

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

CHAPTER II

APPLICATIONS

SECTION I

Submission of applications

Article 3

Entitlement to submit an application

The following persons and entities shall, to the extent they are entitled to initiate proceedings, in order to determine whether an intellectual property right has been infringed, in the Member State or Member States where the customs authorities are requested to take action, be entitled to submit:

- (1) a national or a Union application:
 - (a) right-holders;
 - (b) intellectual property collective rights management bodies as referred to in point (c) of Article 4(1) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights⁽¹⁾;
 - (c) professional defence bodies as referred to in point (d) of Article 4(1) of Directive 2004/48/EC;
 - (d) groups within the meaning of point (2) of Article 3, and Article 49(1) of Regulation (EU) No 1151/2012, groups of producers within the meaning of Article 118e of Regulation (EC) No 1234/2007 or similar groups of producers provided for in Union law governing geographical indications representing producers of products with a geographical indication or representatives of such groups, in particular Regulations (EEC) No 1601/91 and (EC) No 110/2008 and operators entitled to use a geographical indication as well as inspection bodies or authorities competent for such a geographical indication;
- (2) a national application:
 - (a) persons or entities authorised to use intellectual property rights, which have been authorised formally by the right-holder to initiate proceedings in order to determine whether the intellectual property right has been infringed;
 - (b) groups of producers provided for in the legislation of the Member States governing geographical indications representing producers of products with

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geographical indications or representatives of such groups and operators entitled to use a geographical indication, as well as inspection bodies or authorities competent for such a geographical indication;

- (3) a Union application: holders of exclusive licenses covering the entire territory of two or more Member States, where those licence holders have been authorised formally in those Member States by the right-holder to initiate proceedings in order to determine whether the intellectual property right has been infringed.

Article 4

Intellectual property rights covered by Union applications

A Union application may be submitted only with respect to intellectual property rights based on Union law producing effects throughout the Union.

Article 5

Submission of applications

1 Each Member State shall designate the customs department competent to receive and process applications ('competent customs department'). The Member State shall inform the Commission accordingly and the Commission shall make public a list of competent customs departments designated by the Member States.

2 Applications shall be submitted to the competent customs department. The applications shall be completed using the form referred to in Article 6 and shall contain the information required therein.

3 Where an application is submitted after notification by the customs authorities of the suspension of the release or detention of the goods in accordance with Article 18(3), that application shall comply with the following:

- a it is submitted to the competent customs department within four working days of the notification of the suspension of the release or detention of the goods;
- b it is a national application;
- c it contains the information referred to in Article 6(3). The applicant may, however, omit the information referred to in point (g), (h) or (i) of that paragraph.

4 Except in the circumstances referred to in point (3) of Article 3, only one national application and one Union application may be submitted per Member State for the same intellectual property right protected in that Member State. In the circumstances referred to in point (3) of Article 3, more than one Union application shall be allowed.

5 Where a Union application is granted for a Member State already covered by another Union application granted to the same applicant and for the same intellectual property right, the customs authorities of that Member State shall take action on the basis of the Union application first granted. They shall inform the competent customs department of the Member State where any subsequent Union application was granted, which shall, amend or revoke the decision granting that subsequent Union application.

6 Where computerised systems are available for the purpose of receiving and processing applications, applications as well as attachments shall be submitted using electronic data-processing techniques. Member States and the Commission shall develop, maintain and employ

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such systems in accordance with the multi-annual strategic plan referred to in Article 8(2) of Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless customs environment for customs and trade⁽²⁾.

Article 6

Application form

- 1 The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 34(2).
- 2 The application form shall specify the information that has to be provided to the data subject pursuant to Regulation (EC) No 45/2001 and national laws implementing Directive 95/46/EC.
- 3 The Commission shall ensure that the following information is required of the applicant in the application form:
 - a details concerning the applicant;
 - b the status, within the meaning of Article 3, of the applicant;
 - c documents providing evidence to satisfy the competent customs department that the applicant is entitled to submit the application;
 - d where the applicant submits the application by means of a representative, details of the person representing him and evidence of that person's powers to act as representative, in accordance with the legislation of the Member State in which the application is submitted;
 - e the intellectual property right or rights to be enforced;
 - f in the case of a Union application, the Member States in which customs action is requested;
 - g specific and technical data on the authentic goods, including markings such as bar-coding and images where appropriate;
 - h the information needed to enable the customs authorities to readily identify the goods in question;
 - i information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right or the intellectual property rights concerned, such as the authorised distributors;
 - j whether information provided in accordance with point (g), (h) or (i) of this paragraph is to be marked for restricted handling in accordance with Article 31(5);
 - k the details of any representative designated by the applicant to take charge of legal and technical matters;
 - l an undertaking by the applicant to notify the competent customs department of any of the situations laid down in Article 15;
 - m an undertaking by the applicant to forward and update any information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned;
 - n an undertaking by the applicant to assume liability under the conditions laid down in Article 28;
 - o an undertaking by the applicant to bear the costs referred to in Article 29 under the conditions laid down in that Article;

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- p an agreement by the applicant that the data provided by him may be processed by the Commission and by the Member States;
- q whether the applicant requests the use of the procedure referred to in Article 26 and, where requested by the customs authorities, agrees to cover the costs related to destruction of goods under that procedure.

SECTION 2

Decisions on applications

Article 7

Processing of incomplete applications

1 Where, on receipt of an application, the competent customs department considers that the application does not contain all the information required by Article 6(3), the competent customs department shall request the applicant to supply the missing information within 10 working days of notification of the request.

In such cases, the time-limit referred to in Article 9(1) shall be suspended until the relevant information is received.

2 Where the applicant does not provide the missing information within the period referred to in the first subparagraph of paragraph 1, the competent customs department shall reject the application.

Article 8

Fees

The applicant shall not be charged a fee to cover the administrative costs resulting from the processing of the application.

Article 9

Notification of decisions granting or rejecting applications

1 The competent customs department shall notify the applicant of its decision granting or rejecting the application within 30 working days of the receipt of the application. In the event of rejection, the competent customs department shall provide reasons for its decision and include information on the appeal procedure.

2 If the applicant has been notified of the suspension of the release or the detention of the goods by the customs authorities before the submission of an application, the competent customs department shall notify the applicant of its decision granting or rejecting the application within two working days of the receipt of the application.

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Article 10

Decisions concerning applications

1 A decision granting a national application and any decision revoking or amending it shall take effect in the Member State in which the national application was submitted from the day following the date of adoption.

A decision extending the period during which customs authorities are to take action shall take effect in the Member State in which the national application was submitted on the day following the date of expiry of the period to be extended.

2 A decision granting a Union application and any decision revoking or amending it shall take effect as follows:

- a in the Member State in which the application was submitted, on the day following the date of adoption;
- b in all other Member States where action by the customs authorities is requested, on the day following the date on which the customs authorities are notified in accordance with Article 14(2), provided that the holder of the decision has fulfilled his obligations under Article 29(3) with regard to translation costs.

A decision extending the period during which customs authorities are to take action shall take effect in the Member State in which the Union application was submitted and in all other Member States where action by the customs authorities is requested the day following the date of expiry of the period to be extended.

Article 11

Period during which the customs authorities are to take action

1 When granting an application, the competent customs department shall specify the period during which the customs authorities are to take action.

That period shall begin on the day the decision granting the application takes effect, pursuant to Article 10, and shall not exceed one year from the day following the date of adoption.

2 Where an application submitted after notification by the customs authorities of the suspension of the release or detention of the goods in accordance with Article 18(3) does not contain the information referred to in point (g), (h) or (i) of Article 6(3), it shall be granted only for the suspension of the release or detention of those goods, unless that information is provided within 10 working days after the notification of the suspension of the release or detention of the goods.

3 Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be entitled to submit an application, no action shall be taken by the customs authorities. The decision granting the application shall be revoked or amended accordingly by the competent customs department that granted the decision.

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Article 12

Extension of the period during which the customs authorities are to take action

1 On expiry of the period during which the customs authorities are to take action, and subject to the prior discharge by the holder of the decision of any debt owed to the customs authorities under this Regulation, the competent customs department which adopted the initial decision may, at the request of the holder of the decision, extend that period.

2 Where the request for extension of the period during which the customs authorities are to take action is received by the competent customs department less than 30 working days before the expiry of the period to be extended, it may refuse that request.

3 The competent customs department shall notify its decision on the extension to the holder of the decision within 30 working days of the receipt of the request referred to in paragraph 1. The competent customs department shall specify the period during which the customs authorities are to take action.

4 The extended period during which the customs authorities are to take action shall run from the day following the date of expiry of the previous period and shall not exceed one year.

5 Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be entitled to submit an application, no action shall be taken by the customs authorities. The decision granting the extension shall be revoked or amended accordingly by the competent customs department that granted the decision.

6 The holder of the decision shall not be charged a fee to cover the administrative costs resulting from the processing of the request for extension.

7 The Commission shall establish an extension request form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 34(2).

Article 13

Amending the decision with regard to intellectual property rights.

The competent customs department that adopted the decision granting the application may, at the request of the holder of that decision, modify the list of intellectual property rights in that decision.

Where a new intellectual property right is added, the request shall contain the information referred to in points (c), (e), (g), (h) and (i) of Article 6(3).

In the case of a decision granting a Union application, any modification consisting of the addition of intellectual property rights shall be limited to intellectual property rights covered by Article 4.

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Article 14

Notification obligations of the competent customs department

1 The competent customs department to which a national application has been submitted shall forward the following decisions to the customs offices of its Member State, immediately after their adoption:

- a decisions granting the application;
- b decisions revoking decisions granting the application;
- c decisions amending decisions granting the application;
- d decisions extending the period during which the customs authorities are to take action.

2 The competent customs department to which a Union application has been submitted shall forward the following decisions to the competent customs department of the Member State or Member States indicated in the Union application, immediately after their adoption:

- a decisions granting the application;
- b decisions revoking decisions granting the application;
- c decisions amending decisions granting the application;
- d decisions extending the period during which the customs authorities are to take action.

The competent customs department of the Member State or Member States indicated in the Union application shall immediately after receiving those decisions forward them to their customs offices.

3 The competent customs department of the Member State or Member States indicated in the Union application may request the competent customs department that adopted the decision granting the application to provide them with additional information deemed necessary for the implementation of that decision.

4 The competent customs department shall forward its decision suspending the actions of the customs authorities under point (b) of Article 16(1) and Article 16(2) to the customs offices of its Member State, immediately after its adoption.

Article 15

Notification obligations of the holder of the decision

The holder of the decision shall immediately notify the competent customs department that granted the application of any of the following:

- (a) an intellectual property right covered by the application ceases to have effect;
- (b) the holder of the decision ceases for other reasons to be entitled to submit the application;
- (c) modifications to the information referred to in Article 6(3).

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Article 16

Failure of the holder of the decision to fulfil his obligations

1 Where the holder of the decision uses the information provided by the customs authorities for purposes other than those provided for in Article 21, the competent customs department of the Member State where the information was provided or misused may:

- a revoke any decision adopted by it granting a national application to that holder of the decision, and refuse to extend the period during which the customs authorities are to take action;
- b suspend in their territory, during the period during which the customs authorities are to take action, any decision granting a Union application to that holder of the decision.

2 The competent customs department may decide to suspend the actions of the customs authorities until the expiry of the period during which those authorities are to take action, where the holder of the decision:

- a does not fulfil the notification obligations set out in Article 15;
- b does not fulfil the obligation on returning samples set out in Article 19(3);
- c does not fulfil the obligations on costs and translation set out in Article 29(1) and (3);
- d without valid reason does not initiate proceedings as provided for in Article 23(3) or Article 26(9).

In the case of a Union application, the decision to suspend the actions of the customs authorities shall have effect only in the Member State where such decision is taken.

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- (1) [OJ L 157, 30.4.2004, p. 45.](#)
- (2) [OJ L 23, 26.1.2008, p. 21.](#)

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Changes and effects yet to be applied to :

- Regulation applied (with modifications) by S.I. 2023/959 reg. 4(a)Sch. 1

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Signature words omitted by S.I. 2019/514 reg. 27
- Art. 1(1)(b) words substituted by S.I. 2019/514 reg. 3(a)(ii)
- Art. 2(A1) inserted by S.I. 2019/514 reg. 4(2)
- Art. 2(1)(c) words omitted by S.I. 2019/514 reg. 4(3)(a)
- Art. 2(1)(e) words omitted by S.I. 2019/514 reg. 4(3)(b)
- Art. 2(1)(f) words substituted by S.I. 2019/514 reg. 4(3)(c)
- Art. 2(1)(g) words substituted by S.I. 2019/514 reg. 4(3)(d)
- Art. 2(1)(h) omitted by S.I. 2019/514 reg. 4(3)(e)
- Art. 2(1)(i) words substituted by S.I. 2019/514 reg. 4(3)(g)
- Art. 2(1)(j) words omitted by S.I. 2019/514 reg. 4(3)(h)
- Art. 2(1)(k) omitted by S.I. 2019/514 reg. 4(3)(f)
- Art. 2(1)(l) words omitted by S.I. 2019/514 reg. 4(3)(h)
- Art. 2(2)(3) substituted by S.I. 2019/514 reg. 4(4)
- Art. 2(4) substituted by S.I. 2019/514 reg. 4(5)
- Art. 2(5)(a) words substituted by S.I. 2019/514 reg. 4(6)
- Art. 2(5)(b) words substituted by S.I. 2019/514 reg. 4(6)
- Art. 2(6) words substituted by S.I. 2019/514 reg. 4(7)
- Art. 2(7) words substituted by S.I. 2019/514 reg. 4(8)(a)
- Art. 2(7)(a) words omitted by S.I. 2019/514 reg. 4(8)(b)
- Art. 2(7)(b) words omitted by S.I. 2019/514 reg. 4(8)(b)
- Art. 2(7)(c) words omitted by S.I. 2019/514 reg. 4(8)(b)
- Art. 2(10) words substituted by S.I. 2019/514 reg. 4(9)
- Art. 2(11) omitted by S.I. 2019/514 reg. 4(10)
- Art. 2(15) words substituted by S.I. 2019/514 reg. 4(11)
- Art. 2(17) omitted by S.I. 2019/514 reg. 4(12)
- Art. 2(18) words substituted by S.I. 2019/514 reg. 4(13)
- Art. 2(19) words substituted by S.I. 2019/514 reg. 4(14)(a)
- Art. 2(19) words substituted by S.I. 2019/514 reg. 4(14)(b)
- Art. 3(1)-(3) substituted by S.I. 2019/514 reg. 5(b)
- Art. 5(3)(b) omitted by S.I. 2019/514 reg. 7(b)
- Art. 6(3)(d) words substituted by S.I. 2019/514 reg. 8(c)(ii)
- Art. 6(3)(f) omitted by S.I. 2019/514 reg. 8(c)(iii)
- Art. 6(3)(j) words omitted by S.I. 2019/514 reg. 8(c)(iv)
- Art. 6(3)(p) words substituted by S.I. 2019/514 reg. 8(c)(v)
- Art. 16(1)(a) word substituted by S.I. 2019/514 reg. 13(a)(ii)
- Art. 16(1)(b) omitted by S.I. 2019/514 reg. 13(a)(iii)
- Art. 21(b) words substituted by S.I. 2019/514 reg. 14
- Art. 25(1)(b) words substituted by S.I. 2019/514 reg. 18