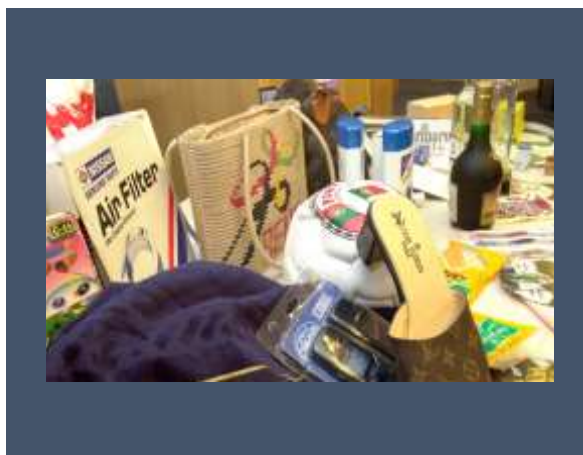


**CUSTOMS  
ENFORCEMENT OF  
INTELLECTUAL  
PROPERTY RIGHTS**



# GUIDELINES

## On acceptance and processing of applications for action

**Regulation (EU) No. 608/2013 of the European Parliament and of the Council of 21 June 2013**

**Commission Implementing Regulation (EU) No. 1352/2013 of 4 December 2013 as amended by Commission Implementing Regulation (EU) 2018/582 of 12 April 2018**

2018 version/EN

## Preface

These guidelines provide guidance on the acceptance and processing of the applications by the competent customs department under Regulation (EU) No 608/2013<sup>1</sup> and Commission Implementing Regulation (EU) No. 1352/2013 of 4 December 2013<sup>2</sup>.

It also provides guidance on the entry of applications and decisions into the central database of the Commission called COPIS.

A separate user guide for COPIS is available under:

<https://circabc.europa.eu/w/browse/d0f3a767-f745-4fad-9db9-56d8e725e26d>.

These guidelines will be updated whenever new developments in the IPR application systems make this necessary.

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<sup>1</sup> Regulation (EU) No 608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L181, 29.6.2013, p.15)

<sup>2</sup> 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 L341, 18.12.2013, p.10) as amended by Commission Implementing Regulation (EU) 2018/582 of 12 April 2018 (OJ L98, 18.4.2018, p.4)

# General table of contents

Preface.....	1
General table of contents .....	2
APPLICATION PROCEDURE.....	3
1. Acceptance of an application.....	3
2. Processing of an application.....	4
Checks regarding type of application:.....	4
Checks regarding the person or entity entitled to submit the application and regarding the rights:.....	4
Checks regarding the representative used to submit the application in name of the applicant:.....	5
Checks regarding requested Member States: .....	6
Checks regarding contact person for legal and technical questions: .....	6
Checks regarding small consignment procedure:.....	7
Checks regarding the list of goods to which the rights refer in the application:.....	7
Checks regarding the boxes for restricted handling:.....	8
Checks regarding information on authentic goods .....	8
Checks regarding information on infringing products .....	9
3. Granting an application .....	10
Decision granting the application completely .....	10
Decision granting the application partially .....	11
4. Rejection of an application.....	12
5. Union applications forwarded to other Member States.....	13
6. Requests for extension of the period of validity of an application.....	14
7. Deletion of one or more of the IPR already registered under a decision granting an application.....	16
8. Adding of one or more IPR under a decision granting an application.....	17
9. Update of information contained in a decision granting an application .....	18

# APPLICATION PROCEDURE

## 1. Acceptance of an application

In order to accept an application you should check whether:

- the standard form laid down by Commission Implementing Regulation (EU) No 1352/2013 is used;
- all mandatory boxes of the form are filled in and the form contains no erasures, overwritten words or other alterations (fields marked with (\*) are mandatory fields; where in one box several fields are marked with (+), it is mandatory to fill in, at least, one of those);
- the application form is printed and completed in the official language(s) acceptable by your country;
- the form is signed by the applicant or by a representative acting on behalf and in the name of the applicant;
- the form is made up of two copies and all attachments mentioned in the form are presented;
- where the application has been filed by means of a representative, evidence of that person's powers to act as representative, in accordance with the legislation of your Member State;



The date of receipt of the application has to be indicated in the box for official use on top of the front of the form.

Where a computerised system for filing the application is established in your country, the requirements established for that system shall apply.

Where the application for action is electronically submitted via the Enforcement Database (EDB) of the Observatory on infringements of IPR then the paper form includes at the top a preAFA Id number under which you can find it in the preAFA management module "Find PreAFA".



**COPIS:** In those cases all the information of the paper version (including attachments) is already registered in COPIS and you should not register this data again.


## 2. Processing of an application


**General remarks:** in cases where the application does not contain all the information required, before rejecting the application you should contact the applicant for giving him the possibility for completing and supplying the missing information within 10 working days.

### Checks regarding type of application:

#### **Box 2 of the application**

Check whether the type of application, namely Union, national or national (cf. Article 5(3)), is indicated in box 2.

 **COPIS:** Enter this information in the first screen under type of application.


 **COPIS:** In case of an ex-officio detention, only a national (cf. Article 5(3)) application can be submitted. If no information is given in boxes 12 to 28, tick the ex-officio box.


### Checks regarding the person or entity entitled to submit the application and regarding the rights:


#### **Boxes 1, 3, 5 and 11 of the application**


- Check whether:
  - a) The attached documents are proving that the applicant is entitled to submit the application in the meaning of Article 3 of Regulation (EU) 608/2013 with regard to the rights listed in box 11, and, in particular, whether those documents proof sufficient evidence of the applicant's ability to initiate proceedings, in all Member States mentioned in box 6, to determine whether an IPR has been infringed;
  - b) The rights listed in box 11 are valid.
- In the case of registered rights, crosscheck the presented documents with available information from the issuing authorities, using relevant databases where appropriate (e.g. EUIPO; national intellectual property offices, etc.). Check whether all appropriate fields in box 11 are filled in: a simple list containing registration numbers only is not sufficient.
- In the case of non-registered rights: check whether the presented documents proof sufficient that the rights exist.
- Evidence to be provided to customs authorities issuing an AFA depends on the situation and/or type of right:
  - Right holder: IP register extract or proof by database of the IP-office;
  - Licensee: contract or extract of a contract;
  - Mother-daughter company: document confirming ability to submit an AFA and be able to represent in all kind of IPR issues;

- Authorised user: documents proofing sufficient evidence of the applicant's status as authorised user and the applicant's possibility to initiate proceedings to determine whether an IPR has been infringed
- Geographical Indications (GI): certificate of "competent authority";
- International Trade Marks: For an UAFA the European Union must be designated in the registration (and not the registration refers to the 28 individual MS);
- Copyright - depend on national law: author/artist declaration; court decision.

 **COPIS:** Register the data of the applicant and upload any presented document as attachment. None of the attachments should exceed 5 Mb in size.

 **COPIS:** Register all the rights for which protection, indicated in box 11, is asked for and upload any presented document as attachment. It is important to enter the expiry date of the right in case it exists. None of the attachments should exceed 5 Mb in size.


 **COPIS:** Put always photos of figurative rights as attachment.


 Where the attached documents do not provide evidence that the applicant is entitled to submit the application in the meaning of Article 3 of Regulation (EU) No 608/2013 and where the rights are not valid, the application must be rejected!

## Checks regarding the representative used to submit the application in name of the applicant:

### **Box 4 of the application**

- Check whether, in accordance with the legislation of your Member State, the attached documents are providing evidence of the representative powers to act in the name of the applicant?


 **COPIS:** The data of the representative is not registered in COPIS.

 If the attached documents do not provide evidence that the representative is empowered to act in the name of the applicant in accordance with the legislation in your Member State, the application must be rejected!

## Checks regarding requested Member States:

### **Box 6 of the application**

- In case of a national application, check whether the sub-box corresponding to your Member State is the only one ticked.
- In case of a Union application, check whether:
  - a) The sub-box ALL MEMBER STATES is ticked, or
  - b) The sub-boxes corresponding to your Member State and at least one more sub-box corresponding to another Member State are ticked.

 **COPIS:** Select the Member State(s) indicated in box 6.

## Checks regarding contact person for legal and technical questions:

### **Boxes 7 and 8 or 9 of the application**


- Check whether the applicant has given all contact details (name and, address, and telephone number, fax number or e-mail address) of a natural person dealing with legal matters.
- In the case of a Union application, check whether the applicant has given all contact details of a natural person dealing with legal matters for each Member State indicated in box 6 of the form in a separate annex.
- Where the applicant has entered information in box 83, check whether all contact details (name and address, and telephone number, fax number or e-mail-address) of a natural person dealing with technical matters have been given.
- In the case of a Union application, check whether the applicant has given all contact details of a natural person dealing with technical matters for each Member State indicated in box 6 of the form in a separate annex.
- A single person could be designated as legal and technical expert, but the person should require expertise in both areas. In the case of a Union application a single person could also be designated for several Member States as legal and/or technical expert. Anyhow it is not necessary that the person is situated in the Member State in which the application for customs action is made or in which customs action is requested.




If contact details for a legal and a technical expert are not provided, the application must be rejected! The same applies in the case of a Union application if contact details for a technical and legal expert are not provided for all Member States indicated in box 6 of the form.

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<sup>3</sup> Box 8 concerning the representative for technical matters must be filled where the representative for technical matters is different from the representative for legal aspects indicated in box 7. Accordingly, where box 8 has not been filled, the representative indicated in box 7 shall be considered the representative for legal and technical matters.


 **COPIS:** Enter the data of the contact person(s) for each Member State and upload any presented document as attachment. None of the attachments should exceed 5 Mb in size.


 **COPIS:** In case the same person is designated for several Member States that person should be registered as a common contact person.

## Checks regarding small consignment procedure:

### Box 10 of the application

- Check whether the applicant has indicated that he wants the small consignment procedure to be applied?


 **COPIS:** When selecting the Member State(s) where the UAFA would apply, change also for each Member State indicated in box 10 the small consignment procedure to “yes”.


 In case of a Union application, the applicant can request the small consignment procedure in one, some or all MS where he wishes to request action. In such case, the selected MS(s) may differ from the MS indicated in its box 6 in the sense that the scope can never be broader than box 6.


## Checks regarding the list of goods to which the rights refer in the application:

### Box 11 of the application

- Check whether the list of goods has been filled in and the goods are covered by the corresponding right. This information must be duly supported by documents attached to the application form.
- In very few cases a Trade Mark (TM) for services may be registered without a link to any good; in such case the applicant has then to define in the AFA for which goods the "service TM" can be used.

 **COPIS:** The data of the rights and corresponding goods are entered in the section IPR in COPIS.

 Where COPIS indicates that related AFA(s) are found for a registered IPR, always contact per e-mail the other Member State for a practical solution. Contact always the applicant to know which AFA needs to be revoked/withdrawn.


 If the attached documents do not provide information on the type of goods covered by the right, the application must be rejected unless the applicant can prove that no goods are covered by the right!



## Checks regarding the boxes for restricted handling:

### Boxes 11 to 28 of the application


- If the applicant does not want that other Member States than indicated in box 6 see the information, he can indicate so by ticking the box “restricted handling” in any of the boxes 11 to 28.


 **COPIS:** If in any of boxes 11 to 28 the restricted handling sub-box is ticked, then, in the relevant screens of COPIS, the question restricted handling should be answered “yes”. Be aware that this sub-box by default is always put to “no” so in case there is a request from the applicant you have to change this sub-box to “yes”.

## Checks regarding information on authentic goods

### Boxes 12 to 19 of the application

- Check whether information on essential technical data on the authentic goods, including markings such as bar-coding and images where appropriate, is provided.
- Only in cases where the production of goods corresponding to rights listed in the application has not yet commenced, the mandatory boxes 12, 13, 14, 15 and 16 may remain empty.
- The relevant information on authentic goods must be comprehensive and be contained in the application; it may not be replaced by:
  - A reference to a public internet address.
  - A general ordering catalogue without further technical description.
  - Images without further technical description.

 If the relevant technical information is not provided within the application form, the application must be rejected, unless it was indicated that production has not yet commenced!

 **COPIS:** Enter in the relevant sections the information provided and upload any presented document as attachment. None of the attachments should exceed 5 Mb in size

## Checks regarding information on infringing products

### Boxes 20 to 27 of the application

- Check whether specific information concerning infringing goods relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right or the intellectual property rights concerned, including the type or pattern of fraud is provided?



If information concerning infringing goods is not provided, the application must be rejected unless the applicant indicates that he has no information!



**COPIS:** Enter in the relevant sections the information provided and upload any presented document as attachment. Each one of the attachments should not exceed 5 Mb in size.

### Box 28 of the application

- Check where additional information has been provided in box 28.




**COPIS:** Enter in the relevant sections the information provided and upload any presented document as attachment. None of the attachments should exceed 5 Mb in size.


### 3. Granting an application

#### Decision granting the application completely


Where all checks have been done and have led to a successful result, the application must be granted and notified to the applicant at the latest within 30 working days of its receipt. The decision taken must be reflected by filling in the box “Decision by customs authorities” of the application on page 4. You should


- tick the box “The application is completely granted” and enter the Registration number of the application on page 1 as registered in COPIS;
- enter the date and the name of the competent customs department;
- sign and stamp the form and
- indicate the expiry date.

 The expiry date shall not exceed one year after adoption. Upon request of the applicant a shorter period may be fixed. In case of an ex-officio NAFA that does not contain the information of boxes 12 to 28, the expiry date should be set at one calendar month.

 Should the applicant wish his ex-officio application to be valid for the standard period, the information regarding boxes 12 to 28 must be added by him before the expiry date.

- notify the decision to the applicant.

 **COPIS:** After you filled in all the fields in COPIS, you can publish the application. COPIS will check if all mandatory boxes are filled in and, for certain fields, if the correct format is used (like for telephone numbers, dates, etc). After the application is successfully published, the application must be subsequently granted in COPIS. Date of adoption and expiration must be entered. When the period of validity is one year, the expiration date must be calculated as the date of adoption + one year (e.g. adoption is 2-1-2014; expiration date will be 2-1-2015 ending at 24.00 hours).

 **COPIS:** In case of update of information for an ex-officio application, after having received the additional information, upload the information in COPIS to the part to which it belongs. Adjust the expiration date to one year after adoption.

## Decision granting the application partially

In case the application cannot be granted for some of the requested IP rights, it can be partially granted with regard to the other IP rights. This should be indicated in box “Decision by customs authorities” of the application on page 4. You should

- tick the box “The application has been partially granted”;
- attach the list of granted IP rights;
- enter the Registration number of the application on page 1 as given in COPIS;
- enter the date and the name of the competent customs department;
- sign and stamp the form and
- indicate the expiry date;



The expiry date shall not exceed one year after adoption. Upon request of the applicant a shorter period may be fixed. In case of an ex-officio NAFA that does not contain the information of boxes 12 to 28, the expiry date should be set at one calendar month.



Should the applicant wish his ex-officio application to be valid for the standard period, the information regarding boxes 12 to 28 must be added by him before the expiry date.

- attach a decision stating the reasons for the partial rejection and information concerning the appeal procedure and
- notify the decision to the applicant.



**COPIS:** After you filled in all the fields in COPIS for the rights that can be granted, you can publish the application. COPIS will check if all mandatory boxes are filled in and, for certain fields, if the correct format is used (like for telephone numbers, dates, etc). After the application is successfully published, you can grant the application in COPIS. Fill in the date of adoption and expiration. The expiration date is calculated as the date of adoption + one year (e.g. adoption is 2-1-2014; expiration date will be 2-1-2015 ending at 24.00 hours). In the field “Reason Decision” you must indicate the partial grant and the list of rejected rights.




**COPIS:** In case of update of information for an ex-officio application, after having received the additional information, upload the information in COPIS to the part to which it belongs. Adjust the expiration date to one year after adoption.

## 4. Rejection of an application

If all checks have been done and led to a rejection of the application, the decision must be taken and notified within 30 working days of its receipt. The decision taken must be reflected by filling in the box “Decision by customs authorities” of the application on page 4. You should:

- tick the box “The application has been rejected”;
- enter the Registration number of the application as given in COPIS on page 1;
- enter the date and the name of the competent customs department;
- sign and stamp the form;
- attach a document stating the reasons for rejection and include information concerning the appeal procedure and
- notify your decision to the applicant.

 **COPIS:** After you filled in all the fields in COPIS, you can publish the application. COPIS will check if all mandatory boxes are filled in and, for certain fields, if the correct format is used (like for telephone numbers, dates, etc). If certain mandatory information is not given, you must circumvent these fields e.g. by filling in XXX. After the application is successfully published, you must reject the application in COPIS. Fill in the date of adoption and give the reason for rejection.

## 5. Union applications forwarded to other Member States

Immediately after granting a Union application in COPIS, all MS in which action is requested will see in the screen “Latest Events” of COPIS that a decision granting such Union application has been taken. No further action is needed from the MS that granted the application.

- check the page “Latest Events” regularly for new granted UAFAs covering your MS.
- check whether additional information concerning products or risk profiling or translations are necessary for the implementation of the decision.



In case of doubts or questions on the decision granting the UAFA, always first contact the competent customs department of the MS that granted the application for clarification.



If you consider that additional information is necessary for the implementation of that decision, ask the competent customs department of the Member State that granted the decision for that information.



If case no additional information is received, contact directly the right-holder’s contact person for legal questions designated for your country and ask him to provide the missing information.



For translation of information you should always contact directly the right-holder’s contact person for legal questions designated for your country and ask him to provide the translation.



Share additional information delivered by the contact person with the issuing MS so that they can upload it in COPIS.



In all circumstances the decision of a granted UAFA has to be forwarded to customs offices.



In case no information is obtained, inform the issuing MS for a possible revocation of the UAFA.



**COPIS:** If translation is necessary for the correct implementation of the decision in your MS, you can suspend the application for your MS until you receive the missing translation.



**COPIS:** After having received additional information or translations where necessary, upload the information in COPIS to the part to which it belongs and if applicable undo the suspension of the UAFA.

## 6. Requests for extension of the period of validity of an application

The model as published in annex 2 of Commission Implementing Regulation (EU) No 1352/2013 must be used to request the extension of the period of validity of an application for action.

- check whether the holder of the decision is still entitled to submit the application in the meaning of Article 3 of Regulation (EU) No 608/2013 and whether the rights covered are still valid.



In the case of registered rights: crosscheck with the available information from issuing authorities, where available using relevant databases (e.g. OHIM; national , ...). In other cases check with the documents attached to the original application.


If all checks have been done and led to a successful result, the decision must be taken and notified within 30 working days of receipt of the request. The decision must be reflected by filling in box “Decision by customs authorities” of the request. You should:


- tick the box “The request for extension is completely granted” or
- tick the box “The request for extension has been partially granted” and attach the list of granted IP rights and attach a document stating the reasons for the partial rejection and include information concerning the appeal procedure;
- enter the date and the name of the competent customs department;
- sign and stamp the form and
- indicate the new expiry date or



The expiry date shall not exceed one year following the date of expiry of the previous period. Upon request of the applicant a shorter period may be fixed.

- tick the box “The request for extension has been rejected”;
- enter the date and the name of the competent customs department;
- sign and stamp the form;
- attach a decision stating the reasons for rejection and information concerning the appeal procedure and
- notify your decision to the applicant.

 **COPIS:** Amend if necessary the fields in COPIS that were indicated in the request; in case of partial extension because rights are no longer valid, enter an expiry date for those rights in the IPR part of the application. Extend the application: fill in the date of adoption and new expiration date. The new expiration date is calculated as the old date of expiration + one year (e.g. expiration date is 2-1-2015; new expiration date will be 2-1-2016 ending at 24.00 hours). In case of partial extension, indicate in the field "Reason Decision" the partial grant and the list of rejected rights.

 **COPIS:** In case of rejection, you must fill in the date of adoption and give the reason for rejection.



## 7. Deletion of one or more of the IPR already registered under a decision granting an application



The request can be sent to the competent customs department, which took the initial decision in a simple letter.



**COPIS:** Amend the application in the system by deleting the right and any other information according to the information received from the holder of the decision and publish the application in COPIS. However, if there is only one IPR present in the AFA, then this IPR cannot be deleted and the AFA needs to be revoked.

- notify your decision to the applicant.

The following form may be used for that purpose:

<b>Name and address of the Competent Customs department</b>	
<b>Decision</b> Art. 10 Regulation (EU) No 608/2013	
<b>Name of the holder of the decision</b>	
<b>Registration number of the decision</b>	
<b>Decision valid until</b>	
<b>Rights deleted</b>	
<b>Date of adoption</b>	
<b>Signature and stamp</b>	

## 8. Adding of one or more IPR under a decision granting an application



As the information for the new IPR is almost the same as what is asked for in a new application, it is recommended that the holder of the decision uses the application form.



**COPIS:** Amend the application in the system by adding the right and all other information according to the information received from the holder of the decision and publish the application.

- notify your decision to the applicant.

If the holder of the decision has not used the application form, you can use the following form for that purpose:

<b>Name and address of the Competent Customs department</b>	
<b>Decision</b> Art. 10 Regulation (EU) No 608/2013	
<b>Name of the holder of the decision</b>	
<b>Registration number of the decision</b>	
<b>Decision valid until</b>	
<b>Rights added</b>	
<b>Date of adoption</b>	
<b>Signature and stamp</b>	

## 9. Update of information contained in a decision granting an application

In the following cases the holder of the decision has to notify the competent customs department immediately which took the initial decision:

- if his rights ceases to be validly registered,
- if his registered rights expire and he will not ask for extension or extension is not possible,
- if because of other reasons he is no longer entitled to submit an application,
- if there is a change of any information, including changes of contact persons' details or new or updated information on authentic goods, provided in the application,
- if the applicant gets new information which has to be included in an application, especially new trends or significant cases that happened in other countries or
- if the holder of the decision wants to delete or add new products under an IPR which has been already registered under an application for action.



The information can be sent to the competent customs department, which took the initial decision in a simple letter.



**COPIS:** Amend the relevant fields in COPIS with the new update information immediately and publish the application or revoke the application if applicable.

- notify your decision to the applicant.

The following form may be used for that purpose:

<b>Name and address of the Competent Customs department</b>	
<b>Decision</b> Art. 10 Regulation (EU) No 608/2013	
<b>Name of the holder of the decision</b>	
<b>Registration number of the decision</b>	
<b>Decision valid until</b>	
<b>The following decision has been taken</b>	
<b>Date of adoption</b>	
<b>Signature and stamp</b>	