



MINISTRY OF FINANCE OF THE REPUBLIC OF CROATIA

CUSTOMS DIRECTORATE – CENTRAL OFFICE

SECTOR FOR CUSTOMS SYSTEM

SERVICE FOR TRANSIT, BORDER PROCEDURES, ENQUIRES
AND GOODS SUBJECT TO RESTRICTIONS AND PROHIBITIONS

RESTRICTIONS AND PROHIBITIONS DEPARTMENT

EU BEST PRACTICES IN IPR CUSTOMS ENFORCEMENT

IP Key Workshop on the Fight Against Counterfeit Goods in
Southeast Asia (online)

7 - 8 November 2024

legal background



8th round of multilateral trade negotiations under the GATT
(Punta del Este, Uruguay, 1986 – Marrakesh, Morocco, 1994)

Foundation of the World Trade Organisation (WTO)

Agreement on Trade-Related Aspects of Intellectual Property
Rights – TRIPs

- Part III – Enforcement of Intellectual Property Rights
 - Articles 51-60 – Special Requirements Related to Border Measures



legal framework



Regulation (EU) No **608/2013** of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights

Commission Implementing Regulation (EU) No **1352/2013** of 4 December 2013 establishing the forms provided for in Regulation (EU) No 608/2013

Commission Implementing Regulation (EU) **2024/2399** of 12 September 2024 amending Implementing Regulation (EU) No 1352/2013



scope of the Regulation 608/2013

Regulation 608/2013 is applicable where goods are, or should have been, subject to customs supervision or customs control:

- when declared for release for free circulation, export or re-export
- when entering or leaving the customs territory of the Union
- when placed under a suspensive procedure or in a free zone or free warehouse

Regulation 608/2013 is applicable to all valid IPR in the EU



exceptions

Regulation 608/2013 is not applicable:

- goods that have been released for free circulation under the end-use regime
- non-commercial goods contained in travellers' personal luggage
- goods that have been manufactured with the consent of the right-holder (parallel trade and overruns)



customs service role

Interceding role – not arbitrary:

- to suspect but not to establish the infringement
- goods under the customs control until the procedure is over

Procedure enables the rights-holder to:

- inspect the goods and take samples
- confirm if the goods infringe his IP rights
- request the destruction of the goods
- initiate the court proceeding



suspicion based on 2 questions

1. Are the goods related to any valid IPR?
 - marked with the mark identical or similar to a registered TM?
 - is the geographical indication used?
 - produced based on the (un)registered design?
 - produced related to the copyright or related right?
 - produced based on the patent?
 - related to the denomination of a plant variety?
 - contains registered topography of semiconductors?
2. (If yes) Are the goods produced by the rights-holder or with his consent?



before initiation of the procedure

- physical control of the goods
- taking the samples
- taking the photos
- identification of the IPR concerned
- identification of the rights-holder
- decision on the type of the procedure



Application for Action (AFA)

UAFA

Union Application for Action

- covering 2 or more EU MS
- covering IP rights valid throughout the EU
- full data set
- based on the initiative of the Applicant

NAFA

National Application for Action

- covering 1 EU MS (where submitted)
- covering any IP rights valid in the issuing EU MS
- full data set
- based on the initiative of the Applicant or *ex officio* case

NAFA cf. Art. 5(3)

National Application for Action cf. Art 5(3)

- covering 1 EU MS (where issued)
- covering any IP rights valid in the issuing EU MS
- reduced data set
- based on the *ex officio* case (Customs initiative)

types of the procedure

1. **standard procedure**
 - based on Application for Action (AFA)
2. **procedure for perishable goods**
 - deteriorate in 20 days
3. **small-consignment procedure**
 - option in the AFA
4. **ex-officio**
 - no valid AFA exists



standard procedure

- notification to both parties
- **10 working days**
- photos, inspection and/or analysis of the goods (RH)
- confirmation of the infringement (RH)
- agreement or deemed agreement of the declarant, owner or holder of the goods
- initiation of the court proceeding
- extension (additional 10 working days)



small consignment procedure (i)

- conditions
 - consignment in postal or courier traffic
 - maximum 3 articles or maximum 2 kilograms
- suspected infringement of the trade-mark, design, copyright or geographical indications
- based on AFA
- not possible for perishable goods



small consignment procedure (ii)

- notification only to the declarant, owner or holder of the goods
- agreement or deemed agreement – destruction
- no agreement – notification to the holder of the decision
- 10 working days to negotiate with the declarant or to initiate the court proceeding



ex-officio procedure

- notification to both parties
- **4 working days** to submit NAFA (RH)
- if NAFA submitted and granted – standard procedure
- not possible for perishable goods



result of the procedure

- release of the goods
 - original / not infringing
 - no reaction of the rights-holder
 - after the court proceeding (no infringement)
- destruction of the goods
 - rights-holder confirms the infringement
 - agreement / deemed agreement of the declarant
 - after the court proceeding (infringement)





anti-**C**ounterfeiting and anti-**P**iracy **I**nformation **S**ystem

- mandatory for all EU Member States
- S2S or light-client user interface
- AFA management
- infringement management
- statistics



Common Customs Risk Management System

- exchange of risk information
- Risk Information Form (RIF)
- immediately available to customs risk management units in all EU Member States
- implementation of the risk profiles in the national risk management systems
- linked with the national customs clearance systems



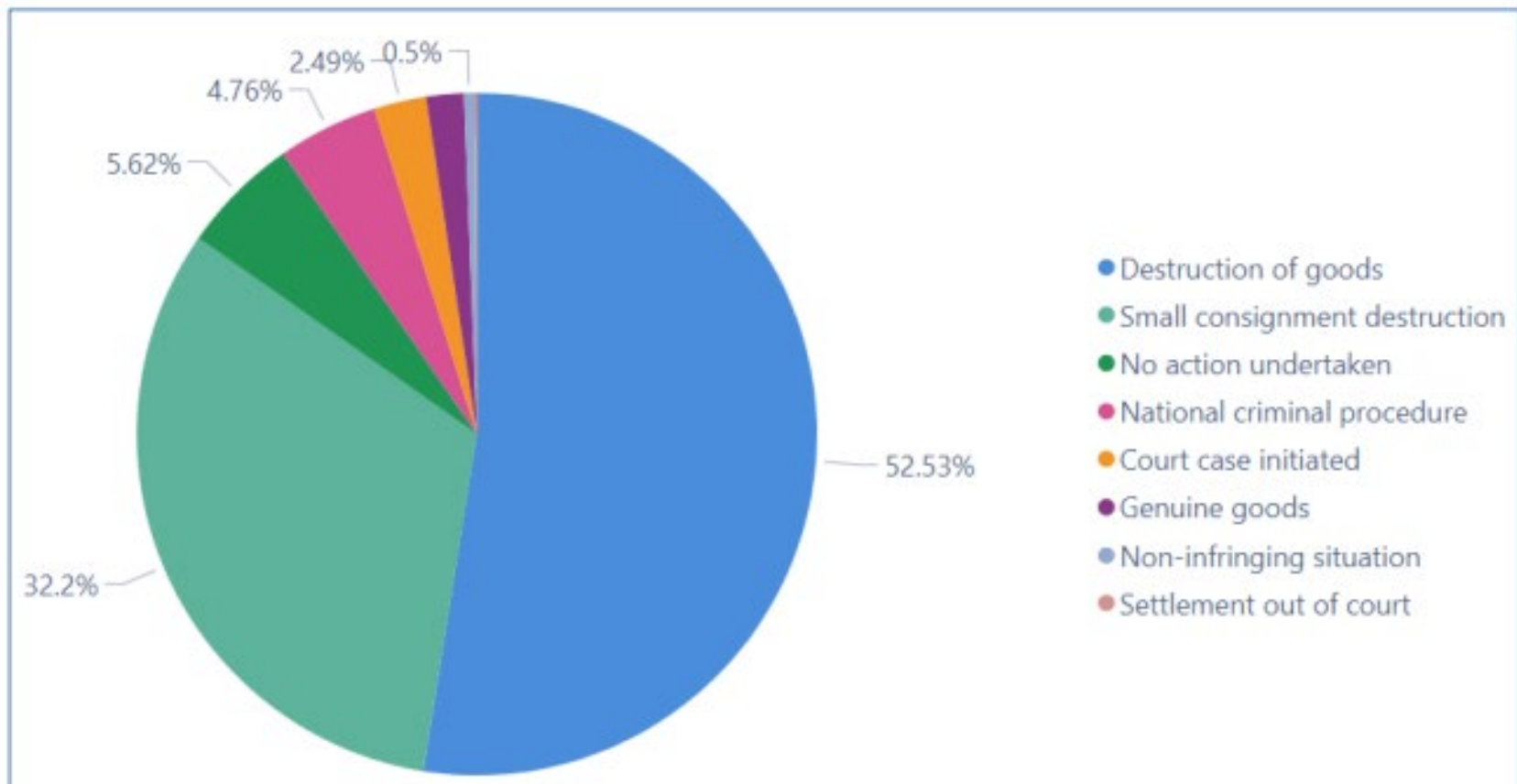
IP Enforcement Portal (EUIPO)

IP ENFORCEMENT portal

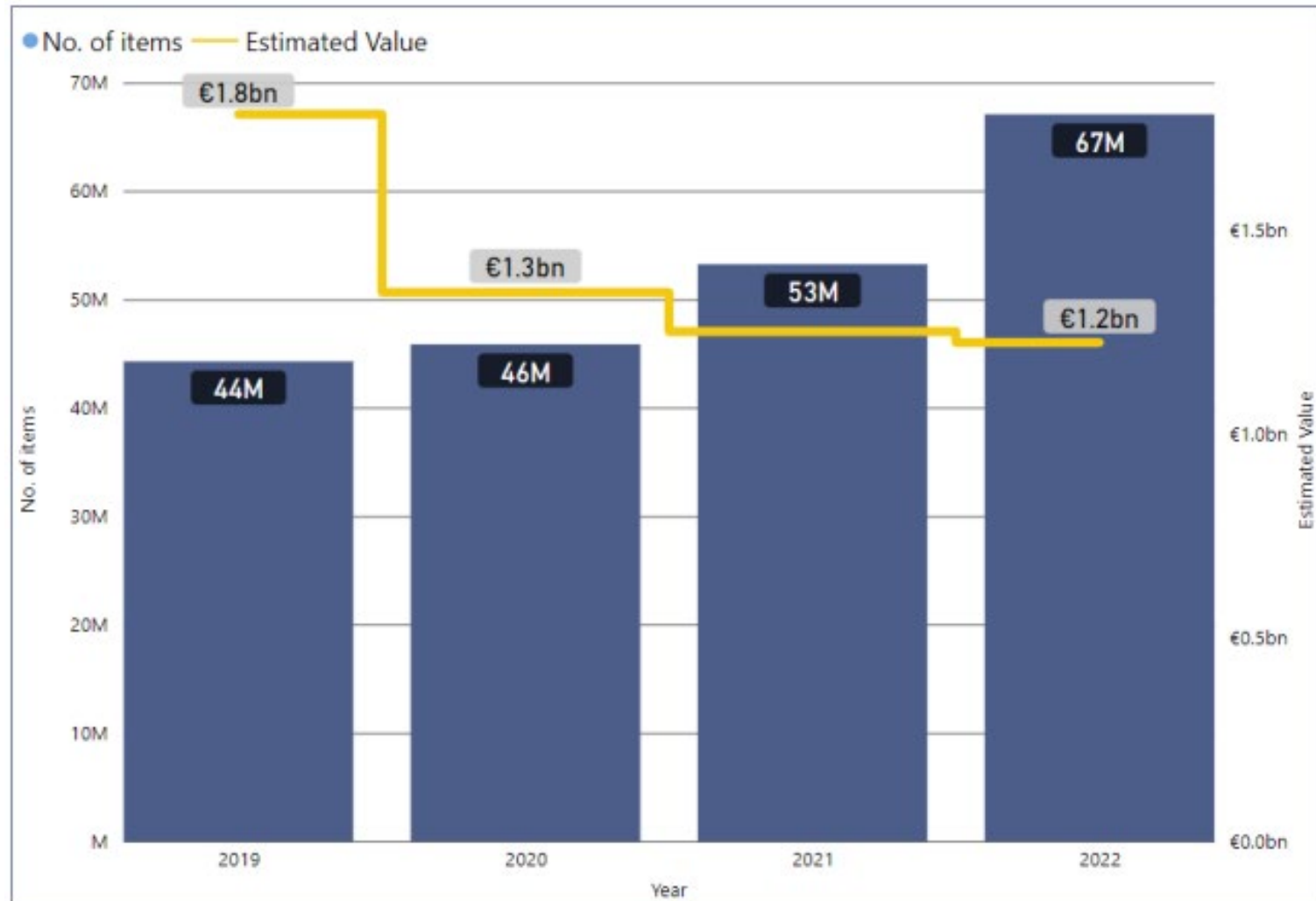
- rights-holders
 - can create, manage and access only their area (company information and contacts, IPR portfolio, products)
 - alerts to enforcement authorities
 - digital channel for submitting AFAs
- enforcement authorities
 - can see all rights-holders information
 - notification to rights-holders (Potential Infringement or Trend)
 - notification to other enforcement authorities (Interesting Case)



statistics – results



statistics – number of items, value



conclusions

- clear legislation
- efficient system
- cooperation and exchange of information
 - between national customs authorities
 - with the EU Commission
 - with the rights-holders (training)
 - with other enforcement authorities
- cooperation with the provenance countries
- area for improvement



contacts

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Thank you!



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