

**355****ACT**

of 18 December 2014

**on the competence of the Customs Administration  
authorities of the Czech Republic in connection with the  
enforcement of intellectual property rights**

The Parliament resolved on the following legislative  
act of the Czech Republic:

## Section 3

**Goods on internal market**

For the purposes hereof, goods on the internal market  
shall mean goods which

- a) are located within the territory of the Czech Republic; and
- b) are not subject to customs supervision within the EU customs territory under a directly applicable Union regulation<sup>2)</sup>.

## Section 4

**Definition of terms**

For the purpose of the Customs Administration authorities' competence to enforce intellectual property rights on the internal market, the definitions of terms set out in Article 2 of the EU Regulation shall apply accordingly, save for those inapplicable due to the nature of the matter.

## Section 5

**No handling of goods infringing intellectual  
property rights**

(1) It is forbidden to handle goods infringing intellectual property rights.

(2) For the purposes of this Act, handling goods shall be understood to include, without limitation, production, processing, transport, transportation, storage, sale or other transfer, offering, import, export, admission for trade, takeover, use or keeping of such goods unless such handling of the goods serves for the personal use of an individual.

**PART ONE GENERAL PROVISIONS**

## Section 1

**Subject matter of regulation**

(1) This Act governs the competence of the Customs Administration authorities of the Czech Republic (hereinafter the "Customs Administration") in connection with the enforcement of intellectual property rights, specifically the competence to:

- a) implement measures in co-operation with parties authorized to enforce intellectual property rights;
- b) supervise compliance with obligations and prohibitions in connection with the enforcement of intellectual property rights.

(2) The competence under paragraph 1 is exercised

- a) on the internal market;
- b) through customs supervision in reference to the directly applicable regulation of the European Union governing the competence of customs authorities in the enforcement of intellectual property rights<sup>1)</sup> (hereinafter the "EU Regulation").

## Section 2

**Exercise of competence**

(1) The competence to be exercised hereunder belongs to customs authorities.

(2) The Customs Office for the Region of Hradec Králové (in Czech: Celní úřad pro Královéhradecký kraj) (hereinafter the "Designated Customs Office") shall have local jurisdiction in matters concerning decisions on applications for the adoption of measures.

<sup>1)</sup> 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.

<sup>2)</sup> Council Regulation (EEC) No. 2913/92 of 12 October 1992, establishing the Community Customs Code, as amended.

## PART TWO INTERNAL MARKET MEASURES

### TITLE I

#### GENERAL PROVISIONS

##### Section 6

##### **Internal market measures**

(1) Measures implemented on the internal market include the detaining of goods on the internal market by a Customs Administration authority in cases laid down by this Act.

(2) Measures implemented on the internal market shall not apply to goods manufactured

- a) in excess of the quantity agreed by the intellectual property rights holder with the manufacturer of such goods; or
- b) with the consent of the intellectual property rights holder.

### TITLE II

#### PROCEEDINGS RELATED TO INTERNAL MARKET MEASURES

##### Section 7

##### **Application for the adoption of internal market measures**

Applications for measures to be adopted on the internal market can be filed by anyone authorized to enforce an intellectual property right under the Act governing the enforcement of industrial property rights or under the Copyright Act (hereinafter the “Beneficiary”).

##### Section 8

##### **Decisions on applications for the adoption of internal market measures**

(1) In order for the Designated Customs Office to issue a decision granting an application for adopting internal market measures (hereinafter the “Internal Market Decision”), the following preconditions shall apply:

- a) the Beneficiary has disclosed facts allowing for an internal market measure to be adopted;
- b) the application for the adoption of an internal market measure demonstrably relates to an intellectual

property right enforceable within the territory of the Czech Republic; and

- c) the Beneficiary has no outstanding payments.

(2) In the Internal Market Decision, the Designated Customs Office shall

- a) set out a time-limit of no more than 1 year in which Customs Administration authorities shall adopt measures applicable on the internal market, as well as the start of the said time-limit; and b) indicate prerequisites allowing for the internal market measure to be adopted.

##### Section 9

##### **Change in the Internal Market Decision**

(1) The Designated Customs Office may extend, by decision, the time-limit in which customs authorities are to adopt internal market measures at the request of the person or entity in whose favour the Internal Market Decision has been granted (hereinafter the “Holder of the Internal Market Decision”) by no more than 1 year; however, the Designated Customs Office may do so repeatedly.

(2) The Designated Customs Office shall reject the application under paragraph 1

- a) unless it was filed at least 15 days prior to the expiry of the time-limit the extension of which has been applied for; or
- b) if the conditions for cancelling the Internal Market Decision *ex officio* have been met.

(3) The Designated Customs Office shall change the Internal Market Decision provided that the conditions for issuing thereof have been met, either

- a) at the request of the Holder of the Internal Market Decision or
- b) *ex officio*, should any changes occur in the data contained in the Internal Market Decision.

(4) The first act of the Designated Customs Office in relation to the change in the Decision pursuant to paragraph 3(b) above may be the issuing of a decision.

##### Section 10

### **Annulment of the Internal Market Decision on proposal**

The Designated Customs Office shall annul the Internal Market Decision on the proposal of its Holder.

#### Section 11

### **Annulment of the Internal Market Decision *ex officio***

(1) Should the Designated Customs Office establish that the conditions for the issuing of an Internal Market Decision have not been met, it shall invite the Holder of an Internal Market Decision to ensure compliance with these conditions within a time-limit set out by the Designated Customs Office provided that the nature of these conditions allows such compliance.

(2) The Designated Customs Office shall annul the Internal Market Decision if

- a) the Holder of the Internal Market Decision fails to ensure compliance with the conditions for the issuing of the Internal Market Decision at the invitation of the Designated Customs Office within the given time-limit;
- b) the conditions for the issuing of the Internal Market Decision, with respect to which the Designated Customs Office did not call for compliance, have not been met;
- c) the Holder of the Internal Market Decision repeatedly fails to meet its notification duty under Section 12;
- d) the Holder of the Internal Market Decision fails to return any samples provided to them by to the customs office or the Holder failed to demonstrate that the samples had been destroyed or damaged to an extent preventing their returning;
- e) the Holder of the Internal Market Decision repeatedly fails to meet its obligation to cover the costs pursuant to Sect. 49; or
- f) the Holder of the Internal Market Decision repeatedly fails to file, without any material reason, a petition to commence proceedings to determine whether or not an intellectual property right was infringed.

#### Section 12

### **Obligations of the Holder of an Internal Market Decision**

(1) Holders of Internal Market Decisions must notify the Designated Customs Office of

- a) the facts that may constitute a reason for the annulment of the Internal Market Decision; or
- b) a change in the data contained in the Internal Market Decision.

(2) Holders of Internal Market Decisions shall notify the Designated Customs Office of any new facts or changes in the data pursuant to paragraph 1 within 3 working days after having acquired knowledge thereof, however, no later than in 10 working days after such facts or changes arose; the notification shall take place in electronic form, using the format and structure disclosed by the Designated Customs Office in a manner enabling remote access.

(3) Holders of Internal Market Decisions may use information disclosed to them by the customs authorities under Sect. 13(2), Sect. 15 (1) and (2) or Sect. 16 (1) or findings from inspections and sampling of detained goods pursuant to Sect. 17 solely for the purpose of

- a) simplified proceedings on the destruction of goods;
- b) judicial proceedings to determine whether or not an intellectual property right has been infringed;
- c) enforcing claims arising from the endangering or infringement of an intellectual property right; or
- d) criminal or administrative proceedings.

## TITLE III

### DETENTION OF GOODS ON THE INTERNAL MARKET AND RELATED PROCEDURES

#### Section 13

### **Detention of goods**

(1) When supervising the handling of goods on the internal market, the customs authorities shall detain

- a) any goods suspected of infringing an intellectual property right, save for perishable goods for which no Internal Market Decision has been issued; or
- b) any goods where there are reasons to presume that the goods are handled in breach of the conditions for free-of-charge transfer for humanitarian purposes.

(2) Prior to detaining the goods, the customs office may invite the Holder of an Internal Market Decision, or any other person who may be a Beneficiary in relation to such goods, to supply information on the goods allowing for their detention. The customs office may disclose information to these persons regarding the actual or estimated quantity of the goods and the nature thereof.

(3) The customs office shall notify the person with whom the goods have been found upon detention orally of the detaining of the goods, and advise them of the legal consequences arising from the simplified proceedings to destroy the goods.

(4) The customs office shall make a record of the goods detention.

(5) No later than the following working day the customs office shall send the person whose goods have been detained a formal notification of the same, advising them of the legal consequences arising from the simplified proceedings to destroy the goods

- a) if such a person is different from the one with whom the goods have been found at the time of detention; and
- b) if such person is known.

#### Section 14

##### **Handling of detained goods**

(1) The customs office may decide *ex officio* to keep the detained goods with the person with whom the goods have been found and, simultaneously, it may order that the goods may be neither destroyed nor otherwise handled, save for keeping or storing of the same. The first act of the customs office in the matter may be the issuing of a decision.

(2) Unless it was decided that the detained goods would be kept with the person with whom they had been found, the customs office shall keep or store the same at the expense of the person whose goods have been detained, or, if no such person exists, at the expense of the Holder of the Internal Market Decision.

(3) The costs of keeping and storage of detained goods also include transportation costs of the goods.

#### Section 15

##### **Procedure following the detention of goods based on the Internal Market Decision**

(1) The customs office detaining goods for which an Internal Market Decision was issued shall send the Holder of the Internal Market Decision, no later than on the working day following the detention of the goods, a notification informing the Holder of

- a) the date of detention of the goods;
- b) information concerning the actual or estimated quantity of the goods and the nature thereof; and
- c) identification data of the person with whom the detained goods have been found if such person is known.

(2) At the request of the Holder of the Internal Market Decision, the customs office detaining the goods shall provide further details regarding the detained goods and persons handling the same if such details are known.

(3) Holders of Internal Market Decisions shall, within 10 working days or, in the event of perishable goods, within 3 working days following the notification pursuant to paragraph 1, inform the customs office of having filed a petition to commence proceedings to determine whether an intellectual property right was infringed. This shall not apply if the Holder of the Internal Market Decision files a petition to commence simplified proceedings to destroy the goods.

(4) The customs office shall return the goods to the person with whom the detained goods have been found unless

- a) the goods were destroyed as part of simplified proceedings to destroy the same;
- b) the Holder of the Internal Market Decision informed the customs office, within the time limit pursuant to paragraph 3 or pursuant to Sect. 20(1), that a petition to commence proceedings to determine whether an intellectual property right had been infringed has been filed;
- c) a decision to confiscate the goods can be issued;
- d) it was notified by an authority competent to carry out supervision under consumer protection regulations that the detained goods may serve as evidence in proceedings on the violation of consumer protection laws.

(5) The customs office shall also return the goods to the person with whom the goods have been found if,

following the detention, the reasons for which the goods had been detained have expired.

#### Section 16

##### **Procedure following the detention of goods in other cases**

(1) The customs office detaining goods for which no Internal Market Decision was issued shall send the person who may be a Beneficiary in relation to the detained goods, no later than on the working day following the detention of the goods, a notification supplying information on the actual or estimated quantity of the goods and the nature thereof.

(2) The Beneficiary may, within 4 working days following the date of notification pursuant to paragraph 1, apply for an internal market measure to be adopted. The Designated Customs Office shall decide on the application within 2 working days from the date of receipt.

(3) If there are facts missing in the application pursuant to paragraph 2 above which allow for the measure exceeding the scope of a particular detention of goods to be adopted, the Beneficiary may supplement the information within 10 working days following the date of notification pursuant to paragraph 1. Upon supplementing the information, the Designated Customs Office shall issue a new Internal Market Decision.

(4) The customs office shall return the goods to the person with whom they have been found provided that

- a) in relation to the detained goods
  1. the person who may be the Beneficiary could not be identified by the working day following the detention of the goods; or
  2. no application for the adoption of internal market measures has been filed within the time-limit pursuant to paragraph 2 or such an application was rejected;
- b) no decision can be awarded on the confiscation of the goods; and
- c) it failed to receive notification from an authority competent to carry out supervision under consumer protection laws that the detained goods may serve as evidence in proceedings on the violation of consumer protection laws.

(5) The customs office shall also return the goods to the person with whom the detained goods have been found

if, following the detention, the reasons for which the goods had been detained, have expired.

#### Section 17

##### **Inspection and sampling of detained goods**

(1) The customs office shall allow Holders of Internal Market Decisions and persons with whom the detained goods have been found to inspect the said goods under supervision of the customs office.

(2) The customs office may take samples of the detained goods and provide them, upon request, to the Holder of Internal Market Decision for analysis. The Holder of the Internal Market Decision shall have the samples of the detained goods analysed at its own expense and risk.

(3) After the analysis is made, Holders of Internal Market Decisions shall promptly

- a) return to the customs office any samples of the goods provided to them by the customs authorities; or
- b) demonstrate to the customs office that, as a result of analysing the samples, the samples of the goods have been destroyed or damaged to an extent preventing their returning.

#### TITLE IV

##### **SIMPLIFIED PROCEEDINGS ON THE DESTRUCTION OF GOODS**

#### Section 18

##### **Opinion on the destruction of goods in simplified proceedings**

(1) Goods suspected of infringing an intellectual property right may be destroyed under the supervision of the customs office, without there being any need to decide whether any intellectual property right was infringed if, within 10 working days or, in case of perishable goods, within 3 working days of the notification of the detention, the customs office receives consent to the destruction from

- a) the Holder of the Internal Market Decision; and
- b) the person whose goods have been detained.

(2) Goods suspected of infringing an intellectual property right may be destroyed in line with paragraph 1

even without the consent of the person whose goods have been detained provided that such a person

- a) failed to relate its opinion on the possibility of the destruction of goods to the customs authorities within the time-limit set out in paragraph 1; or
- b) is unknown and cannot be identified within the time-limit pursuant to paragraph 1, running from the date of detention of the goods, and, simultaneously, the person fails to inform the customs office of its opinion on the possibility of the destruction of goods.

(3) The consent of the Holder of the Internal Market Decision to the destruction of goods shall be understood as a proposal to commence simplified proceedings to destroy the goods. The decision in respect of the destruction of goods shall be awarded by the customs office detaining the respective goods.

(4) The consent to the destruction of goods in simplified proceedings cannot be withdrawn.

(5) Where the detained goods are not subject to any Internal Market Decision, the time-limit pursuant to paragraph 1 starts to run on the date the Internal Market Decision was notified.

#### Section 19

##### **Destruction of goods in simplified proceedings**

(1) The goods are destroyed at the expense of the Holder of the Internal Market Decision.

(2) The goods are destroyed under the supervision of a three-member commission of the customs office who shall make a record in respect of the destruction.

#### Section 20

##### **Procedure in case of non-destruction of goods in simplified proceedings**

(1) Where the conditions for destruction of goods in simplified proceedings have not been met as a result of which it is decided that the goods would not be destroyed, the Holder of the Internal Market Decision shall inform the customs office within 10 working days or, in case of perishable goods, within 3 working days from the notification of the Decision, that it has filed a petition to commence proceedings to determine whether any intellectual property right had been infringed.

(2) The customs office may, at the request of the Holder of the Internal Market Decision, extend the time-

limit pursuant to paragraph 1, if the goods in question are not perishable, by no more than another 10 working days.

### **PART THREE MEASURES UNDER CUSTOMS SUPERVISION**

#### Section 21

##### **Change in the decision not relating to intellectual property rights**

(1) The Designated Customs Office may change the decision approving an application, unless the change in question relates to intellectual property rights,

- a) at the request of the Holder of the Decision; or
- b) *ex officio* if

1. the Holder of the Decision disclosed information allowing for a measure implemented under customs supervision to be adopted; or
2. there has been a change in the information contained in the Decision.

(2) The first act of the Designated Customs Office in respect of a change in the Decision pursuant to paragraph 1(b) may be the issuing of a decision.

#### Section 22

##### **Detention of goods and suspension of the release of goods**

(1) If, in cases set out by the EU Regulation, the customs authorities detain goods or suspend their release, they shall advise the person with whom the goods have been found upon detention or suspension of release of the legal consequences resulting from the procedure of the destruction of goods pursuant to the EU Regulation.

(2) The customs office shall make a record in respect of the detention or suspension of release of the goods.

(3) Persons with respect to whom the suspension of release of the goods was ordered are not allowed to destroy or handle the goods, save for keeping or storing of the same.

(4) The customs office may decide *ex officio* to keep the detained goods with the person with whom the detained goods have been found and, simultaneously, may order that the goods may not be destroyed or handled, save for keeping and storing of the same. The first act of the

customs office in the matter at hand may be the issuing of a decision.

(5) In the event that, in line with the EU Regulation, the customs office is obliged to terminate the detention of goods, it shall return these to the person with whom the detained goods have been found.

(6) Goods shall also be considered detained if they were surrendered to the customs office due to suspected infringement of an intellectual property right provided that the goods in question were subject to customs control and had been detained by other public authorities exercising their powers.

### Section 23

#### **Destruction of goods**

(1) If, in line with the EU Regulation, goods suspected of infringing an intellectual property right are to be destroyed, the written consent of the Holder of the Decision to the destruction of goods shall be considered a petition to commence proceedings to destroy these goods.

(2) If, in line with the EU Regulation, the procedure for destroying goods in small consignments is to apply, the proceedings to destroy such goods shall commence on the date the customs office, in accordance with the EU Regulation, informed the declarant or the holder of the goods of the detention or suspension of release of the goods, advising them of the legal consequences arising from the procedure for the destruction of goods in small consignments.

(3) The decision to destroy the goods is awarded by the customs office detaining the goods in question or suspending the release thereof.

(4) The goods are destroyed under the supervision of a three-member commission of the customs office who shall make a record in respect of the destruction.

### Section 24

#### **Security deposit**

(1) The declarant or holder of the goods shall provide a security deposit (guarantee) pursuant to the EU Regulation

- a) by making a deposit to a special account of the customs office; the security deposit must remain on

the account until the court delivers a decision in the matter; or

- b) in the form of a bank guarantee accepted by the customs office to secure
  1. any damages incurred by the Holder of the Decision as a result of a final and conclusive judicial decision to the effect that the goods which have been released or whose detention was terminated due to the payment of the security deposit, do infringe an intellectual property right;
  2. any outstanding payments recorded by the customs office or other public authorities as at the 90<sup>th</sup> day from the day the court delivered a decision in the matter.

(2) The bank guarantee must be provided for a definite period of time no shorter than 4 years.

(3) The customs office shall decide on the amount of the security deposit so as to provide sufficient protection of the rights of the Holder of the Decision.

(4) Before setting the amount of the security deposit, the customs office shall invite the Holder of the Decision to consider what amount of the security deposit would be sufficient enough to protect the Holder's rights.

(5) In respect of the administration of the security deposit payment, provisions of the Tax Procedure Rules shall apply accordingly.

### Section 25

#### **New security deposit**

Whoever provided a security in the form of a bank guarantee shall be obliged, in the event that, within 6 months prior to the expiry of the period for which the bank guarantee had been provided, no decision of the court was delivered, to provide a new security by

- a) extending the period for which the bank guarantee had been provided by no less than 2 years;
- b) providing a new bank guarantee, continuing directly in the previous bank guarantee which has been accepted by the customs office; or
- c) depositing an amount equal to the amount of the security to a special account of the customs office.

### Section 26

### **Court resolution in the matter**

(1) For the purposes of security deposits, a court resolution in the matter shall mean the final and conclusive decision of the court in respect of

- a) the amount of damages if the resolution in question was issued based on the decision pursuant to subparagraph (b); or
- b) the fact that the goods, whose release has been achieved or detention has been terminated due to the payment of the security deposit, actually infringe an intellectual property right, unless the Holder of the Decision notified the customs office within 90 days of the date of legal force of this decision that it has filed a petition to commence judicial proceedings pursuant to subparagraph (a).

(2) For the purposes of the use of the security, the day on which a court resolution in the matter was delivered pursuant to paragraph (1)(b) shall be the day on which

- a) the Holder of the Decision informed the customs office that it would not file a petition to commence judicial proceedings pursuant to paragraph (1)(a); or
- b) the time-period pursuant to paragraph (1)(b) has expired in vain.

### **Section 27**

#### **Use of the security deposit upon non-infringement of an intellectual property right**

(1) If the court decides finally and conclusively that the goods, whose release has been achieved or detention has been terminated due to the payment of the security deposit, do not infringe any intellectual property right, the deposited amount becomes an overpayment of the person providing the security deposit. If the overpayment thus incurred is refundable, the customs office shall disburse it to the relevant person within 90 days of the date the respective judicial decision took force.

(2) The time-limit pursuant to paragraph (1) shall not run at the time the customs office or another public authority is conducting proceedings

- a) which may result into a decision assessing a tax, fee or similar payment; and
- b) which were initiated within 90 days of the date of legal force of the judicial decision to the effect that the goods, whose release has been achieved or detention has been ended due to the payment of the

security deposit, do not infringe any intellectual property right.

(3) If the court decides finally and conclusively that the goods, whose release has been achieved or detention has been ended due to the payment of the security deposit, do not infringe any intellectual property right, the customs office shall call on the issuer of the bank guarantee to cover any arrears kept on record as at the 90<sup>th</sup> day from the date of this decision

- a) with the customs office; or
- b) with another public authority requesting disbursement of such arrears from the customs office.

(4) The customs office shall call on the issuer of the bank guarantee to cover the arrears pursuant to paragraph 3 no earlier than after 90 days, however, no later than in 5 months of the date of legal force of the judicial decision to the effect that the goods, whose release has been achieved or detention has been ended due to the payment of the security deposit, do not infringe any intellectual property right.

(5) The issuer of the bank guarantee shall reimburse the amount within 15 days of receiving the notice.

### **Section 28**

#### **Use of the security deposit upon infringement of an intellectual property right**

(1) If the court awards a decision in the matter, the deposited amount becomes an overpayment of the Holder of the Decision, up to the amount corresponding to the amount set by the judicial decision on the award of damages. If the overpayment thus incurred is refundable, the customs office shall disburse it to the relevant person within 90 days of the date the court awarded the decision.

(2) The time-limit pursuant to paragraph (1) shall not run at the time the customs office or another public authority is conducting proceedings

- a) which may result into a decision assessing a tax, fee or similar payment; and
- b) which was initiated within 90 days of the date the court decided in the matter.

(3) If the security deposit paid is higher than the amount set by the judicial decision on the award of damages, the surplus to the amount set by the judicial decision on damages becomes the overpayment of the

person providing the security deposit. If the overpayment thus incurred is refundable, Section 27(1) and (2) shall apply accordingly.

#### Section 29

##### **Use of the bank guarantee upon infringement of an intellectual property right**

(1) If the court awards a decision in the matter, the customs office shall call on the issuer of the bank guarantee within 90 days to reimburse the amount set in the judicial decision on the award of damages.

(2) The issuer of the bank guarantee shall reimburse the amount within 15 days of receiving the notice.

(3) The amount paid by the issuer of the bank guarantee becomes the overpayment of the Holder of the Decision. If the overpayment thus incurred is refundable, Sect. 28 (1) and (2) shall apply accordingly.

(4) If the security provided in the form of a bank guarantee is higher than the amount set by the judicial decision on the award of damages, the customs office shall call on the issuer of the bank guarantee, higher than the amount set by the judicial decision awarding damages, to cover the arrears of the person providing the security recorded as at the 90<sup>th</sup> day from the date of the respective decision

- a) by the customs office or
- b) by another public authority requesting disbursement of such arrears from the customs office.

(5) When proceeding pursuant to paragraph 4, Section 27 (4) and (5) shall apply accordingly.

#### Section 30

##### **Inapplicability of the security deposit**

Unless the security deposit can be used in any of the methods above, it shall pass to the State as state budget revenues.

## **PART FOUR**

### **ADMINISTRATIVE DELICTS**

#### **TITLE I**

#### **INFRACTIONS**

#### Section 31

##### **Infractions in the area of control of compliance with obligations and prohibitions in connection with the enforcement of intellectual property rights**

(1) An individual commits an infraction

- a) by handling goods infringing an intellectual property right in breach of Sect. 5(1);
- b) by handling goods in breach of Sect. 14(1) or Sect. 22 (3) or (4) as a person in relation to whom the customs office suspended the release of such goods or ordered the person to keep the detained goods suspected of infringing an intellectual property right;
- c) as a person providing a security in the form of a bank guarantee who failed to provide a new security deposit pursuant to Sect. 25; or
- d) by handling goods in breach of the conditions for a free-of-charge transfer for humanitarian purposes.

(2) The infraction can be sanctioned by a fine of up to CZK 1,000,000 if the infraction qualifies as an infraction pursuant to paragraph 1 (a), (b) or (d).

(3) The infraction can be sanctioned by a fine of up to the amount of the security not provided if the infraction qualifies as an infraction pursuant to paragraph 1 (c).

#### Section 32

##### **Infractions in the area of measures in connection with the enforcement of intellectual property rights in co-operation with the Holder of an Internal Market Decision or with the Holder of a Decision**

(1) An individual commits an infraction as a Holder of an Internal Market Decision by

- a) failing to notify the Designated Customs Office in breach of Sect. 12(1) of any fact that may be a reason for annulment of an Internal Market Decision or for a change in the data contained in the Decision or by failing to report any such fact or change in data within the set time-limit or in the prescribed manner;
- b) using information disclosed by the customs office in breach of Sect. 12(3); or

- c) failing to return, in breach of Sect. 17(3) samples of goods or failing to demonstrate to the customs office that the samples were destroyed or damaged.

(2) An individual commits an infraction as a Holder of a Decision, acting in breach of the EU Regulation, by

- a) failing to report to the Designated Customs Office any facts that may constitute a reason for the annulment of the Decision or for a change in the data contained in the Decision;
- b) using information disclosed by the customs office; or
- c) failing to return samples of goods to the customs office.

(3) The infraction pursuant to paragraphs 1 or 2 can be sanctioned by a fine of up to CZK 500,000.

## TITLE II

### ADMINISTRATIVE DELICTS OF LEGAL ENTITIES AND SELF-EMPLOYED INDIVIDUALS

#### Section 33

#### **Administrative delicts in the area of control of compliance with obligations and prohibitions in connection with the enforcement of intellectual property rights**

(1) Legal entities or self-employed individuals commit an administrative delict

- a) by handling goods infringing an intellectual property right in breach of Sect. 5(1);
- b) by handling goods in breach of Sect. 14(1) or Sect. 22 (3) or (4) as a person in relation to whom the customs office suspended the release of such goods or ordered the person to keep the detained goods suspected of infringing an intellectual property right; or
- c) as a person providing a security in the form of a bank guarantee who failed to provide a new security pursuant to Sect. 25.

(2) The administrative delict shall be sanctioned by a fine

- a) of up to CZK 10,000,000 if the delict qualifies as a delict pursuant to paragraph 1 (a) or (b); or
- b) of up to the amount of the security not provided if the delict qualifies as a delict pursuant to paragraph 1 (c).

#### Section 34

#### **Administrative delicts in the area of measures in connection with the enforcement of intellectual property rights in co-operation with the Holder of an Internal Market Decision or with the Holder of a Decision**

(1) Legal entities or self-employed individuals commit an administrative delict as Holders of an Internal Market Decision by

- a) failing to notify the Designated Customs Office in breach of Sect. 12(1) of any fact that may constitute a reason for the annulment of an Internal Market Decision or for a change in the data contained in this Decision or by failing to report any such fact or change in data within the set time-limit or in the prescribed manner;
- b) using information disclosed by the customs office in breach of Sect. 12(3); or
- c) failing to return, in breach of Sect. 17(3), samples of goods or failing to demonstrate to the customs office that the samples were destroyed or damaged.

(2) Legal entities or self-employed individuals commit an administrative delict as Holders of a Decision, acting in breach of the EU Regulation, by

- a) failing to report to the Designated Customs Office any facts that may constitute a reason for the annulment of the Decision or for a change in the data contained in the Decision;
- b) using information disclosed by the customs office; or
- c) failing to return samples of goods to the customs office.

(3) The administrative delict pursuant to paragraphs 1 or 2 can be sanctioned by a fine of up to CZK 500,000.

#### Section 35

### **Administrative delicts in the area of free-of-charge transfers of counterfeit goods**

(1) Legal entities, as recipient organizations, commit administrative delicts by

- a) failing to adopt, in breach of Sect. 45(a), measures preventing the misuse of counterfeit goods and their re-admission to the market;
- b) failing to use, in breach of Sect. 45(b), counterfeit goods only for stipulated humanitarian purposes; or
- c) failing to alter, in breach of Sect. 46(1), counterfeit goods transferred for humanitarian purposes.

(2) Legal entities or self-employed individuals commit an administrative delict by handling goods in breach of the conditions for free-of-charge transfers for humanitarian purposes.

(3) The administrative delict shall be sanctioned by a fine

- a) of up to CZK 500,000 if the delict qualifies as an administrative delict pursuant to paragraph 1 (a) or (c); or
- b) of up to CZK 1,000,000 if the delict qualifies as an administrative delict pursuant to paragraph 1 (b) or paragraph 2.

## **TITLE III**

### **FORFEITURE AND CONFISCATION**

#### **Section 36**

##### **Forfeiture**

(1) The customs office shall impose forfeiture of

- a) goods infringing an intellectual property right; or
- b) materials, tools or equipment designed or used solely or mostly for activities infringing intellectual property rights.

(2) Goods shall be forfeited if

- a) they belong to a person committing an administrative delict; and
- b) they were used to commit an administrative delict or if they were acquired by means of an administrative delict or in exchange for other goods acquired through an administrative delict.

(3) Forfeiture of a thing set out in paragraph 1(b) cannot be ordered if the value of the thing is in gross disproportion to the nature of the administrative delict.

#### **Section 37**

##### **Confiscation**

(1) Unless the customs office ordered forfeiture of goods pursuant to Sect. 36, it shall decide on the confiscation thereof.

(2) The customs office shall decide on the confiscation of goods if

- a) they belong to a perpetrator who cannot be prosecuted for an administrative delict;
- b) they do not belong to the person committing an administrative delict or they do not belong to such a person in full; or
- c) the owner of the goods is unknown.

(3) Confiscation of a thing set out in Sect. 36 (1)(b) cannot be ordered if the value of the thing is in gross disproportion to the nature of the administrative delict. A decision to seize the thing cannot be delivered if 2 years have lapsed from the action showing the elements of an administrative delict.

#### **Section 38**

##### **Common provisions for forfeited and confiscated goods**

(1) Any forfeited or confiscated goods pass to the State.

(2) Forfeited or confiscated goods infringing an intellectual property right shall be destroyed unless they were transferred free of charge for humanitarian purposes. Other forfeited or confiscated goods shall be destroyed according to their nature.

(3) Instead of destroying forfeited or confiscated goods, the General Customs Directorate may keep, store and use these for educating, training and testing purposes, for expertise activities or for performing other activities carried out under the competence of customs authorities.

(4) Destruction of goods shall take place under the supervision of a three-member commission of the General Customs Directorate and a record shall be made in respect thereof.

(5) Whoever committed an administrative delict and their goods have been forfeited or with whom the

confiscated goods have been found and detained shall be obliged to reimburse the State for any costs related with the administration and destruction of the goods.

(6) Whoever committed an administrative delict and their goods have been forfeited as counterfeits transferred for humanitarian purposes shall reimburse the recipient organization for any costs incurred in connection with the alteration of the counterfeit goods. Upon request of the recipient organization, the customs office shall disclose the identification data of the person committing the administrative delict.

#### TITLE IV

### COMMON PROVISIONS FOR ADMINISTRATIVE DELICTS

#### Section 39

#### **Commencement of proceedings on an administrative delict**

(1) Proceedings on an administrative delict pursuant to Sect. 31(1)(a) and Section (33)(1)(a) can be initiated only provided that a final and conclusive decision was awarded in judicial proceedings to the effect that an intellectual property right had been infringed.

(2) As long as the judicial proceedings to determine whether or not infringement of an intellectual property right was committed are underway, the time-limits for commencement of the proceedings on an administrative delict shall be suspended.

#### Section 40

#### **Liability of legal entities and self-employed individuals**

(1) Legal entities shall not be liable for administrative delicts if they demonstrate to have used all reasonable efforts in order to prevent the violation of a legal obligation.

(2) When assessing the amount of the fine payable by a legal entity, the gravity of the administrative delict shall be considered, including, without limitation, the manner in which the delict was committed, the consequences thereof as well as the circumstances under which the delict was committed.

(3) Liability of legal entities for administrative delicts shall expire unless the administrative bodies initiated proceedings within 2 years of having acquired knowledge thereof, however, no more than in 6 years of the day the delict had been committed.

(4) Liability for any action committed by self-employed individuals while conducting their business or in direct connection therewith shall be subject to statutory provisions on the liability of, and sanctions for, legal entities.

#### Section 41

#### **Competence to hear an administrative delict**

(1) Administrative delicts hereunder are heard by the customs office in whose territorial sphere the person suspected of committing an administrative delict has its registered office. If the registered office of the person is not located on the territory of the Czech Republic, the administrative delict shall be heard by the customs office in whose territorial sphere the administrative delict was committed; if the place of commitment of the delict cannot be identified reliably, the case shall be heard by the customs office in whose territorial sphere the commitment of the administrative delict was detected.

(2) Administrative delicts pursuant to Sections 32(1)(a), 32(2)(a), 34(1)(a) and 34(2)(a) are heard by the Designated Customs Office.

#### Section 42

#### **Due date of and revenues from fines**

(1) The fine is payable in 30 days from the date on which the decision imposing the fine took legal force.

(2) Revenues from fines are state budget revenues.

(3) Revenues from fines for administrative delicts pursuant to Sections 31(1)(c) or 33(1)(c) shall serve, up to the amount assessed by the judicial decision awarding damages, as a security provided in the form of a security deposit.

### **PART FIVE FREE-OF-CHARGE TRANSFER OF COUNTERFEIT GOODS FOR HUMANITARIAN PURPOSES**

#### Section 43

**Free-of-charge transfer of  
counterfeit goods for  
humanitarian purposes**

(1) The General Customs Directorate may transfer any forfeited or confiscated counterfeit goods free of charge to a recipient organization for humanitarian purposes.

(2) For the purposes hereof, transfer of counterfeit goods means

- a) a transfer of the possessory title or
- b) a change in the competence to administer counterfeit goods under the Act on the Property of the Czech Republic and its Acting as a Legal Entity.

(3) For the purposes hereof, humanitarian purposes shall be understood to include, without limitation, activities carried out with an aim to provide for the basic needs of citizens who have been exposed to a situation of personal distress or suffered from an extraordinary event.

(4) Counterfeit goods not safe for human health or not safe to use cannot be transferred for humanitarian purposes.

(5) Free-of-charge transfer of counterfeit goods for humanitarian purposes is subject to the consent of the Holder of the Decision or the Holder of the Internal Market Decision.

(6) Counterfeit goods shall be transferred free of charge in the order of the applications received or, as the case may be, depending on the urgency of the needs or the manner of use.

Section 44

**Recipient organizations**

(1) Recipient organizations may include

- a) branches of the State;
- b) contributory organizations of the State, if established for the purposes of providing social care or pursuing activities in health care or education;
- c) territorial self-governed units;
- d) legal entities established or founded by a territorial self-governed unit, if established or founded for the purposes of providing social care or pursuing activities in health care or education; or

e) other legal entities if

1. they have not been formed for entrepreneurial purposes;
2. they are active in the area of social care services, health care or education;
3. they have been pursuing activities allowing for the use of counterfeit goods for humanitarian purposes continuously for no less than 2 years; and
4. they have no outstanding payments.

(2) Recipient organizations must comply with the conditions pursuant to paragraph 1 above throughout the time of their handling of counterfeit goods.

Section 45

**Obligations of recipient organizations  
when handling counterfeit goods**

In the event of free-of-charge transfers, the General Customs Directorate and the recipient organization shall agree on the organization's obligation

- a) to adopt measures preventing any misuse of counterfeit goods and their re-admission to the market;
- b) to use the counterfeit goods solely for the agreed humanitarian purposes.

Section 46

**Alteration of counterfeit goods  
transferred for humanitarian  
purposes**

(1) Subject to the conditions agreed upon the free-of-charge transfer of counterfeit goods, the recipient organization shall provide for the altering of the counterfeit goods at its own expense.

(2) For the purposes of this Act, altering counterfeit goods shall be understood to mean, without limitation, the removal of trademarks or geographic descriptions from the counterfeit goods and the destroying thereof.

Section 47

### **Records of counterfeit goods**

(1) Recipient organizations shall keep continuous records of counterfeit goods.

(2) Recipient organizations shall keep the entries in the records of counterfeit goods for a period of 3 years from the end of the calendar year in which a document had been issued based on which the entry in the records of counterfeit goods had been made, however, no more than 10 years from the date of the first entry in the counterfeit goods records.

#### Section 48

### **Checking recipient organizations' compliance with their obligations and the consequences of any violation**

(1) Customs Administration authorities check whether or not recipient organizations comply with their obligations under this Act as well as the obligations agreed upon the free-of-charge transfer of counterfeit goods.

(2) Upon the recipient organization's violation of the obligation pursuant to paragraph 1, the General Customs Directorate may withdraw from the legal act constituting the free-of-charge transfer of counterfeit goods, with effect from the date of receipt of such withdrawal notice by the recipient organization.

(3) If the General Customs Directorate withdraws from its legal act pursuant to paragraph 2, counterfeit goods may be again transferred to such a recipient organization no sooner than upon expiry of 2 years from the withdrawal.

## **PART SIX COMMON PROVISIONS**

#### Section 49

### **Reimbursement of costs**

(1) If a person becomes obliged to cover costs incurred by a Customs Administration authority under this Act or under the EU Regulation, the customs authority shall assess the amount of these costs provided they amount to no less than CZK 100.

(2) The reimbursement of costs pursuant to paragraph 1 is payable in 30 days of the date the decision on the amount thereof is notified to the obligated person.

(3) The reimbursement of costs pursuant to paragraph 1 can be assessed within no more than 1 year from the end of the calendar year in which the customs authorities acquired knowledge thereof, however, no later than in 3 years from the end of the calendar year in which the costs arose.

#### Section 50

### **Suspensory effect of appeal**

Appeals against decisions of the Customs Administration authorities under this Act shall have no suspensory effect, save for appeals against decisions on administrative delicts or decisions to confiscate a thing.

#### Section 51

### **Objection against the detention of goods or the suspension of their release**

(1) Declarants or persons whose goods have been detained or in relation to whom release of their goods has been suspended may file an objection against the intervention of the customs office consisting in the detaining of goods or suspending the release thereof in accordance with this Act, within 5 working days, or in case of perishable goods within 3 working days, of the notice of detention or suspension of release. Wasting of the time-limit cannot be excused.

(2) Objections are filed with the customs office detaining or suspending the release of goods.

(3) The objections have no suspensory effect.

(4) The director of the customs office shall decide on the objection without unnecessary delay. Appeals against decisions on objections are not admissible.

#### Section 52

### **No outstanding payments**

For the purposes of this Act, persons having no outstanding payments shall be understood to mean persons with no record of arrears kept with the Financial Administration authorities of the Czech Republic or the Customs Administration authorities, save for outstanding payments where deferred payment or payment via instalments is permissible.

## Section 53

**Co-operation with authorities competent to carry out supervision under the Consumer Protection Act**

(1) Subject to the fulfilment of the conditions for returning of the goods pursuant to Sect. 15(4)(a) through (c) or Sect. 16(4)(a) and (b), the customs office shall inform the authority competent to carry out supervision under the Consumer Protection Act of

- a) the date of detention of the goods;
- b) the quantity and nature of the goods;
- c) the identification data of the person whose goods have been detained; and
- d) facts substantiating the detaining of the goods.

(2) The authority competent to carry out supervision under the Consumer Protection Act may inform the customs authority within 10 working days of having received notice pursuant to paragraph 1 above that the detained goods may be used as evidence in the proceedings on the violation of consumer protection laws.

(3) Subject to the customs office receiving notice pursuant to paragraph 2 and subject to fulfilling further conditions for the returning of goods to the person whose goods had been detained, the customs office shall pass the goods to the authority competent to carry out supervision under the Consumer Protection Act for further procedure. The customs office shall draw a record in respect of such a procedure.

**PART SEVEN CLOSING PROVISIONS**

## Section 54

**Delegating provisions**

The Ministry of Finance shall stipulate by decree

- a) the essential elements and the sample form of applications for the adoption of Internal Market Measures;
- b) the list of prerequisites allowing for the adoption of an Internal Market Measure;
- c) the list of prerequisites allowing for the adoption of an Internal Market Measure beyond the scope of particular detention of goods;

- d) the essential elements and sample form of an application for the extension of the time-limit in which Customs Administration authorities are to adopt Internal Market Measures;
- e) the essential elements and the sample form of an application for a change in the Internal Market Decision;
- f) the method and form of keeping records of counterfeit goods.

## Section 55

**Transitional provisions**

(1) Measures adopted on the basis of decisions approving applications for the adoption of measures implemented by customs authorities that were issued prior to the effective date hereof shall be adopted by the customs office in accordance with this Act within the time-limit set out in the respective decisions.

(2) Proceedings to carry out supervision as part of consumer protection under Act No. 191/1999 Coll., On measures relating to import, export and re-export of goods infringing certain intellectual property rights and on the amendments to certain other legislation, initiated prior to the effective date hereof, shall be concluded pursuant to Act No. 191/1999 Coll., in the wording effective prior to the effective date of the present Act.

(3) Upon violation of any obligation under Act No. 191/1999 Coll. prior to the effective date hereof, the proceedings on administrative delicts shall be governed by Act No. 191/1999 Coll., in the wording effective prior to the effective date of the present Act.

(4) Proceedings on administrative delicts under Act No. 191/1999 Coll. that were initiated prior to the effective date hereof and that have not been concluded upon a final judgement by the effective date hereof, shall be concluded pursuant to Act No. 191/1999 Coll., in the wording effective prior to the effective date of the present Act.

(5) Proceedings to assess the reimbursement of costs under Act No. 191/1999 Coll. that were initiated prior to the effective date hereof shall be concluded pursuant to Act No. 191/1999 Coll., in the wording effective prior to the effective date of the present Act.

## Section 56

### Repealing provisions

The following provisions are repealed:

1. Act No. 191/1999 Coll., On measures relating to import, export and re-export of goods infringing certain intellectual property rights and on the amendment to certain other legislation;
2. Part Nine of Act No. 121/2000 Coll., On copyrights, copyright-related rights and on the amendment to certain legislation (Copyright Act).
3. Part One of Act No. 260/2002 Coll., amending Act No. 191/1999 Coll., On measures relating to import, export and re-export of goods infringing certain intellectual property rights and on the amendment to certain other legislation, as amended by Act No. 121/2000 Coll., Act No. 586/1992 Coll., On income tax, as amended, Act No. 593/1992 Coll., On reserves for the assessment of income tax base, as amended, and Act No. 569/1991 Coll., On the Land Fund of the Czech Republic, as amended.
4. Act No. 255/2004 Coll., amending Act No. 191/1999 Coll., On measures relating to import, export and re-export of goods infringing certain intellectual property rights and on the amendment to certain other legislation, as amended.
5. Act No. 173/2007 Coll., amending Act No. 191/1999 Coll., On measures relating to import, export and re-export of goods infringing certain intellectual property rights and on the amendment to certain other legislation, as amended.
6. Part Fifty Eight of Act No. 41/2009 Coll., On the amendment to certain legislation in connection with the adoption of the Criminal Code.
7. Part One of Act No. 219/2011 Coll., amending Act No. 191/1999 Coll., On measures relating to import, export and re-export of goods infringing certain intellectual property rights and on the amendment to certain other legislation, as amended, Act No. 64/1986 Coll., On the Czech Commerce Inspection, as amended, and Act No. 634/1992 Coll., On consumer protection, as amended.
8. Part Thirty Seven of Act No. 458/2011 Coll., On the amendment to certain legislation related to the establishing of a single collecting point and on further amendments to tax and insurance legislation.
9. Part Fourteen of Act No. 18/2012 Coll., amending certain legislation in connection with the adoption of the Act on the Customs Administration of the Czech Republic.

### PART EIGHT EFFECTIVENESS

#### Section 57

This Act enters into effect as at 1 January 2015.

by proxy **Jermanová**, in her own hand

**Zeman** in his own hand

**Sobotka** in his own hand