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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
concerning customs enforcement of intellectual property rights and repealing
Council Regulation (EC) No 1383/2003
COMMON GUIDELINES
Consultation deadline for Croatia: 15.5.2013

I. INTRODUCTION

The Commission submitted the above-mentioned proposal to the Council on 26 May 2011.

The European Data Protection Supervisor transmitted its opinion on 12 October 2011.

The European Parliament delivered its Opinion at first reading on 3 July 2012, amending the proposal.

Under the ordinary legislative procedure (Article 294 TFEU), on [...] the Council, having regard to Parliament's first reading, adopted its position at first reading on the draft Regulation.

II. OBJECTIVE

The purpose of the draft Regulation is to strengthen and clarify the provisions concerning enforcement of intellectual property rights. This is achieved through broadening the scope covered by Regulation (EC) No 1383/2003, by including trade names, topographies of semiconductor products and utility models together with a number of infringements.

The draft Regulation introduces simplified procedures with regard to the destruction of goods, enabling customs to have goods abandoned for destruction without having to undergo legal proceedings. Concerning small consignments, a specific procedure allow for suspected counterfeit and pirated goods covered by an application to be destroyed without the involvement of the right- holder.

The Proposal also provides for a number of measures that ensure the protection of the interests of legitimate traders from possible abuse of the customs enforcement procedures, in particular with regard to information to be passed on to right-holders by customs and the right of defence.

III. ANALYSIS OF THE COMMON POSITION

1. General

The Council, in its position at first reading, shares the proposal's overall objective with regard to the need to strengthen the enforcement by customs of intellectual property rights. However, the Council takes the view that the scope of the Regulation should be extended to parallel trade and overruns and that the right to be heard should be granted in accordance with national law and in addition introduces an number of technical changes to the proposal.

2. EP Amendments

The European Parliament adopted 108 amendments to the proposal¹. These amendments mainly concern:

- the applicability of the Regulation to goods in transit;
- the traceability of parallel imports;
- the submission of applications using electronic data processing systems, with such systems being available no later than 1 January 2014;
- with regard to goods suspected to be counterfeit and placed under a suspensive procedure, the adequate evidence to be provided by the declarant or holder of the goods that the final destination of the goods is beyond the territory of the Union;
- the right to be heard;

¹ The complete text of the amendments adopted by Parliament at its plenary on 3 July 2012 is available at the following address:
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-272>

- the cooperation with customs authorities of third countries and the sharing of information and data between customs authorities;
- the extension of the simplified procedure for the destruction of goods to all IPR infringements;
- the specific procedure for the destruction of goods in small consignments, defined on the basis of the number of items (less than three) and their total weight (less than 2kg) contained in a single package;
- the reporting by the Commission on the implementation of this Regulation by three years after its entry into force.

3. **New elements introduced by the Council**

The main points of the common position which differ from the Commission's proposal concern:

- the exclusion of parallel trade and overruns from the scope of the Regulation;
- the customs controls and identification measures that customs authorities may carry out to prevent operations in breach of intellectual property laws applicable in the territory of the Union, and in order to cooperate with third countries on the enforcement of intellectual property rights;
- the common procedure to apply to all IPR infringements falling within the scope of the Regulation, without prejudice to the specific procedure for small consignments;
- the procedure for small consignments, which only applies upon request from the applicant, and the costs of which the applicant may be requested to cover;

- the definition of small consignments in the Regulation, with regard to which the Commission is empowered to adopt delegated acts in accordance with Article 290 TFEU in view of amending, under certain circumstances, its non-essential elements;
- the necessary legal basis, in line with Article 69 TRIPS and with a view to eliminating international trade in goods infringing intellectual property rights, for the swift exchange of information between customs authorities in the EU and in third countries. Implementing powers are conferred on the Commission to define the elements of the practical arrangements for the exchange of data with third countries;
- the right to be heard;
- the situations in which the right-holder may use the information that customs disclosed to him following a detention of goods;
- the provisions in the basic act on data collection, processing, retention periods, exercise of rights and responsibilities in accordance with existing legislation on data protection.

IV. CONCLUSION

The position at first reading, which has been unanimously adopted by the Council and which is supported by the Commission, is designed to meet the objectives of the proposed Regulation, which is to re-enforce and clarify the legal framework in which customs authorities operate in view of enforcing intellectual property rights.

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