



### CHECKLIST OF ISSUES ON ENFORCEMENT<sup>1</sup>

#### UPDATED RESPONSES FROM THE REPUBLIC OF MOLDOVA

#### Civil and administrative procedures and remedies

(a) *Civil judicial procedures and remedies*

**1. Specify the courts which have jurisdiction over IPR infringement cases.**

Proceedings in courts	Civil order	Administrative order	Criminal order
1st instance	Riscani District Court/Chisinau Court of Appeal	District judges	District judges
Appeal	Court of Appeal	Court of Appeal	Court of Appeal
Recourse/review	Supreme Court of Justice	Supreme Court of Justice	Supreme Court of Justice

**2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?**

In order to achieve the right of citizen "free access to justice" enshrined in the Constitution of RM and protected by the European Convention on Human Rights and Fundamental Freedoms, procedural legislation of the Republic of Moldova places at right holders' disposal many procedural means to an effective defense, the persons being able to make various requests to the court.

The following persons shall have the right to institute proceedings against infringement of an exclusive right on IPO or a legitimate interest arising from the exclusive right:

- a) the holder of IPO;
- b) any person authorized to use OPI, particularly licensees;
- c) other natural or legal persons who represent the right holder.

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<sup>1</sup> Document IP/C/5.

At the same time, Art. 55 of Law No. 139 of 02.07.2010 on Copyright and Related Rights stipulate who may institute infringement proceedings;

(1) Any natural person or legal entity that have claims in respect of the use of an object of copyright, related rights or other rights protected by this Law shall have the right to institute proceedings in the competent court or shall inform other enforcement authority for the application of measures, procedures and remedies provided for in this chapter.

(2) Proceedings for infringement of copyright, related rights or other rights protected by this Law may be initiated by the following persons or legal entities:

(a) the right holders or authorities entitled to protect their rights;

(b) other persons authorized to use such rights, in particular licensees;

(c) organizations for collective management of copyright or related rights;

(d) professional defense organizations and other representatives of right holders and licensees.

(3) The courts and other competent authorities shall apply the measures, procedures and remedies provided for in this chapter in a fair and equitable manner in a way that they are not unnecessarily complicated or costly and do not entail unnecessary time-limits or unwarranted delays. The application of these measures, procedures and remedies shall be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

According to Article 75 of the Code of Civil Procedure of the Republic of Moldova No. 225-XV of 30.05.2003 (hereinafter CCP RM):

(1) In the civil procedure, natural persons can defend their personal interests through a lawyer or trainee lawyer. Personal participation in the procedure does not make the natural person lose his right to have a lawyer.

(2) Procedures of the legal persons are supported in court by their management bodies, acting within the powers conferred by law, other regulations or their instruments of incorporation and by other authorized employees of the legal person, by lawyers and trainee lawyers.

(3) The head of the organization confirms his powers by the documents submitted to the court certifying his function or quality of service or, where appropriate, by the constitutional documents. In the event of dissolution or liquidation of the legal person, its interests may be represented by the office administrator or liquidator, appointed under the law.

(4) The procedural acts performed by the representative within his powers are binding on the person represented to the extent that they might be carried out by itself. The fault of the representative is equivalent to the fault of the party.

**3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?**

The judicial authority that has the power to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control, are the courts established in item 1 of this questionnaire.

According to the provisions of Art.119 CCP RM

(1) In a civil procedure the evidence is collected and presented by the parties and other participants in the procedure. If in the process of gathering evidence appear difficulties, the court

may contribute, at the request of the parties and other participants in the procedure, to the gathering and presentation of evidence required.

(2) In the evidence claiming request must be specified the evidence and circumstances that could be confirmed or refuted by the evidence, the causes that prevent the acquisition of evidence, its location. The court (judge) may issue, if necessary, at the request of the parties or other participants in the procedure, an order to obtain the evidence. The person who has the claimed evidence submits it directly to the court or serves it to the person who has the order to present it in court.

(3) Persons who do not have the necessary evidence or are not able to present them within the time-limit established by the court are obliged to inform the court within 5 days as from the date of receipt of its request, indicating the reasons for failure of evidence. In case of non-receipt of a notice and a declaration by the court for non-compliance with the order to present evidence as unfounded, the guilty persons who are not participants in the procedure shall be punished by a fine of up to 10 conventional units. Application of the fine does not exempt persons who hold the claimed evidence from the obligation of its adduction in court".

#### **4. What means exist to identify and protect confidential information brought forward as evidence?**

According to the provisions of Art.127<sup>1</sup> CCP RM "(1) Any person whose intellectual property rights have been violated may petition the court, until the institution of proceedings in court, as well as during the proceedings, the application of provisional measures to ensure the evidence, pending protection of information that constitutes a trade secret or whose confidentiality needs to be ensured under the legislation in force and provided that a security is filed".

Article 1 of the Law on Trade Secret stipulates

"(1) Trade secret shall mean the information which is not state secret, pertaining to production, technologies, administration, financial activity and other activity carried out by the economic agent, the disclosure (communication, leakage) of which may prove injurious to the economic agent's interests.

2. Information constituting a trade secret is the property of the entrepreneur's agent, or is in the possession, use or at the disposal of the latter, within the limits specified by the agent in compliance with the legislation".

Article 13 of the same Law stipulates that:

(1) In the process of judicial debate of various disputes initiation of the court, arbitration and third parties in trade secret objects shall only be allowed to the extent that it relates directly to the essence of the dispute, in which the economic agent is presented as complainant or defendant. Upon presentation of evidence shall be taken into account the legitimate interests of the parties relating to the protection of their industrial and trade secrets.

#### **5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:**

- **Injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other withdrawal from commercial channels of infringing goods and materials/implements for their production;**
- **any other remedies.**

National legislation provides remedies ordered by the court where it is found the infringement of IPO.

Thus, according to Article 69 of Law No. 38-XVI/2008 on the Protection of Trademarks (hereafter Law No. 38/2008):

(1) Having established that an infringement of rights has taken place, a court may, at the applicant's request, order measures to be taken in relation to the goods infringing the rights in a trademark and, in appropriate cases, in relation to the materials and equipment which were used in creating and manufacturing these goods. Such measures shall include in particular:

(a) temporary removal of goods from commercial circulation;

(b) final removal of goods from commercial circulation; or

(c) destruction of goods – where a trademark cannot be removed from an item without the item being destroyed, and also where the removal of a trademark is insufficient for the purposes of excluding the infringement of rights.

(2) The measures specified in paragraph (1) shall be carried out at the defendant's expense, apart from in cases where there are substantial grounds preventing this.

(3) When examining a request for the application of remedial measures, a court shall be governed by the principle of fairness, proportionality to the seriousness of the infringement committed and the prescribed means of protection, and shall also take into account the interests of third parties.

Art. 81 of Law No. 50-XVI/2008 on the Protection of Inventions (hereafter Law No. 50/2008):

(1) The court shall have the authority, where an infringement is stated, to order, upon request of the plaintiff, taking of measures in respect of the goods found to be infringing the rights conferred by a patent application or a patent and, where appropriate, the materials and implements used for the creation and manufacture of such goods. Such measures may include, in particular:

a) provisional disposal of the infringing goods outside the channels of commerce;

b) final disposal of the infringing goods outside the channels of commerce; or

c) destruction of goods infringing the rights conferred by a patent application or a patent.

(2) The measures mentioned in paragraph (1) above shall be performed at the infringer's expense, unless this would be contrary to existing substantiated reasons.

(3) When examining a request for the application of remedial measures, a court shall be governed by the principle of fairness, proportionality to the seriousness of the infringement committed and the prescribed means of protection, and shall also take into account the interests of third parties.

Art. 65 of Law No. 161/2007 on the Protection of Industrial Designs (hereinafter Law No. 161/2007):

(1) Having established that an infringement of rights has taken place, a court may, at the request of the plaintiff, order measures to be taken with regard to goods that infringe rights in an industrial design and, in appropriate cases, to materials and equipment used to create and manufacture these goods. These measures shall include:

(a) temporary removal of the goods from commercial trading;

(b) permanent removal of the goods from commercial trading; or

(c) destruction – in cases where the industrial design cannot be removed from the article without the destruction of the article, and in cases where the removal of the industrial design would be inadequate to rectify the infringement of rights.

(2) The measures laid down in paragraph (1) shall be applied at the expense of the respondent, except in cases where there are serious grounds preventing this.

(3) In considering a request for the application of remedial measures, a court shall be guided by the principle of justice and shall ensure that the means of defense employed are proportionate to the seriousness of the infringements committed; it shall also take into account the interests of third parties.

Art. 60 of Law No. 139 of 02.07.2010 on Copyright and Related Rights stipulates that:

(1) Without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the competent judicial authorities may order, at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing copyright, related rights or other rights protected by this Law and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those goods. Such measures shall include:

- (a) recall from the channels of commerce;
- (b) definitive removal from the channels of commerce; or
- (c) seizure and destruction.

(2) The judicial authorities shall order that the measures mentioned in paragraph (1) of this article be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

(3) In considering a request for remedial measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

**6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?**

In item 3 of this questionnaire are referred cases when judicial authorities have the authority to order the infringer to inform the right holder of the identity of third parties involved in the production and distribution of goods or services found to be infringing and of their channels of distribution.

**7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?**

Cases concerning the indemnification of defendants wrongly enjoined are the following public authorities and/or officials liable in such a situation and "remedial measures" are applicable to them:

According to the provisions of Art.119 CCP RM:

(1) In a civil procedure the evidence is collected and presented by the parties and other participants in the procedure. If in the process of gathering evidence appear difficulties, the court may contribute, at the request of the parties and other participants in the procedure, to the gathering and presentation of evidence required.

(2) In the evidence claiming request must be specified the evidence and circumstances that could be confirmed or refuted by the evidence, the causes that prevent the acquisition of evidence,

its location. The court (judge) may issue, if necessary, at the request of the parties or other participants in the procedure, an order to obtain the evidence. The person who has the claimed evidence submits it directly to the court or serves it to the person who has the order to present it in court.

(3) Persons who do not have the necessary evidence or are not able to present them within the time-limit established by the court are obliged to inform the court within 5 days as from the date of receipt of its request, indicating the reasons for failure of evidence. In case of non-receipt of a notice and a declaration by the court for non-compliance with the order to present evidence as unfounded, the guilty persons who are not participants in the procedure shall be punished by a fine of up to 10 conventional units. Application of the fine does not exempt persons who hold the claimed evidence from the obligation of its adduction in court".

**8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

Article 85 CCP RM sets the exemptions from state duty

(1) The following shall be exempted from state duty for examination of civil cases:

a) complainants in actions:

- arising from copyright and related rights, the right to inventions, industrial designs, plant varieties, topographies of integrated circuits and other intellectual property rights;

j) State Agency on Intellectual Property - if challenging its decrees and decisions on the procedure for registration of intellectual property objects.

As to the provisions governing the length of judicial proceedings, we can mention that the national legal framework, i.e. CCP RM in Art. 4 "Tasks of civil legal consists in fair judgment and in the due time of civil cases on defense of violated or contested rights, of freedoms and legitimate interests of natural persons and legal entities and their associations, of public authorities and other persons who are subjects of legal civil, family, labor and other legal relations, as well as the interests of state and society, strengthening the legacy and the rule of law and preventing violations of the law.

Article 192 entitled "Terms of judging civil causes" states that civil cases are judged in the first instance in reasonable time.

However, from the practice of AGEPI (in actions in which it participates) the medium term of examination of causes in the field of IPO by the national courts is 1.5-3 years.

*(b) Administrative procedures and remedies*

**9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.**

**Provisional measures**

*(a) Judicial measures*

**10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.**

The procedure for implementing the provided measures to secure evidence shall be conducted by the court or other competent authorities in accordance with the relevant provisions of the Code of Civil Procedure. Measures to secure evidence will be carried out with the

participation of a court bailiff, who will be assisted by a representative of AGEPI and a police officer.

Thus Article 127<sup>1</sup> of the CCP provides "Securing of evidence in the case of intellectual property objects

(1) Any person whose intellectual property rights have been infringed may request from the court, until an action is brought before the court, and during the proceedings, the application of provisional measures for securing of evidence, subject to the protection of information that constitutes a trade secret or whose confidentiality needs to be provided according to the provisions of the legislation in force and provided that a security is lodged.

Also, in the context of Art. 68 of Law No. 38/2008, Art. 64 of Law No. 161/2007, Art. 80 of Law No. 50/2008, measures are set out to ensure the proceedings for infringement of rights. Thus, having established the actual or imminently threatening infringement of the rights in the IPO, the court may, at the request of the right owner, institute certain measures to ensure the proceedings for infringement of rights against the defendant and/or intermediaries, such as to:

(a) take a decision to temporarily prohibit the particular activities constituting the infringement of the rights in a trademark, or to allow such activities, subject to the provision of a security which is sufficient to provide compensation for the harm done to the right owner;

(b) seize the property suspected of infringing the rights in a trademark, industrial design in order to prevent it from being introduced into the channel of commerce;

(c) seize any property of the infringer, including blocking bank accounts, supplying bank, finance or commercial documentation, if the infringement occurs in the commercial sphere and a risk of non-compensation for harm exists.

(2) Measures to guarantee rights may be established in accordance with Article 64 of Law No. 38/2008, Art. 60 of Law No. 161/2007 and Art. 75 of Law No. 50/2008 without hearing a defendant, where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence to be destroyed. The decision of the court shall be communicated immediately to the party affected.

Art. 127<sup>3</sup> Cancellation of measures to secure evidence

(1) Measures to secure evidence shall be considered void if the complainant fails within 20 working days to bring before the court an action for infringement of rights.

(2) Measures to secure evidence shall be canceled, on request:

a) as a result of any prejudicial action or inaction of the applicant;

b) if it is found that there is no violation or attempted violation of a right to intellectual property objects;

c) under a judgment;

d) in other cases provided by law.

(3) The period referred to in paragraph (1) is a limitation period and can not be restored".

#### **11. In what circumstances may such measures be ordered *inaudita altera parte*?**

According to Article 177(2) CCP, measures to secure evidence may be established without the defendant to be heard where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence to be destroyed. The decision of the court shall be communicated immediately to the party affected.

**12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.**

The main procedures for the initiation, ordering and maintenance in force of provisional measures are stipulated in item 10 of this questionnaire.

Regarding the relevant time-limits and safeguards to protect the legitimate interests of the defendant these are stipulated in the CCP RM.

**13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

The provisions governing the length and cost of proceedings are mentioned in item 8 of this questionnaire.

*(b) Administrative measures*

**14. Reply to the above questions in relation to any administrative provisional measures.**

**Special requirements related to border measures**

**15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?**

According to Art. 301(1) of Customs Code of the RM, border measures shall apply with a view to protect intellectual property to goods liable of infringing an intellectual property right, which:

- a) are brought into or out of the customs territory of the Republic of Moldova;
- b) are declared to customs authorities to be placed under a definitive or suspensive customs procedure;
- c) are under customs supervision in any other situations;
- d) are found during customs checks on goods entering or leaving the country not having been declared;
- e) are entered into state ownership by confiscation or abandonment to the State's advantage.

Intellectual property border protection measures shall not apply to:

- goods which are the object of a protected intellectual property right and which have been manufactured with the consent of the right holder, but without his consent are in one of the situations referred to in paragraph (1). – *According to Art. 301(2) Customs Code of the RM;*



- goods covered by paragraph (2), manufactured or protected by another intellectual property right, in other terms than those agreed with the right owner.) – *According to Art. 301(3) Customs Code of the RM;*
- goods intended for personal use, moved across the customs border of the Republic of Moldova by natural persons. ). – *According to Art. 301(4) Customs Code of the RM.*

**16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?**

The current mechanism for applying border protection measures in respect of intellectual property objects consist of the following steps:

A. Initiation of the procedure – by submission to the Customs Service, by the right holder, of the application for customs action and its examination – *According to Art. 302<sup>1</sup> Customs Code of the RM;*

B. Acceptance of the application for customs action and setting of the action period. – *According to Art. 302<sup>1</sup> Customs Code of the RM;*

On the basis of accepted applications for customs action, the Customs Service manages the "Register of Intellectual Property Objects". Register of Intellectual Property Objects to which border protection is applicable can be found on the website of the Customs Service (<http://www.customs.gov.md/index.php?id=653>).

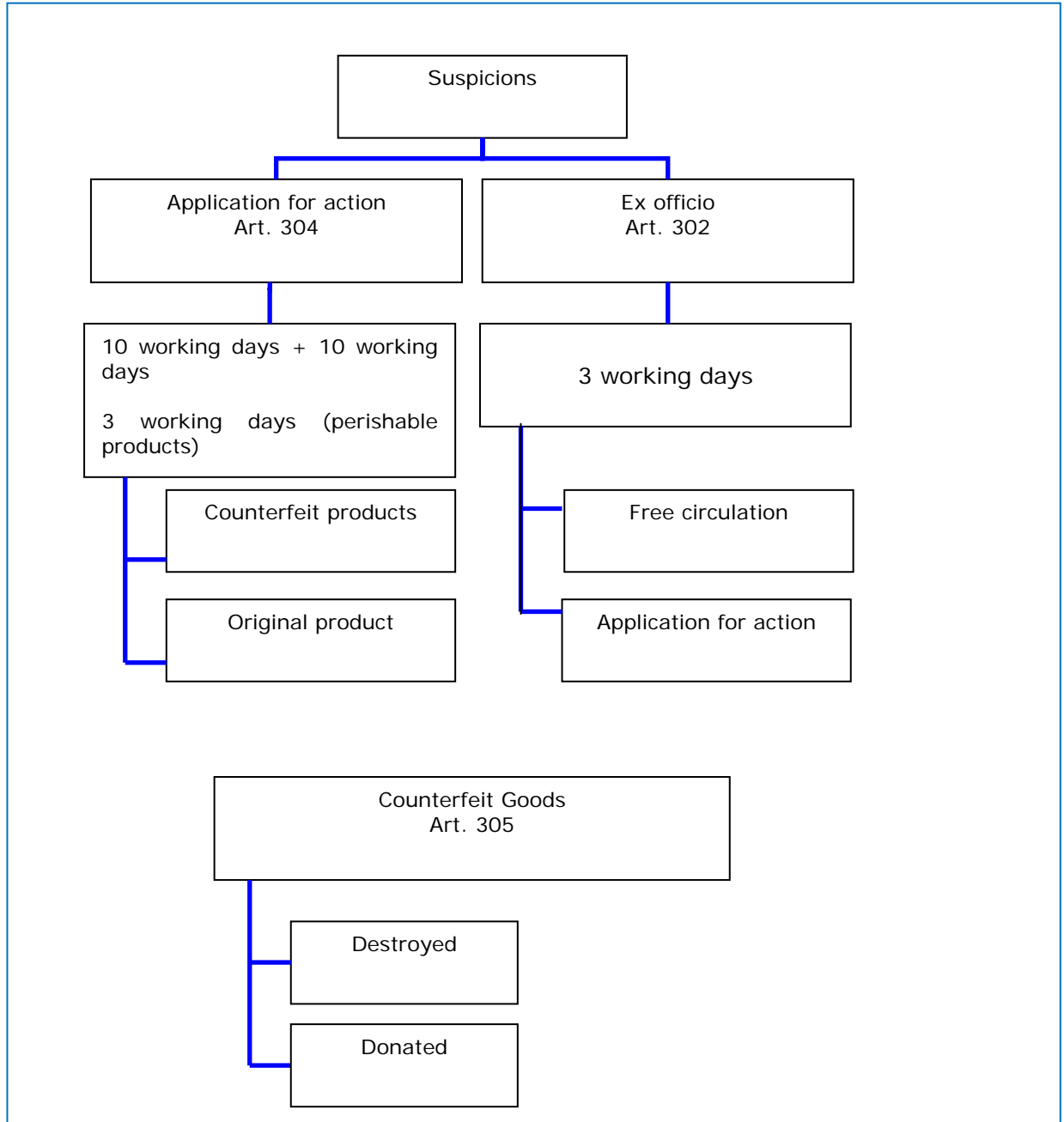
C. Application of protection measures (ex-officio procedure) through the detention of goods suspected of infringing intellectual property rights and/or suspension of customs clearance with the notification of right holder and the declarant/consignee of the goods in order to initiate proceedings in the courts. These measures can be applied at the initiative of the customs authority if there are reasonable grounds to believe that the goods infringe the intellectual property rights. If the right holder does not sue within the established time-limit, the customs authority shall order the release of goods and/or the grant of customs release, provided that the other statutory provisions are met. - *According to Art. 302 Customs Code of the RM;*

D. Application of protection measures (on the basis of the application for action) through the detention of goods suspected of infringing intellectual property rights and/or suspension of the customs clearance with the notification of the right holder and the declarant/consignee of the goods in order to initiate proceedings in the courts . These measures can be implemented at the initiative of the customs authority if there are reasonable grounds to believe that the goods infringe the intellectual property rights. If the right holder does not sue within the time-limit, the customs authority shall order the release of goods and/or the grant of customs release, provided that the other statutory provisions are met. – *According to Art. 304 Customs Code of the RM;*

E. Application of measures to goods found to infringe an intellectual property right:

- destruction, in accordance with the legal provisions;
- which have the effect of depriving the persons concerned of the actual economic benefits of the transaction, except for cases when simply removing the marks applied on counterfeit goods is not considered as that would effectively deprive the persons concerned of the economic benefits of the transaction;
- free delivery to public institutions, including from the social protection system, public associations or humanitarian foundations, sports associations or clubs, state

educational institutions, natural persons who have suffered from natural disasters, if there is written consent of the owner of the intellectual property right and if goods are fit for consumption or use by the natural persons under the condition of not being marketed.



According to Art. 302<sup>1</sup> Customs Code of the RM, the application for action by the customs authority shall be lodged to the Customs Service by the right holder in writing on paper or in electronic form, according to the form established by the Customs Service.

The application must contain the following mandatory information:

- a) data identifying the right holder;

b) an accurate and detailed technical description of the original goods, data about the place where they were produced, about their manufacturer and data about other right holders;

c) any specific information the right holder may have concerning the way of infringement of his right;

d) the name and address of the contact person appointed by the right holder.

The right holder will provide, in so far as it is known to him, any other information, such as:

a) the pre-tax value of the original goods;

b) the location of the goods or their destination;

c) particulars identifying the consignment or packages;

d) the date of arrival or departure of the goods;

e) the means of transport used;

f) the country or countries of production and the routes used;

g) the technical differences between the original goods and those suspected of infringing an intellectual property right;

h) the name and premises of the legal entities authorized to import, export or distribute goods.

To the application shall be obligatorily attached the following documents:

a) the declaration of the right holder, of a prescribed form, through which he assumes his responsibility if goods are found not to infringe an intellectual property right and the obligation to bear all costs incurred under this chapter;

b) the proof that he is the owner of the intellectual property.

The Customs Service shall notify the owner in writing of the acceptance or rejection of the application or the fact that it is subject to examinations or of the need for presentation of further information within 30 days of its receipt.

The right holder shall not be charged royalties/fees to cover the administrative costs occasioned by the processing of the application for action.

Against the decision to reject the application for action by the customs authority the right holder may lodge a complaint with the competent court.

According to Article 304 of the Customs Code of RM, on the basis of the application for action accepted, the customs authority shall issue a decision to detain goods suspected of infringing an intellectual property right and/or suspend the customs clearance, notifying in writing about it, according to the form established by the Government, both the right holder and the declarant/consignee of the goods. The customs authority shall immediately inform the Customs Service about the measures taken.

Where customs authorities have detained and/or suspended the release of goods suspected of infringing an intellectual property right, the goods may be destroyed without following the procedure laid down in paragraph (7) of Article 304 of the Customs Code of RM, if the following conditions are met:

a) the right holder informs the customs authorities in writing within 10 working days, or three working days in the case of perishable goods, of receipt of the notification provided above, that detained goods infringe an intellectual property right;

b) the right holder submits to the customs authority, within the period referred to in subparagraph a), the written agreement of the declarant/consignee of the goods to abandon the goods for destruction; this agreement may be submitted directly to the customs authority by the declarant/ consignee of the goods, the condition in question shall be deemed to be fulfilled when the declarant/consignee of the goods has not opposed in writing the detention and/or suspension of the customs clearance or destruction of the goods within the expressly prescribed period;

c) the customs authority obligatorily takes samples of the goods to be destroyed, according to customs regulations, for keeping in such conditions that they constitute evidence in court, as appropriate;

d) the destruction is carried out, unless otherwise specified in national legislation, at the expense and under the responsibility of the right holder.

Where the declarant/consignee of the goods contests the measures for detention of goods and/or for suspension of customs clearance or objects to the destruction of the goods, the procedure laid down in paragraph (7) of Article 304 of the Customs Code of RM shall apply.

With a view to establishing whether an intellectual property right has been infringed, the customs authority shall inform the right holder, at his written request and if known, of the names and addresses of the declarant/consignee of the goods and the country of origin and shipment of goods suspected of infringing an intellectual property right.

The holder of the intellectual property right who receives the information pursuant to paragraph (4) of Article 304 of the Customs Code RM can only use it for the purposes of applying the provisions of paragraph (2) of Article 304 of the Customs Code RM. Use of such information for purposes other than those expressly provided attracts the liability of the right holder and the cancellation of the customs authority's action.

The customs authority may allow the parties to inspect the goods detained or whose clearance has been suspended, and to take samples to determine, through analysis or testing, whether goods infringe intellectual property rights. If the samples are not destroyed as a result of the analysis, the right holder shall return them as much as possible before the release of the goods and/or the grant of the release into free circulation. Costs and liabilities relating to the analysis of these samples shall be borne by the right holder.

If, within 10 working days of receipt of the notification of suspension of release or of detention, the right holder does not institute proceedings against the declarant/consignee of the goods and if the provisions of par. (2) and (3) of Art. 304 of the Customs Code RM are not applicable, customs authority shall order the release of goods and/or the grant of the release into free circulation, provided that the other statutory provisions are met.

In duly justified cases, at the written request of the right holder, the Customs Service may extend by a maximum of 10 working days the period provided in par. (7), and in the cases of perishable goods the period of 3 working days, referred to in paragraph (10) of Article 304 of the Customs Code RM, may not be extended.

If suing the declarant/consignee of the goods, the holder of the intellectual property right shall immediately inform the customs authority of the measures adopted and the customs authority shall detain the goods until the date on which judgment remains final and irrevocable.

The holder of the intellectual property right shall, within 15 days of the termination of the protection of intellectual property right, and in the case of other related changes that occur in the Republic of Moldova, be obliged to inform the Customs Service about it. Otherwise, the holder will bear all the consequences to be derived from his inaction, being liable to the persons involved.

Customs destinations destruction and abandonment for the benefit of the state are governed by the Customs Code of the RM, the Regulation on customs destination "destruction" approved by the Customs Service Order No. 230-A of 28.06.2007, and by the Regulation implementing the customs destinations provided by the Customs Code of RM, approved by Government Decision No. 1140 of 02.11.2005.

**17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?**

According to Art.307(3) of the Customs Code RM, the burden of costs for storage and manipulation of goods under customs supervision and the costs for destruction or other related or similar costs is imposed on the holder of the intellectual property right or the person importing them.

**18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to ex officio action?**

Article 302 of the Customs Code RM. Measures prior to the lodging of an application for action by the customs authority

(1) Where the customs authority, in the course of action in one of the situations referred to in Article 301 and before an application has been lodged by a right holder or accepted, has sufficient grounds for suspecting that goods infringe an intellectual property right, it may suspend the release of the goods or detain them for a period of three working days. The customs authority shall inform the right holder and the declarant/consignee of the goods, if the latter are known, of the measure taken, according to a model established by the Customs Service. The 3-day period begins to run from the date of receipt of notification by the right holder.

(2) If, within the period specified in par. (1), the right holder does not apply for action, the customs authority shall suspend the measure for detention of goods and/or shall perform their clearance, provided that the other legal requirements are met.

(3) In the case referred to in par (1), the customs authority may, before informing the right holder of the possible infringement of an intellectual property right, ask the right holder to provide it with any information on the protected right.

**19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.**

The respective provisions are set forth in item 5 of this questionnaire.

However, Art. 307 of the Customs Code of RM prescribe the liability of customs authorities and right holder.

Thus, acceptance of an application for action by the customs authority does not entitle the right holder to request the customs authority a compensation or any damage, in the event where the goods referred to in Article 301 of the Customs Code of RM were not detected by the customs authority.

Detention of goods suspected of infringing an intellectual property right and/or suspension of customs clearance shall not attract liability of customs authority to persons who can claim a right in the goods referred to in Article 301 of the Customs Code of RM to repair any damage caused by them as a result of customs action.

The burden of costs for storage and manipulation of goods under customs supervision and the costs for destruction or other related or similar costs is imposed on the holder of the intellectual property right or the person importing them.

In the case of disclosure, contrary to the law, of the information referred to in Article 304(5) of the Customs Code of RM, customs officers may be made disciplinarily responsible in accordance with the legislation in force.

## Criminal Procedures

### **20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.**

Article 29 of the Criminal Procedure Code of the Republic of Moldova (General Part) No. 122-XV of 14.03.2003 (hereinafter CPC RM) entitled "Courts that dispense justice in criminal cases" prescribes that:

(1) In criminal cases, justice is dispensed by the Supreme Court of Justice, the courts of appeal and judges according to their competence provided by this Code.

(2) For certain categories of criminal cases, specialized courts or colleges or panels of judges may be established.

(3) As part of the court with judicial authority and with its own functions in a criminal proceeding, investigative judges shall work at the criminal investigation stage".

### **21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?**

Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002 (hereinafter CC RM) establishes the criminal liability for the following offenses:

Art.185<sup>1</sup>. Infringement of copyright and related rights

1) Infringement of copyright and related rights, if it is in a large scale, committed by:

a) reproduction of works or objects of related rights in the course of business activity tangential intellectual to the intellectual activity in the field of copyright and related rights, particularly in the field of literature, art and science, for marketing purposes or offering for sale, import, export, and storing, transporting of copies of works or phonograms for the purposes mentioned, or any other form of exploitation of objects of copyright and related rights in order to obtain profit without the consent of the right holder;

b) rental, exchange or otherwise making available to third parties free of charge or for consideration, and storage for purposes specified or other use of copies of works or phonograms, in any manner and in any form, without marking and without control marks and without holding, at the time of inspection, author contracts concluded with right holders;

c) selling or offering for sale, rental, importation or storage of technical equipment or their components intended to facilitate access to broadcasts of broadcasting organizations communicating by air, cable or satellite in interactive mode, including through the Internet;

d) indication on the copies of works or phonograms of false information about the membership and the limits on the exercise of copyright and related rights, as well as any other information that may mislead the beneficiary;

e) improper application of control marks other than those for physical media specified in the annexes to the application for issuance of control marks, on copies of works or phonograms used without the consent of the right holder;

f) modification, removal from copies of works or phonograms of the symbols and signs of protection of copyright and related rights, indicated by the holder of those rights; removal from copies of works or phonograms of the information on management of copyright and related rights; removal from copies of works or phonograms of the technical means of protection of copyright and related rights;

g) appropriation of paternity or co-paternity under constraint shall be punished with a fine from 800 to 1000 conventional units or by unpaid community work from 180 to 240 hours and the legal entity shall be punished with a fine from 2000 to 4000 conventional units with the deprivation of the right to carry out certain activities for a period from 1 to 5 years.

(2) Illegal marking, marketing, import, export, transport or storage of control marks, their forgery, which caused large damages,

shall be punished with a fine from 2000 to 4000 conventional units or with unpaid community work from 180 to 240 hours and the legal entity shall be punished with a fine from 2000 to 6000 conventional units with the deprivation of the right to carry out certain activities for a period from 1 to 5 years.

(3) The actions referred to in par. (1) and (2) committed:

a) by two or more persons;

b) by an organized criminal group or a criminal organization;

c) under physical or mental constraint;

d) in extremely large proportions,

shall be punished with a fine from 4000 to 5000 conventional units or by imprisonment of 3 to 5 years, with a fine applied to the legal entity, in the size from 8000 to 10000 conventional units with the deprivation of the right to carry out certain activities for a period from 1 to 5 years or liquidation of the legal entity.

Art 185<sup>2</sup>. Infringement of industrial property rights

(1) Dissemination of information on an invention, utility model, industrial design, plant variety, topography of integrated circuit without the author's (creator's) consent or the consent of his successor in right, before the official publication of data from the application for registration, by a person to whom such information was entrusted or became available otherwise, as well as the fraudulent appropriation by a third party of the authorship to an invention, utility model, industrial design, plant variety, topography of integrated circuit, or constraint to co-authorship, which caused large-scale damages

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours.

(2) Use without the consent of the owner of a protected trademark or sign which, due to the identity or similarity with the registered trademark and the identity or similarity of the goods or services covered by the sign and trademark, generates the risk of consumer confusion, application of the sign on goods or packages, as well as use of this sign as packaging in the case of three-dimensional trademarks, offering the products under this sign for sale or selling, or their storage for this purpose, or, where appropriate, offering or providing services under this sign, import or export of goods under this sign, use of the sign for advertising purposes, reproduction, storage or sale of the designation for the above-mentioned purposes, and inciting third persons to carry out such actions, which caused large-scale damages,

shall be sanctioned with a fine from 500 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity, as well as deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(2<sup>1</sup>) Direct or indirect commercial use of an appellation of origin/geographical indication registered for products not covered by the registration so far as those products are comparable to those registered under this name or insofar this usage allows to take advantage of the reputation of the protected name, and usurpation, imitation or evocation of the associations related to a registered appellation of origin / geographical indication, even where the true origin of the goods is indicated or where the protected indication is used in translation or accompanied by an expression such as "kind", "type", "style", "imitation" or other similar expressions, false or misleading indication to the provenience, origin, nature or essential qualities of the product listed on the product or on its package, in advertising, as well packaging use of a recipient likely to create a

wrong impression regarding the origin of product, unfolding of the practices likely to mislead the consumer as to the true origin of the product and inciting third parties to perform these actions, which caused large-scale damages,

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity and deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(2<sup>2</sup>) Any practice liable to mislead the consumer as to a designation of traditional specialty guaranteed, any imitation of a registered and reserved designation pursuant to the legislation on the protection of geographical indications, appellations of origin and traditional specialties guaranteed, any commercial use of the product names that could be confused with designations of the traditional specialties guaranteed registered with reservation of the name according to the legislation on the protection of geographical indications, appellations of origin and traditional specialties guaranteed, any abusive misuse or misleading usurpation of the term "Traditional Specialty Guaranteed" and its associated national symbol, and inciting third parties to perform such actions, which caused large-scale damages,

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity and deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(2<sup>3</sup>) Illegal use under par. (2<sup>1</sup>) of an unregistered appellation of origin/geographical indication, protected under bilateral agreements to which Republic of Moldova is party, and inciting third parties to perform such actions, committed at large scale,

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity and deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(3) Manufacture, importation, exportation, transportation, offering for sale, sale, other methods of commercial distribution or storage for such purposes of the product, use of processes that constitute inventions or utility models, or incorporate the object of a protected invention or utility model that require, according to the legislation, authorization from the right holder, conducted without such authorization and inciting third parties to perform such actions, which caused large-scale damages,

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity and deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(4) Manufacture, importation, exportation, offering for sale, sale, other methods of commercial distribution or storage for such purposes of a product obtained by using a protected industrial design, if this product is entirely or substantially a copy of the protected industrial design that require, according to the legislation, authorization from the right holder, conducted without such authorization and inciting third parties to perform such actions, which caused large-scale damages,

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity and deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(5) Production, re-production, conditioning aimed at propagation, offering for sale, selling or other forms of marketing, import, export, stocking for such purposes of the plant variety material that require, according to the legislation, authorization from the right holder, conducted without such authorization and inciting third parties to perform such actions, which caused large-scale damages,

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity and deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.



(6) Reproduction in the whole or a part of a topography of integrated circuit, import, export, offering for sale, selling or distribution in any other form for commercial purposes of a topography of integrated circuit that require, according to the legislation, authorization from the right holder, conducted without such authorization and inciting third parties to perform such actions, which caused large-scale damages,

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity and deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(7) Actions mentioned in paragraphs (1), (2), (2<sup>1</sup>), (2<sup>2</sup>), (2<sup>3</sup>), (3), (4), (5) and (6) committed:

b) by two or more persons;

c) by an organized criminal group or criminal organization;

d) under physical or psychological constraint;

e) in extremely large proportions

shall be sanctioned with a fine from 3000 to 5000 conventional units or imprisonment for a term from 3 to 5 years, with a fine ranging from 7000 to 10 000 conventional units imposed on the legal entity, as well as deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years, or its liquidation.

Article 185<sup>3</sup>. Intentionally false statements in intellectual property registration documents

Intentionally false statements, operation with intentionally false entries in intellectual property protection documents, as well as counterfeiting of documents needed for issuance of protection titles, drafting of intentionally false documents or intentional submission of documents that undermine the authority of the applicant of an intellectual property protection object

shall be sanctioned with a fine from 800 to 1000 conventional units or with unpaid community work from 180 to 240 hours, with a fine from 3500 to 5 000 conventional units imposed on the legal entity, as well as deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

Art. 246<sup>1</sup>: Unfair competition

Any act of unfair competition, including:

a) creation, by any means, of confusion with the competitor's enterprise, products or industrial or commercial activity;

b) dissemination, in the course of trade, of false statements discrediting the competitor's enterprise, products or business activity;

c) misleading the consumer as to the nature, manufacturing process, characteristics, usability and quantity of the competitor's goods;

d) use of the trade name or trademark in a manner that produces confusion with those lawfully used by another economic agent;

e) comparison, for advertising purposes, of goods produced or marketed by one economic agent with the goods of other economic agents

shall be sanctioned with a fine ranging from 600 to 1000 conventional units or imprisonment for a term from 1 to 3 years, with a fine from 3500 to 5000 conventional units imposed on the legal entity, as well as deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

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Article 246<sup>2</sup>. Forgery and counterfeiting of products

(1) Forging products, namely their manufacturing for marketing purposes without accompanying documents of provenance, quality and compliance, as well urging third parties to perform such an action, committed on a large scale,

shall be sanctioned with a fine from 1000 to 2000 conventional units or with imprisonment up to one year, with a fine from 3500 to 5000 conventional units imposed on the legal entity, as well as deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

(2) Counterfeiting products, namely actions specified in par. (1) with reference to products that constitute or include a protected intellectual property object, as well urging third parties to perform such an action, committed on a large scale,

shall be sanctioned with a fine from 1000 to 2000 conventional units or with imprisonment up to one year, with a fine from 3500 to 5000 conventional units imposed on the legal entity, as well as deprivation of such legal entity of the right to carry out certain activities for a term from 1 to 5 years.

**22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?**

Art. 253 CPC RM provides:

"Criminal prosecuting bodies

(1) The criminal prosecution is carried out by the prosecutor and by criminal prosecuting bodies, constituted according to the law within the:

- 1) Ministry of Internal Affairs;
- 2) Customs Service;
- 3) National Anti-Corruption Center

(2) Criminal prosecuting bodies are represented by criminal prosecuting officers especially appointed by the institutions mentioned in paragraph (1) and organizationally subordinated to the leader of the respective institution.

(3) Criminal prosecuting officers are independent, subjected only to the law and to the written indications of the leader of the criminal prosecuting body and of the prosecutor.

(4) The status of the criminal prosecuting officer is established by law."

The start of the criminal prosecution is made only on the basis of the preliminary complaint of the plaintiff (Art.276 CPC RM), is an exception to the formality of criminal prosecution.

In the case of committed crime provided for in Art. 246<sup>1</sup> CC RM (Unfair competition) the start or stop of the criminal prosecution depends on the will of the victim (damaged party) evidenced by the filling of a complaint, withdrawal of the complaint or reconciliation with the suspect (the accused).

The start of the criminal prosecution under the crime provided for in Art. 185<sup>2</sup> (Infringement of industrial property rights) will be carried out in accordance with the general rule laid down in Art. 274 and 262 CPC RM based on the:

- 1) complaint;
- 2) denunciation;
- 3) self-denunciation;
- 4) detection of the crime directly by the criminal prosecuting body's collaborators.

According to the same rule will also be started the criminal prosecution in the case of committed acts referred to in Art. 185<sup>2</sup>, par. 2<sup>3</sup> (Infringement of industrial property rights – illegal

use of an unregistered AO, GI, protected under bilateral agreements) and Art.185<sup>3</sup> (Intentionally false statements in intellectual property registration documents).

Notwithstanding the provisions of Art. 276(1) CPC RM, where the prosecuting body directly detects or is notified about the commission or preparation for the commission of offenses under Art.185<sup>2</sup>, it shall notify the right holder or authority empowered under the law on the protection of geographical indications, appellations of origin and traditional specialties guaranteed about them.

In these cases, the prosecution is started, if the right holder or authority empowered under the law on the protection of geographical indications, appellations of origin and traditional specialties guaranteed, within 15 working days as from the receipt of the notification, will lodge the complaint, otherwise the prosecuting body does not start the criminal prosecution.

### **23. Do private persons have standing to initiate criminal proceedings and, if so, who?**

Art. 274 CPC RM Start of the criminal prosecution

(1) The criminal prosecuting body or the prosecutor notified according to the provisions of Articles 262 and 273 orders within 30 days the start of the criminal prosecution through resolution in case if from the contents of the notification act or of the finding acts result the constitutive elements of the crime and if there are no circumstances that would exclude criminal prosecution.

(2) If the criminal prosecuting body or the prosecutor is notified ex officio regarding the start of the criminal prosecution, it draws up the minutes which constitute the start act of criminal prosecution.

(3) The resolution, or depending on the case, the minutes of the criminal prosecution start are issued by the criminal prosecuting body and are subjected to the confirmation of the prosecutor carrying out the supervision over the criminal prosecution activity within 24 hours from the date of start of the criminal prosecution, at the same time presenting the respective file. Together with the confirmation of the criminal prosecution start the prosecutor establishes the criminal prosecution term for the respective case.

(3<sup>1</sup>) In the case when from the contents of the notification or findings results the suspicion of commission of a crime provided for in Art.166<sup>1</sup> of the Criminal Code, the prosecutor will decide on it corresponding to paragraph (1) of this Article, within a period not exceeding 15 days.

(4) If from the contents of the notification act results any of the reasons which impede the start of criminal prosecution, the criminal prosecuting body submits to the prosecutor the drawn up acts with the proposal not to start criminal prosecution. If the prosecutor finds that there are no circumstances that would impede criminal prosecution, he/she returns the acts with his/her resolution to the mentioned body in order to start criminal prosecution.

(5) If the prosecutor agrees with the proposal not to start criminal prosecution, he/she confirms this fact through the motivated resolution and announces, within a term as shorter as possible, but not exceeding 15 days, the person who has submitted the notification about this. If the prosecutor considers that there are no grounds to start the criminal prosecution, he annuls, by ordinance, the resolution of non-start of the criminal prosecution and orders refusal of the start of the criminal prosecution and dismissal of criminal proceeding.

(6) The resolution of non-start of the criminal prosecution may be challenged through a complaint filed with the court, under the conditions of Art. 313.

(7) If later on it is found that the circumstance which has served basis for the proposal of not to start criminal prosecution had not existed or has disappeared, the prosecutor annuls his/her resolution and orders the start of the criminal prosecution.

**24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:**

- **Imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

All categories of intellectual property rights and the type of infringement, where appropriate, sanctions and other remedies that may be imposed, are mentioned in p.21 of this questionnaire.

**25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.**

CPC RM provides in

Article 259 Terms of criminal prosecution

(1) The criminal prosecution has to be conducted within the limits of a reasonable term.

(2) The reasonable term of criminal prosecution in a certain case is established by the prosecutor through a resolution, after having considered the criteria of establishment of the reasonable term provided for in Art. 20 par. (2).

(3) The criminal prosecution term established by the prosecutor is obligatory for the criminal prosecuting officer and can be prolonged upon his/her request.

(4) In case where the prolongation of the term is necessary, the criminal prosecuting officer draws up a motivated request in this respect and submits it to the prosecutor before the expiry of the term established by him/her.

Article 227 Judicial expenses

(1) Judicial expenses are the expenses that according to the law are needed for assuring the proper development of the criminal proceedings.

(2) Judicial expenses include the following amounts:

1) paid or to be paid to witnesses, injured party, their representatives, experts, specialists, interpreters, translators and procedural assistants;

2) expenses for storage, transportation and research of material evidence;

3) to be paid for the legal aid provided by the publicly appointed attorney;

4) expenses for restituting the counter value of deteriorated or destroyed objects during the performance of the expert examination or during the reconstruction of the deed;

5) other expenses related to procedural actions in the criminal case.

(3) The judicial expenses are paid from the state budget if the law does not provide for other modality.

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