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COMMISSION STAFF WORKING DOCUMENT

**Report on the implementation of the EU Customs Action Plan to Combat Intellectual
Property Right Infringements for the Years 2009 to 2012**

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INTRODUCTION

The customs services of the European Union are responsible for controlling goods at the EU external border, and to detain those goods suspected of infringing intellectual property rights (IPR) that are protected by EU and national laws. Customs work in partnership with stakeholders, such as right-holders, other national bodies and institutions responsible for the enforcement and application of IP legislation, and the European Commission.

To allow customs to follow a common approach on IPR enforcement and focus their attention on the situations posing the greatest risks, the Commission and the Member States jointly set up a multi-annual Action Plan. The Action Plan has provided the framework to ensure that the limited customs resources available for IPR enforcement can be used in the most effective way.

The EU Customs Action Plan to combat IPR infringements for years 2009 to 2012 (Action Plan) as endorsed by the Council¹ in 2009 aims to tackle four main challenges, namely dangerous counterfeit goods, organised crime, globalisation of counterfeiting and the sales of counterfeits over the Internet. This is to be achieved by means of:

- improving and where necessary modifying, existing IPR legislation on customs enforcement,
- improving cooperation with right-holders,
- strengthening operational cooperation between customs in the EU and with third countries,
- developing further international cooperation on IPR enforcement,
- improving publicity and awareness, and
- responding to the problem of Internet sales and delivering ad hoc training to customs officers.

The Action Plan invited the Commission, in co-operation with the Member States, to conduct annual reviews of its implementation and to submit to the Council a final report in 2012.

This report was prepared by the Commission services, in cooperation with Member States customs experts. It follows the general structure of the Action Plan and includes a set of recommendations on how to go forward.

MAIN OUTCOMES IN THE IMPLEMENTATION OF THE ACTION PLAN

¹ 2009/C 71/01 Council Resolution of 16 March 2009 on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012.

1. Legislation and data tools

1.1 Legislation

The Action Plan envisaged a review of Council Regulation (EC) No. 1383/2003 of 22 July 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, and of its implementing provisions contained in Commission Regulation (EC) No. 1891/2004, with the aim of clarifying and harmonising its interpretation.

The review was carried out by the Commission in collaboration with experts from Member States. An open public consultation through the Internet was also held from 25 March to 7 June 2010.

On 24 May 2011, the Commission issued a proposal for a new regulation on the customs enforcement of IPR, as part of a Communication on a comprehensive EU strategy concerning intellectual property rights. The objective of the proposal is to strengthen customs enforcement of IPR by streamlining procedures, while respecting the rights of the parties concerned.

The proposal is the subject of negotiations between the Council and the European Parliament, for a planned adoption by the end of 2012, when the 20th anniversary of the Single Market will be celebrated.

1.2 Data tools

As foreseen in the Action Plan, the Commission and the Member States have been developing COPIS (anti-Counterfeit and anti-Piracy Information System), an EU electronic system for registering and disseminating among customs companies' applications for action². It will include a database for recording customs detentions of IPR infringing goods at the external border and related statistics. Development of the system started in 2009 with the fixing of user requirements. Several Member States were visited by IT experts from the Commission to study the national systems in order to maximise the potential of the future COPIS system, and to ensure compatibility between national systems and COPIS. The Commission continued to develop COPIS throughout 2011 and 2012, in full collaboration with Member States in the framework of the Electronic Customs Group. COPIS is expected to be operational in the first half of 2013.

2. Operational performance

The Action Plan contains activities aimed at improving the operational performance of customs in the enforcement of IPR at the border. Actions undertaken in this field ranged from training activities to the organisation of joint customs operations.

2.1 Cooperation between national administrations.

Throughout the period of implementation of the Action Plan, Member States reported numerous examples of sharing best practices and of close cooperation between

² see § 3.1 *Applications for action*

administrations, through benchmarking exercises, trainings and exchange visits not only within the EU, but also with third countries, mostly involving neighbouring countries. These types of activities were reported to be well covered by the majority of Member States and saw an upward trend from 2009 onwards. An increase in the number of detentions following the completion of training activities was observed, although such increase was reported to be temporary. Dedicated training materials were developed by most Member States; nevertheless only some Member States reported having created e-learning courses as envisaged by the Action Plan.

2.2 Targeted actions.

The Action Plan also envisaged the setting up of EU-coordinated activities to combat counterfeiting in the framework of significant cultural, social and sporting events, and to combat dangerous goods. The only EU coordinated activity of the kind has been Operation Gold Medal, organised in view of the Olympic and Paralympic Games of London 2012. Although the final results of the operation are yet to be published, the number of consignments of suspected infringing goods detained at the border fell below the levels that were anticipated. Outside the framework of the Action Plan, a number of Member States reported having selected well-known sporting events, including the European football championships and the hockey championships, to conduct targeted, and sometimes coordinated, anti-counterfeiting operations.

With regard to the phenomenon of dangerous counterfeit products, collaboration between customs and other enforcement authorities on issues such as product safety was promoted, for example by means of seconding health inspectors to work with customs.

Several Member States reported on participation in Operation Pangea IV, an international operation aimed at tackling the trade in counterfeit medicines, where the main coordinators were the WCO and Interpol. Member States also participated in the Joint Customs Operation 'Fireblade' (2011) aimed at detecting the smuggling of counterfeit clothing and accessories in commercial consignments entering the EU by road. Operation 'Fireblade' was organised by one Member State in close cooperation with OLAF and with Europol. All EU Member States and some non-EU countries were invited to participate in this operation and as a result, more than 28,000 counterfeit textile products, as well as considerable quantities of other counterfeit goods, cigarettes and perfumes were detained when entering the EU by road via its Eastern border. The equivalent domestic retail value of the goods represented an estimated 1 million euro and in addition, seized smuggled cigarettes represented an additional 1,5 million euro in terms of evaded duties and taxes. Operation Diabolo II, organised within the framework of the Asia-Europe Meeting (ASEM) and coordinated by OLAF, took place in the second half of 2009. The main focus of the operation was on the fighting against smuggling of counterfeit cigarettes, by means of back-tracking and monitoring suspicious consignments; nevertheless, other products were also included. The operation resulted in the seizure of almost 66 million tobacco products and the detention of around 370 thousand other counterfeit products and sensitive goods. Another joint customs operation mainly targeting counterfeit/illicit cigarettes has been Operation Sirocco, within the framework of the Union for the Mediterranean partnership and organised by OLAF with the support of the WCO, EUROPOL and INTERPOL. As a result of the operation, 37 million cigarettes were seized.

2.3 Risk analysis

As far as risk management is concerned, the Action Plan required the promotion of the Risk Information Form (RIF) that is an integral part of the EU customs risk management system, for wider and more efficient use in the area of IPR enforcement. The customs administrations of Member States used this tool on a frequent basis with a view to sharing information and carrying out targeted actions. The required set-up of a dedicated group in RIF was followed up and most Member States have indicated they have active national networks of experts at operational level.

To enhance risk analysis, a notification mechanism allowing right-holders to swiftly inform the relevant customs administrations about specific details or general trends concerning suspected counterfeit goods has been elaborated in close collaboration with industry. The "Red Alert" and "New Trends" forms have been made easily accessible and downloadable from the national customs as well as the Commission website.

2.4 Counterfeit over the Internet

In order to tackle the growing problem posed by the trade in counterfeit goods via the Internet (*e-counterfeiting*), the Action Plan envisaged the creation of an ad hoc working group of experts and the organisation of seminars aimed at identifying and sharing best practices in this area. In October 2010 a Customs 2013 seminar was organised in Paris - La Villette to exchange information on how customs tackle the phenomenon of counterfeit goods being sold via the Internet, to share experiences and to explore possible ways to improve the efficiency of customs controls on counterfeited goods in small consignments. The seminar produced robust conclusions that included a recommendation to each administration to provide for a customs structure responsible for the fight against counterfeiting via the Internet. As a follow-up to the La Villette seminar, whose recommendations were endorsed by the Customs Union Group of the Council, the *e-Counterfeit Project Group* was established in October 2011. The Project Group provides a forum for interested Member State experts to exchange best practices and to review the available instruments to combat *e-counterfeiting*, with a view to strengthening national customs capacity to curb such illegal activity.

3. Business cooperation

Involving industry in the fight against IPR infringements at the border is paramount, as customs cannot act without the active engagement of right-holders. The Action Plan therefore features a section specifically devoted to cooperation between customs and business. An important part of the activities related to this section has been to promote the role of customs to enforce IPR at the border and to explain the possibility to apply for protection of one's rights, as well as the need to ensure that the quality of the applications for action submitted is adequate.

3.1 Applications for action³

Throughout the period of implementation of the Action Plan, Member States promoted the submission of applications for action and raised awareness of this option by means of

³ IPR holders may apply in writing to the EU competent customs department for action by the customs authorities when goods could be found or are found in one of the situation referred to in Article 1(1) of the Council Regulation No 1383/2003 of 22 July 2003 (application for action).

organising trade fairs and dedicated activities for small and medium enterprises. Relevant material was published on national websites and in some cases, the possibility for online submission of applications was also provided for. As a result, the number of applications for action recorded in the annual reports on EU customs enforcement of IPR has steadily increased: if in 2009 the number of applications filed across the EU was around 15,000, in 2010 it rose to 18,330. In 2011 20,566 applications for action were submitted.

As far as the electronic exchange of information with the private sector is concerned, there appears to be a wide divergence of approaches between Member States. In some cases, the use of electronic tools appears to be limited to e-mail correspondence, whilst in others customs offer full electronic communication, using a certified digital signature. Some Member States allow for or prescribe the electronic submission of applications for action, through nationally developed systems, whilst others are now waiting for the EU-level system, COPIS, to be launched. However, even in Member States where there is not yet a dedicated electronic system for applications, right-holders may be invited to submit applications and other information, such as photos, electronically.

3.2 Special arrangements

If the promotion of the submission of applications for action was reported as successful, the conclusion of memoranda of understanding with relevant stakeholders produced mixed results. Although a number of Member States concluded special arrangements with different categories of stakeholders (notably airlines, express mail and postal services, but also major private sector bodies such as international industry federations and chambers of commerce), others did not conclude such agreements, indicating they deemed such arrangements not to be useful. Only some Member States reported having concluded memoranda of understanding with Internet Service Providers. Poor willingness of the stakeholders to engage in strengthened forms of cooperation was also sometimes reported.

3.3 Targeted seminars

Most Member States actively encouraged the strengthening of cooperation and the exchange of information with stakeholders by means of seminars and workshops on different topics (e.g. the electronic submission of applications for action) and with different target audiences (e.g. small and medium enterprises). The Commission services also organised occasional meetings with EU-level trade federations and other interested parties, as envisaged by the Action Plan.

3.4 Red alert/trend forms

Member States reported having undertaken actions to raise awareness about these forms; nevertheless, response from the right-holders appeared to be very low, if not inexistent. Attention was also drawn to the fact that those forms are currently only available in English and the view was expressed that their translation into the other EU official languages might encourage their use.

3.5 Provision of information

The provision of information to right-holders concerning customs procedures relating to IPR enforcement was widespread across the EU and was carried out through a wide variety of instruments, including websites, bilateral correspondence between right-holders and Customs

administrations, manuals and instructions to right-holders, as well as through the meetings organised by national Customs administrations for interested right-holders.

4. International cooperation

The EU market is a major target of IPR infringing goods and China is the main source country, therefore international cooperation is an essential component of the EU's strategy for the effective enforcement of intellectual property rights at the border. The objective is to address the globalisation of counterfeiting through an overarching approach, which includes the sharing of expertise, the exchange of relevant information and the organisation of joint activities with key trading partners.

4.1 ACTA

Negotiations for an Anti-Counterfeiting Trade Agreement (ACTA) were concluded in September 2010. The Commission referred it to the Court of Justice of the European Union, asking for an examination of its compatibility with the Charter of Fundamental Rights. The European Parliament did not give its consent to the Agreement, whereas the Council approved it.

4.2 Cooperation with China

The Action Plan foresees the conclusion and implementation of a dedicated Action Plan concerning EU-China Customs Cooperation on Intellectual Property Rights ("EU-China Action Plan"), which was signed in Brussels on 30 January 2009, and subsequently extended until 31 December 2012 in recognition of its potential significance in enhancing the enforcement of intellectual property rights in the trade relationship between the two parties.

The EU-China Action Plan envisages coordinated action in four key areas:

- Systematic exchange and analysis of seizures, trends and general risk information.
- Creation of networks of customs in key ports and airports to target high risk consignments.
- Exchange of practices on means of providing seizure information to assist other administrations in stopping production and winding up distribution networks.
- Joint development of partnerships with business communities in the EU and China.

Progress has been made on all four key actions, and it is recognised that the cooperation should be further strengthened to achieve a more tangible impact on the illicit trafficking in counterfeit and pirated goods. Feedback from the private sector involved in the EU-China Project on the Protection of Intellectual Property Rights (IPR2)⁴ was positive, customs activities being numbered among the most efficient and successful. With regard to the exchange of statistical data and good practices, some information was exchanged through the networks, although below expected levels taking into account the overall traffic in IPR infringing goods recorded in the annual customs statistics. Eight Member State ports and airports have participated so far in the network of customs experts and the systematic exchange of information (the first two key actions), while all Member States are involved in

⁴ The EU-China Project on the Protection of Intellectual Property Rights (IPR2) was a partnership project between the EU and the People's Republic of China on the protection of intellectual property rights in China that was implemented between 2007 and 2011.

the other activities. Several technical meetings have been organised since 2009 with a view to sharing experiences and exploring means to further enhance mutual cooperation.

Kick-off of key action 3 took the form of a conference held in February 2012 in Cologne. Customs, police and judicial authorities from Member States and China exchanged views, 'best practices' and ideas on how to better cooperate within one jurisdiction and between the EU and China in the fight against IPR infringements. Follow-up activities are now under consideration.

Joint development of partnership with business communities in the EU and China was also launched through a first joint industry-customs Working Group meeting held in February 2012 in Rotterdam. As it proved to be an excellent platform for detailed discussions between right-holders and Customs on IPR border enforcement in the EU and China, all parties expressed the need to maintain this initiative.

Since the EU-China Action Plan will expire at the end of 2012, a final review of the activities carried out within its framework is on-going and discussions on the possibility of extending its validity and widening its scope have started.

4.3 Cooperation with other trading partners and international organisations

Based on the EU Action Plan, initiatives have been taken to strengthen cooperation with key partners, such as the US and Japan, within the framework of the respective customs cooperation agreements. In this respect, the mutual exchange of statistical data with Japan was endorsed. Besides cooperation with like-minded partners, several Member States have also strengthened bilateral cooperation with third countries considered to be source countries for IPR infringing products, through exchanges, study visits, seminars, coordination projects and similar activities. Furthermore the EU Action Plan addresses the commitment at EU level of the G8 leaders to continue to promote the enforcement of IPR consistent with international agreements.

From an operational point of view, joint actions are a useful contribution to the fight against counterfeiting and piracy and a number of Member States have participated in joint customs operations organised by international organisations such as the WCO and Interpol. Additionally, the Commission and the Member States also participated in meetings of the Counterfeit and Piracy (CAP) Group in the WCO, which provides a forum to exchange views, experiences and practices on the border measures against counterfeit and pirated goods. The EU participated in the CAP Group, contributing towards the identification of needs and towards the preparation of capacity-building activities.

The Commission defended the EU in a WTO Dispute Settlement Procedure with Brazil and India on the customs detention of generic medicines in transit through the EU territory towards non-EU countries. The dispute was amicably resolved with India through a Joint Understanding between the European Commission and the Indian government. As a result, in February 2012 the Commission issued [guidelines](#) concerning the enforcement by EU customs authorities of intellectual property rights with regard to goods in transit through the EU, including medicines. The guidelines are published on the Commission internet site.

5 Raising awareness and communication

5.1 Awareness-raising activities

These are widespread across the EU and tend to concentrate on the possible damaging effects associated with the purchase and the consumption of counterfeit products, especially in terms of risks for public health and safety. Particular emphasis was placed on consumer protection and public health issues, as well as on the possible dangers in buying certain products, like medicines, via the Internet. Communication was done through a number of different media outlets, including TV, radio, websites and social media. Conferences, exhibitions and trade fairs were organised, targeting a wide and varied audience that ranged from school children to companies. In some Member States specific campaigns were set up for travellers at airports and other border crossing points in which passengers travelling to certain destinations were targeted and provided with leaflets. With regard to the messages conveyed through those campaigns, approaches have again been varied, with some campaigns being focused on the activities carried out by customs and others highlighting the negative implications and consequences of infringing intellectual property rights.

During the Shanghai World Expo a well-attended and well-received International Customs Conference with focus on IPR enforcement was organised in collaboration with Chinese customs. One of the most important objectives was to promote the positive impact of effective cooperation with Chinese customs on consumers, trade and industry and to develop collaborative partnerships with business.

5.2 EU-level coordination of communication actions

Media events were sometimes organised in connection with the publishing of national and EU-wide reports on the enforcement of intellectual property rights by customs with a view to reaching out to the wider public and raising awareness. Such reports provide credible evidence of the role of customs in the enforcement of IPR and raise the profile of customs activities in general terms.

The statistics contained in the EU annual report are compiled from data collected from the Member States and regularly attract wide media attention, partly due to the limited availability of alternative data collections on the extent of counterfeiting, piracy and other IPR infringements in the EU. In this respect, the European Observatory on Infringements of Intellectual Property Rights has been entrusted with the tasks of establishing a methodology for the collection, analysis and reporting of data relating to infringements of intellectual property rights on the internal market and of disseminating the collected data.

The celebration of the 40 years of Customs Union saw the launch of an EU-wide campaign called "Customs see what you don't" in which the prevention of the flood of unsafe or counterfeit goods had a central role. The communication message, which remains valid, is still widely visible across Europe.

5.3 Cooperation between enforcement authorities

The Action Plan envisages the promotion of cooperation on communication between enforcement authorities. Some Member States reported on initiatives in this area, particularly with regard to cooperation with the police, national trademark and patent offices and market surveillance authorities.

CONCLUSION

This document gives an overview of the implementation of the Customs Action Plan to combat IPR infringements for the years 2009 to 2012.

Overall, Member States customs administrations and the Commission have been very active in providing a firm response to the key challenges associated with the enforcement of intellectual property rights by customs. Between 2009 and 2011, the number of cases of detentions of IPR infringing goods by customs increased from 44,000 to 91,000, reaching 115 million articles in 2011. The estimated value of the equivalent genuine products was nearly 1,3 billion euro in 2011. The number of cases in the postal traffic tripled between 2009 and 2011, thereby confirming that the challenges identified in the Action Plan are more acute than ever. The Commission presented a proposal for a new regulation on the customs enforcement of IPR, and cooperation with the main source country, China, further developed.

The EU has a strong system to protect against IPR infringements at the external border and the Action Plan has shown to be a valuable aid for customs in tackling the four main challenges identified.

However, there is no room for complacency. The trafficking of IPR infringing goods is constantly evolving and enforcement authorities must be equipped with the necessary tools to face the phenomenon. Further developments are necessary in the customs domain as regards the legislation, information sharing and international cooperation.

One shortcoming of the current Action Plan is the lack of an adequate level of detail as to the objectives to be achieved, as well as to the means to measure the success or impact of the implemented actions.

RECOMMENDATIONS

Past experience shows the advantages of coordinating customs activities to combat IPR infringements through an action plan, and agreeing on a similar instrument for the coming years is desirable. Such an initiative should take due account of experiences and outcomes of the existing Action Plan whilst ensuring a smooth transition.

The action plan that is to succeed the present one should combine a pragmatic approach with a clearer strategic vision as well as general objectives supported by specific goals for each action. In order to allow for a better evaluation of the success of the activities carried out within its framework, the new plan should also provide for clearer indications as to the timing and the required results for each action, while giving better consideration to achievability, the impact on resources and staff and national specificities. Indicators could be developed to measure the realisation of the actions and their impact. In this context, further consideration should be given to the possibility of establishing partnerships with relevant national and international agencies.

Moreover, the future action plan should take account of and address the new trends and international developments, such as the increase in sales over the Internet and the rise of new key players on the international stage.

Finally, on the basis of the outcome of the brainstorming exercise that the Commission has held with the IPR experts of EU Member States, it is recommended that the following elements of the existing Action Plan are retained and further developed:

On Legislation:

- Actions to support the successful implementation of the new customs Regulation on IPR enforcement by providing guidance documents, training, review, etc.

On Operational performance:

- Work together on intelligence, risk analysis and joint operations.
- Exploit the opportunities offered by the C2013 programme to facilitate our work (e.g. working visits, training and exchange of officials).
- Maximise the future use of COPIS for trend analysis.

On Business cooperation:

- Collaborate with business to improve enforcement.
- Training on the new Regulation.
- Cooperation with stakeholders regarding China.

On International cooperation:

- Develop a strategic approach to priority countries and international organisations.
- The continuation of cooperation with key partners such as China and seeking new forms of international collaboration.

On Raising awareness and communication:

- Develop an EU-wide customs communication strategy including common actions on awareness-raising.