address; in the case of a natural person-entrepreneur, the application must contain the following data: business name, place of business, telephone number, fax number and e-mail address.

(7) The right-holder may appoint in the application under paragraph 2 a representative authorised to act on behalf of the right-holder in connection with

taking actions in the national market based on a decision under § 4(1).

§ 4

Decision on the application for action in the national market

(1) If the application for action in the national market meets all the requirements laid down by this Act and the application contains all data the right-holder is required to provide, the Financial Directorate shall mark both copies of the application for action in the national market as approved and attach a signature of a natural person acting on behalf of the Financial Directorate and the official stamp thereto. The approved application for action in the national market is considered an enforceable decision. The Financial Directorate shall deliver one copy of the decision of the right-holder and shall immediately notify customs offices of the issuance of the decision.

(2) Based on the decision under paragraph 1, the customs offices shall take actions in the national market for two years from its issuance date; the customs offices will, however, take no action in the national market if circumstances referred to in paragraph 10(b) and (c) have occurred. Upon request by the holder of the decision, the time limit may be extended for another two years, even repeatedly; paragraph 1 and 3 through 7, § 3 and § 39(3) and (4) shall accordingly apply to the request to extend the time limit for action in the national market and to the decision on the request. The request to extend the time limit for action in the national market shall be submitted on a form to be specified by the Ministry pursuant to § 40(b).

(3) If the application for action in the national market does not meet the requirements under paragraph 1 or does not contain the data referred to in paragraph 1, the Financial Directorate shall request the right-holder in writing to complete the application within ten working days of the delivery of the notification of request.

(4) The completion of the action referred to in paragraph 3 shall be done by the submission of a new application for action in the national market to supersede the original application; if the notification of request to complete the application under paragraph 3 concerns its annex only, the application shall be completed by the submission of a new annex. The time limit for the issuance of the decision specified in paragraph 7 shall be suspended until the application is completed.

(5) The Financial Directorate shall decide to reject

⁷⁾ § 3 of Act of the National Council of the Slovak Republic No. 270/1995 Coll. on the official language of the Slovak Republic, as amended.

the application for action in the national market, if

a) the right-holder fails to complete the application within the time limit under paragraph 3 or in the manner under paragraph 4;

b) the right-holder has submitted the application within one year of the effective date of the decision by which the Financial Directorate revoked the previous decision as specified in paragraph 10(e), where the right-holder was the holder of that decision; or

c) the right-holder has submitted the application within one year of the effective date of a decision establishing that the right-holder committed an offence or other administrative delict under § 22(g).

(6) The issuance of the decision under paragraph 5 shall be marked on the application for action in the national market, and a signature of a person acting on behalf of the Financial Directorate and official stamp shall be attached thereto. The Financial Directorate shall deliver the decision to the right-holder, along with one copy of the application for action in the national market.

(7) The Financial Directorate shall issue the decision under paragraph 1 or paragraph 5 within thirty working days of the submission date of the application for action in the national market.

(8) The decision under paragraph 5(a) does not preclude a repeated submission of the application for action in the national market.

(9) The holder of the decision shall immediately notify the Financial Directorate in writing of the following facts:

a) extinguishment of the intellectual property right to which the decision referred to in paragraph 1 relates;

b) that the holder of the decision has ceased to be the right-holder;

c) any changes in the data provided in the application for action in the national market.

(10) The Financial Directorate shall revoke the decision under paragraph 1, if

a) so requested by the holder of the decision;

b) the intellectual property right the protection of which was sought by the right-holder has been extinguished;

c) the holder of the decision has ceased to be the right-holder;

d) the holder of the decision has repeatedly failed to reimburse the costs related to taking action in the

national market pursuant to § 10(1) within the due date; or

e) a decision has taken effect establishing that the holder of the decision committed an offence or other administrative delict under § 22(g).

(11) The Financial Directorate shall commence proceedings to revoke the decision immediately after it has learnt of the facts referred to in paragraph 10(b), (c), (d) or (e).

(12) The Financial Directorate shall immediately notify the customs offices of the revocation of the decision.

§ 5

Entitlements of customs office in taking actions in the national market

(1) When taking actions in the national market, a customs office is entitled, in addition to using powers and means under a separate regulation,⁸⁾ to

a) access operating premises, warehouses and other facilities on suspicion that there are goods or relevant documents located in the said premises, which are suspected of infringing an intellectual property right; the customs office is also entitled to access residential premises on suspicion that there are goods or relevant documents located in the said premises, which are suspected of infringing an intellectual property right, if the residential premises are also used for business purposes or for the performance of other economic activity;

b) request the holder of the goods to submit the relevant documents and provide information and statements;

c) verify the identity of the holder of the goods and the person authorised to act on his behalf, as well as the authorisation of this person to act on behalf of the holder of the goods;

d) make copies of documents or detain their originals without consent by the person affected.

(2) The holder of the goods and the person acting on his behalf shall provide the necessary assistance to the customs office.

(3) If, when taking actions in the national market, the customs office identifies goods suspected of infringing an intellectual property right, the customs office is entitled to request the holder of the decision, before detaining the goods, to provide information necessary to vindicate the suspicion.

§ 6

(1) The holder of the decision may notify the Financial Directorate in writing that it does not seek the application of the procedure under § 7 if the quantity of the goods suspected of infringing an intellectual property right does not exceed the quantity specified in that notification. The Financial Directorate shall immediately notify the customs offices to that effect.

(2) If the customs office identifies goods suspected of infringing intellectual property rights in the quantity not exceeding the quantity specified in the notification referred to in paragraph 1, the procedure under § 7 shall not be applied.

§ 7

Detention of goods after the decision on the application for action in the national market

(1) The customs office is entitled to detain the goods suspected of infringing intellectual property rights.

(2) The customs office shall issue a written decision on the detention of the goods by which it also requests the holder of the goods to confirm in writing, within ten working days, or three working days in the case of perishable goods, of the delivery of the decision on the detention of the goods, whether it agrees to the destruction of the goods; the decision shall also include information for the holder of the goods about the procedure under § 9(1) and advice on the legal consequences pursuant to § 11(3) and (4).

(3) The holder of the goods shall be notified by the customs office of the decision on the detention of the goods immediately after the decision has been issued.

(4) The holder of the goods may file an appeal against the decision on the detention of the goods within three working days of its delivery; the appeal has no suspensory effect.

(5) If the customs office has detained the goods referred to in paragraph 1, it shall immediately notify the holder of the decision of this fact, in writing and by electronic means, if possible. The customs office shall also provide the holder of the decision with the data on the quantity and type of the goods detained.

(6) In the notification referred to in paragraph 5, the customs office shall request the holder of the decision to provide, within ten working days, or

three working days in the case of perishable goods, of the delivery of the written notification,

a) a written statement whether his intellectual property right has been infringed and whether he agrees to the destruction of the goods; or

b) evidence that he has filed a petition with a court to initiate proceedings in order to determine whether the goods infringe his intellectual property right.

(7) In the notification under paragraph 5, the customs office shall inform the holder of the goods about the procedure under § 9(1) and advise him on the legal consequences pursuant to § 11(4).

(8) If the holder of the goods notifies within the time limit referred to in paragraph 2 that he does not agree to the destruction of the goods, the customs office shall immediately notify the holder of the decision to that effect, in writing and by electronic means, if possible.

(9) Upon written request by the holder of the decision, the customs office may extend the time limit referred to in paragraph 6 for another ten working days. In the case of perishable goods, the time limit referred to in paragraph 6 may not be extended. No appeal can be filed against the decision on the extension of the time limit.

(10) Upon written request, the customs office shall provide the holder of the decision with the identification data of the holder of the goods and allow him to inspect the goods detained. If the holder of the goods is a natural person, the customs office shall provide the following personal data of that person: name, surname and permanent residence; in the case of a natural person-entrepreneur, the customs office shall provide his business name and place of business. The customs office is required to ensure that the personal data and trade secret are protected; this is without prejudice to its obligation under a separate regulation.⁸⁾

(11) The holder of the decision is only entitled to use the information received pursuant to paragraph 10 for the purposes of

a) filing a petition with a court to initiate proceedings in order to determine whether his intellectual property right has been infringed, and in the courses of those proceedings;

b) submitting a notification that a crime has been

⁸⁾ Act No. 652/2004 Coll. on state administration authorities in customs management and on amendments to certain acts, as amended.

committed, or for the purposes of criminal proceedings;

- c) exercising a right under a separate regulation;⁹⁾
- d) exercising a right to the reimbursement of costs pursuant to § 10(1);
- e) agreeing with the holder of the goods to the destruction of the goods.

(12) Upon written request by the holder of the decision, the customs office may take samples of the goods detained and provide them to the holder of the decision for the purposes of analysis. The provided samples of the goods are analysed at the costs and under the responsibility of the holder of the decision. The holder of the decision shall return the samples of the goods to the customs office after the analysis is completed. If it is not possible, the holder of the decision shall notify the customs office of this fact, within seven working days of the completion of the analysis, stating reasons why the samples of the goods cannot be returned.

(13) The customs office shall return the detained goods to the person from which they were detained, if

- a) the holder of the decision has failed to prove, within the time limit specified in paragraph 6 or paragraph 9, that he filed a petition with a court to initiate proceedings in order to determine whether the goods infringe his intellectual property right, and the conditions for the application of the procedure under § 9(1) are not met;
- b) the court has dismissed with finality the petition to initiate proceedings in order to determine whether the goods infringe an intellectual property right; or
- c) the court has discontinued with finality the proceedings in order to determine whether the goods infringe an intellectual property right.

§ 8

Detention of goods before the decision on the application for action in the national market

(1) If the customs office, when exercising its official powers, suspects that the goods infringe an intellectual property right and no application for action in the national market has yet been submitted, or an application for action in the national market has been submitted but has not been decided by the Financial Directorate, the customs office is entitled

to detain such goods. The customs office shall issue a written decision on the detention of the goods by which it also requests the holder of the goods to confirm in writing, within ten working days, or three working days in the case of perishable goods, of the delivery of the decision on the detention of the goods, whether it agrees to the destruction of the goods. The customs office shall also advise the holder of the goods on the procedure under § 9(1) and on the legal consequences pursuant to § 11(3) and (4); the provisions of § 7(3) and (4) shall apply accordingly. The customs office shall also immediately notify the Financial Directorate of the detention of the goods.

(2) The procedure under paragraph 1 shall not apply where the perishable goods are involved.

(3) The customs office shall immediately notify in writing a person that might be the right-holder that it has detained goods suspected of infringing his intellectual property rights, including the information about the quantity and type of the goods detained. In the notification, the customs office shall also request that person to,

a) provide, within ten working days of the delivery of the notification,

1. a written statement to this customs office whether his intellectual property right has been infringed and whether he agrees to the destruction of the goods; or

2. evidence that he has filed a petition with a court to initiate proceedings in order to determine whether the goods infringe his intellectual property right; and,

b) within four working days of the delivery of the notification, to

1. submit the application for action in the national market to the Financial Directorate; or

2. notify the Financial Directorate that he has already submitted the application for action in the national market.

(4) In the notification under paragraph 3, the customs office shall inform the person that might be the holder of the goods about the procedure under § 9(1) and advise him on the legal consequences pursuant to § 11(4).

(5) Upon written request by the person referred to in paragraph 3, the customs office may decide to extend the time limit referred to in paragraph 3(a) for ten working days.

(6) § 3 and § 4(1), (2), (5) and (6) shall accordingly apply to the application referred to in

⁹⁾ For example, § 27(2) of Act No. 444/2002 Coll. on designs, as amended by Act No. 84/2007 Coll.; § 28(2) of Act No. 517/2007 Coll. on utility models and on amendments to certain acts; § 8(4) of Act No. 506/2009 Coll. on trade marks.

paragraph 3(b) and to the decision on that application.

(7) If the right-holder has submitted, within the time limit referred to in paragraph 3(b), the application for action in the national market to the Financial Directorate, or has notified the Financial Directorate that he already submitted that application, the Financial Directorate shall notify the right-holder of its decision under § 4(1) or (5) within two working days of the delivery of the application or of the delivery of the notification.

(8) The Financial Directorate shall decide to reject the application for action in the national market, if

- a) the application does not contain all the required formalities; or
- b) there are reasons to reject the application pursuant to § 4(5)(b) or (c).

(9) The Financial Directorate shall immediately notify the customs office that detained the goods of the issuance of the decision under § 4(1) or (5).

(10) Where the Financial Directorate has notified the customs offices of the issuance of a decision granting the application, the provisions of § 7(8) and (10) through (12) shall apply to the further procedure in taking actions in the national market.

(11) If the right-holder has failed to submit, within the time limit referred to in paragraph 3(b), the application for action in the national market to the Financial Directorate, or failed to notify the Financial Directorate that he already submitted that application, the Financial Directorate shall immediately notify this fact to the customs office that detained the goods.

(12) The customs office shall return the goods to the person from which they were detained, if

- a) the Financial Directorate has notified the customs office of the issuance of the decision under paragraph 8;
- b) the Financial Directorate has notified the customs office pursuant to paragraph 11;
- c) the right-holder has failed to prove, within the time limit referred to in paragraph 3(a)(2) or paragraph 5, that he filed a petition with a court to initiate proceedings in order to determine whether the goods infringe his intellectual property right, and the conditions for the application of the procedure under § 9(1) are not met; or
- d) on grounds referred to in § 7(13)(b) or (c).

§ 9

Destruction of goods suspected of infringing an intellectual property right

(1) The customs office shall ensure the goods are destroyed, if

- a) the holder of the decision has provided a written statement, within the time limit referred to in § 7(6) or (9) or § 8(3)(a) or (5), that his intellectual property right was infringed;
- b) the holder of the decision has agreed in writing, within the time limit referred to in § 7(6) or (9) or § 8(3)(a) or (5), to the destruction of the goods; and
- c) the holder of the goods has agreed, within the time limit referred to in § 7(2) or § 8(1), to the destruction of the goods.

(2) The customs office shall prepare an official protocol on the destruction of the goods. Before the destruction of the goods, the customs office may take samples of the goods to be used for educational purposes; such samples can be destroyed at any time.

§ 10

Costs of taking action in the national market

(1) The holder of the decision shall reimburse the customs authorities for all the costs incurred in connection with the detention of the goods pursuant to § 7(1) or § 8(1), including the storage costs and handling costs, costs of destruction of the goods pursuant to § 9(1) or § 35(1)(a) and (2)(a), and costs of actions pursuant to § 35(1)(b); this is without prejudice to the right of the holder of the decision to seek compensation for such costs from the holder of the goods.

(2) The holder of the decision is relieved from the obligation referred to in paragraph 1, if he has not confirmed, within the time limit referred to in § 7(6) or (9) or within the time limit referred to in § 8(3)(a) or (5), that the intellectual property right was infringed, nor has he proved that he filed a petition with a court to initiate proceedings in order to determine whether the goods infringe his intellectual property right; the foregoing does not apply where the goods were detained under § 7(1) at the request of the holder of the decision.

(3) For the purposes of paragraph 2, the request of the holder of the decision means a written request by the holder of the decision seeking detention of

the goods under § 7(1), in which the holder of the decision specifies the particular information concerning the goods suspected of infringing an intellectual property right and their location and persons that own, manufacture, offer for sale, sell, store, move or keep such goods. No decision is issued with respect to such a request.

(4) The provisions of a separate regulation¹⁰⁾ shall apply accordingly.

§ 11

Special provisions

(1) For the purposes of taking actions in the national market, ‘goods’ also means movable tangible assets manufactured in the customs territory of the European Union.¹¹⁾

(2) The customs office shall not apply the procedure under § 7 through 9, if

- a) the quantity, value, nature of the goods and the circumstances surrounding the goods do not indicate that the goods are intended for commercial purposes;
- b) the goods were manufactured with the consent of the holder of the intellectual property rights but have been placed on the national market without his consent; or
- c) the goods were manufactured with the consent of the holder of the intellectual property rights, but in excess of the agreed quantity.

(3) Where the holder of the goods fails to provide, within the time limit referred to in § 7(2) or § 8(1), his written agreement to the destruction of the goods or fails to provide his written disagreement to the destruction of the goods, this is considered his agreement to the destruction of the goods.

(4) The agreement to the destruction of the goods cannot be withdrawn and, once the agreement has been provided, no objections against the destruction of the goods can be applied.

PART THREE

ACTIONS WITH RESPECT TO GOODS SUBJECT TO CUSTOMS SUPERVISION

§ 12

Competent customs department

The Financial Directorate is the customs department competent to receive and process applications under a separate regulation.¹²⁾

§ 13

Submission of application

(1) An application for action with respect to the goods subject to customs supervision, request to extend the validity of a decision granting the application for action with respect to the goods subject to customs supervision and request for amending the decision granting the application for action with respect to the goods subject to customs supervision shall be submitted by the right-holder pursuant to a separate regulation¹³⁾ to the Financial Directorate in writing. Where the application is submitted by electronic means, it must be completed in writing not later than within three working days. Applications which were not completed within this time limit are not taken into account.

(2) The application under paragraph 1 shall be submitted in the state language.¹⁴⁾ Where the application is submitted in a language other than the state language, it shall be attached with its officially authenticated translation in the state language. The same shall also apply to the documents constituting an annex to the application, as well as any other data that the right-holder is required to provide to the Financial Directorate.

§ 14

Notification to complete application

The Financial Directorate shall make a written request for the application for action with respect to the goods subject to customs supervision¹⁴⁾ to be completed with the missing information. In the notification of request, the Financial Directorate shall give notice to the right-holder that the time limit for the issuance of the decision is suspended until the requested information is received, and advise him on the legal consequences of the failure to provide the missing information.¹⁵⁾

¹²⁾ Article 5(1) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

¹³⁾ Regulation (EU) No 608/2013 of the European Parliament and of the Council.

¹⁴⁾ Article 7(1) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

¹⁵⁾ Article 7(2) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

¹⁰⁾ Article 29(1), second sub-paragraph, of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

¹¹⁾ Article 3 of Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1), as amended.

§ 15

Procedure by customs office for the identification of goods suspected of infringing an intellectual property right

(1) The customs office shall issue a written decision on the suspension of the release of the goods or the detention of the goods under a separate regulation,¹⁶⁾ in which it shall also request the declarant¹⁷⁾ or the holder of the goods to provide a written statement, within the time limit specified by a separate regulation,¹⁸⁾ whether he agrees to the destruction of the goods. In the advice to the decision, the customs office shall provide information pursuant to a separate regulation¹⁹⁾ and advise the declarant or the holder of the goods on the legal consequences under § 17(1) and (2).

(2) The customs office shall notify the declarant or the holder of the goods of the decision on the detention of the goods within the time limit specified by a separate regulation.²⁰⁾

(3) The declarant or the holder of the goods may file an appeal against the decision on the suspension of the release of the goods or the decision on the detention of the goods within three working days of its delivery; the appeal has no suspensory effect.

(4) In the notification of the suspension of the release of the goods or the notification on the detention of the goods on grounds of suspected infringement of an intellectual property rights, the customs office shall request the holder of the decision to provide, within the time limit pursuant to a separate regulation,²¹⁾ a written statement whether the intellectual property right has been infringed and whether he agrees to the destruction of the goods. The customs office shall include the information pursuant to a separate regulation¹⁹⁾ in the notification, and advise the holder of the decision on the legal consequences under § 17(2).

(5) When detaining the goods, the customs office

shall proceed in compliance with a separate regulation,²²⁾ unless paragraph 1 through 4 and § 19 stipulate otherwise.

(6) Paragraph 1 through 5 shall accordingly apply to the procedure taken by the customs office for the identification of goods suspected of infringing an intellectual property rights with respect to which no application for action with respect to the goods subject to customs supervision has yet been submitted. In that case, the facts referred to in paragraph 4 shall be notified to a person that might be the right-holder.

(7) Where goods in small consignments²³⁾ are involved, paragraph 1 through 3 and 5 shall apply accordingly.

§ 16

(1) If the holder of the decision cannot return the sample of the goods²⁴⁾ to the customs office after the completion of the analysis, he shall notify the customs office of this fact in writing within seven working days of the completion of the analysis, and give reasons why the samples of the goods cannot be returned, not even partially.

(2) The provisions of a separate regulation concerning the temporary warehousing of goods²⁵⁾ shall accordingly apply to the storing of goods during the suspension of the release of the goods suspected of infringing an intellectual property right, or during the detention of the goods suspected of infringing an intellectual property right.

§ 17

(1) Where the declarant or the holder of the goods fails to confirm, within the time limit pursuant to a separate regulation,¹⁸⁾ his agreement to the destruction of the goods or raises no objections against the destruction of the goods, this is considered his agreement to the destruction of the goods.

(2) The agreement to the destruction of the goods cannot be withdrawn and, once the agreement has been provided, no objections against the destruction

¹⁶⁾ Article 17(1) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

¹⁷⁾ Article 4 (18) of Council Regulation (EEC) 2913/92 as amended.

¹⁸⁾ Article 23(1)(c) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

¹⁹⁾ Article 17(3), fourth sub-paragraph, of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

²⁰⁾ Article 17(3), first sub-paragraph, and Article 26(3) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

²¹⁾ Article 23(1)(a) and (b) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

²²⁾ § 64 of Act No. 199/2004 Coll., the Customs Act and on amendments to certain acts as amended.

²³⁾ Article 2(19) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

²⁴⁾ Article 19(2) and (3) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

²⁵⁾ For example, Article 50 of Council Regulation (EEC) No 2913/92.

of the goods can be applied.

(3) The customs office shall prepare an official protocol on the destruction of the goods.

§ 18

(1) The information that the declarant or the holder of the goods has disagreed, in writing, with the destruction of the goods, shall be forwarded by the customs office to the holder of the decision by electronic means.

(2) The information that the declarant or the holder of the goods has disagreed, in writing, with the destruction of the goods in small consignments, shall be forwarded by the customs office to the holder of the decision in writing and by electronic means, if possible.

§ 19

Except as provided by a separate regulation,²⁶⁾ the customs office shall return the detained goods or continue a customs procedure on grounds specified in § 7(13)(b) or (c).

§ 20

The application for early release of goods²⁷⁾ shall be annexed with an original copy of the agreement between the holder of the decision and the declarant, or the holder of the goods, on the amount of guarantee.

§ 21

Where the court decides with finality that the goods with respect to which the decision on the suspension of the release of the goods under § 15(1) was issued infringe an intellectual property right, the customs office shall reject the application for the release of the goods for free circulation, export or entry for a suspensive procedure, or reject the re-export or placement of the goods in a free zone or free warehouse. The provisions on the customs procedure under a separate regulation²⁸⁾ shall accordingly apply to the decision.

²⁶⁾ Article 23(1), second sub-paragraph, and Article 26(9) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

²⁷⁾ Article 24 of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

²⁸⁾ Council Regulation (EEC) No 2913/92 as amended. Act No. 199/2004 Coll. as amended.

PART FOUR

LIABILITY FOR THE BREACH OF OBLIGATIONS

Offences and other administrative delicts

§ 22

An offence or other administrative delict is committed by anyone who

a) submits a customs declaration for the release of the goods infringing an intellectual property right for free circulation, export or any of the suspensive procedures, or submits a request for their re-export or placement in a free zone or free warehouse;

b) by violating the customs regulation²⁹⁾ causes the release of the goods infringing an intellectual property right for free circulation, export, any of the suspensive procedures, or submits a request for their re-export or placement in a free zone or free warehouse;

c) imports or exports goods infringing an intellectual property right;

d) owns, manufactures, offers for sale, sells, stores, moves or keeps goods infringing an intellectual property right;

e) does not provide assistance to the customs office pursuant to § 5(2) or, at the request under § 5(1)(b), provides the customs office with untrue or incomplete information;

f) does not comply with the conditions for the handling of the goods detained under this Act or does not comply with the conditions for the handling of the goods provided for humanitarian purposes under this Act;

g) uses the information about the goods or the holder of the goods, received from the customs office or during the inspection of the goods, in conflict with this Act or a separate regulation;³⁰⁾

h) does not return the samples of the detained goods or fails to provide the customs office with the information pursuant to § 7(12) or § 16(1);

i) does not fulfil the notification obligation under § 4(9) or under a separate regulation.³¹⁾

§ 23

Offences

²⁹⁾ § 2(a) of Act No. 199/2004 Coll. as amended by Act No. 672/2006 Coll.

³⁰⁾ Article 21 of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

³¹⁾ Article 15 of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

(1) An offence is committed where a natural person has violated this Act or a separate regulation³²⁾ in any of the manners referred to in § 22, provided it is not a crime.

(2) The offences specified in this Act shall be subject to proceedings by the customs authorities. Offences and related proceedings shall be governed by a general regulation on offences,³³⁾ unless otherwise stipulated in § 24 through 28.

Penalties for offences

§ 24

The following penalties may be imposed for an offence under § 23:

- a) fine;
- b) forfeiture of goods.

§ 25

(1) A fine for the offence may be imposed

- a) in the amount from EUR 200 up to EUR 3,400 for a violation of this Act or a separate regulation³²⁾ in a manner described in § 22(a) through (d) and (g);
- b) in the amount from EUR 300 up to EUR 5,100 for a recurring violation of this Act or a separate regulation³²⁾ in a manner described in § 22(a) through (d) and (g), or for a violation of this Act or a separate regulation³²⁾ in a larger extent in a manner described in § 22(a) through (d) and (g);
- c) in the amount from EUR 500 up to EUR 6,800 for a recurring violation of this Act or a separate regulation³²⁾ in a manner described in § 22(a) through (d) and (g) in a larger extent;
- d) in the amount from EUR 50 up to EUR 1,700 for a violation of this Act or a separate regulation³²⁾ in a manner described in § 22(e), (f), (h) and (i).

(2) The recurring violation of this Act or a separate regulation³²⁾ means a violation that has occurred within two years of the effective date of a decision by which a penalty under this Act was imposed on a natural person for the violation of this Act or a separate regulation.³²⁾

(3) The violation of this Act or a separate regulation³²⁾ in a larger extent means such conduct

that has infringed a right of the right-holder where

- a) the customs value of imported goods exceeds EUR 34,000; or
- b) the price of exported goods or goods detained pursuant to § 7(1) or § 8(1) determined pursuant to a separate regulation³⁴⁾ exceeds EUR 34,000.

(4) The offence may be fined within two years of the day the customs has learnt of the offence but not later than six years from the day when the offence was committed.

(5) The fine imposed for the offence under this Act shall be paid within 30 days of the effective date of decision by which it was imposed.

(6) Revenues from the fines constitute revenues of the state budget.

§ 26

(1) The goods may be forfeited if they belong to the natural person that committed the offence and the goods were

- a) used in, or intended for, the commitment of the offence; or
- b) obtained through offence, or acquired in return for the goods obtained through offence.

(2) The forfeiture of goods under paragraph 1 may be imposed within two years of the day the customs has learnt of the offence but not later than six years from the day when the offence was committed.

(3) The forfeiture of goods may be imposed separately, or jointly with a fine.

(4) The state shall become an owner of the forfeited goods. Such assets are managed by the customs office that ordered the forfeiture of goods.

§ 27

(1) Where no forfeiture sanction was imposed and where required in order to ensure the security of persons or property or other general interest, the customs office shall decide on the seizure of the goods if the goods belong to the natural person that committed the offence and cannot be prosecuted for that offence, or if the goods do not belong to the natural person that committed the offence, or if that person is unknown.

³²⁾ For example, Regulation (EU) No 608/2013 of the European Parliament and of the Council.

³³⁾ Act of the Slovak National Council No. 372/1990 Coll. on offences as amended.

³⁴⁾ Act of the National Council of the Slovak Republic No. 18/1996 Coll. on prices, as amended.

(2) A seizure decision cannot be made where two years have lapsed since the commitment of the offence.

(3) The state shall become an owner of the seized goods. Such assets are managed by the customs office that decided on the seizure of the goods.

§ 28

The offence-related proceedings shall be carried out by the customs office that has jurisdiction over the territory in which the natural person that committed the offence has its permanent residence. If the person has no permanent residence in the territory of the Slovak Republic, the proceedings shall be carried out by the customs office having jurisdiction over the territory where the offence was identified.

§ 29

Other administrative delicts

An other administrative delict is committed where a legal person or natural person-entrepreneur has violated, through actions or omission to act, this Act or a separate regulation³²⁾ in any of the manners referred to in § 22, provided it is not a crime.

Penalties for other administrative delicts

§ 30

The following penalties may be imposed for an other administrative delict under § 29:

- a) fine;
- b) forfeiture of goods.

§ 31

(1) A fine for the other administrative delict may be imposed

- a) in the amount from EUR 3,000 up to EUR 67,000 for a violation of this Act or a separate regulation³²⁾ in a manner described in § 22(a) through (d) and (g);
- b) in the amount from EUR 5,000 up to EUR 100,000 for a recurring violation of this Act or a separate regulation³²⁾ in a manner described in § 22(a) through (d) and (g), or for a violation of this Act or a separate regulation³²⁾ in a larger extent in a manner described in § 22(a) through (d) and (g);
- c) in the amount from EUR 5,000 up to EUR 135,000 for a recurring violation of this Act or a

separate regulation³²⁾ in a manner described in § 22(a) through (d) and (g) in a larger extent;

d) in the amount from EUR 500 up to EUR 34,000 for a violation of this Act or a separate regulation³²⁾ in a manner described in § 22(e), (f), (h) and (i).

(2) The recurring violation of this Act or a separate regulation³²⁾ means a violation that has occurred within two years of the effective date of a decision by which a penalty under this Act was imposed on a legal person or natural person-entrepreneur for the violation of this Act or a separate regulation.³²⁾

(3) The violation of this Act or a separate regulation³²⁾ in a larger extent means such conduct that has infringed a right of the right-holder where

a) the customs value of imported goods exceeds EUR 34,000; or

b) the price of exported goods or goods detained pursuant to § 7(1) or § 8(1) determined pursuant to a separate regulation³⁴⁾ exceeds EUR 34,000.

(4) When determining the amount of the fine, an account shall be taken of the gravity, manner, duration and consequences of the unlawful conduct.

(5) The fine for an other administrative delict may be imposed within two years of the day the customs has learnt of the commitment of that other administrative delict but not later than six years from the day when the other administrative delict was committed.

(6) The fine imposed for the other administrative delict under this Act shall be paid within 30 days of the effective date of decision by which it was imposed.

(7) Revenues from the fines constitute revenues of the state budget.

§ 32

(1) The goods may be forfeited if they belong to the legal person or natural person-entrepreneur that committed the other administrative delict and the goods were

a) used in, or intended for, the commitment of the other administrative delict; or

b) obtained through other administrative delict, or acquired in return for the goods obtained through other administrative delict.

(2) The forfeiture of goods under paragraph 1 may

be imposed within two years of the day the customs office has learnt of the commitment of that other administrative delict but not later than six years from the day when the other administrative delict was committed.

(3) The forfeiture of goods may be imposed separately, or jointly with a fine.

(4) The state shall become an owner of the forfeited goods. Such assets are managed by the customs office that ordered the forfeiture of goods.

§ 33

(1) Where no forfeiture sanction was imposed for the other administrative delict and where required in order ensure the security of persons or property or other general interest, the customs office shall decide on the seizure of the goods if the goods do not belong to the natural person-entrepreneur or the legal person that committed the other administrative delict, or if the person that committed the other administrative delict is unknown.

(2) A seizure decision cannot be made where six years have lapsed since the commitment of the other administrative delict.

(3) The state shall become an owner of the seized goods. Such assets are managed by the customs office that decided on the seizure of the goods.

§ 34

(1) The other administrative delict-related proceedings shall be carried out by the customs office that has jurisdiction over the territory in which the natural person-entrepreneur has his place of business, or the legal person has its registered office.

(2) If the person referred to in paragraph 1 has no registered office or place of business in the territory of the Slovak Republic, the proceedings shall be carried out by the customs office having jurisdiction over the territory where the other administrative delict was identified.

PART FIVE

COMMON, TRANSITIONAL AND FINAL PROVISIONS

§ 35

(1) Where a court has decided with finality that the goods infringe an intellectual property right and where the customs office has not decided on the forfeiture or seizure of such goods under this Act and the procedure under § 37 is not applied, the customs office shall

a) decide on the destruction of such goods and ensure their destruction; the customs office shall prepare an official protocol on the destruction of the goods; or

b) take another action to protect the rights of the right-holder, which deprives the declarant or the holder of the goods of any economic benefits from commercial transactions involving such goods.

(2) Where the customs office has decided on the forfeiture or seizure of the goods infringing an intellectual property right and the procedure under § 37 is not applied, the customs office shall ensure

a) that such goods are destructed;

b) that the trade marks are removed from such goods; or

c) that modifications are made to such goods, other than those referred to in point (b), without infringing the intellectual property rights.

§ 36

(1) The costs incurred under § 10(1) or under a separate regulation³⁵⁾ shall be notified by the customs office to the holder of the decision by means of a decision issued after

a) the detained goods are destructed;

b) the detained goods are returned to the person from which they were detained;

c) the goods are provided for humanitarian purposes under § 37; or

d) the effective date of the decision under which the detained goods were forfeited to the state or seized.

(2) The customs office may notify the holder of the decision, by means of a single decision, of the aggregated costs of several cases of the detention of the goods with respect to which the circumstances referred to in paragraph 1 have occurred, covering a period of one month, quarter of year, half of year or year.

(3) The holder of the decision shall pay the costs within 30 days of the delivery of the decision under

³⁵⁾ Article 29 of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

paragraph 1 or paragraph 2; an appeal has no suspensory effect.

§ 37

(1) Where the conditions for the destruction of the goods under this Act or under a separate regulation³⁶⁾ are met, or where the goods infringing an intellectual property right are involved, as decided by a court with finality, and the customs office has decided on the forfeiture or seizure of such goods, the customs office may, under the conditions laid down by this Act and separate regulations³⁶⁾ provide such goods for humanitarian purpose free of charge. The provision of the goods for humanitarian purposes means the provision of the goods for activities carried out in order to ensure the basic needs of the population in a difficult life situation, in material need, or affected by an emergency situation.

(2) The customs office may only provide the goods under paragraph 1 to

- a) the Administration of State Material Reserves of the Slovak Republic (hereinafter only referred to as the “Reserves Administration”);
- b) a provider of social services,³⁷⁾ facilities for social and legal protection of children and social custody,³⁸⁾ or healthcare facilities;³⁹⁾ or
- c) a non-profit organisation⁴⁰⁾ or another legal person that is not an entrepreneur,⁴¹⁾ where such persons have demonstrably provided care in the facilities referred to in point (b) for at least one calendar year.

(3) For the purposes specified in paragraph 1 and 2, the Financial Directorate shall publish the offer of goods referred to in paragraph 1 at its website. The customs office shall provide the goods to the persons referred to in paragraph 2 (hereinafter only referred to as “acquirer”) in the order as their applications were received, with the exemption of the Reserves Administration which has a preferential right to receive the goods from the customs office.

(4) The acquirer referred to in paragraph 2(b) and (c) shall

- a) under the conditions specified by the customs office and at its own costs, ensure that the trade marks are removed from the goods pursuant to § 35(2)(b) or that other modifications are made in a manner described in § 35(2)(c), and that the removed trade marks, waste and any remnants after such modifications are destroyed;
- b) use the goods solely in the territory of the Slovak Republic in compliance with the prescribed or contractually agreed conditions;
- c) take measures to prevent the misuse of the goods and their re-release for circulation;
- d) keep records of, and store, all the documents on the receipt of the goods and on the manner of the handling of such goods for the period of three years from the receipt of the goods; the foregoing is without prejudice to the record-keeping provisions under separate regulations.⁴²⁾

(5) The Reserves Administration shall, at its own costs, ensure that the trade marks are removed from the goods pursuant to § 35(2)(b) or that other modifications are made in a manner described in § 35(2)(c), and that the removed trade marks, waste and any remnants after such modifications are destroyed. Further handling of the goods provided to the Reserves Administration is governed by a separate regulation.⁴³⁾

(6) The customs office shall conclude a written contract⁴⁴⁾ on the provision of the goods under paragraph 1 and 2 with the acquirer referred to in paragraph 2(b) and (c); the contract shall particularly include

- a) the type and quantity of the goods provided;

³⁶⁾ For example, Act No. 264/1999 Coll. on technical requirements for products and on conformity assessment and on amendments to certain acts, as amended; Act No. 250/2007 Coll. on customers protection and on amendments to Act of the Slovak National Council No. 372/1990 Coll. on offences as amended, as amended.

³⁷⁾ § 3(3) of Act No. 448/2008 Coll. on social services and on amendments to Act No. 455/1991 Coll. on licensed trade (the Trades Act) as amended.

³⁸⁾ § 45 of Act No. 305/2005 Coll. on social and legal protection of children and social custody and on amendments to certain acts as amended by Act No. 466/2008 Coll.

³⁹⁾ § 7(1) of Act No. 578/2004 Coll. on healthcare providers, medical workers, professional healthcare organisations and on amendment to certain acts as amended by Act No. 653/2007 Coll.

⁴⁰⁾ § 2(1) of Act No. 213/1997 Coll. on non-profit organisations providing services in the general interest as amended by Act No. 35/2002 Coll.

⁴¹⁾ § 2(2) of the Commercial Code.

⁴²⁾ For example, Act No. 431/2002 Coll. on accounting as amended.

⁴³⁾ Act No. 372/2012 Coll. on state material reserves and on amendments to Act No. 25/2007 Coll. on electronic toll collection system for the use of designated sections of road communications and on amendments to certain acts, as amended.

⁴⁴⁾ § 51 of the Civil Code.

b) the purpose for which the acquirer should use the goods;

c) the conditions under which the goods referred to in paragraph 1 and 2 are provided, including the obligations specified in paragraph 4;

d) the warning of the consequences arising from the violation of the obligations set out by this Act, separate regulations or the contract.

(7) The customs office shall conclude a written contract⁴⁴⁾ on the provision of the goods under paragraph 1 and 2 with the Reserves Administration, or a contract under a separate regulation;⁴⁵⁾ the contract shall particularly include

a) the type and quantity of the goods provided;

b) the purpose for which the Reserves Administration should use the goods.

(8) The customs office is entitled to check whether the acquirer referred to in paragraph 2(b) and (c) complies with the conditions the acquirer undertook to meet under the contract. The acquirer shall enable the performance of such checks and provide necessary assistance. Provisions of a separate regulation⁴⁶⁾ shall accordingly apply to the performance of such checks.

§ 38

The holder of the decision granting the application pursuant to § 3(1) and (2) and the holder of the decision by which the Financial Directorate grants, in full or in part, the application pursuant to § 13, has no right to compensation for damage under a separate regulation,⁴⁷⁾ if the customs office

a) has not identified that the goods subject to customs supervision infringe an intellectual property right;

b) has released the goods referred to in point (a) for free circulation, export, entry for a suspensive procedure, permitted their re-export or placement in a free zone or free warehouse;

c) when taking actions in the national market, has not identified goods suspected of infringing an intellectual property right;

d) has not taken any action to detain the goods referred to in point (a) and (c).

(1) Unless otherwise stipulated by this Act or a separate regulation,¹³⁾ the proceedings under this Act or under a separate regulation¹³⁾ shall be governed by a general regulation on administrative proceedings.⁴⁸⁾

(2) The party to proceedings concerning the application under § 3 or § 13 is the person that submitted that application.

(3) The general regulation on administrative proceedings⁴⁸⁾ does not apply to the preparation of a written decision under § 4(1) and to the preparation of a written decision by which the application for action with respect to the goods subject to customs supervision or the request for the extension of the validity of the decision granting the application for action with respect to the goods subject to customs supervision is granted in the full scope.

(4) No appeal can be filed against the decision under § 4(1) and against the decision by which the application under § 13 is granted in the full scope.

(5) If the customs authorities deliver the decision under § 15(1) or the notification under § 15(4) or (6) by means of a postal service operator,⁴⁹⁾ the delivery date of that decision or notification to the addressee shall be the day following the day on which the decision or notification was submitted to the postal service operator for dispatch.

(6) The time limit referred to in § 7(2), the time limit referred to in § 8(1) and the time limit under a separate regulation⁵⁰⁾ is met, if the written statement by the declarant or the holder of the goods containing his agreement to the destruction of the goods is delivered to the customs office not later than on the last day of the time limit.

(7) The time limit referred to in § 7(6)(a) or (9), the time limit referred to in § 8(3)(a)(1) or § 8(5), and the time limit under a separate regulation²¹⁾ is met, if the written statement by the holder of the decision or the right-holder whether an intellectual property right has been infringed and whether he agrees to the destruction of goods is delivered to the customs office not later than on the last day of the time limit.

⁴⁵⁾ § 9 of Act of the National Council of the Slovak Republic No. 278/1993 Coll. on the management of state assets, as amended.

⁴⁶⁾ § 6 through 8 of Act No. 199/2004 Coll.

⁴⁷⁾ Act No. 514/2003 Coll. on the liability for damage caused by the discharge of public authority and on amendments to certain acts, as amended.

⁴⁸⁾ Act No. 71/1967 on Administrative Proceedings (Administrative Code), as amended.

⁴⁹⁾ § 7 of Act No. 324/2011 Coll. on postal services and on amendments to certain acts.

⁵⁰⁾ Article 23(1)(c) and Article 26(5) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

(8) The time limit referred to in § 7(6)(b) or (9), the time limit referred to in § 8(3)(a)(2) or § 8(5), and the time limit under a separate regulation⁵¹⁾ is met, if the submission by which the holder of the decision proves that he has filed a petition with a court to initiate proceedings in order to determine whether the goods infringe an intellectual property right is delivered to the customs office not later than on the last day of the time limit.

(9) The time limit referred to in § 8(3)(b)(1) and the time limit under a separate regulation⁵²⁾ is met, if the application is delivered to the Financial Directorate not later than on the last day of the time limit.

(10) The time limit referred to in § 8(3)(b)(2) is met, if the application is delivered to the Financial Directorate not later than on the last day of the time limit.

§ 40

Enabling provisions

A generally binding regulation to be issued by the Ministry shall laid down

- a) a sample form for the submission of an application for action in the national market;
- b) a sample form for the submission of an application to extend the validity of the decision on the application for action in the national market;
- c) the amount of storage costs.

Transitional provisions

§ 41

Proceedings commenced before the effective date of this Act shall be governed by the existing regulations.

§ 42

Decisions on taking action issued by the Financial Directorate prior to the effective date of this Act or issued under § 40 shall apply for the effective period set out under the existing regulations.

§ 43

The time limits that commenced prior to the effective date of this Act, as well as the time limits for the exercise of a right under the existing regulations even, if commenced after the effective date of this Act, shall be governed by the existing regulations.

§ 44

The provisions of this Act shall also govern the legal relationships established before 1 January 2014. However, the establishment of such legal relationships, as well as the rights and obligations arising from such relationships before 1 January 2014, shall be governed by the existing regulations.

§ 45

Repealing provision

Act No. 200/2004 Coll. on actions against the infringement of intellectual property rights in import, export and re-export of goods, as amended by Act No. 116/2006 Coll., Article XV of Act No. 465/2008 Coll., Act No. 476/2009 Coll., Article III of Act No. 508/2010 Coll. and Article IV of Act No. 331/2011 Coll. is hereby repealed.

§ 46

Entry into force

This Act shall enter into force on 1 January 2014.

Ivan Gašparovič

Pavol Paška

Robert Fico

⁵¹⁾ Article 23(5) and Article 26(9) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.

⁵²⁾ Article 5(3)(a) of Regulation (EU) No 608/2013 of the European Parliament and of the Council.