



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0137(COD)

26.1.2012

AMENDMENTS

61 - 259

Draft report
Jürgen Creutzmann
(PE470.069v01-00)

Customs enforcement of intellectual property rights

Proposal for a regulation
(COM(2011)0285 – C7-0139/2011 – 2011/0137(COD))

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PE480.583v02-00

EN

United in diversity

EN

Amendment 61
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) The marketing of goods infringing intellectual property rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be kept off the market and measures should be adopted to deal with this unlawful activity without impeding legitimate trade.

Amendment

(2) The marketing of goods infringing intellectual property rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be **prevented from entering the customs territory and be** kept off the market and measures should be adopted to deal with this unlawful activity without impeding legitimate trade.

Or. fr

Amendment 62
Christian Engström

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) The marketing of goods infringing **intellectual property** rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be kept off the market and measures should be adopted to deal with this unlawful activity without impeding legitimate trade.

Amendment

(2) The marketing of goods infringing **trademark** rights **and copyrights** does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be kept off the market and measures should be adopted to deal with this unlawful activity without impeding legitimate trade.

Or. en

Amendment 63
Emma McClarkin

Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) The review of Regulation (EC) No 1383/2003 showed that certain improvements to the legal framework were necessary to strengthen the enforcement of intellectual property rights, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas.

Amendment

(3) The review of Regulation (EC) No 1383/2003 showed that certain improvements to the legal framework were necessary to strengthen the enforcement of intellectual property rights **by customs authorities**, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas. ***The Commission should take all measures to ensure a harmonised application, without unnecessary delay, by the customs authorities of the new legal framework throughout the Union to ensure an efficient enforcement of intellectual property rights, which would protect rightholders without hampering trade. The implementation of the Modernised Customs Code and in particular an interoperable 'eCustoms' system could, in the future, facilitate such enforcement.***

Or. en

Amendment 64
Christian Engström

Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) The review of Regulation (EC) No 1383/2003 showed that certain improvements to the legal framework were necessary to strengthen the enforcement of

Amendment

(3) The review of Regulation (EC) No 1383/2003 showed that certain improvements to the legal framework were necessary to strengthen the enforcement of

intellectual property rights, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas.

selected intellectual property rights, **particularly trademark and copyright**, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas. ***That review also showed that border measures should not be applicable to other intellectual property rights, particularly patents and supplementary protection certificates for medicinal products where proper determination of infringement is dependent on highly technical judicial proceedings. Likewise, it was determined that border measures should not be applied to goods-in-transit.***

Or. en

Amendment 65
Jürgen Creutzmann

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, with a view to enforcing intellectual property rights. Enforcing intellectual property rights at the border, wherever the goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An exception should be made for goods released for free circulation under the end-

Amendment

(4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, ***including goods placed under a suspensive procedure***, with a view to enforcing intellectual property rights. Enforcing intellectual property rights at the border, wherever the goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An

use regime, as such goods remain under customs supervision, even though they have been released for free circulation. It is also appropriate not to apply the Regulation to goods carried by passengers in their personal luggage as long as these goods are for their own personal use and there are no indications that commercial traffic is involved.

exception should be made for goods released for free circulation under the end-use regime, as such goods remain under customs supervision, even though they have been released for free circulation. It is also appropriate not to apply the Regulation to goods carried by passengers in their personal luggage as long as these goods are for their own personal use and there are no indications that commercial traffic is involved.

Or. en

Amendment 66
Cornelis de Jong

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, with a view to enforcing intellectual property rights. Enforcing intellectual property rights at the border, wherever the goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An exception should be made for goods released for free circulation under the end-use regime, as such goods remain under customs supervision, even though they have been released for free circulation. ***It is also appropriate not to apply the***

Amendment

(4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, with a view to enforcing intellectual property rights. Enforcing intellectual property rights at the border, wherever the goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An exception should be made for goods released for free circulation under the end-use regime, as such goods remain under customs supervision, even though they have been released for free circulation. ***When a traveller's personal baggage***

Regulation to goods carried by passengers in their personal luggage as long as these goods are for their own personal use and there are no indications that commercial traffic is involved.

contains goods of a non-commercial nature within the limit of the duty-free allowance and there are no material indications to suggest the goods are part of commercial traffic, Member States should consider such goods to be outside the scope of this Regulation.

Or. en

Amendment 67
Christian Engström

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, with a view to enforcing **intellectual property** rights. Enforcing intellectual property rights at the border, wherever the goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An exception should be made for goods released for free circulation under the end-use regime, as such goods remain under customs supervision, even though they have been released for free circulation. It is also **appropriate** not to apply the Regulation to goods carried by passengers in their personal luggage as long as **these goods are for their own personal use and there are no indications that commercial**

Amendment

(4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, with a view to enforcing **trademark** rights **and copyrights**. Enforcing **such** intellectual property rights at the border, wherever the goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An exception should be made for goods released for free circulation under the end-use regime, as such goods remain under customs supervision, even though they have been released for free circulation. It is also **essential** not to apply the Regulation to goods carried by passengers in their personal luggage as long as there are no indications **on the basis of the applicable**

traffic is involved.

legal procedures that *a* commercial *purpose* is involved.

Or. en

Amendment 68
Anna Hedh

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements, *such as infringements resulting from parallel trade, as well as other infringements of rights already enforced by customs authorities but* not covered by Regulation (EC) No 1383/2003. For *the same* purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and devices to circumvent technological measures, *as well as any exclusive intellectual property right established by Union legislation.*

Amendment

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements not covered by Regulation (EC) No 1383/2003. For *this* purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and devices to circumvent technological measures.

Or. sv

Amendment 69
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements, ***such as infringements resulting from parallel trade, as well as other infringements of rights already enforced by customs authorities but*** not covered by Regulation (EC) No 1383/2003. For the same purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and devices to circumvent technological measures, as well as any exclusive intellectual property right established by Union legislation.

Amendment

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements not covered by Regulation (EC) No 1383/2003. For the same purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and devices to circumvent technological measures, as well as any exclusive intellectual property right established by Union legislation.

Or. fr

Amendment 70
Cornelis de Jong

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. ***In order to strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements, such as infringements resulting from parallel trade, as well as other infringements of***

Amendment

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. For ***that reason*** it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national

rights already enforced by customs authorities but not covered by Regulation (EC) No 1383/2003. For *the same purpose* it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and devices to circumvent technological measures, as well as any exclusive intellectual property right established by Union legislation.

law, topographies of semiconductor products, utility models and devices to circumvent technological measures, as well as any exclusive intellectual property right established by Union legislation.

Or. en

Amendment 71
Christian Engström

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to *strengthen the* enforcement of intellectual property rights, customs control should *therefore be extended to other types of* infringements, *such as infringements resulting from parallel trade, as well as other infringements of rights already enforced by customs authorities but not covered by Regulation (EC) No 1383/2003.* For *the same* purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, *trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and* devices to circumvent technological measures, *as well*

Amendment

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to *ensure efficient* enforcement of intellectual property rights, customs control should *target selected* infringements. For *that* purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, *particular* devices *designed* to circumvent technological *protection* measures (*TPMs*).

as any exclusive intellectual property right established by Union legislation.

Or. en

Amendment 72
Louis Grech

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Regulation, when fully implemented, should further contribute to a single market which ensures more effective protection to rights holders, fuels creativity and innovation and provides consumers with reliable and high- quality products, which should in turn strengthen cross-border transactions between consumers, businesses and traders;

Or. en

Amendment 73
Christian Engström

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

(8) Any person, whether or not the holder of ***an intellectual property*** right, who is able to initiate legal proceedings in his/her own name with respect to a possible infringement of that right, should be entitled to submit an application for action by the customs authorities.

(8) Any person, whether or not the holder of ***a trademark right or copyright*** right, who is able to initiate legal proceedings in his/her own name with respect to a possible infringement of that right, should be entitled to submit an application for action by the customs authorities.

Or. en

Amendment 74
Christian Engström

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) In order to ensure **that** intellectual property rights **are enforced** throughout the Union, it is appropriate to provide that, where a person entitled to submit an application for action seeks enforcement of **an** intellectual property right covering the whole territory of the Union, that person may request the customs authorities of a Member State to take a decision requiring action by the customs authorities of that Member State and of any other Member State where enforcement of **the** intellectual property right is sought.

Amendment

(9) In order to ensure **effective enforcement of** intellectual property rights throughout the Union, it is appropriate to provide that, where a person entitled to submit an application for action seeks enforcement of **a relevant** intellectual property right covering the whole territory of the Union, that person may request the customs authorities of a Member State to take a decision requiring action by the customs authorities of that Member State and of any other Member State where enforcement of **such** intellectual property right is sought.

Or. en

Amendment 75
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) In order to ensure the swift enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of **adequate evidence**, that goods under their supervision infringe intellectual property rights, those customs authorities may suspend the release or detain the goods whether at their own initiative or upon application, in order to enable the persons entitled to submit an application for action of the customs authorities to initiate

Amendment

(10) In order to ensure the swift enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of **having sufficient reason to believe this**, that goods under their supervision infringe intellectual property rights, those customs authorities may suspend the release or detain the goods whether at their own initiative or upon application, in order to enable the persons entitled to submit an application for action of the customs

proceedings for determining whether an intellectual property right has been infringed.

authorities to initiate proceedings for determining whether an intellectual property right has been infringed.

Or. fr

Amendment 76
Christian Engström

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) In order to ensure *the swift* enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of adequate *evidence*, that goods under their supervision infringe intellectual property rights, those customs authorities may suspend the release or detain the goods whether at their own initiative or upon application, in order to enable the persons entitled to submit an application for action of the customs authorities to initiate proceedings for determining whether *an* intellectual property right has been infringed.

Amendment

(10) In order to ensure *effective and lawful* enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of adequate *indications resulting from the applicable legal procedures*, that goods under their supervision infringe *relevant* intellectual property rights, those customs authorities may suspend the release or detain the goods whether at their own initiative or upon application, in order to enable the persons entitled to submit an application for action of the customs authorities to initiate proceedings for determining whether *such* intellectual property right has been infringed.

Or. en

Amendment 77
Jürgen Creutzmann

Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Where goods in transit are suspected to be an imitation or a copy of a product protected in the Union by an

intellectual property right, customs authorities should ask the declarant or holder of the goods to provide adequate evidence that the final destination of the goods is beyond the territory of the Union. In the absence of adequate evidence to the contrary being provided, customs authorities should presume a substantial likelihood of diversion of those goods onto the market of the Union. The Commission should adopt guidelines which will provide criteria for customs authorities to effectively assess their risk of deviation onto the market of the Union, taking into account the relevant case-law of the Court of Justice of the European Union.

Or. en

(See amendments to Articles 16 and 17)

Justification

Since the rapporteur considers it highly uncertain that substantive legislation will be amended to cover the mere transit of goods that are imitations or copies of goods protected in the EU, he proposes to include this additional safeguard to prevent those goods from entering the internal market. Two conditions must be fulfilled so that customs can suspend the release of or detain goods: goods must be suspected to be counterfeit or pirated and the evidence provided must be inadequate.

Amendment 78

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be difficult to determine upon mere visual examination by customs authorities whether an intellectual property right might be infringed. It is therefore appropriate to

Amendment

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be difficult to determine upon mere visual examination by customs authorities whether an intellectual property right might be infringed. It is therefore appropriate to

provide that proceedings should be initiated, unless the parties concerned, namely the holder of the goods and the right-holder, agree to abandon the goods for destruction. It should be for the competent authorities dealing with such proceedings to determine whether an intellectual property right has been infringed and to take appropriate decisions concerning the infringements of intellectual property rights concerned.

provide that proceedings should be initiated, unless the parties concerned, namely the ***declarant or the*** holder of the goods and the right-holder, agree to abandon the goods for destruction. It should be for the competent authorities dealing with such proceedings to determine whether an intellectual property right has been infringed and to take appropriate decisions concerning the infringements of intellectual property rights concerned.

Or. fr

Amendment 79
Christian Engström

Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be difficult to determine upon mere visual examination by customs authorities whether ***an*** intellectual property right might be infringed. It is therefore appropriate to provide that proceedings should be initiated, ***unless the parties concerned, namely the holder of the goods and the right-holder, agree to abandon the goods for destruction.*** It should be for the competent authorities dealing with such proceedings to determine whether ***an*** intellectual property right has been infringed and to take appropriate decisions ***concerning the infringements of intellectual property rights concerned.***

Amendment

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be difficult to determine upon mere visual examination by customs authorities whether ***another*** intellectual property right might be infringed. It is therefore appropriate to provide that proceedings should be initiated. It should be for the competent authorities dealing with such proceedings to determine whether ***a relevant*** intellectual property right has been infringed and to take appropriate decisions.

Or. en

Amendment 80
Evelyne Gebhardt

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. ***In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.***

Amendment

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder.

Or. de

Amendment 81
Anna Hedh

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, ***which would allow for goods to be destroyed without the agreement of the right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments,***

Amendment

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods.

this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.

Or. sv

Amendment 82
Cornelis de Jong

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. ***In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.***

Amendment

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder.

Or. en

Amendment 83
Christian Engström

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.

Amendment

(13) In order to reduce to the minimum the administrative burden and costs, ***without prejudice to the end consumer's right to be duly informed within a reasonable time of the legal basis of the actions taken by the customs authorities,*** a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate ***and public*** consultations during its preparatory work, including ***with consumer and civil rights organisations and*** at expert level.

Or. en

Amendment 84
Evelyne Gebhardt

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment

deleted

Amendment 85
Emma McClarkin

Proposal for a regulation
Recital 14

Text proposed by the Commission

Amendment

(14) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

deleted

Justification

With a definition of small consignment provided in the Regulation there is no need of delegated acts.

Amendment 86
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing an intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, the conditions for applying the procedure allowing for destruction of the goods under customs control for suspected infringements of intellectual property

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing an intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, **and** the conditions for applying the procedure allowing for destruction of the goods under customs control for suspected infringements of intellectual

rights other than for counterfeit and pirated goods **and to introduce a provision allowing the holder of the goods to express his/her views before the customs administration takes a decision which would adversely affect him/her.**

property rights other than for counterfeit and pirated goods.

Or. fr

Justification

A distinction needs to be made between operators, who complete customs formalities on a regular basis, and the end consumer. The former are very familiar with customs procedures. Consequently care must be taken not to set up long administrative procedures that prevent rapid and efficient action by the customs authorities concerned.

Amendment 87 **Jürgen Creutzmann**

Proposal for a regulation **Recital 15**

Text proposed by the Commission

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing an intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, the conditions for applying the procedure allowing for destruction of the goods under customs control for suspected infringements of intellectual property rights ***other than for counterfeit and pirated goods*** and to introduce a provision allowing the holder of the goods to express his/her views before the customs administration ***takes a decision which would adversely affect him/her.***

Amendment

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing an intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities ***and*** the conditions for applying the procedure allowing for destruction of the goods under customs control for suspected infringements of intellectual property rights. ***Where customs authorities take action following the granting of an application, it is also appropriate*** to introduce a provision allowing the holder of the goods to express his/her views before the customs administration ***suspends the release or detains goods suspected of infringing intellectual property rights that are not***

counterfeit or pirated goods, as it may be difficult for customs authorities to determine upon mere visual examination whether an intellectual property right might be infringed.

Or. en

(See amendment to Article 16 (3))

Justification

In most cases customs action is based on a clear suspicion and eventually turns out to be justified. The right to be heard should therefore be limited to goods other than counterfeit or pirated goods, where it may be more difficult for customs authorities to determine upon mere visual examination whether an IPR might be infringed and to cases where customs take action following the grant of an application, where conflicting interests of the parties affected may be of relevance.

Amendment 88 **Christian Engström**

Proposal for a regulation **Recital 15**

Text proposed by the Commission

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing ***an*** intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, the conditions for applying the procedure allowing for destruction of the goods under customs control ***for suspected infringements of intellectual property rights other than for counterfeit and pirated goods and to introduce a provision allowing the holder of the goods to express his/her views before the customs administration takes a decision which would adversely affect him/her.***

Amendment

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing ***a relevant*** intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, the conditions for applying the procedure allowing for destruction of the goods under customs control.

Amendment 89
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. ***The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision.*** In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the

Amendment

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, ***the right for consumers to be heard before a decision is taken by the customs authority should be established.***

accomplishment of customs formalities, *that period* should be *significantly extended*.

Or. fr

Justification

The end consumer does not have a good knowledge of customs formalities and needs to be protected by the introduction of a right to be heard before any decision is taken by the customs authority.

Amendment 90 **Anna Hedh**

Proposal for a regulation **Recital 16**

Text proposed by the Commission

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those *are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties*. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs

Amendment

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those *have been received*. The period allowing for a right to be heard before an adverse decision is taken should be three working days *after receipt*, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular

authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, that period should be significantly extended.

situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, that period should be significantly extended.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 91 Cornelis de Jong

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in

Amendment

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in

which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, that period should be significantly extended.

which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, that period should be significantly extended. ***When considering the potential workload of the customs enforcement created by this Regulation, the customs authorities should give preference to handling large consignments.***

Or. en

Amendment 92
Jürgen Creutzmann

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of

Amendment

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of

the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before ***an adverse decision is taken*** should be three working days, ***given that*** the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, ***that*** period should be significantly extended.

the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before ***the suspension of release or detention of goods other than counterfeit or pirated goods*** should be three working days ***where*** the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and ***given*** that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, ***the right to be heard should be granted for all types of goods and the period allowing for that right*** should be significantly extended.

Or. en

(See amendment to Article 16 (3))

Justification

In most cases customs action is based on a clear suspicion and eventually turns out to be justified. The right to be heard should therefore be limited to goods other than counterfeit or pirated goods, where it may be more difficult for customs authorities to determine upon mere visual examination whether an IPR might be infringed and to cases where customs take action following the grant of an application, where conflicting interests of the parties affected may be of relevance.

Amendment 93
Christian Engström

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. ***The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision.*** In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, ***that period*** should be ***significantly***

Amendment

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, ***the right to be duly informed within a reasonable time of the legal basis for the actions taken by the customs authorities, as well as the right to be heard before an adverse decision is taken by the customs authorities,*** should be ***established.***

extended.

Or. en

Amendment 94
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The customs authority in receipt of an application for action shall suspend the release of or shall detain those goods from a non-Community country placed under a suspensive procedure as soon as it has sufficient reason to suspect an intellectual property right has been infringed.

Or. fr

Justification

The Commission's initial proposal ought to be amended through the addition of more precise details in light of a judgment by the EU Court of Justice in joined cases C-446/09 and C-495/09.

Amendment 95
Matteo Salvini

Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public

health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account of any substantial likelihood of diversion of these goods onto the market of the Union.

health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account of any substantial likelihood of diversion of these goods onto the market of the Union. ***With regard to dangerous products, and in particular falsified medicines as defined in Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products¹ the Union customs authorities should be able to draw on other provisions of Union law, and in particular on the measures provided for in Directive 2011/62/EU. The Commission should analyse, within 18 months following the adoption of this Regulation, the effectiveness of current customs measures aiming at combating falsified medicines, and to propose, if necessary, legislative changes.***

¹ OJ L 174, 1.7.2011, p. 74.

Or. en

Justification

In order to fight against falsified medicines and to strengthen security of the citizens, while all the same not preventing the access to legal generic drugs, it is necessary to streamline the effectiveness of the customs measures aimed at falsified medicines.

Amendment 96
Anna Hedh

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account *of any substantial likelihood* of diversion of these goods onto the market of the Union.

Amendment

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account *the risk* of diversion of these goods onto the market of the Union.

Or. en

Amendment 97
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) Under the "Declaration on the TRIPS Agreement and Public Health" adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of

Amendment

(17) Under the "Declaration on the TRIPS Agreement and Public Health" adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of

WTO Members' right to protect public health and, in particular, to promote access to medicines for all. ***In particular with regard to*** medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account of any substantial likelihood of diversion of these goods onto the market of the Union.

WTO Members' right to protect public health and, in particular, to promote access to medicines for all. ***Without prejudice to Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products¹, for*** medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account of any substantial likelihood of diversion of these goods onto the market of the Union. ***Within two years of the adoption of this Regulation, the Commission shall assess the effectiveness of actions by Customs against falsified medicinal products.***

¹ OJ L 174, 1.7.2011, p. 74.

Or. fr

Amendment 98
Cornelis de Jong

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of

Amendment

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of

WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, ***when assessing a risk of infringement of intellectual property rights, take account of any substantial likelihood of diversion of these goods onto the market of the Union.***

WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should ***not interfere in any way with the rights of third countries concerning access to medication.***

Or. en

Amendment 99 **Christian Engström**

Proposal for a regulation **Recital 17**

Text proposed by the Commission

(17) Under the 'Declaration on the TRIPS Agreement and Public Health' adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, ***when assessing a risk of infringement of intellectual property rights, take account***

Amendment

(17) Under the 'Declaration on the TRIPS Agreement and Public Health' adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should ***ensure that any measures taken by them are in line with the Union's international***

of any substantial likelihood of diversion of these goods onto the market of the Union.

commitments. In particular, no detention of generic medicines should be allowed in the absence of clear and convincing evidence of imminent, intended entry onto the market of the Union, meaning intended sale to and consumption by Union residents.

Or. en

Amendment 100
Anna Hedh

Proposal for a regulation
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) In determining the risk of diversion onto the market of the Union of goods in transit, which the rights holder has identified as counterfeit or infringing intellectual property rights, the declarant, holder or owner of the goods should bear the burden of proving the final destination of the goods. The final destination of the goods should be presumed to be the market of the Union in the absence of clear and convincing evidence to the contrary provided by the declarant, holder or owner of the goods.

Or. en

Amendment 101
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) In order to step up action against infringements of intellectual property

rights, the European Observatory on Counterfeiting and Piracy should play an important role in providing customs authorities with useful information enabling them to act quickly and effectively.

Or. fr

Amendment 102
Emma McClarkin

Proposal for a regulation
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) With regard to dangerous products, and in particular falsified medicines as defined in Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products¹, the Union customs authorities should draw on other provisions of Union law, and in particular on the measures provided for in Directive 2011/62/EU. By ..., the Commission should analyse the effectiveness of current customs measures aimed at combating trade in falsified medicines and to propose, if necessary, legislative changes.*

¹ OJ L 174, 1.7.2011, p. 74.

*OJ: please insert the date: 18 months after the adoption of this Regulation.

Or. en

Amendment 103
Anna Hedh

Proposal for a regulation
Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) Medicines that bear a false trademark or trade description misrepresent their origin and quality level and thus are falsified medicines under Directive 2011/62/EU. Adequate measures should be taken to prevent such products and other health products bearing a false trademark or trade description from reaching patients and consumers in the Union. By ... * the Commission should present a report highlighting the measures it intends to take under Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products¹.

¹ OJ L 174, 1.7.2011, p. 74.

****OJ: please insert the date: 24 months after the date of the adoption of this Regulation.***

Or. en

Justification

Counterfeit medicines and other health products carry serious health risks for patients and should be seized irrespective of their destination country. Customs should retain their current powers to act against suspected counterfeit medicines in all situations in which infringing goods are under Customs supervision and not just in situations when infringing goods are declared for import. This procedure shall apply to counterfeit goods in transit and must not obstruct the legitimate trade in generic medicines from manufacturers for lawful sale to customers outside (or via) the EU.

Amendment 104
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, ***this should not preclude*** the holder of the decision ***from seeking*** compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

Amendment

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, the holder of the decision ***should have the right to seek*** compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned, ***for example certain intermediaries such as carriers***. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

Or. fr

Amendment 105
Anna Hedh

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should

Amendment

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should

reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons, ***including intermediaries such as carriers or freight forwarders***, that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

Or. en

Amendment 106
Anja Weisgerber

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on

Amendment

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. ***However, haulage firms should, under certain circumstances, be made directly liable for all reasonable costs incurred by the customs authorities and rights holders when enforcing***

intellectual property, should be governed by the specific legislation in each particular case.

intellectual property rights. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

Or. de

Justification

Haulage firms unwittingly play a central role in the import of illegal and counterfeit goods into the EU. They cannot be required to discover such goods. They can, however, contribute to protecting the EU against the import of such goods if they have been informed, in the preparatory stage of a commission, of any previous trade mark infringements committed by the receiver of the goods they are transporting.

Amendment 107

Gianluca Susta, Pier Antonio Panzeri

Proposal for a regulation

Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) The Member States should establish a system of effective, proportionate, dissuasive and harmonised sanctions in order to ensure that more coherent and better coordinated action is taken to prevent and punish intellectual property right infringements and that EU consumers are properly protected.

Or. it

Amendment 108

Ildikó Gáll-Pelcz

Proposal for a regulation

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The following elements of the database should be defined in Union legislation: the entity which will be controlling and managing the database and the entity in charge of ensuring the security of the processing of the data contained in the database. Introducing any type of possible interoperability or exchange should first and foremost comply with the purpose limitation principle, namely that data should be used for the purpose for which the database has been established, and no further exchange or interconnection should be allowed outside this purpose.

Or. en

Amendment 109
Emma McClarkin

Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Member States face increasingly limited resources in the field of customs. Therefore, any new regulation should not result in additional financial burdens for national authorities. The promotion of new risk management technologies and strategies to maximise resources available to national authorities should be supported,

Or. en

Amendment 110
Christian Engström

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation sets out the conditions and procedures for action by the customs authorities where goods suspected of infringing **an** intellectual property **right** are, or should have been, subject to customs supervision within the customs territory of the Union.

Amendment

1. This Regulation sets out the conditions and procedures for action by the customs authorities where goods suspected of infringing **the specific** intellectual property **rights defined in Article 2** are, or should have been, subject to customs supervision within the customs territory of the Union.

Or. en

Amendment 111
Christian Engström

Proposal for a regulation
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Regulation shall not apply to goods-in-transit, meaning products passing across the territory of the Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, for which transit through the Union is only a portion of a complete journey beginning and terminating beyond the territory of the Union.

Or. en

Amendment 112
Anna Hedh

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

4. This Regulation shall not apply to goods of a non-commercial nature contained in travellers' personal luggage.

Amendment

4. This Regulation shall not apply to goods of a non-commercial nature contained in travellers' personal luggage ***unless there are material indications to suggest that the goods are part of commercial traffic.***

Or. en

Amendment 113
Cornelis de Jong

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

4. This Regulation shall not apply to goods of a non-commercial nature ***contained in travellers' personal luggage.***

Amendment

4. This Regulation shall not apply to ***a traveller's personal baggage when this contains*** goods of a non-commercial nature ***within the limit of the duty-free allowance and when there are no material indications to suggest the goods are part of commercial traffic.***

Or. en

Amendment 114
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point e

Text proposed by the Commission

(e) a patent as provided for by the legislation of a Member State;

Amendment

deleted

Or. en

Amendment 115
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point f

Text proposed by the Commission

Amendment

(f) a supplementary protection certificate for medicinal products as provided for in Regulation (EC) No 469/2009 of the European Parliament and of the Council; ***deleted***

Or. en

Amendment 116
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point g

Text proposed by the Commission

Amendment

(g) a supplementary protection certificate for plant protection products as provided for in Regulation (EC) No 1610/96 of the European Parliament and of the Council; ***deleted***

Or. en

Amendment 117
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point h

Text proposed by the Commission

Amendment

(h) a Community plant variety right as provided for in Council Regulation (EC) No 2100/94; ***deleted***

Or. en

Amendment 118
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point i

Text proposed by the Commission

Amendment

*(i) a plant variety right as provided for by
the legislation of a Member State;* *deleted*

Or. en

Amendment 119
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point j

Text proposed by the Commission

Amendment

*(j) a topography of semiconductor product
as provided for by the legislation of a
Member State;* *deleted*

Or. en

Amendment 120
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point k

Text proposed by the Commission

Amendment

*(k) a utility model as provided for by the
legislation of a Member State;* *deleted*

Or. en

Amendment 121
Anna Hedh

Proposal for a regulation
Article 2 – point 1 – point k

Text proposed by the Commission

(k) a utility model **as provided for** by the legislation of a Member State;

Amendment

(k) a utility model **insofar as it is protected as an exclusive intellectual property right** by the legislation of a Member State,

Or. sv

Amendment 122
Christian Engström

Proposal for a regulation
Article 2 – point 1 – point l

Text proposed by the Commission

(l) a trade name in so far as it is protected as an exclusive intellectual property right by legislation of a Member State;

Amendment

deleted

Or. en

Amendment 123
Anna Hedh

Proposal for a regulation
Article 2 – point 1 – point m

Text proposed by the Commission

(m) any other right that is established as an exclusive intellectual property right by Union legislation;

Amendment

deleted

Or. en

Justification

The provision is intended to cover any additional exclusive rights, thus being a potential extension of the protected area. It is not possible to anticipate what rights, in the future, may be subject to the proposed Regulation and consequently it is not possible to assess whether they are suitable for customs intervention or not.

Amendment 124 **Christian Engström**

Proposal for a regulation **Article 2 – point 1 – point m**

Text proposed by the Commission

Amendment

(m) any other right that is established as an exclusive intellectual property right by Union legislation;

deleted

Or. en

Amendment 125 **Emma McClarkin**

Proposal for a regulation **Article 2 – point 3 – point b**

Text proposed by the Commission

Amendment

(b) a design registered in a Member State;

(b) a design registered in a Member State or by a multi-state body, such as the Benelux Office for Intellectual Property;

Or. en

Amendment 126 **Matteo Salvini**

Proposal for a regulation **Article 2 – point 5 – point a**

Text proposed by the Commission

Amendment

(a) goods **which are subject of an action** infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

(a) goods infringing a trade mark and **which** bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Or. en

Justification

Simplification of the legal understanding of the text.

Amendment 127

Anna Hedh

Proposal for a regulation

Article 2 – point 5 – point a

Text proposed by the Commission

Amendment

(a) goods which **are** subject of **an action infringing** a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

(a) goods which **have been the** subject of a trade mark **infringement in the Member State where the goods are found** and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Or. sv

Justification

It should be made clearer that this relates to an infringement requiring customs measures, i.e. that no 'manufacturing fiction' is applied.

Amendment 128

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Article 2 – point 5 – point 5.1 – introductory part

Text proposed by the Commission

5.1 goods which are subject of an action infringing a trade mark and bear without authorisation a **trade mark** identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Amendment

goods, **including their packaging or wrapping**, which are subject of an action infringing a trade mark and bear without authorisation a **sign** identical to the trade mark validly registered in respect of the same type of goods **for which the said trade mark is registered**, or which cannot be distinguished in its essential aspects from such a trade mark;

Or. fr

Amendment 129

Emma McClarkin

Proposal for a regulation

Article 2 – point 5 – point a

Text proposed by the Commission

(a) goods **which are subject of an action** infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Amendment

(a) goods infringing a trade mark and **which** bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Or. en

Amendment 130

Anja Weisgerber

Proposal for a regulation

Article 2 – point 5 – point a

Text proposed by the Commission

(a) goods which are subject of an action

Amendment

(a) Goods, **including packaging**, which are

infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

subject of an action infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark **and therefore infringes the holder's rights under the national law of the importing state;**

Or. de

Justification

Brings the text into line with the definition of counterfeit goods in Article 51 of the TRIPS Convention.

Amendment 131
Christian Engström

Proposal for a regulation
Article 2 – point 5 – point a

Text proposed by the Commission

(a) goods ***which are subject of an action infringing a trade mark and bear*** without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Amendment

(a) ***any*** goods, ***including packaging, bearing*** without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark, ***and which thereby infringes the rights of the owner of the trademark in question in the country of import,***

Or. en

Amendment 132
Bernadette Vergnaud

Proposal for a regulation
Article 2 – point 5 – point 5.1

Text proposed by the Commission

5.1 goods which are subject of an action infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Amendment

5.1 goods, ***to include their wrapping, any other trade mark sign (logo, label, sticker, brochure, operating instructions, warranty document bearing the sign in question) even if presented separately, and their packaging*** which are *the* subject of an action infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

Or. fr

Amendment 133

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Article 2 – point 5 – point 5.1 a (new)

Text proposed by the Commission

Amendment

5.1a. any packaging, label, sticker, brochure, operating instructions, warranty document or other similar item, even if presented separately, which is the subject of an action infringing a trade mark and which includes a sign identical to a validly registered trade mark, or which cannot be distinguished in its essential aspects from such a trade mark, for a use for the same type of goods as that for which the trade mark has been registered;

Or. fr

Amendment 134

Matteo Salvini

Proposal for a regulation
Article 2 – point 5 – point b

Text proposed by the Commission

(b) goods ***which are subject of an action*** infringing a geographical indication and bear or are described by a name or term protected in respect of that geographical indication;

Amendment

(b) goods infringing a geographical indication and bear or are described by a name or term protected in respect of that geographical indication;

Or. en

Justification

Simplification of the legal understanding of the text.

Amendment 135
Anna Hedh

Proposal for a regulation
Article 2 – point 5 – point b

Text proposed by the Commission

(b) goods which ***are*** subject of ***an action infringing*** a geographical indication and bear or are described by a name or term protected in respect of that geographical indication;

Amendment

(b) goods which ***have been the*** subject of a geographical indication ***infringement in the Member State where the goods are found*** and bear or are described by a name or term protected in respect of that geographical indication;

Or. sv

Justification

It should be made clearer that this relates to an infringement requiring customs measures, i.e. that no 'manufacturing fiction' is applied.

Amendment 136
Emma McClarkin

Proposal for a regulation
Article 2 – point 5 – point b

Text proposed by the Commission

(b) goods ***which are subject of an action*** infringing a geographical indication and bear or are described by a name or term protected in respect of that geographical indication;

Amendment

(b) goods infringing a geographical indication and bear or are described by a name or term protected in respect of that geographical indication;

Or. en

Amendment 137

Anna Hedh

Proposal for a regulation

Article 2 – point 6

Text proposed by the Commission

6. ‘pirated goods’ means goods which ***are*** subject of an ***action infringing a*** copyright or related right or a design and which are or contain copies made without the consent of the holder of a copyright or related right or a design, regardless of whether it is registered, or of a person authorised by that holder in the country of production;

Amendment

6. ‘pirated goods’ means goods which ***have been the*** subject of an ***infringement of*** copyright or related right or a design ***in the Member State where the goods are found*** and which are or contain copies made without the consent of the holder of a copyright or related right or a design, regardless of whether it is registered, or of a person authorised by that holder in the country of production.

Or. sv

Justification

It should be made clearer that this relates to an infringement requiring customs measures, i.e. that no ‘manufacturing fiction’ is applied.

Amendment 138

Christian Engström

Proposal for a regulation

Article 2 – point 6

Text proposed by the Commission

(6) ‘pirated goods’ means goods which are **subject of an action infringing a copyright or related right or a design** and which are or **contain copies made without the consent of the holder** of a copyright or related right **or a design, regardless of whether it is registered, or of a person authorised by that holder in the country of production**;

Amendment

(6) ‘pirated **copyright** goods’ means **any** goods which are **copies made without the consent of the right holder in the country of production** and which are **made directly or indirectly from an article where the making of that copy would have constituted an infringement** of a copyright or related right **under the law** of the country of **importation**;

Or. en

Amendment 139

Anna Hedh

Proposal for a regulation

Article 2 – point 7 – introductory part

Text proposed by the Commission

(7) ‘goods suspected of infringing an intellectual property right’ means goods with regard to which there is **adequate evidence** to satisfy customs authorities that, in the Member State where these goods are found, are prima facie:

Amendment

(7) ‘goods suspected of infringing an intellectual property right’ means goods with regard to which there is **reasonable grounds** to satisfy customs authorities that, in the Member State where these goods are found, are prima facie:

Or. en

Amendment 140

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Article 2 – point 7 – introductory part

Text proposed by the Commission

7. ‘goods suspected of infringing an intellectual property right’ means goods with regard to which there **is adequate evidence** to satisfy customs authorities that,

Amendment

7. "goods infringing an intellectual property right" means goods with regard to which there **are sufficient reasons** to satisfy customs authorities that, in the

in the Member State where these goods are found, are prima facie:

Member State where these goods are found, are prima facie

Or. fr

Justification

It is not possible to both suspect that goods infringe an intellectual property right and require there to be adequate evidence.

Amendment 141
Christian Engström

Proposal for a regulation
Article 2 – point 7 – introductory part

Text proposed by the Commission

(7) ‘goods suspected of infringing an intellectual property right’ means goods with regard to which there *is* adequate *evidence* to satisfy customs authorities that, in the Member State where these goods are found, are prima facie:

Amendment

(7) ‘goods suspected of infringing an intellectual property right’ means goods with regard to which there *are* adequate *indications on the basis of the applicable legal procedures* to satisfy customs authorities that, in the Member State where these goods are found, are prima facie:

Or. en

Amendment 142
Matteo Salvini

Proposal for a regulation
Article 2 – point 7 – point a

Text proposed by the Commission

(a) goods *which are subject of an action* infringing an intellectual property right under the law of the Union or of that Member State;

Amendment

(a) goods infringing an intellectual property right under the law of the Union or of that Member State;

Justification

Simplification of the legal understanding of the text.

Amendment 143

Anna Hedh

Proposal for a regulation

Article 2 – point 7 – point a

Text proposed by the Commission

(a) goods which are subject of an action infringing an intellectual property right ***under the law of the Union or of that Member State;***

Amendment

(a) goods which are subject of an action infringing an intellectual property right ***in the Member State where the goods are found;***

Or. en

Amendment 144

Emma McClarkin

Proposal for a regulation

Article 2 – point 7 – point a

Text proposed by the Commission

(a) goods ***which are subject of an action*** infringing an intellectual property right under the law of the Union or of that Member State;

Amendment

(a) goods infringing an intellectual property right under the law of the Union or of that Member State, ***or of the countries of origin or destination of the goods;***

Or. en

Amendment 145

Christian Engström

Proposal for a regulation

Article 2 – point 7 – point a

Text proposed by the Commission

(a) goods which are subject of an action ***infringing an intellectual property right*** under the law of the Union or of that Member State;

Amendment

(a) ***counterfeit trademark goods or pirated copyright goods*** which are subject of an action under the law of the Union or of that Member State;

Or. en

Amendment 146
Christian Engström

Proposal for a regulation
Article 2 – point 7 – point b

Text proposed by the Commission

(b) devices, products or components ***which*** circumvent any technology, device or component that, in the normal course of ***its*** operation, ***prevents or restricts*** acts in respect of works ***which are not authorised*** by ***the right-holder of any*** copyright or ***right*** related to copyright ***and*** which infringe an intellectual property right under the law of that Member state;

Amendment

(b) ***particular*** devices, products or components ***designed to*** circumvent ***technological protection measures (TPMs) in*** any technology, device or component that, ***and which*** in the normal course of ***their*** operation ***perform*** acts in respect of works ***protected*** by copyright or ***rights*** related to copyright which infringe an intellectual property right under the law of that Member state;

Or. en

Amendment 147
Anna Hedh

Proposal for a regulation
Article 2 – point 7 – point c

Text proposed by the Commission

(c) any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if such moulds or matrices infringe the right-holder's rights

Amendment

(c) any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if such moulds or matrices infringe the right-holder's rights

under Union law or the law of that
Member State;

in the Member State where the goods are
found;

Or. en

Amendment 148
Malgorzata Handzlik

Proposal for a regulation
Article 2 – point 7 a (new)

Text proposed by the Commission

Amendment

7a. ‘small consignment’ means an individual package weighing up to two kilograms or containing no more than five items;

Or. pl

Justification

It is important for the term ‘small consignment’ to be defined in the regulation. Customs authorities already classify consignments on the basis of their weight and also take account of the number of items they contain. The easiest thing to do would be to base the classification on gross weight, i.e. the weight of the items in the package plus the weight of the packaging itself (excluding any containers or equipment used for transport purposes). This definition will be simple to apply in practice.

Amendment 149
Christian Engström

Proposal for a regulation
Article 2 – point 12

Text proposed by the Commission

Amendment

(12) ‘holder of the goods’ means the person who is the owner of the goods or who has a similar right of disposal ***over them or who has physical control*** over them;

(12) ‘holder of the goods’ means the person who is the owner of the goods or who has a similar right of disposal over them;

Or. en

Justification

Extending the definition to intermediaries will create unforeseen liabilities with potential harmful consequences for the infrastructure at hand.

Amendment 150
Emma McClarkin

Proposal for a regulation
Article 2 – point 12

Text proposed by the Commission

(12) ‘holder of the goods’ means the person who is the owner of the goods or who has a similar right of disposal ***over them or who has physical control*** over them;

Amendment

(12) ‘holder of the goods’ means the person who is the owner of the goods or who has a similar right of disposal over them;

Or. en

Justification

Including in the definition of the “holder of the goods” the person “who has physical control over them” is not appropriate as it could encompass in many cases carriers who have no entitlement and involvement in the enforcement of IPRs and should not intervene between the customs and the right-holders and/or the declarant regarding the release and the destruction of the goods.

Amendment 151
Anja Weisgerber

Proposal for a regulation
Article 2 – point 12 a (new)

Text proposed by the Commission

(12 a) ‘intermediary’ means a person who is involved in the transport of goods, such as an importer, haulier, recipient of goods, sender of goods or customs declarant, or freight operator;

Amendment

Or. de

Justification

Haulage firms unwittingly play a central role in the import of illegal and counterfeit goods into the EU. They cannot be required to discover such goods. They can, however, contribute to protecting the EU against the import of such goods if they have been informed, in the preparatory stage of a commission, of any previous trade mark infringements committed by the receiver of the goods they are transporting.

Amendment 152
Christian Engström

Proposal for a regulation
Article 2 – point 13 a (new)

Text proposed by the Commission

Amendment

(13a) 'small consignment' means a consignment that is not obviously imported for commercial purposes.

Or. en

Amendment 153
Anna Hedh

Proposal for a regulation
Article 2 – point 17 a (new)

Text proposed by the Commission

Amendment

(17a) 'perishable good' means a good that is liable to significantly reduce in value over time or, because of its nature, is in danger of being destroyed.

Or. en

Amendment 154
Christian Engström

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

Without prejudice to Article 8 of Regulation (EC) No 864/2007²⁵, the law of the Member State where the goods are found in one of the situations referred to in Article 1(1) shall apply for the purpose of determining whether the use of those goods gives rise to suspicion of infringement of an intellectual property right or has infringed an intellectual property right.

Amendment

Without prejudice to Article 8 of Regulation (EC) No 864/2007²⁵, the law of the Member State where the goods are found in one of the situations referred to in Article 1(1) shall apply for the purpose of determining whether the use of those goods gives rise to suspicion of infringement of an intellectual property right or has infringed an intellectual property right. ***The law of the Member State may not be applied to goods-in-transit, unless there is clear and convincing evidence of imminent, intended entry onto the market of the Union, meaning intended sale to and consumption by Union residents. Under no circumstances shall a Member State apply a "manufacturing fiction" to determine the intellectual property status of the challenge goods.***

Or. en

Amendment 155
Matteo Salvini

Proposal for a regulation
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

When there are indications suggesting that non-Union goods in transit will be put on sale in the territory of the Union, such goods shall be considered as imports under the intellectual property laws of the Member State where they are found or where an application is made.

Or. en

Justification

The notion of 'transit' also encompasses goods in transit within the EU and many older

designs, trademarks and all patents are protected only on a national basis. As a result counterfeiters can exploit this loophole by selecting EU entry ports where the national trademark, design or patent in question is not protected before ‘transiting’ such goods to another Member State. Consistent with Joined Cases C-446/09 and C-495/09.

Amendment 156
Cristian Silviu Buşoi

Proposal for a regulation
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

When there are indications suggesting that non-Union goods in transit will be put on sale in the territory of the Union, such goods shall be considered as imports under the intellectual property laws of the Member State where they are found or where an application is made.

Or. en

Justification

The notion of ‘transit’ also encompasses goods in transit within the EU and many older designs, trademarks and all patents are protected only on a national basis. Counterfeiters can exploit this loophole by selecting EU entry ports where the national trademark, design or patent in question is not protected before ‘transiting’ such goods to another Member State.

Amendment 157
Matteo Salvini

Proposal for a regulation
Article 3 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Indications suggesting that these goods will be put on sale in the territory of the Union may include, inter alia, the fact that the destination of the goods is not declared whereas the suspensive procedure requested requires such a declaration, the lack of precise or reliable

information as to the identity or address of the manufacturer or consignor of the goods, a lack of cooperation with the customs authorities or the discovery of documents or correspondence concerning the goods in question suggesting that there is liable to be a diversion of those goods to Union consumers.

Or. en

Justification

In Joined Cases C-446/09 and C-495/09 the European Court of Justice specified the conditions under which goods coming from non-member States that are placed in a suspensive procedure in the EU and that are suspected to be pirated or counterfeit goods may be detained by the customs authorities of the Member States in application of EU and national law. These specifications and the indications suggesting a fraudulent diversion should be added to this Regulation.

Amendment 158
Cristian Silviu Buşoi

Proposal for a regulation
Article 3 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Indications suggesting that these goods will be put on sale in the territory of the Union may include, inter alia, the fact that the destination of the goods is not declared whereas the suspensive procedure requested requires such a declaration, the lack of precise or reliable information as to the identity or address of the manufacturer or consignor of the goods, a lack of cooperation with the customs authorities or the discovery of documents or correspondence concerning the goods in question suggesting that there is liable to be a diversion of those goods to Union consumers.

Or. en

Justification

Alignment with ECJ case-law in joint cases C-446/09 and C-495/09

Amendment 159

Matteo Salvini

Proposal for a regulation

Article 3 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

When there are indications suggesting a likelihood of diversion of the goods to the territory of the Union and when proceedings to determine whether an intellectual property right has been infringed are underway before the competent authority, the declarant or holder of the goods shall establish that such goods are not intended for the territory of the Union.

Or. en

Justification

Consistent with Joined Cases C-446/09 and C-495/09 specifying which indications suggest a fraudulent diversion of goods in transit, bona fides declarants or holders of goods in transit will always be able to swiftly and easily provide the information clarifying that the goods are not at risk of fraudulent diversion, for example, when the destination of the goods is not declared or if the identity or address of the manufacturer is unknown, or if documents or related correspondence are incomplete.

Amendment 160

Cristian Silviu Buşoi

Proposal for a regulation

Article 3 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

When there are indications suggesting a likelihood of diversion of the goods to the territory of the Union and when

proceedings to determine whether an intellectual property right has been infringed are underway before the competent authority, the declarant or holder of the goods shall establish that such goods are not intended for the territory of the Union.

Or. en

Justification

The declarant should provide the information clarifying that the goods are not at risk of fraudulent diversion. Coherent with ECJ case-law (Joint Cases C-446/09 and C-495/09)

Amendment 161

Anna Hedh

Proposal for a regulation

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Medicinal products, medical devices and other health products

There will be an assumption that medicinal products, medical devices and other health products whose destination is not declared, or whose supply chain is otherwise unclear, are intended to enter the territory of the Union.

Or. en

Justification

Counterfeit medicines carry serious health risks for patients and should be seized irrespective of their destination country. Customs should retain their current powers to act against suspected counterfeit medicines in all situations in which infringing goods are under Customs supervision and not just in situations when infringing goods are declared for import. This procedure shall apply to counterfeit goods in transit and must not obstruct the legitimate trade in generic medicines from manufacturers for lawful sale to customers outside (or via) the EU.

Amendment 162
Christian Engström

Proposal for a regulation
Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) intellectual property collective rights management bodies which are **regularly recognised as having a right to represent** holders of copyrights or related rights;

Amendment

(b) intellectual property collective rights management bodies which are **lawfully representing** holders of copyrights or related rights;

Or. en

Amendment 163
Christian Engström

Proposal for a regulation
Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) professional defence bodies which are **regularly recognised as having a right to represent** holders of intellectual property rights;

Amendment

(c) professional defence bodies which are **lawfully representing** holders of intellectual property rights;

Or. en

Amendment 164
Christian Engström

Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission

A Union application may be submitted with respect to **any** intellectual property **right** applying throughout the Union.

Amendment

A Union application may be submitted with respect to **the** intellectual property **rights of Article 2** applying throughout the Union.

Amendment 165
Jürgen Creutzmann

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2).

Amendment

The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2). ***When exercising its implementing power, the Commission shall consult the European Data Protection Supervisor.***

Or. en

Justification

This amendment follows the recommendations set out in the opinion of the European Data Protection Supervisor (2011/C 363/01).

Amendment 166
Rolandas Paksas

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2).

Amendment

The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2). ***In exercising its implementing powers, the Commission shall consult the European Data Protection Supervisor.***

Amendment 167
Jürgen Creutzmann

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The form shall include the information to be provided to the data subject pursuant to Article 10 of Directive 95/46/EC and Article 11 of Regulation (EC) No 45/2001.

Or. en

Justification

This amendment follows the recommendations set out in the opinion of the European Data Protection Supervisor (2011/C 363/01).

Amendment 168
Emma McClarkin

Proposal for a regulation
Article 6 – paragraph 4

Text proposed by the Commission

Amendment

4. **Where** computerised systems are available for the purpose of receiving and processing applications, applications shall be **submitted** using electronic data-processing techniques.

4. **When** computerised systems are available for the purpose of receiving and processing applications **by January 2014**, applications shall be **made available** using electronic data-processing techniques.

Or. en

Amendment 169
Jürgen Creutzmann

Proposal for a regulation
Article 6 – paragraph 4

Text proposed by the Commission

4. Where computerised systems are available for the purpose of receiving and processing applications, applications shall be submitted using electronic data-processing techniques.

Amendment

4. Where computerised systems are available for the purpose of receiving and processing applications, applications shall be submitted using electronic data-processing techniques. ***Member States shall make such systems available no later than 1 January 2014.***

Or. en

Justification

There should be a legal obligation to invest in and implement inter-operable “eCustoms” procedures also regarding enforcement of IPRs.

Amendment 170
Christian Engström

Proposal for a regulation
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The application and all information relevant to the identification of the goods by customs authorities, as well as for the analysis and assessment of the risk of infringement of the intellectual property right(s) concerned, as defined in points (g), (h) and (i) of the second subparagraph of paragraph 3, shall be made publicly accessible through a website.

Or. en

Amendment 171
Marielle Gallo

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. Where the applicant does not provide the missing information within the period referred to in paragraph 1, the competent customs department **shall** reject the application.

Amendment

2. Where the applicant does not provide the missing information within the period referred to in paragraph 1, the competent customs department **may** reject the application.

Or. fr

Amendment 172
Emma McClarkin

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. Where the applicant does not provide the missing information within the period referred to in paragraph 1, the competent customs department shall reject the application.

Amendment

2. Where the applicant does not provide the missing information within the period referred to in paragraph 1, the competent customs department shall reject the application. ***In that event the competent customs department shall provide reasons for its decision and include information on the appeal procedure.***

Or. en

Amendment 173
Christian Engström

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission

3. Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, no action shall be taken by the customs authorities. The decision granting the application shall

Amendment

3. Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, ***the applicant shall notify the customs authorities thereof and no further*** action

be revoked or amended accordingly by the customs *authorities* that granted the decision.

shall be taken by the customs authorities. The decision granting the application shall be revoked or amended accordingly by the customs *authorities* that granted the decision.

Or. en

Amendment 174
Christian Engström

Proposal for a regulation
Article 11 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, no action shall be taken by the customs authorities. The decision granting the extension shall be revoked or amended accordingly by the customs authorities that granted the decision.

Amendment

Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, ***the applicant shall notify the customs authorities thereof and no further*** action shall be taken by the customs authorities. The decision granting the extension shall be revoked or amended accordingly by the customs authorities that granted the decision.

Or. en

Amendment 175
Christian Engström

Proposal for a regulation
Article 12

Text proposed by the Commission

Amending the decision with regard to intellectual property rights

The competent customs department that adopted the decision granting the application may, at the request of the holder of that decision, modify the list of

Amendment

deleted

intellectual property rights in that decision.

In the case of a decision granting a Union application, any modification consisting in adding intellectual property rights shall be limited to those intellectual property rights covered by Article 5.

Or. en

Amendment 176
Christian Engström

Proposal for a regulation
Article 13 – paragraph 3

Text proposed by the Commission

3. Once the central database of the Commission referred to in Article 31(3) is in place, all exchanges of data on decisions concerning applications for action, accompanying documents and notifications between the customs authorities of the Member States shall be made via that database.

Amendment

3. Once the central database of the Commission referred to in Article 31(3) is in place, all exchanges of data on decisions concerning applications for action, accompanying documents and notifications between the customs authorities of the Member States shall be made **publicly available** via that database.

Or. en

Amendment 177
Christian Engström

Proposal for a regulation
Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

The holder of the decision granting the application shall notify the competent customs department that adopted that decision of any of the following:

Amendment

The holder of the decision granting the application shall notify **within five working days** the competent customs department that adopted that decision of any of the following:

Amendment 178
Matteo Salvini

Proposal for a regulation
Article 15 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) does not comply with the requirements of Article 18(2) on returning samples; ***deleted***

Or. en

Justification

The returning of samples cannot always take place and the text is not precise on who judges if the circumstances allow the returning of samples or not. Furthermore one situation cannot prejudice what would be future actions taken by the right holder, the text should provide a sufficiently flexible approach to protect the EU market.

Amendment 179
Matteo Salvini

Proposal for a regulation
Article 15 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) does not initiate proceedings as provided for in Articles 20(1), 23(4) or 24(9). ***deleted***

Or. en

Justification

The returning of samples cannot always take place and the text is not precise on who judges if the circumstances allow the returning of samples or not. Furthermore one situation cannot prejudice what would be future actions taken by the right holder, the text should provide a sufficiently flexible approach to protect the EU market.

Amendment 180
Jürgen Creutzmann

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

1. Where the customs authorities of a Member State identify, in one of the situations referred to in Article 1(1), goods suspected of infringing an intellectual property right covered by a decision granting an application for action, they shall **take a decision to** suspend the release of the goods or **to** detain them.

Amendment

1. Where the customs authorities of a Member State identify, in one of the situations referred to in Article 1(1), goods suspected of infringing an intellectual property right covered by a decision granting an application for action, they shall suspend the release of the goods or detain them.

Or. en

Justification

The rapporteur considers that the suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. He therefore proposes to delete the word "decision".

Amendment 181
Cristian Silviu Buşoi

Proposal for a regulation
Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In order for the competent authority to take a substantive decision, it may examine whether proof that goods are intended to be put on sale in the Union and the other elements constituting an infringement of the intellectual property right relied upon exist. To this end, the competent authority may refer to the indications provided for in Article 3.

Or. en

Justification

Consistent with amendments on article 3.

Amendment 182
Jürgen Creutzmann

Proposal for a regulation
Article 16 – paragraph 2

Text proposed by the Commission

2. Before ***adopting*** the ***decision of suspension of*** release or ***detention of*** the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any relevant information. The customs authorities may also provide the holder of the decision with information about the actual or supposed number of items, their nature and images of those items as appropriate.

Amendment

2. Before ***suspending*** the release or ***detaining*** the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any relevant information. The customs authorities may also provide the holder of the decision with information about the actual or supposed number of items, their nature and images of those items as appropriate.

Or. en

Justification

The rapporteur considers that the suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. He therefore proposes to delete the word "decision".

Amendment 183
Marielle Gallo

Proposal for a regulation
Article 16 – paragraph 2

Text proposed by the Commission

2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any

Amendment

2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any

relevant information. The customs authorities *may* also provide the holder of the decision with information about the actual or supposed number of items, their nature and images of those items as appropriate.

relevant information. The customs authorities *shall* also provide the holder of the decision with information about the actual or supposed number of items, their nature and images of those items as appropriate.

Or. fr

Amendment 184
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Article 16 – paragraph 3

Text proposed by the Commission

Amendment

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.

deleted

Or. fr

Justification

To avoid a long, disproportionate administrative procedure, the right to be heard must be restricted to the final consumer who, unlike the traders, does not have an in-depth knowledge of customs formalities.

Amendment 185
Emma McClarkin

Proposal for a regulation
Article 16 – paragraph 3

Text proposed by the Commission

Amendment

3. Before adopting the decision of suspension of release or detention of the goods, the customs authorities shall, communicate their intention to the declarant or, in cases where goods are to be detained, the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.

deleted

Or. en

Amendment 186
Jürgen Creutzmann

Proposal for a regulation
Article 16 – paragraph 3

Text proposed by the Commission

Amendment

3. Before adopting the decision of suspension of release or detention of the goods, the customs authorities shall, communicate their intention to the declarant or, in cases where goods are to be detained, the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.

3. Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, the holder of the goods *before suspending the release or detaining the goods*. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.

Or. en

(See amendments to Recitals 15 and 16)

Justification

In most cases customs action is based on a clear suspicion and eventually turns out to be justified. The right to be heard should therefore be limited to goods other than counterfeit or pirated goods, where it may be more difficult for customs authorities to determine upon mere

visual examination whether an IPR might be infringed and to cases where customs take action following the grant of an application, where conflicting interests of the parties affected may be of relevance.

Amendment 187

Anna Hedh

Proposal for a regulation

Article 16 – paragraph 3

Text proposed by the Commission

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of **dispatch** of that communication.

Amendment

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of **receipt** of that communication.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 188

Christian Engström

Proposal for a regulation

Article 16 – paragraph 3

Text proposed by the Commission

3. Before adopting the decision of suspension of release or detention of the goods, the customs authorities shall, communicate their intention to the

Amendment

3. Before adopting the decision of suspension of release or detention of the goods, the customs authorities shall, communicate their intention to the

declarant or, in cases where goods are to be detained, the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within **three** working days of dispatch of that communication.

declarant or, in cases where goods are to be detained, the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within **five** working days of dispatch of that communication.

Or. en

Amendment 189
Jürgen Creutzmann

Proposal for a regulation
Article 16 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where goods suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right are placed under a suspensive procedure, the customs authorities shall request the declarant or holder of the goods to provide adequate evidence that the final destination of the goods is beyond the territory of the Union within three working days of dispatch of that request. Where no adequate evidence to the contrary is provided, customs authorities shall presume the final destination to be the territory of the Union.

Within one year after the entry into force of this Regulation the Commission shall adopt guidelines for customs authorities to assess the risk of deviation of these goods onto the market of the Union in accordance with the advisory procedure referred to in Article 29(2).

Or. en

Justification

Since the rapporteur considers it highly uncertain that substantive legislation will be

amended to cover the mere transit of goods that are imitations or copies of goods protected in the EU, he proposes to include this additional safeguard to prevent those goods from entering the internal market. Two conditions must be fulfilled so that customs can suspend the release of or detain goods: goods must be suspected to be counterfeit or pirated and the evidence provided must be inadequate.

Amendment 190
Matteo Salvini

Proposal for a regulation
Article 16 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In order that the authority competent to take a substantive decision may profitably examine whether proof that goods are intended to be put on sale in the Union and the other elements constituting an infringement of the intellectual property right relied upon exist, the customs authority to which an application for action is made shall, as soon as there are indications before it giving grounds for suspecting that such an infringement exists, suspend the release of or detain those goods.

Indications suggesting that those goods will be put on sale in the territory of the Union may include, inter alia, the fact that the destination of the goods is not declared whereas the suspensive procedure requested requires such a declaration, the lack of precise or reliable information as to the identity or address of the manufacturer or consignor of the goods, a lack of cooperation with the customs authorities or the discovery of documents or correspondence concerning the goods in question suggesting that there is liable to be a diversion of those goods to Union consumers.

Or. en

Justification

Consistent with Joined Cases C-446/09 and C-495/09 (Section 79, Paragraph 6) the Regulation should be amended to reflect the fact that the custom authority must act when the indications for suspecting an infringement exist.

Amendment 191 **Christian Engström**

Proposal for a regulation **Article 16 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. When adopting a decision to suspend the release of the goods or to detain them, in the case of small consignments, the customs authorities shall within a reasonable time duly inform the end-consumer of the legal basis for the actions taken by them.

Or. en

Amendment 192 **Jürgen Creutzmann**

Proposal for a regulation **Article 16 – paragraph 4 – subparagraph 1**

Text proposed by the Commission

Amendment

The customs authorities shall notify the holder of the decision granting the application and the declarant or holder of the goods of ***their decision to suspend*** the release of the goods or ***to detain them*** within one working day of the ***adoption*** of ***their*** decision.

The customs authorities shall notify the holder of the decision granting the application and the declarant or holder of the goods of the ***suspension of the*** release of the goods or ***their detention*** within one working day. ***Alternatively, the customs authorities may request the holder of the decision granting the application to notify the declarant or holder of the goods accordingly, where the holder of the decision granting the application guarantees that he/she will***

comply with the time limits and obligations laid down in this Regulation.

Or. en

Amendment 193
Cornelis de Jong

Proposal for a regulation
Article 16 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. When indications suggest that non-community goods in transit will be put on sale in the territory of the Union, such goods shall be considered as imports into the internal market of the Union. The intellectual property laws of the Member State where they are found will be applied when considering infringements of intellectual property rights.

Indications suggesting that these goods will be put on sale in the territory of the Union may include, inter alia, the fact that the destination of the goods is not declared, or is not fully declared, and whereas there is a lack of precise or reliable information as to the identity of the manufacturer or consignor.

Or. en

Amendment 194
Jürgen Creutzmann

Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Before *adopting* the *decision* of *suspension of release* or *detention* of the goods, the customs authorities may,

2. Before *suspending* the *release* of or *detaining* the goods, the customs authorities may, without disclosing any

without disclosing any information other than the actual or supposed number of items, their nature and images of those items as appropriate, request any person entitled to submit an application concerning the alleged infringement of intellectual property rights to provide them with any relevant information.

information other than the actual or supposed number of items, their nature and images of those items as appropriate, request any person entitled to submit an application concerning the alleged infringement of intellectual property rights to provide them with any relevant information.

Or. en

Justification

The rapporteur considers that the suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. He therefore proposes to delete the word "decision".

Amendment 195

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Article 17 – paragraph 3

Text proposed by the Commission

Amendment

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.

deleted

Or. fr

Justification

To avoid a long, disproportionate administrative procedure, the right to be heard must be restricted to the final consumer who, unlike the traders, does not have an in-depth knowledge of customs formalities.

Amendment 196
Emma McClarkin

Proposal for a regulation
Article 17 – paragraph 3

Text proposed by the Commission

Amendment

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.

deleted

Or. en

Amendment 197
Anna Hedh

Proposal for a regulation
Article 17 – paragraph 3

Text proposed by the Commission

Amendment

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of **dispatch** of that communication.

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of **receipt** of that communication.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time

take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 198
Christian Engström

Proposal for a regulation
Article 17 – paragraph 3

Text proposed by the Commission

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within **three** working days of dispatch of that communication.

Amendment

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within **five** working days of dispatch of that communication.

Or. en

Amendment 199
Jürgen Creutzmann

Proposal for a regulation
Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where goods suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right are placed under a suspensive procedure, the customs authorities shall request the declarant or holder of the goods to provide adequate evidence that the final destination of the goods is beyond the territory of the Union within three working days of dispatch of that request. Where no adequate evidence

to the contrary is provided, customs authorities shall presume the final destination to be the territory of the Union.

Within one year after the entry into force of this Regulation the Commission shall adopt guidelines for customs authorities to assess the risk of deviation of these goods onto the market of the Union in accordance with the advisory procedure referred to in Article 29(2).

Or. en

Justification

Since the rapporteur considers it highly uncertain that substantive legislation will be amended to cover the mere transit of goods that are imitations or copies of goods protected in the EU, he proposes to include this additional safeguard to prevent those goods from entering the internal market. Two conditions must be fulfilled so that customs can suspend the release of or detain goods: goods must be suspected to be counterfeit or pirated and the evidence provided must be inadequate.

Amendment 200
Christian Engström

Proposal for a regulation
Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. When adopting a decision to suspend the release of the goods or to detain them, in the case of small consignments, the customs authorities shall within a reasonable time duly inform the end-consumer of the legal basis for the actions taken by them.

Or. en

Amendment 201
Jürgen Creutzmann

Proposal for a regulation
Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where no person entitled to submit an application can be identified, customs authorities shall cooperate with the competent authorities in order to identify a person entitled to submit an application.

Or. en

Justification

This amendment seeks to improve the cooperation between customs authorities and competent authorities in order to identify the person entitled to submit an application. This would solve the current problem that customs must grant the release of the goods suspected to infringe IPR or put an end to their detention if they are not able to identify the person entitled to submit an application within one working day.

Amendment 202
Jürgen Creutzmann

Proposal for a regulation
Article 17 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

The customs authorities shall notify the declarant or holder of the goods of ***their decision to suspend*** the release of the goods or ***to detain them*** within one working day ***of the adoption of their decision.***

The customs authorities shall notify the declarant or holder of the goods of the ***suspension of the*** release of the goods or ***their detention*** within one working day.

Or. en

Justification

The rapporteur considers that the suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. He therefore proposes to delete the word "decision".

Amendment 203
Marielle Gallo

Proposal for a regulation
Article 17 – paragraph 6

Text proposed by the Commission

Amendment

6. This Article shall not apply to perishable goods.

deleted

Or. fr

Amendment 204
Matteo Salvini

Proposal for a regulation
Article 18 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

The customs authorities may take samples and may provide samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

The customs authorities may take samples and may provide **or send** samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

Or. en

Justification

In order to effectively fight against counterfeiting, it is necessary to encourage an effective and inexpensive interaction between the customs and the holders of the decision granting the application.

Amendment 205
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Article 18 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The customs authorities may take samples and may provide samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

Amendment

The customs authorities may take samples ***representative of the goods as a whole*** and may provide ***such*** samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

Or. fr

Amendment 206
Anna Hedh

Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission

3. The customs authorities shall, upon request and if known, provide the holder of the decision granting the application with the names and addresses of the consignee, the consignor, the declarant or the holder of the goods, the customs procedure and the origin, provenance and destination of goods suspected of infringing an intellectual property right.

Amendment

3. The customs authorities shall, upon request and if known, provide the holder of the decision granting the application with the names and addresses of the consignee, the consignor, the declarant or the holder of the goods, the customs procedure and the origin, provenance and destination of goods suspected of infringing an intellectual property right.

For goods in transit that are suspected of infringing an intellectual property right in the country of destination, the customs authorities may communicate this information to the customs authorities in the destination country using inter alia the World Customs Organisation SAFE Framework.

Justification

It is important to ensure that customs authorities are able to communicate information on infringers to law enforcement agencies to help enhance investigation and detention procedures; and to inform the customs authorities in countries of destination, in accordance with Article 69 of TRIPS. It is also important to maximize the use of existing global frameworks to enable customs authorities to take action against illegal goods.

Amendment 207
Phil Prendergast

Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission

3. The customs authorities shall, upon request and if known, provide the holder of the decision granting the application with the names and addresses of the consignee, the consignor, the declarant or the holder of the goods, the customs procedure and the origin, provenance and destination of goods suspected of infringing an intellectual property right.

Amendment

3. The customs authorities shall, upon request and if known, provide the holder of the decision granting the application ***and, where relevant, law enforcement authorities and agencies*** with the names and addresses of the consignee, the consignor, the declarant or the holder of the goods, the customs procedure and the origin, provenance and destination of goods suspected of infringing an intellectual property right.

For goods in transit that are suspected of infringing an intellectual property right in the country of destination, the customs authorities may communicate this information to the customs authorities in the country of destination.

Amendment 208
Jürgen Creutzmann

Proposal for a regulation
Article 19 – point a

Text proposed by the Commission

Amendment

(a) to initiate proceedings to determine whether an intellectual property right has been infringed;

(a) to initiate proceedings to determine whether an intellectual property right has been infringed ***or in the course of such proceedings***;

Or. en

Justification

Alignment with amendment 30 by the rapporteur.

Amendment 209

Marielle Gallo

Proposal for a regulation
Article 19 – point a a (new)

Text proposed by the Commission

Amendment

(aa) to initiate criminal proceedings;

Or. fr

Amendment 210

Jürgen Creutzmann

Proposal for a regulation
Article 19 – point b

Text proposed by the Commission

Amendment

(b) to seek compensation from the infringer or other persons where goods are destroyed in accordance with ***Articles 20(3) or 23(3)***.

(b) to seek compensation from the infringer or other persons where goods are destroyed in accordance with ***Article 20(3)***.

Or. en

(See amendment 42 of draft report)

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents). Therefore it is proposed to delete the paragraphs of the proposed Article 20 and replace them with the wording on proposed Article 23, which would then apply to all IPR infringements.

Amendment 211
Anna Hedh

Proposal for a regulation
Article 19 – point b a (new)

Text proposed by the Commission

Amendment

(ba) to use the information for or in connection with a criminal investigation or criminal proceeding, including those related to an intellectual property right.

Or. en

Amendment 212
Anna Hedh

Proposal for a regulation
Article 19 – point b b (new)

Text proposed by the Commission

Amendment

(bb) to use the information in settlement negotiations out of court.

Or. en

Amendment 213
Matteo Salvini

Proposal for a regulation
Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where goods other than those covered by Articles 23 and 24 are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of ***dispatch*** of the ***decision to suspend*** the release of the goods or ***to detain them***.

Amendment

Where goods other than those covered by Articles 23 and 24 are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of ***the receipt*** of the ***notification of the suspension of the*** release of the goods or ***their detention***.

Or. en

Justification

In order to avoid problems linked to the sending of the notification, the deadline should be set with reference to the receipt of the notification, and not its dispatch.

Amendment 214
Anna Hedh

Proposal for a regulation
Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where goods other than those covered by Articles 23 and 24 are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of ***dispatch*** of the decision to suspend the release of the goods or to detain them.

Amendment

Where goods other than those covered by Articles 23 and 24 are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of ***receipt*** of the decision to suspend the release of the goods or to detain them.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of

the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 215
Christian Engström

Proposal for a regulation
Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where goods *other than those covered by Articles 23 and 24* are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of dispatch of the decision to suspend the release of the goods or to detain them.

Amendment

Where goods are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of dispatch of the decision to suspend the release of the goods or to detain them.

Or. en

Amendment 216
Matteo Salvini

Proposal for a regulation
Article 20 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the case of perishable goods suspected of infringing an intellectual property right, the period for initiating the proceedings referred to in the first subparagraph shall be three working days of *dispatch* of the *decision to suspend* the release of the goods or *to detain them*.

Amendment

In the case of perishable goods suspected of infringing an intellectual property right, the period for initiating the proceedings referred to in the first subparagraph shall be three working days of *the receipt* of the *notification of the suspension of the* release of the goods or *their detention*.

Or. en

Justification

In order to avoid problems linked to the sending of the notification, the deadline should be set

with reference to the receipt of the notification, and not its dispatch.

Amendment 217
Anna Hedh

Proposal for a regulation
Article 20 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In the case of perishable goods suspected of infringing an intellectual property right, the period for initiating the proceedings referred to in the first subparagraph shall be three working days of *dispatch* of the decision to suspend the release of the goods or to detain them.

Amendment

In the case of perishable goods suspected of infringing an intellectual property right, the period for initiating the proceedings referred to in the first subparagraph shall be three working days of *receipt* of the decision to suspend the release of the goods or to detain them.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 218
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Article 20 – paragraph 2 – point b

Text proposed by the Commission

(b) a written agreement between the holder of the decision granting the application and the holder of the goods to abandon the goods for destruction.

Amendment

(b) a written agreement between the holder of the decision granting the application and the *declarant or* holder of the goods to abandon the goods for destruction.

Or. fr

Amendment 219
Christian Engström

Proposal for a regulation
Article 21 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the customs authorities have been notified of the initiation of proceedings to determine whether a design, ***patent, utility model or plant variety*** right has been infringed and the period provided for in Article 20 has expired, the declarant or holder of the goods may request the customs authorities to release the goods or put an end to their detention.

Amendment

Where the customs authorities have been notified of the initiation of proceedings to determine whether a design right has been infringed and the period provided for in Article 20 has expired, the declarant or holder of the goods may request the customs authorities to release the goods or put an end to their detention.

Or. en

Amendment 220
Christian Engström

Proposal for a regulation
Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

1. Goods abandoned for destruction ***under Articles 20, 23 or 24*** shall not be:

Amendment

1. Goods abandoned for destruction shall not be:

Or. en

Amendment 221
Matteo Salvini

Proposal for a regulation
Article 22 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. By way of exception to the provisions of paragraph 1, the customs authorities may authorise the public or private

organisations, which aim at combating against counterfeiting and have been individually authorised prior to these operations, to use the above-mentioned measures. Prior to the destruction of the abandoned goods, the authorised organisations may stock them, in the conditions defined in the authorisation, for the purposes of analysis and establishment of a database of information intended to fight against counterfeiting. The authorised organisations shall be published on the website of the Commission.

Or. en

Justification

Study of the counterfeit or pirated goods provides information on the understanding of the problem and allows introducing the relevant strategies for combating it. It is then necessary to be able to analyse these goods prior to their destruction.

Amendment 222
Christian Engström

Proposal for a regulation
Article 23

Text proposed by the Commission

Amendment

Article 23

deleted

Destruction and initiation of proceedings

1. Goods suspected of being counterfeit goods or pirated goods may be destroyed under customs control, without there being any need to determine whether an intellectual property right has been infringed under the law of the Member State where the goods are found, where all of the following conditions are fulfilled:

(a) the holder of the decision granting the application has informed the customs authorities in writing of his/her

agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them;

(b) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them.

2. Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the periods set out in paragraph 1(b) nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities may deem that the declarant or holder of the goods has agreed to their destruction.

The customs authorities shall inform the holder of the decision granting the application accordingly.

Where the declarant or holder of the goods objects to the destruction of the goods, the customs authorities shall inform the holder of the decision granting the application of such objection.

3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. Samples may be taken prior to destruction.

4. Where there is no agreement to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been

infringed within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them.

The customs authorities may extend the periods referred to in the first subparagraph by a maximum of 10 working days upon request by the holder of the decision granting the application in appropriate cases.

In the case of perishable goods those periods shall not be extended.

5. The customs authorities shall grant the release of the goods or put an end to their detention, as appropriate, immediately after completion of all customs formalities, where they have not received information from the holder of the decision granting the application on any of the following:

(a) his/her agreement to the destruction within the periods referred to in paragraph 1(a);

(b) the initiation of proceedings to determine whether an intellectual property right has been infringed within the period referred to in paragraph 4.

Or. en

Amendment 223
Matteo Salvini

Proposal for a regulation
Article 23 – paragraph 1 – point a

Text proposed by the Commission

(a) the holder of the decision granting the application has informed the customs authorities in writing of his/her agreement to the destruction of the goods within 10 working days, or three working days in the

Amendment

(a) the holder of the decision granting the application has informed the customs authorities in writing of his/her agreement to the destruction of the goods within 10 working days, or three working days in the

case of perishable goods, of *dispatch* of the *decision to suspend* the release of the goods or *to detain them*;

case of perishable goods, of *the receipt* of the *notification of the suspension of the* release of the goods or *their detention*.

Or. en

Justification

In order to avoid problems linked to the sending of the notification, the deadline should be set with reference to the receipt of the notification, and not its dispatch.

Amendment 224

Anna Hedh

Proposal for a regulation

Article 23 – paragraph 1 – point a

Text proposed by the Commission

(a) the holder of the decision granting the application has informed the customs authorities in writing of his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of *dispatch* of the decision to suspend the release of the goods or to detain them;

Amendment

(a) the holder of the decision granting the application has informed the customs authorities in writing of his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of *receipt* of the decision to suspend the release of the goods or to detain them.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 225

Matteo Salvini

Proposal for a regulation

Article 23 – paragraph 1 – point b

Text proposed by the Commission

(b) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of ***dispatch*** of the ***decision to suspend*** the release of the goods or ***to detain them***.

Amendment

(b) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of ***the receipt*** of the ***notification of the suspension of the*** release of the goods or ***their detention***.

Or. en

Justification

In order to avoid problems linked to the sending of the notification, the deadline should be set with reference to the receipt of the notification, and not its dispatch.

Amendment 226

Anna Hedh

Proposal for a regulation

Article 23 – paragraph 1 – point b

Text proposed by the Commission

(b) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of ***dispatch*** of the decision to suspend the release of the goods or to detain them.

Amendment

(b) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of ***receipt*** of the decision to suspend the release of the goods or to detain them.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 227

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Article 23 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the periods set out in paragraph 1(b) nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities *may* deem that the declarant or holder of the goods has agreed to their destruction.

Amendment

Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the periods set out in paragraph 1(b) nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities *shall* deem that the declarant or holder of the goods has agreed to their destruction.

Or. fr

Amendment 228

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Article 23 – paragraph 3

Text proposed by the Commission

3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. Samples may be taken prior to destruction.

Amendment

3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. Samples *representative of the goods as a whole* may be taken prior to destruction.

Or. fr

Amendment 229
Matteo Salvini

Proposal for a regulation
Article 23 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Where there is no agreement to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days, or three working days in the case of perishable goods, of *dispatch* of the *decision to suspend* the release of the goods or *to detain them*.

Amendment

Where there is no agreement to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days, or three working days in the case of perishable goods, of *the receipt* of the *notification of the suspension of the* release of the goods or *their detention*.

Or. en

Justification

In order to avoid problems linked to the sending of the notification, the deadline should be set with reference to the receipt of the notification, and not its dispatch.

Amendment 230
Anna Hedh

Proposal for a regulation
Article 23 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Where there is no agreement to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days, or three working days in the case of perishable goods, of *dispatch* of the decision to suspend the release of the goods or to detain them.

Amendment

Where there is no agreement to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days, or three working days in the case of perishable goods, of *receipt* of the decision to suspend the release of the goods or to detain them.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 231

Konstantinos Poupakis

Proposal for a regulation

Article 23 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Customs authorities may donate non-hazardous manufactured products such as clothes and shoes to schools, nursing homes, orphanages, non-governmental organisations or any other social or welfare services. In such cases, no duties or other national taxes should be levied.

Or. el

Amendment 232

Anna Hedh

Proposal for a regulation

Article 24 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) goods ***suspected of being*** counterfeit or pirated goods;

(a) goods ***that are obviously*** counterfeit or pirated goods.

Or. sv

Amendment 233

Christian Engström

Proposal for a regulation
Article 24 – paragraph 1 – point a

Text proposed by the Commission

(a) goods suspected of being counterfeit or pirated goods;

Amendment

(a) goods suspected of being counterfeit **trademark goods** or pirated **copyrighted** goods;

Or. en

Amendment 234
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Article 24 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) it has been confirmed by the holder, after having been informed, that the goods are counterfeit or pirated goods;

Or. fr

Amendment 235
Marielle Gallo

Proposal for a regulation
Article 24 – paragraph 2

Text proposed by the Commission

Amendment

2. Article 16 (3), (4) and (5) and Article 18(2) shall not apply.

2. Article 16(4) and (5) and Article 18(2) shall not apply.

Or. fr

Amendment 236
Anna Hedh

Proposal for a regulation
Article 24 – paragraph 4

Text proposed by the Commission

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within 20 working days of **dispatch** of the decision to suspend the release of the goods or to detain them.

Amendment

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within 20 working days of **receipt** of the decision to suspend the release of the goods or to detain them.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 237
Marielle Gallo

Proposal for a regulation
Article 24 – paragraph 4

Text proposed by the Commission

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within **20** working days of dispatch of the decision to suspend the release of the goods or to detain them.

Amendment

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within **five** working days of dispatch of the decision to suspend the release of the goods or to detain them.

Or. fr

Amendment 238
Anna Hedh

Proposal for a regulation
Article 24 – paragraph 5

Text proposed by the Commission

5. The goods concerned may be destroyed where, within 20 working days of **dispatch** of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.

Amendment

5. The goods concerned may be destroyed where, within 20 working days of **receipt** of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.

Or. sv

Justification

So as to ensure that all European holders of the decision granting the application have the same amount of time to take action on suspended or detained goods, regardless of the time take by postal services to deliver the decision by customs authorities to suspend the release of the goods or to detain them, the deadline for taking action should be counted down with reference to receipt of this decision, and not its dispatch.

Amendment 239
Marielle Gallo

Proposal for a regulation
Article 24 – paragraph 5

Text proposed by the Commission

5. The goods concerned may be destroyed where, within **20** working days of dispatch of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.

Amendment

5. The goods concerned may be destroyed where, within **10** working days of dispatch of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.

Or. fr

Amendment 240
Marielle Gallo, Andreas Schwab

Proposal for a regulation
Article 24 – paragraph 7

Text proposed by the Commission

7. The destruction shall be carried out under customs ***control and at*** the expense of the ***customs authorities***.

Amendment

7. The destruction shall be carried out under customs ***control at*** the expense of the ***holder of the decision granting the application***.

Or. fr

Amendment 241

Anna Hedh

Proposal for a regulation

Article 24 – paragraph 8

Text proposed by the Commission

8. Where the declarant or holder of the goods objects to the destruction of the goods, the customs authorities shall inform the holder of the decision granting the application of such objection and of the number of items and their nature, including images of those items where appropriate.

Amendment

8. Where the declarant or holder of the goods objects to the destruction of the goods, the customs authorities shall inform the holder of the decision granting the application of such objection and of the number of items and their nature, including images of those items ***or samples*** where appropriate.

Or. sv

Amendment 242

Evelyne Gebhardt

Proposal for a regulation

Article 24 – paragraph 10

Text proposed by the Commission

10. The Commission shall be empowered to adopt delegated acts in accordance with Article 30 concerning the thresholds that define small consignments for the purpose of this Article.

Amendment

deleted

Or. de

Amendment 243
Cornelis de Jong

Proposal for a regulation
Article 24 – paragraph 10 a (new)

Text proposed by the Commission

Amendment

10a. When considering the potential workload of the customs enforcement created by this proposal, the customs authorities shall give preference to handling large consignments.

Or. en

Amendment 244
Anna Hedh

Proposal for a regulation
Article 27 – paragraph 1

Text proposed by the Commission

Amendment

1. Where requested by the customs authorities, the holder of the decision granting the application shall reimburse all costs incurred by the customs administration in keeping goods under customs supervision in accordance with Articles 16 and 17 and in destroying goods in accordance with Articles 20 and 23.

1. Where requested by the customs authorities, the holder of the decision granting the application shall reimburse all costs incurred by the customs administration in keeping goods under customs supervision in accordance with Articles 16 and 17 and in destroying goods in accordance with Articles 20 and 23. ***The holder of a decision shall, upon request, be given information by the customs authorities on where and how the detained goods are being stored and on the costs associated with this storage, and shall be given the opportunity to comment on this storage.***

Or. sv

Justification

The proposal as formulated by the Commission means that the right holder must make an economic calculation when submitting an application for action. This can be problematic for small and medium-sized enterprises that have limited financial resources. This may in turn lead to the right holder choosing not to submit an application, thus letting infringing goods cross the border.

Amendment 245

Anja Weisgerber

Proposal for a regulation

Article 27 – paragraph 1

Text proposed by the Commission

1. Where requested by the customs authorities, the holder of the decision granting the application shall reimburse all costs incurred by the customs administration in keeping goods under customs supervision in accordance with Articles 16 and 17 and in destroying goods in accordance with Articles 20 and 23.

Amendment

1. Where requested by the customs authorities, the holder of the decision granting the application shall reimburse all costs incurred by the customs administration in keeping goods under customs supervision in accordance with Articles 16 and 17 and in destroying goods in accordance with Articles 20 and 23 ***and in intercepting goods, providing the intermediaries are not liable under Article 27(2)(b).***

Or. de

Justification

Haulage firms unwittingly play a central role in the import of illegal and counterfeit goods into the EU. They cannot be required to discover such goods. They can, however, contribute to protecting the EU against the import of such goods if they have been informed, in the preparatory stage of a commission, of any previous trade mark infringements committed by the receiver of the goods they are transporting.

Amendment 246

Anna Hedh

Proposal for a regulation

Article 27 – paragraph 2

Text proposed by the Commission

2. This Article shall be without prejudice to the right of the holder of the decision granting the application to seek compensation from the infringer or other persons in accordance with the legislation of the Member State where the goods were found.

Amendment

2. This Article shall be without prejudice to the right of the holder of the decision granting the application to seek compensation from the infringer or other persons, ***including intermediaries such as carriers or freight forwarders***, in accordance with the legislation of the Member State where the goods were found.

Or. en

Amendment 247

Jürgen Creutzmann, Morten Løkkegaard

Proposal for a regulation

Article 27 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall adopt provisions in their national law enabling the holder of the decision granting the application to seek compensation from the declarant or the person who has physical control over the goods where both the infringer and the owner of the goods or the person who has a similar right of disposal over them cannot be identified, are not liable to prosecution in their territory or are unable to provide compensation, and where the declarant or the person who has physical control over the goods cannot produce names, addresses and VAT numbers (if applicable) of the consignor and the consignee.

Or. en

(See amendment 13 of the rapporteur.)

Justification

Intermediaries, such as carriers and/or forwarders, are in contractual relationship with the

infringers and they receive payments for transporting the infringing goods. Where a lack of due diligence on the part of intermediaries can be established, they should bear costs of destruction of goods. Such obligation would encourage intermediaries to be more involved in the fight against infringements of intellectual property rights.

Amendment 248

Gianluca Susta, Pier Antonio Panzeri

Proposal for a regulation

Article 28 – title

Text proposed by the Commission

Amendment

Administrative sanctions

Sanctions

Or. it

Amendment 249

Gianluca Susta, Pier Antonio Panzeri

Proposal for a regulation

Article 28 – paragraph 1

Text proposed by the Commission

Amendment

The Member States shall lay down the rules on **administrative** sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The **administrative** sanctions provided for must be effective, proportionate and dissuasive.

The Member States shall lay down the rules on sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.

Or. it

Amendment 250

Marielle Gallo, Andreas Schwab

Proposal for a regulation

Article 28 – paragraph 1

Text proposed by the Commission

The Member States shall **lay down** the rules on administrative sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions provided for must be effective, proportionate and dissuasive.

Amendment

Without prejudice to their national law, the Member States shall **apply** the rules on administrative sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions provided for must be effective, proportionate and dissuasive.

Or. fr

Amendment 251
Christian Engström

Proposal for a regulation
Article 28 a (new)

Text proposed by the Commission

Amendment

Article 28a

Penalties imposed on applicants

Applicants who repeatedly submit applications concerning the alleged intellectual property rights violations that prove to be false in the majority of cases over a period of two years shall lose the right to submit applications for a fixed period. Member States shall lay down rules on penalties applicable to those applicants. The penalties provided for must be effective, proportionate and dissuasive.

Or. en

Amendment 252
Jürgen Creutzmann

Proposal for a regulation
Article 31 – paragraph 3

Text proposed by the Commission

3. All information referred to in paragraphs 1 and 2 shall be stored in a central database of the Commission.

Amendment

3. All information referred to in paragraphs 1 and 2 shall be stored in a central database of the Commission. ***In order to establish a legal basis for that database, the Commission shall adopt a separate proposal for adoption under the ordinary legislative procedure within one year after entry into force of this Regulation. When preparing its proposal, the Commission shall consult the European Data Protection Supervisor. The database shall be operational not later than 1 January 2015.***

Or. en

Justification

This amendment follows the recommendations set out in the opinion of the European Data Protection Supervisor (2011/C 363/01). There should be a legal obligation to invest in and implement inter-operable “eCustoms” procedures also regarding enforcement of IPRs.

Amendment 253
Jürgen Creutzmann

Proposal for a regulation
Article 31 – paragraph 4

Text proposed by the Commission

4. The Commission shall make the relevant information referred to in paragraphs 1 and 2 available to the customs authorities of the Member States in an electronic form.

Amendment

4. The Commission shall make the relevant information referred to in paragraphs 1 and 2 available to the customs authorities of the Member States in an electronic form ***as soon as possible and not later than 1 January 2015.***

Or. en

Justification

There should be a legal obligation to invest in and implement inter-operable “eCustoms” procedures also regarding enforcement of IPRs.

Amendment 254
Ildikó Gáll-Pelcz

Proposal for a regulation
Article 32 – paragraph 1

Text proposed by the Commission

1. The processing of personal data in the central database of the Commission shall be carried out in accordance with Regulation (EC) No 45/2001²⁶ and under the supervision of the European Data Protection Supervisor.

Amendment

1. The processing of personal data in the central database of the Commission shall be carried out in accordance with Regulation (EC) No 45/2001²⁶ and under the supervision of the European Data Protection Supervisor. ***In any event, the implementing measures to be adopted should specify in detail the functional and technical characteristics of the database.***

Or. en

Amendment 255
Jürgen Creutzmann

Proposal for a regulation
Article 32 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Retention of personal data by the Commission and Member States shall be limited to the duration of the period of validity of the decision granting the application.

Or. en

Justification

This amendment follows the recommendations set out in the opinion of the European Data

Protection Supervisor (2011/C 363/01).

Amendment 256
Emma McClarkin

Proposal for a regulation
Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Reporting

*By ... * the Commission shall submit to the European Parliament, a report on its enforcement by the Member States, including in particular whether the computerised database is fully functional throughout the Union.*

** OJ: please insert the date: 36 months after the entry into force of this Regulation.*

Or. en

Amendment 257
Małgorzata Handzlik

Proposal for a regulation
Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Report

No later than three years after the entry into force of this Regulation, the Commission shall submit a report on its implementation to the European Parliament and the Council. The report shall focus in particular on the preparations made by Member States for

implementing this Regulation.

Or. pl

Justification

This regulation deals with procedural matters and, if its goals are to be achieved, it is important for it to be properly implemented by the Member States. It is particularly important for the operation of the computer systems referred to in the regulation to be checked.

Amendment 258

Małgorzata Handzlik

Proposal for a regulation

Article 36 – paragraph 1

Text proposed by the Commission

Applications for action granted in accordance with Council Regulation (EC) No 1383/2003 shall remain valid for the period specified in the decision granting the application during which the customs authorities are to take action and ***shall not*** be extended.

Amendment

Applications for action granted in accordance with Council Regulation (EC) No 1383/2003 shall remain valid for the period specified in the decision granting the application during which the customs authorities are to take action and ***may*** be extended ***in accordance with Article 11 of this Regulation. When submitted for the first time, applications for the extension of the period during which the customs authorities may take action shall be supplemented by the information required under Article 6(3).***

Or. pl

Justification

The holder of the decision granting the application should be able to secure the extension of the period established in accordance with Council Regulation (EC) No 1383/2003 during which the customs authorities may take action on the basis of this Regulation. This will be less of a burden for both the customs authorities and the holder of the decision granting the application.

Amendment 259

Jürgen Creutzmann

Proposal for a regulation
Article 37 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By ... * the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

**** OJ: please insert the date: 36 months after the entry into force of this Regulation.***

Or. en

Justification

The report will provide useful information on the functioning of this Regulation, in particular the enforcement of additional IPR by customs authorities and the special procedure for small consignments.