



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 5 December 2012**

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**NOTE**

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from:	Presidency
to:	Delegations
No. prev. doc:	16888/11 UD 311
Subject:	Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017

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Delegations will find attached the above Council Resolution on the EU Customs Action Plan, as agreed by the Permanent Representatives Committee at its meeting on 4 December 2012.

DRAFT

**Council Resolution on the EU Customs Action Plan to combat IPR infringements  
for the years 2013 to 2017**

**THE COUNCIL OF THE EUROPEAN UNION,**

RECALLING:

1. The EUROPE 2020 strategy on smart, sustainable and inclusive growth<sup>1</sup>;
2. The Commission Communication on a comprehensive EU strategy concerning intellectual property rights<sup>2</sup>;
3. Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>3</sup>;

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<sup>1</sup> Communication from the Commission of 3 March 2010 - Europe 2020 A strategy for smart, sustainable and inclusive growth - COM(2010) 2020 final – Not published in the Official Journal.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A Single Market for Intellectual Property Rights - Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe - COM(2011)287.

<sup>3</sup> OJ L 196, 2.8.2003, p. 7. A Commission proposal meant to review this regulation is currently under examination by the European parliament and the Council - COM(2011)235.

4. Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>4</sup>
5. Provisions in agreements on mutual administrative assistance in customs matters concluded between the EU and third countries;
6. Council Resolution of 16 March 2009 on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012<sup>5</sup>;

#### CONSIDERING

7. [The Council conclusions on the Progress on the Strategy for the evolution of the Customs Union<sup>6</sup>;
8. The report on the implementation of the EU Customs Action Plan to combat intellectual Property Right infringements for the years 2009-2012<sup>7</sup>;
9. The experience gained from the previous EU Action plans;
10. AWARE of the economic and reputational damage of IPR infringements to EU businesses and creators, and the profits generated by such illicit activities for organised crime;
11. CONCERNED BY the risks counterfeit goods may create for the health and safety of consumers and end-users and to the environment, in addition to the economic and social consequences;

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<sup>4</sup> OJ L 082, 22.03.1997, p.1.

<sup>5</sup> OJ C 71, 25.3.2009, p.1.

<sup>6</sup> To be completed with the relevant reference once adopted, foreseen in December 2012.

<sup>7</sup> doc. 16349/12.

12. STRESSES the objective to strive for a high level of protection of the EU internal market by means of modern and harmonised approaches to customs controls and of customs cooperation, in particular to avoid trade diversion within the EU;
13. RECOGNISES the need to provide customs authorities with the necessary tools to successfully address new trends in the international trade of goods infringing intellectual property rights;
14. ENDORSES the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017 set out in the Annex, prepared by the Presidency in co-operation with the Member States and the Commission;

INVITES:

15. The Member States and the Commission to implement the Action Plan set out in the Annex effectively and efficiently making full use of the tools and the resources available;
16. The Commission, in co-operation with Member States:
  - to prepare a comprehensive roadmap by spring 2013 to facilitate the implementation of the Action Plan;
  - to monitor the implementation of the Action Plan;
  - to submit to the Council annual summary reports on the implementation of the Action Plan;
  - to submit to the Council a final report on the implementation of the Action Plan in 2017.

## **EU Customs Action Plan to combat IPR infringements for the years 2013-2017**

### **INTRODUCTION**

The massive violations of intellectual property rights in the trade of goods are a serious global problem. In 2011, the customs enforcement of IPR in the EU resulted in almost 115 million articles detained.

The competitiveness of economies is increasingly based on creativity and innovation. The Europe 2020 Strategy for smart, sustainable and inclusive growth outlines the way forward towards Europe's economic recovery and growth. Promoting knowledge and innovation is one of the three priorities of that Strategy.

It is essential to improve framework conditions for business to innovate and to reduce the damage to its legitimate interests caused by counterfeiters taking advantage of the investments, efforts and brand reputation of right-holders. The fight against international organisations engaged in fraud and organised crime, often searching for easy gains and economic benefits from the trade in counterfeit and pirated goods, also requires specific attention, as well as the risks that counterfeit goods may cause to consumers and end-users.

A comprehensive IPR legal framework must be combined with effective enforcement. Business and consumers rely heavily on the responsiveness of enforcement authorities. Customs play a key role in enforcement: once IPR infringing goods have entered the Single market, they are much more difficult to interrupt. Coordinating and planning European customs activities to combat IPR infringements related to cross-border trade is paramount.

## **EVALUATION OF THE EU ACTION PLAN 2009-2012**

The outcomes of the implementation of the Action Plan 2009-2012 are reflected in the dedicated report that the Commission services prepared in co-operation with Member States.

During the last four years, focus has been put on improving existing EU legislation on the customs enforcement of IPR, strengthening operational co-operation between customs and with industry, and further developing international co-operation on IPR enforcement. Publicity and awareness-raising, responding to the problem of Internet sales and the delivery of ad hoc training to customs officers were also part of the Action Plan.

Customs administrations and the Commission have given a firm response to the key challenges associated with the enforcement of intellectual property rights by customs. Statistics gathered show impressive results with almost 115 million detained articles and the acceptance of more than 20.000 applications for actions lodged by right-holders in 2011. The estimated value of the equivalent genuine products approached 1.3 billion euro. Internet sales have boosted the number of cases in postal traffic, which tripled between 2009 and 2011.

The evaluation of the Action Plan shows the need for maintaining an EU-wide approach towards the customs enforcement of IPR. This was also echoed in the 79<sup>th</sup> meeting of Directors-General for Customs of the EU Member States, Croatia and Turkey. The meeting called for the establishment of a new EU Customs Action Plan to combat IPR with clear objectives, appropriate resources and indicators of results and performance.

## WAY FORWARD

The new Action Plan is designed to bring added value and enhanced outcomes in a climate of financial austerity. It contains some core elements of previous Action Plans that remain valid and must be further deepened and implemented. The experience gained from the implementation of the 2009-2012 Action Plan also highlights the need for some adjustment to our action, taking account of the resource constraints in administrations. The efforts to be engaged should be clearly defined and linked to indicators allowing measurement of results. A partnership should also be developed with the European Observatory on infringements of IPRs and co-operation enhanced with the European Anti-Fraud Office (OLAF) and European enforcement bodies other than customs, in the framework of their respective competences, where appropriate. The future Customs 2020 Programme shall continue like previous programmes to support the implementation of the present Action Plan.

The strategic objectives of this Action Plan are therefore the following:

- \* Effectively implementing and monitoring the new EU legislation on customs enforcement of IPR;
- \* Tackling trade of IPR infringing goods in post and parcels resulting from Internet sales as well as container trade;
- \* Tackling major trends in trade of IPR infringing goods;
- \* Strengthening cooperation with the European Observatory on infringements of IPRs and law enforcement authorities.

The Action Plan will run for the years 2013-2017.

## **ROADMAP**

A detailed roadmap will be prepared by the Commission in co-operation with Member States experts to define the actions and tools to be deployed within an agreed timeframe, taking into account the financial and human resource implications. The agreed roadmap will be made available to the Council in Spring 2013.

## **REVIEW MECHANISM**

The Commission in co-operation with the Member States experts, will present yearly summary reports to the Council describing the state of implementation of the Action Plan, on the basis of the roadmap. A more detailed report will be prepared in the final year.

## **CONCLUSIONS**

The EU Customs Action Plan to combat IPR infringements for the years 2013-2017 is attached. As a first step, the Commission will prepare the above-mentioned roadmap.



**1. EFFECTIVELY IMPLEMENTING AND MONITORING THE NEW EU LEGISLATION ON CUSTOMS ENFORCEMENT OF IPR**

<b>Specific objective 1.1: Developing tools for implementing the new EU Regulation</b>		Responsible actors
Actions	Indicators	
1.1.1 Production of a manual for right-holders filing applications for action	Manual published on websites	Commission & MSs
1.1.2 Support visit to all MSs by a team composed of IPR experts and the Commission	<input type="checkbox"/> Visits performed and advice provided where appropriate <input type="checkbox"/> Detected problems are followed-up and capacity building plans established where necessary	Commission & MSs
1.1.3 Preparation of specific Guidelines for customs in all EU official languages on new procedures (including small consignments) where appropriate.	Guidelines available	Commission & MSs
1.1.4 Development of a proposal for a training plan to facilitate the implementation of the Regulation, possibly including an e-learning tool for Customs and right-holders	<input type="checkbox"/> Training plan established by a working E-group and trainings performed	Commission & MSs in cooperation with the European Observatory on Infringements of Intellectual Property Rights

<b>Specific objective 1.2: Exploiting the full functionality of COPIs</b>		
Actions	Indicators	Responsible actors
1.2.1 Implementation of the functionalities of COPIs	Full exploitation of search and reporting functionalities of COPIs	Commission & MSs

<b>Specific objective 1.3: Engaging right-holders &amp; stakeholders</b>		
Actions	Indicators	Responsible actors
1.3.1 Provision of information on the new EU Regulation to right-holders and stakeholders	<input type="checkbox"/> Websites of customs administrations updated when the Regulation enters into application <input type="checkbox"/> Information on new legal framework in SME Helpdesks <input type="checkbox"/> Special parts of TransAtlantic Portal on Customs enforcement up to date <input checked="" type="checkbox"/> Information on new legal framework in Member States SME support organisations and relevant industrial and intellectual property departments and offices	Commission & MSs  Commission  Commission  Commission and Member States

1.3.2 Regular meetings at EU level between customs, representatives of right-holder and other parties involved in IPR enforcement	<input type="checkbox"/> 1 <sup>st</sup> meeting at the latest one year after the new Regulation is applicable	Commission, MSs & right-holders/other involved parties
<b>Specific objective 1.4: Annual publication of statistics</b>		
Actions		
1.4.1 Publication of a yearly EU report of statistics on customs enforcement of IPR	Indicators Yearly reports available in May	Responsible actors Commission & MSs

## 2. TACKLING MAJOR TRENDS IN TRADE OF IPR INFRINGING GOODS

<b>Specific objective 2.1: Developing tailor-made approaches for parcel and postal traffic</b>		
Actions		
2.1.1 Exchange of best practices on the customs follow-up of internet trade, complementing the activities of the Customs Cooperation Working Party (EU Council) pertaining to the area of customs related Internet Crime	Indicators Best practices available to customs administrations via the e-counterfeiting group under the Customs 2013 Programme	Responsible actors Commission & MSs

<b>Specific objective 2.2: Strengthening Customs Risk Management</b>		
<b>Actions</b>	<b>Indicators</b>	<b>Responsible actors</b>
2.2.1 Development of a common risk management based control strategy including risk information needs, common risk criteria and standards and implementation of EU priority control actions (PCAs) as appropriate, targeted at detection of IPR infringements for small and large consignments	<input type="checkbox"/> Criteria and standards established	Commission with the support of the MSs
2.2.2 Regular provision of appropriate IPR risk and customs control information via the Customs Risk Management System (CRMS) and control contact points	<input type="checkbox"/> CRMS used to exchange risk information on IPR infringements <input type="checkbox"/> Regular feedback from MSs on risk and customs control information provided and control results	Commission & MSs
2.2.3 Elaboration of a coordinated work plan for Joint Customs Operations (JCOs) on IPR, including coordination with international organisations	<input type="checkbox"/> Multi-annual work plan of JCOs on IPR coordinated with the different customs authorities, the EU Council and international organisations <input type="checkbox"/> Use of information gathered during JCOs for risk analysis and investigation purposes	Commission & MSs

### 3. TACKLING TRADE OF IPR INFRINGING GOODS THROUGHOUT THE INTERNATIONAL SUPPLY CHAIN

<b>Specific objective 3.1: Strengthening cooperation with key source, transit and destination countries</b>		
Actions	Indicators	Responsible actors
3.1.1 Reinforcement of customs cooperation on IPR with third countries, in particular China and Hong Kong	<input type="checkbox"/> New expanded EU-China Action Plan implemented after 2012 <input type="checkbox"/> Cooperation activities with Hong Kong agreed and implemented	Commission & MSs
3.1.2 Development of exchange of information with third countries in compliance with the legal provisions, including on goods in transit/transhipment across the EU	<input type="checkbox"/> Mechanisms for the exchange of information are established <input type="checkbox"/> Number of information exchanges and number of detention cases on the basis of that information	Commission & MSs
3.1.3 Enhancement of the exchange of information between the EU Member States and Commission services on the one hand and third countries authorities on the other hand, including Balkan and Eastern Partnership countries, with a view to eliminating international trade in goods infringing intellectual property rights.	<input type="checkbox"/> Number of cases opened on the basis of the information exchanged <input type="checkbox"/> Recommendations	Commission & MSs

3.1.4 Organisation of EU Customs presence in international events to spread knowledge	<input type="checkbox"/> EU Customs authorities represented in relevant international IPR enforcement events <input type="checkbox"/> Feedback on these events provided to all MSs and Commission by EU participants	Commission & MSs
<b>Specific objective 3.2 : Building capacity in candidate and neighbouring countries on IPR enforcement</b>		
Actions	Indicators	Responsible actors
3.2.1 Provision of technical assistance for capacity building to candidate and neighbouring countries upon request	<input type="checkbox"/> Pool of experts available <input type="checkbox"/> Multi-annual planning of activities	Commission & MSs
3.2.2 Exchanges of experiences and possible study visits on operational structure, IT and operational solutions applied by Customs in IPR enforcement	<input type="checkbox"/> Report on best practices in IPR enforcement in the EU and the neighbouring countries	Commission & MSs
3.2.3. Exchange of officials	<input type="checkbox"/> Number of exchanges performed <input type="checkbox"/> Reporting to the other MSs and the Commission on the experience gained in the exchanges	MSs

**4. STRENGTHENING COOPERATION WITH THE EUROPEAN OBSERVATORY ON INFRINGEMENTS OF IPRs, AND LAW ENFORCEMENT AUTHORITIES**

**Specific objective 4.1: Establishing a partnership with the European Observatory on infringements of IPRs**

Actions	Indicators	Responsible actors
<p>1.1 Contribution to the development and implementation as appropriate, of projects by the European Observatory on infringements of Intellectual Property Rights to support institutions and initiatives on IPR enforcement, within the limits of the powers conferred to it by Regulation (EC) No 386/2012, and according to the work plan of the European Observatory, in particular to :</p> <ul style="list-style-type: none"> <li>- develop systems to gather, analyse and report on the scope and scale of counterfeiting and piracy in the EU and exchange key information</li> <li>- building competencies in IP enforcement by delivering specialised training</li> <li>- How best to safeguard your IP rights</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Projects correspond to customs needs</li> <li><input type="checkbox"/> Compatibility and synergies with customs projects</li> <li><input type="checkbox"/> Availability of tools for spreading knowledge about IPR laws, <u>[...]</u></li> <li><input type="checkbox"/> Public awareness activities including those targeted at consumers</li> </ul>	<p>European Observatory on infringements of Intellectual Property Rights in co-operation with Commission &amp; MSs</p>

<b>Specific objective 4.2: Improving mutual understanding and cooperation between Customs, police and judicial authorities</b>		
<b>Actions</b>	<b>Indicators</b>	<b>Responsible actors</b>
4.2.1 Joint events between representatives of customs administrations, police, judicial authorities and industrial and intellectual property departments and offices	<input type="checkbox"/> Conference organised by the Commission and the Observatory in 2014	Commission, European Observatory on infringements of Intellectual Property Rights & MSs

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