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NOTE

From: General Secretariat of the Council

To: Delegations

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Subject: Draft Council Conclusions on the EU Customs Action Plan to Combat IPR Infringements for the Years 2018 to 2022

Delegations will find attached the above revised draft Council Conclusions and related Action Plan, as agreed by the Working Party at its meeting on 25 July 2018. This text will be submitted for adoption to Coreper and the Council as an item without discussion.

Changes to the initial document are in **bold**, and only concern the alignment of the paragraphs put in bold, not the content.

Draft

**Council Conclusions on the EU Customs Action Plan to Combat IPR Infringements for the
Years 2018 to 2022**

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING:

- The EUROPE 2020 strategy on smart, sustainable and inclusive growth ⁽¹⁾;
- The Commission Communication on a comprehensive EU strategy concerning intellectual property rights ⁽²⁾;
- 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 ⁽³⁾;

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- ⁽¹⁾ 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.
- ⁽²⁾ 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.
- ⁽³⁾ OJ L 181, 29.6.2013, p. 15.

- 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 ⁽⁴⁾;
- Provisions on mutual administrative assistance in customs matters concluded between the EU and third countries;
- Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017 ⁽⁵⁾;

CONSIDERING

- The Council conclusions on the Progress on the Strategy for the evolution of the Customs Union ⁽⁶⁾;
- The report on the implementation of the EU Customs Action Plan to combat intellectual Property Right infringements for the years 2013-2017 ⁽⁷⁾;
- The experience gained from the previous EU Action plans;

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;

CONCERNED BY the risks counterfeit and pirated 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;

⁽⁴⁾ OJ L 82, 22.3.1997, p. 1.

⁽⁵⁾ OJ C 80, 19.3.2013, p. 1.

⁽⁶⁾ OJ C 80, 19.3.2013, p. 11.

⁽⁷⁾ doc. 6494/18.

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;

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;

ENDORSES the EU Customs Action Plan to combat IPR infringements for the years 2018 to 2022 set out in the Annex, prepared by the Presidency in co-operation with the Member States and the Commission;

INVITES:

- 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;
- The Commission, in co-operation with Member States:
 - to prepare a roadmap by spring 2019 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 2022.

EU Customs Action Plan to Combat IPR Infringements for the Years 2018-2022

INTRODUCTION

The massive violations of intellectual property rights in the trade of goods are a serious global problem. In 2016, the customs enforcement of IPR in the EU resulted in over 41 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 and pirated 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 2013-2017

The outcomes of the implementation of the Action Plan 2013-2017 are reflected in the dedicated report that the Commission services prepared in co-operation with Member States ⁽⁸⁾.

During the last four years, focus has been put on effectively implementing and monitoring the new EU legislation on customs enforcement of IPR, tackling major trends in trade of IPR infringing goods, tackling trade of IPR infringing goods throughout the international supply chain, and strengthening cooperation with the European Observatory on infringements of IPRs, which is part of the European Union Intellectual Property Office (EUIPO), and with law enforcement authorities.

Member State customs administrations and the Commission have deployed significant efforts and are working proactively to address the challenges associated with the customs enforcement of IPR and curb the influx of IPR infringing goods into the EU.

All means have been employed to make Regulation (EU) No 608/2013 known and used to its full potential by all public and private stakeholders concerned. The support visits have proved particularly useful for experts from different Member States to discuss implementation practices and for the Commission to gather a global implementation picture.

The number of applications for action (AFAs) granted by customs administrations has shown a steady rise (from 26 865 in 2013 to 34 931 in 2017).

Statistics gathered show more than 41 million detained articles in 2016. The estimated value of the equivalent genuine products approached EUR 672 million. Internet sales have boosted the number of cases in postal traffic, which tripled between 2009 and 2011.

⁽⁸⁾ COM(2018) 77 final.

Cooperation was reinforced with stakeholders, through and with the EU Observatory, and with third countries. The challenges of the cooperation between enforcement authorities engaged in the fight against IPR infringements have also been addressed and the dialogue established has shown how important it would be to pursue efforts in this regard.

The trafficking of IPR infringing goods remains however a widespread and ever increasing phenomenon. International trade in counterfeit products represents up to 2.5% of world trade, or as much as EUR 338 billion, based on the latest available data from 2013 ⁽⁹⁾. The impact of counterfeiting is particularly high in the European Union, with counterfeit and pirated products amounting up to 5% of imports, or as much as EUR 85 billion. In a series of sectorial studies, the EUIPO has estimated lost sales in 13 sectors (directly in the industries being analysed and across their associated supply chain), as a result of counterfeiting. These losses totalled more than EUR 100 billion per year ⁽¹⁰⁾.

The evaluation of the Action Plan shows the need for further developments in order to ensure effective customs enforcement of IPR throughout the Union, develop IPR risk management tools, and strengthen cooperation between customs authorities and EUROPOL and between customs authorities and police and other enforcement authorities.

⁽⁹⁾ Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD/EUIPO (2016) https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Mapping_the_Economic_Impact_study/Mapping_the_Economic_Impact_en.pdf.

⁽¹⁰⁾ Synthesis Report on IPR Infringement 2018, EUIPO (2018) https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/docs/Full%20Report/Full%20Synthesis%20Report%20EN.pdf.

WAY FORWARD

Infringements of IPR remain an increasing threat and a difficult challenge to address. Coordination of customs activities having shown its added value to reinforce results, the customs action plan to combat IPR infringements should certainly be re-conducted for the years to come.

On 29 November 2017 a comprehensive package of measures to further improve the application and enforcement of IPRs within the EU Member States, at EU borders and internationally has been adopted by the Commission. The Communication COM (2017)707 from 29 November 2017, entitled “A balanced IP enforcement system responding to today’s societal challenges”, which is part of the package, mentions that the Commission will offer a more targeted assistance to national customs authorities, based on the result of the current EU customs Action Plan, and will work with the Council towards a new Action Plan in 2018.

The new Action Plan 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 2013-2017 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. The co-operation with the European Observatory on infringements of IPRs, the European Anti-Fraud Office (OLAF) and European enforcement bodies other than customs, in the framework of their respective competences, should be strengthened. The 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:

- Ensuring effective customs enforcement of IPR throughout the Union.
- Tackling major trends in trade of IPR infringing goods.
- Tackling trade of IPR infringing goods throughout the international supply chain.
- Strengthening cooperation with the European Observatory on infringements of IPRs and law enforcement authorities.

The Action Plan will run for the years 2018-2022.

ROADMAP

A 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 2019.

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 2018-2022 is attached. As a first step, the Commission will prepare the above-mentioned roadmap.

1. ENSURING EFFECTIVE CUSTOMS ENFORCEMENT OF IPR THROUGHOUT THE UNION		
Specific objective 1.1: Tools for proper and efficient implementation of the EU Regulation		
Actions	Indicators	Responsible actors
1.1.1. Update the manual for right-holders filing applications for action with the new forms provided by Commission Implementing Regulation (EU) 2018/582 amending Implementing Regulation (EU) No 1352/2013	Updated manual published on websites	Commission & MSs
1.1.2. Update the “Guidelines on Acceptance and Processing of Applications for Action” in all EU official languages in order to ensure an enhanced quality of UAFA	Recommendations from the IPR workshop “Harmonisation in the application process” (Munich, 25 and 26 October 2016) are taken into consideration Updated guidelines available	Commission & MSs

<p>1.1.3. Support visit to all MSs by a team composed of IPR experts and the Commission with a view to focus on identified problems and challenges in IPR enforcement by customs to ensure a proper and efficient implementation of the EU Regulation</p>	<p>Visits performed, problems and challenges discussed and advice provided where appropriate</p> <p>Detected problems are followed-up and capacity building plans established where necessary</p> <p>Regular discussions in the meetings of the Customs expert group Intellectual Property Rights Enforcement Section on the problems and challenges and how they have been tackled</p>	<p>Commission & MSs</p>
<p>Specific objective 1.2: Enhancement of COPIS and exploiting the full functionality of COPIS</p>		
<p>1.2.1. Making full use of the functionalities of COPIS</p>	<p>Indicators</p> <p>Full exploitation of search and reporting functionalities of COPIS</p> <p>Necessary improvements of the functionalities of COPIS are identified and implemented</p>	<p>Responsible actors</p> <p>Commission & MSs</p>

<p>1.2.2. Extend the existing integration between COPIs and EDB with a view to eAFA, where a right-holder will be able to manage an AFA without lodging a paper based request</p> <p>To ensure an AFA is manageable without paper work at the custom office, there is a need to offer a portal to the right-holders. This portal shall allow them to enter electronically AFA information, but shall also allow the right-holders to update the information or request the extension of the validity of their AFA. To be trusted by the MSs, this electronic exchange of information shall provide the same guarantees to the customs office as the current process which is paper based</p>	<p>A system is planned, developed and in place which at least</p> <ul style="list-style-type: none"> ▪ enables the electronic submission of AFAs through EDB (respectively the new IP Enforcement Portal which is under way) to COPIs, including translations of the relevant fields into all of the languages of the applicable countries ▪ enables the electronic submission of extension requests through EDB to COPIs ▪ enables the electronic submission of AFA amendments to an existing AFA through a synchronised exchange of data between EDB and COPIs ▪ provides non-repudiation functionalities the right-holder can optionally enable to ensure that his request is trustable by the authorities 	<p>European Observatory on infringements of Intellectual Property Rights in co-operation with Commission & MSs</p>
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<p>1.2.3. Exploiting possible synergies between already existing information systems such as COPIs and ACIST and EDB (for the reporting on detentions)</p>	<p>Data storing and exchange of information on detentions is harmonised as much as possible between MSs A system is planned, developed and in place which enables the exchange of information on detentions between the information systems</p>	<p>European Observatory on infringements of Intellectual Property Rights in co-operation with Commission & MSs</p>
<p>Specific objective 1.3: Engaging right-holders & stakeholders</p>		
<p>Actions</p> <p>1.3.1. Provision of information on the EU Regulation to right-holders and stakeholders</p>	<p>Indicators</p> <p>Information on legal framework in SME Helpdesks Special parts of Trans Atlantic Portal on Customs enforcement up to date Information on legal framework in Member States SME support organisations and relevant industrial and intellectual property departments and offices</p>	<p>Responsible actors</p> <p>Commission Commission & MSs</p>

1.3.2. Regular meetings at EU level between customs, representatives of right-holder and other parties involved in IPR enforcement	Meeting at least once a year	Commission, MSs & right-holders/other involved parties
Specific objective 1.4: Annual publication of statistics		
	Indicators	Responsible actors
1.4.1. Publication of a yearly EU report of statistics on customs enforcement of IPR	Yearly reports available in July	Commission
1.4.2. Exchange of best practices between MSs on publication of yearly national reports and statistics on customs enforcement of IPR	Best practices are available to customs administrations. National reports are produced and published where appropriate.	Commission & MSs

2. TACKLING MAJOR TRENDS IN TRADE OF IPR INFRINGING GOODS		
Specific objective 2.1: Developing tailor-made approaches for parcel and postal traffic		
Actions	Indicators	Responsible actors
<p>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</p>	<p>Best practices are available to customs administrations in order to strengthen e-commerce enforcement by customs</p> <p>New tools and techniques (e.g., blockchain) should be used where available and appropriate.</p> <p>New legal provisions should be developed where necessary.</p>	<p>Commission & MSs</p>

<p>2.1.2. Monitoring changes in the framework of the Universal Postal Union (UPU) in the area of e-commerce and making best use of developments made in this area for customs enforcement of IPR</p>	<p>Changes in the framework of the UPU are monitored and brought to the attention of customs administrations. Customs administrations make best use of developments made in the area of e-commerce.</p>	<p>Commission & MSs</p>
<p>Specific objective 2.2: Strengthening Customs Risk Management</p>		
<p>Actions</p>	<p>Indicators</p>	<p>Responsible actors</p>
<p>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</p>	<p>Detention data, including data exchanged with third countries, is analysed. Criteria and standards are established via the Working Group on Common Risk Management under the Customs 2020 Programme.</p>	<p>Commission with the support of the MSs and the European Observatory on infringements of Intellectual Property Rights</p>

<p>2.2.2. Regular provision of appropriate IPR risk and customs control information via the Customs Risk Management System (CRMS) and control contact points</p>	<p>CRMS used to exchange risk information on IPR infringements. Regular feedback from MSs on risk and customs control information provided and control results</p>	<p>Commission & MSs</p>
<p>3. TACKLING TRADE OF IPR INFRINGING GOODS THROUGHOUT THE INTERNATIONAL SUPPLY CHAIN</p>		
<p>Specific objective 3.1: Strengthening cooperation with key source, transit and destination countries</p>		
<p>Actions</p>	<p>Indicators</p>	<p>Responsible actors</p>
<p>3.1.1. Reinforcement of customs cooperation on IPR with third countries, in particular China and Hong Kong</p>	<p>New EU-China Action Plan 2018-2020 implemented Exchange of information on detentions (referrals) with China is extended to nominal data Cooperation activities with Hong Kong implemented and strengthened where necessary</p>	<p>Commission & MSs</p>

<p>3.1.2. Exchange of information with third countries in compliance with the legal provisions, including on goods in transit/transshipment across the EU</p>	<p>The necessary practical arrangements concerning the exchange of data and information with third countries are properly implemented with a view to eliminating international trade in goods infringing intellectual property rights</p> <p>Mechanisms for the exchange of information are established.</p> <p>Number of information exchanges and number of detention cases on the basis of that information.</p> <p>Number of investigation cases opened on the basis of the information exchanged</p> <p>Number of joint customs operations within ASEM focusing on IPR infringements.</p>	<p>Commission & MSs</p>
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Specific objective 3.2: Support capacity building in candidate and neighbouring countries on IPR enforcement		
Actions	Indicators	Responsible actors
3.2.1. Provision of technical assistance for capacity building to candidate and neighbouring countries upon request	Pool of experts available	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	Report on best practices in IPR enforcement in the EU and the neighbouring countries	Commission & MSs
3.2.3. Exchange of officials	Number of exchanges performed 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: Partnership with the European Observatory on infringements of IPRs

Actions	Indicators	Responsible actors
<p>4.1.1 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 (EU) No 386/2012, and according to the work plan of the European Observatory, in particular to:</p> <ul style="list-style-type: none"> – develop systems to gather, analyse and report on the scope and scale of counterfeiting and piracy in the EU and exchange key information – building competencies in IP enforcement by delivering specialised training 	<p>Projects correspond to customs needs Compatibility and synergies with customs projects Availability of tools for spreading knowledge about IPR laws, IP related databases and enforcement support systems Public awareness activities including those targeted at consumers</p>	<p>European Observatory on infringements of Intellectual Property Rights in co-operation with Commission & MSs</p>

<p>4.1.2. Develop specific training programmes improving the use of the EUIPO Virtual Training Centre (IP VTC) where necessary</p>	<p>Training needs of customs are identified (e.g. transit issues). Specific training programmes are developed by IP VTC and trainings are held.</p>	<p>European Observatory on infringements of Intellectual Property Rights in co-operation with Commission & MSs</p>
<p>Specific objective 4.2: Improving mutual understanding and cooperation between customs, police and judicial authorities</p>		
<p style="text-align: center;">Actions</p>		
<p>4.2.1 Joint events between representatives of customs administrations, police, judicial authorities and industrial and intellectual property departments and offices</p>	<p>Indicators Events organised as appropriate</p>	<p>Responsible actors Commission, European Observatory on infringements of Intellectual Property Rights & MSs</p>
<p>4.2.2. Raising awareness on the link between unsafe and substandard goods and IPR infringements</p>	<p>Outcome of the ongoing Study of the Observatory is brought to the attention of customs administrations. Customs administrations make use of the information as appropriate.</p>	<p>European Observatory on infringements of Intellectual Property Rights in co-operation with Commission & MSs</p>

Specific objective 4.3: Tackling trade of IPR infringing goods throughout the international supply chain		
Actions	Indicators	Responsible actors
4.3.1. Joint actions to reinforce the programme of voluntary cooperation practices by intermediaries based on MoUs	Role of intermediaries is analysed. Events with intermediaries on their role are organised as appropriate, in order to achieve more trust and more transparency.	Commission & European Observatory on infringements of Intellectual Property Rights with the support of the MSs
4.3.2. Analysis of logistics of goods transported by train on the “Silk Road Economic Belt” with a view to customs controls	Impact of the “Silk Road Economic Belt” on customs controls is available and analysed. Strategies for customs controls in this traffic are developed and implemented as appropriate.	Commission & European Observatory on infringements of Intellectual Property Rights with the support of the MSs