

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2035**of 7 December 2020****amending Implementing Regulation (EU) No 1352/2013 as regards the application for action form provided for in Regulation (EU) No 608/2013 of the European Parliament and of the Council, in order to introduce the possibility to request the taking of action in Northern Ireland**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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⁽¹⁾, and in particular Article 6(1) thereof,

After consulting the Customs Code Committee,

Whereas:

- (1) Commission Implementing Regulation (EU) No 1352/2013⁽²⁾ establishes, in its Annex I, the form to be used to submit an application requesting that customs authorities take action with respect to goods suspected of infringing an intellectual property right, referred to in Article 6 of Regulation (EU) No 608/2013 ('the application for action form').
- (2) Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a 'third country'. The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (Withdrawal Agreement)⁽³⁾ provides for a transition period ending on 31 December 2020. Until that date, Union law in its entirety applies to and in the United Kingdom.
- (3) After the end of the transition period, the Protocol on Ireland/Northern Ireland ('IE/Ni Protocol'), which forms an integral part of the Withdrawal Agreement, applies. The IE/Ni Protocol makes certain provisions of Union law applicable under certain conditions also to and in the United Kingdom in respect of Northern Ireland⁽⁴⁾.
- (4) The IE/Ni Protocol provides that the regulations listed in its Annex 2 under point 45 (Regulation (EU) No 1151/2012 of the European Parliament and of the Council⁽⁵⁾; Regulation (EU) 2019/787 of the European Parliament and of the Council⁽⁶⁾; Regulation (EU) No 251/2014 of the European Parliament and of the Council⁽⁷⁾; Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁽⁸⁾, Sections 2 and 3 of Chapter I of Title II of Part II and Regulation (EU) No 608/2013) apply to and in the United Kingdom in respect of Northern Ireland.
- (5) Hence, a right holder should be able to request a customs action in a Member State for protection in Northern Ireland of those intellectual property rights, by submitting a Union application.

⁽¹⁾ OJ L 181, 29.6.2013, p. 15.

⁽²⁾ Commission Implementing Regulation (EU) No 1352/2013 of 4 December 2013 establishing the forms provided for in Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights (OJ L 341, 18.12.2013, p. 10).

⁽³⁾ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 ('Withdrawal Agreement').

⁽⁴⁾ Article 5(4) of the IE/Ni Protocol.

⁽⁵⁾ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

⁽⁶⁾ Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ L 130, 17.5.2019, p. 1).

⁽⁷⁾ Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

⁽⁸⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

- (6) More specifically, a right holder should be able to request that the procedure for the destruction of goods in small consignments, set out in Article 26 Regulation (EU) No 608/2013 be used for goods whose geographical indication has been infringed, as these goods are included in the definition of counterfeit goods in point 5 of Article 2 of Regulation (EU) No 608/2013.
- (7) Therefore, the application for action form needs to be adapted by introducing in the box '6. Member State or, in the case of a Union application, Member States in which customs action is requested' and in box '10. I request the use of the procedure of Article 26 of Regulation (EU) No 608/2013 (small consignments) in the following Member State(s) and, where requested by the customs authorities, agree to cover the costs related to the destruction of goods under this procedure' a new tick box called 'XI' for Northern Ireland.
- (8) In the same fields, the tick box for UK should be deleted to reflect the end of the transition period provided for in the Withdrawal Agreement.
- (9) The notes on completion of Annex I to Implementing Regulation (EU) No 1352/2013, which are set out in Annex III to that Regulation should be amended to clarify that action in Northern Ireland can only be asked for intellectual property rights which are protected in Northern Ireland by virtue of the IE/Ni Protocol.
- (10) Implementing Regulation (EU) No 1352/2013 should therefore be amended accordingly.
- (11) This Regulation should start applying on the day following that on which the transition period provided for in the Withdrawal Agreement is to end,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 1352/2013 is amended as follows:

- (1) Annex I is replaced by the text set out in Annex I to this Regulation;
- (2) Annex III is amended in accordance with Annex II to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

'ANNEX I'

EUROPEAN UNION – APPLICATION FOR ACTION

COPY FOR THE COMPETENT CUSTOMS DEPARTMENT	1	1. Applicant Name*: EORI-No*: Address*: Town*: Postal Code: Country*: TIN No: National registration No: Telephone: (+) Mobile: (+) Fax: (+) Email*: Website:	For official use Date of receipt Registration number of application <hr/> INTELLECTUAL PROPERTY RIGHTS APPLICATION FOR ACTION BY CUSTOMS AUTHORITIES under Article 6 of Regulation (EU) No 608/2013 2*. Union application <input type="checkbox"/> National application <input type="checkbox"/> National application (cf. Article 5(3)) <input type="checkbox"/>
	3*. Status of applicant <input type="checkbox"/> Right-holder <input type="checkbox"/> Person or entity authorised to use the IP right <input type="checkbox"/> IP collective rights management body <input type="checkbox"/> Professional defence body	<input type="checkbox"/> Group of producers of products with a Geographical Indication or representative of such group <input type="checkbox"/> Operator entitled to use a Geographical Indication <input type="checkbox"/> Inspection body or authority competent for a Geographical Indication <input type="checkbox"/> Exclusive license holder covering two or more Member States	
1	4. Representative submitting the application in the name of the applicant Company: Name*: EORI-No*: Address*: Town*: Postal Code: Country*: Telephone: (+) Mobile: (+)	<input type="checkbox"/> Evidence of the representatives power to act is enclosed Fax: (+) Email*: Website:	
5*. Type of right to which the application refers		<input type="checkbox"/> National trademark (NTM) <input type="checkbox"/> European Union trademark (EUTM) <input type="checkbox"/> International registered trademark (ITM) <input type="checkbox"/> Registered national design (ND) <input type="checkbox"/> Registered Community design (CDR) <input type="checkbox"/> International registered design (ICD) <input type="checkbox"/> Unregistered Community design (CDU) <input type="checkbox"/> Copyright and related right (NCPR) <input type="checkbox"/> Trade name (NTN) <input type="checkbox"/> Topography of semiconductor product (NTSP) <input type="checkbox"/> Patent as provided for by national law (NPT) <input type="checkbox"/> Patent as provided for by Union law (UPT) <input type="checkbox"/> Utility model (NUM)	Geographical Indication/Designation of origin: <input type="checkbox"/> for agricultural products and foodstuff (CGIP) <input type="checkbox"/> for wine (CGIW) <input type="checkbox"/> for aromatised drinks based on wine products (CGIA) <input type="checkbox"/> for spirit drinks (CGIS) <input type="checkbox"/> for other products (NGI) <input type="checkbox"/> as listed in Agreements between the Union and third countries (CGIL) Plant variety right: <input type="checkbox"/> national (NPVR) <input type="checkbox"/> Community (CPVR) Supplementary protection certificate: <input type="checkbox"/> for medicinal products (SPCM) <input type="checkbox"/> for plant protection products (SPCP)
6*. Member State or, in the case of a Union application, Member States in which customs action is requested			<input type="checkbox"/> BE <input type="checkbox"/> BG <input type="checkbox"/> CZ <input type="checkbox"/> DK <input type="checkbox"/> DE <input type="checkbox"/> EE <input type="checkbox"/> IE <input type="checkbox"/> EL <input type="checkbox"/> ES <input type="checkbox"/> FR <input type="checkbox"/> HR <input type="checkbox"/> IT <input type="checkbox"/> CY <input type="checkbox"/> LV <input type="checkbox"/> ALL MEMBER STATES <input type="checkbox"/> LT <input type="checkbox"/> LU <input type="checkbox"/> HU <input type="checkbox"/> MT <input type="checkbox"/> NL <input type="checkbox"/> AT <input type="checkbox"/> PL <input type="checkbox"/> PT <input type="checkbox"/> RO <input type="checkbox"/> SI <input type="checkbox"/> SK <input type="checkbox"/> FI <input type="checkbox"/> SE <input type="checkbox"/> XI
7. Representative for legal matters Company: Name*: Address*: Town*: Postal Code: Country*: Telephone: (+) Fax: (+) Mobile: (+) Email*: Website:		8. Representative for technical matters Company: Name*: Address*: Town*: Postal Code: Country*: Telephone: (+) Fax: (+) Mobile: (+) Email*: Website:	
9. In case of a Union application, the details of the designated representatives for legal and technical matters are included in annex no			
10. I request the use of the procedure of Article 26 of Regulation (EU) No 608/2013 (small consignments) in the following Member State(s) and, where requested by the customs authorities, agree to cover the costs related to the destruction of goods under this procedure.			
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* these are mandatory fields and shall be filled in

(+) at least one of these fields shall be filled in

28. Additional information <input type="checkbox"/>	<input type="checkbox"/> Restricted handling						
<input type="checkbox"/> See enclosed annex no							
<p>29. Undertakings</p> <p>By signing I undertake to:</p> <ul style="list-style-type: none"> • notify immediately the competent customs department that granted this application of any change in the information provided by me within this application or attachments in accordance with Article 15 of Regulation (EU) No 608/2013. • forward to the competent customs department that granted this application any update on the information as referred to in point (g), (h) or (i) of Article 6(3) of Regulation (EU) No 608/2013 that are relevant to customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) included in this application. • assume liability under the conditions laid down in Article 28 of Regulation (EU) No 608/2013 and bear the costs as referred to in Article 29 of Regulation (EU) No 608/2013. <p>I agree that all the data submitted with this application may be processed by the Member States and the European Commission, acting as a processor on behalf of Member States, and the European Union Intellectual Property Office.</p>							
<p>30*. Signature</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 45%; border: none;">Date (DD/MM/YYYY)</td> <td style="width: 55%; border: none;">Applicant's signature</td> </tr> <tr> <td style="border: none;">Place</td> <td style="border: none;">Name (Block capitals)</td> </tr> </table>		Date (DD/MM/YYYY)	Applicant's signature	Place	Name (Block capitals)		
Date (DD/MM/YYYY)	Applicant's signature						
Place	Name (Block capitals)						
<p>For official use</p> <p>Decision by customs authorities (within the meaning of Section 2 of Regulation (EU) No 608/2013)</p> <p><input type="checkbox"/> The application is completely granted.</p> <p><input type="checkbox"/> The application has been partially granted (for the granted rights see attached list).</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">Date of adoption (DD/MM/YYYY)</td> <td style="width: 33%; border: none;">Signature and stamp</td> <td style="width: 34%; border: none;">Competent customs department</td> </tr> </table> <p>Expiry date of the application: Any request for extension of the period that customs authorities are to take action should be received by the competent customs department at the latest 30 working days before the expiry date.</p> <p><input type="checkbox"/> The application has been rejected.</p> <p>A reasoned decision stating the grounds for partial or complete rejection and information concerning the appeal procedure are attached.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">Date (DD/MM/YYYY)</td> <td style="width: 33%; border: none;">Signature and stamp</td> <td style="width: 34%; border: none;">Competent customs department</td> </tr> </table>		Date of adoption (DD/MM/YYYY)	Signature and stamp	Competent customs department	Date (DD/MM/YYYY)	Signature and stamp	Competent customs department
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Personal data protection and the central database for the processing of applications for action.

This privacy statement explains the reasons for processing your personal data, the way they are collected, handled and the way protection of all your personal data is ensured.

The competent customs authority of a Member State are the controller(s) of the processing operation. To this respect the controller(s) processes personal data contained in this application in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

The European Commission acts as a processor on behalf of Member States and processes personal data contained in this application in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

The purpose of the processing of personal data of the application for action is the enforcement of intellectual property rights (IPR) by customs authorities in the Union, in accordance with Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights.

The legal basis for processing the personal data for the enforcement of IPR are Articles 31 and 33 of Regulation (EU) No 608/2013. The processing activity of the Commission, acting on behalf of Member States and within their mandate, consists of storing and maintaining of the personal data related to applications for action and its attachments in the central database COPIS. This includes maintaining adequate technical and organizational arrangements for the reliable and secure operation of the database COPIS.

Technical measures include appropriate actions to address online security, risk of data loss, alteration of data or unauthorised access, taking into consideration the risk presented by the processing and the nature of the personal data being processed. The access to personal data is granted on a need-to-know basis and via personal accounts to authorised personnel of Member States custom authorities and the European Commission. The contact point within the European Commission for questions on the processing activity in COPIS is Directorate-General for Taxation and Customs Union: TAXUD-DP-COPIS@ec.europa.eu.

For a deeper analysis of the infringements data and to improve the understanding of the geographical scope and impact of infringements of IPR, the Commission within the mandate provided by the Member States will send, together with the infringement data, the name of the respective holder of the decision based on which the customs acted to the European Union Intellectual Property Office. The record reference of EUIPO's processing operation is DPR-2019-051 (https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/data_protection/rpt_register_en.pdf).

Replies to data fields marked with an * and to at least one of the fields marked "+" are obligatory to be filled in. In case of failure to fill in these obligatory data, the application shall be rejected.

Customs authorities will delete the data no later than six months from the date the decision granting the application has been revoked or the relevant period during which customs authorities are to take action has expired. The period during which customs authorities are to take action shall be specified by the competent customs department when granting the application and shall not exceed one year from the day following the date of adoption of the decision granting the application. However, where customs authorities have been notified of proceedings initiated to determine a possible infringement of goods under the application, they will delete the data no later than six months after the proceedings have been concluded in a final way.

In case of a data breach, the customs authorities in the Member States will fulfil their obligations in compliance with their duties stipulated in the GDPR. Where that personal data breach is likely to result in a high risk to your rights and freedoms the customs authorities in the Member States are committed to inform you immediately in order to allow you to take the necessary precautions.

You are at any given moment entitled to access and rectify your personal data in case the data is inaccurate or incomplete. You have the rights to (if applicable) request restriction of processing or erasure ('right to be forgotten'), to object to the processing, to withdraw your consent, and not to be subject to automated individual decision making, including profiling. All requests shall be submitted to and processed by the competent customs department where the application was submitted. For the list of competent customs departments in the Member States see

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_controls/counterfeit_piracy/right_holders/defend-your-rights_en.pdf.

If you feel that your rights are violated in any way, you are entitled to file a complaint with the National Supervisory Authority responsible for data protection (contact info here: https://edpb.europa.eu/about-edpb/board/members_en) following the applicable national procedure. If you have comments, questions or any concerns regarding the collection and use of your personal data, please feel free to contact Data Protection Officer (DPO) in the Member State's Customs Organisation. If your complaint concerns an action of the European Commission, you should lodge it with the European Data Protection Supervisor.

EUROPEAN UNION – APPLICATION FOR ACTION

COPY FOR THE APPLICANT	2	1. Applicant Name*: EORI-No*: Address*: Town*: Postal Code: Country*: TIN No: National registration No: Telephone: (+) Mobile: (+) Fax: (+) Email*: Website:	For official use Date of receipt Registration number of application INTELLECTUAL PROPERTY RIGHTS APPLICATION FOR ACTION BY CUSTOMS AUTHORITIES under Article 6 of Regulation (EU) No 608/2013	
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1

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The European Commission acts as a processor on behalf of Member States and processes personal data contained in this application in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

The purpose of the processing of personal data of the application for action is the enforcement of intellectual property rights (IPR) by customs authorities in the Union, in accordance with Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights.

The legal basis for processing the personal data for the enforcement of IPR are Articles 31 and 33 of Regulation (EU) No 608/2013.

The processing activity of the Commission, acting on behalf of Member States and within their mandate, consists of storing and maintaining of the personal data related to applications for action and its attachments in the central database COPIS. This includes maintaining adequate technical and organizational arrangements for the reliable and secure operation of the database COPIS.

Technical measures include appropriate actions to address online security, risk of data loss, alteration of data or unauthorised access, taking into consideration the risk presented by the processing and the nature of the personal data being processed. The access to personal data is granted on a need-to-know basis and via personal accounts to authorised personnel of Member States custom authorities and the European Commission. The contact point within the European Commission for questions on the processing activity in COPIS is Directorate-General for Taxation and Customs Union: TAXUD-DP-COPIS@ec.europa.eu.

For a deeper analysis of the infringements data and to improve the understanding of the geographical scope and impact of infringements of IPR, the Commission within the mandate provided by the Member States will send, together with the infringement data, the name of the respective holder of the decision based on which the customs acted to the European Union Intellectual Property Office. The record reference of EUIPO's processing operation is DPR-2019-051 (https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/data_protection/rpt_register_en.pdf).

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Customs authorities will delete the data no later than six months from the date the decision granting the application has been revoked or the relevant period during which customs authorities are to take action has expired. The period during which customs authorities are to take action shall be specified by the competent customs department when granting the application and shall not exceed one year from the day following the date of adoption of the decision granting the application. However, where customs authorities have been notified of proceedings initiated to determine a possible infringement of goods under the application, they will delete the data no later than six months after the proceedings have been concluded in a final way.

In case of a data breach, the customs authorities in the Member States will fulfil their obligations in compliance with their duties stipulated in the GDPR. Where that personal data breach is likely to result in a high risk to your rights and freedoms the customs authorities in the Member States are committed to inform you immediately in order to allow you to take the necessary precautions. You are at any given moment entitled to access and rectify your personal data in case the data is inaccurate or incomplete. You have the rights to (if applicable) request restriction of processing or erasure ('right to be forgotten'), to object to the processing, to withdraw your consent, and not to be subject to automated individual decision making, including profiling. All requests shall be submitted to and processed by the competent customs department where the application was submitted. For the list of competent customs departments in the Member States see

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_controls/counterfeit_piracy/right_holders/defend-your-rights_en.pdf.

If you feel that your rights are violated in any way, you are entitled to file a complaint with the National Supervisory Authority responsible for data protection (contact info here: https://edpb.europa.eu/about-edpb/board/members_en) following the applicable national procedure. If you have comments, questions or any concerns regarding the collection and use of your personal data, please feel free to contact Data Protection Officer (DPO) in the Member State's Customs Organisation. If your complaint concerns an action of the European Commission, you should lodge it with the European Data Protection Supervisor.

ANNEX II

In Part I of Annex III to Implementing Regulation (EU) No 1352/2013, in the note on the completion of box 6 ('Member State or, in the case of a Union application, Member States in which customs action is requested'), the following paragraph is added:

'In case Northern Ireland (XI) is indicated, the application shall be a Union application and can only be granted for protection of any of the following intellectual property rights which are protected in Northern Ireland by virtue of the IE/Ni Protocol:

- (a) geographical indications or designations of origin protected for agricultural products and foodstuff as provided for in Regulation (EU) No 1151/2012 of the European Parliament and of the Council *;
- (b) geographical indications of spirit drinks as provided for in Regulation (EU) 2019/787 of the European Parliament and of the Council **;
- (c) geographical designations for aromatised products as provided for in Regulation (EU) No 251/2014 of the European Parliament and of the Council ***;
- (d) designations of origin or geographical indications for wine as provided for in Sections 2 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ****.

* Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

** Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ L 130, 17.5.2019, p. 1).

*** Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

**** Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).'
