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Committee on the Internal Market and Consumer Protection

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*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights (COM(2011)0285 – C7-0139/2011 – 2011/0137(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Jürgen Creutzmann

Rapporteurs for the opinion (*):
Josefa Andrés Barea, Committee on International Trade
Marielle Gallo, Committee on Legal Affairs

(*) Associated committees — Rule 50 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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(*) Associated committees — Rule 50 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights (COM(2011)0285 – C7-0139/2011 – 2011/0137(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0285),
 - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0139/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on International Trade and the Committee on Legal Affairs (A7-0000/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

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

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. ***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.***

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.

Or. en

(See Amendment 15 to Article 1(4))

Justification

This Regulation seeks merely to set out a procedural framework for the customs enforcement of IPRs. It cannot be read as containing any substantive provision influencing the determination of IPR infringements. The exemption of travellers' luggage is not consistent with this approach, since according to the EU's substantive IP legislation, IPR can only be enforced when the goods are of commercial nature/used in the course of trade. The provision should therefore be deleted.

Amendment 2

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

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, such as parallel ***imports of goods that have been manufactured***

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.

with the consent of the holder of intellectual property rights but distributed in the EEA without his/her consent, as well as goods that have been

manufactured without the consent of the holder of intellectual property rights. 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. en

Justification

The scope of the proposed Regulation is extended to parallel imports and so-called "overruns" (goods that have been manufactured without the consent of the holder of intellectual property rights), amongst other types of infringements. For reasons of legal clarity and in order to ensure correct implementation, it is appropriate to use the wording of Article 3 of Regulation (EC) No 1383/2003 to describe these infringements.

Amendment 3

Proposal for a regulation

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Member States should commit sufficient resources to enable customs authorities to carry out their extended responsibilities and provide appropriate training for customs officials. The Commission and Member States should adopt guidelines to ensure the correct and uniform implementation of customs controls for the different types of infringements covered by this Regulation.

Or. en

Justification

To alleviate concerns with regard to customs authorities' ability to effectively carry out their obligations related to the new types of infringements included in the scope of the regulation, it is useful to underline the importance of allocating sufficient resources, providing appropriate training as well as developing guidelines to assist customs authorities in carrying out the necessary controls.

Amendment 4 **Proposal for a regulation** **Recital 6**

Text proposed by the Commission

(6) This Regulation contains procedural rules for customs authorities. Accordingly, this Regulation does not **introduce** any **new** criterion for ascertaining the existence of an infringement of the intellectual property law applicable.

Amendment

(6) This Regulation contains procedural rules for customs authorities. Accordingly, this Regulation does not **set out** any criterion for ascertaining the existence of an infringement of the intellectual property law applicable.

Or. en

(e.g. see Amendment 15 to Article 1(4))

Justification

Consistent with the objective to maintain a clear delineation between procedural and substantive IP law, the Regulation should not set out any criterion for determining an IPR infringement. Any existing provisions that could be interpreted in such a way should be deleted.

Amendment 5 **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

Amendment

deleted

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.

Or. en

(See Amendments 34-38 to Article 20)

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 replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 6 **Proposal for a regulation** **Recital 12**

Text proposed by the Commission

(12) Regulation (EC) No 1383/2003 allowed Member States to provide for a procedure allowing the destruction of certain goods without there being any obligation to initiate proceedings to establish whether an intellectual property right has been infringed. As recognised in the European Parliament Resolution of 18 December 2008 on the impact of counterfeiting on international trade, this procedure has proved very successful in the Member States where it has been available. Therefore, such procedure should be made compulsory *for those visible* infringements *that are easy to identify upon mere visual examination by the customs authorities* and should be applied at the right-holder's request, where the declarant or holder of the goods does

Amendment

(12) Regulation (EC) No 1383/2003 allowed Member States to provide for a procedure allowing the destruction of certain goods without there being any obligation to initiate proceedings to establish whether an intellectual property right has been infringed. As recognised in the European Parliament Resolution of 18 December 2008 on the impact of counterfeiting on international trade, this procedure has proved very successful in the Member States where it has been available. Therefore, such procedure should be made compulsory *with regard to all* infringements and should be applied at the right-holder's request, where the *right-holder has confirmed the infringement of an intellectual property right and agreed to the destruction and where the* declarant

not object to destruction.

or holder of the goods does not object to destruction.

Or. en

(See Amendments 34-38 to Article 20)

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). In addition to confirming his/her agreement to destruction, the right-holder should also confirm that an IPR has been infringed and indicate which IPR is concerned to ensure his/her liability for the destruction.

Amendment 7
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, which would allow for goods to be destroyed without the agreement of the right-holder ***where he/she has requested the use of the specific procedure in his application.***

Or. en

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators

should be entitled to decide on the definition and the applicable thresholds. The destruction of goods by customs without confirmation of an IPR infringement from the right-holder or a court would conflict with the fundamental right of property. Therefore right-holders should have to "opt-in".

Amendment 8
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

Or. en

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 9
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 rights ***other than for counterfeit and***

(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.

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.

Or. en

(See Amendments 34-38 to Article 20, Amendment 24 to Article 16(3) and Amendment 27 to Article 17(3))

Justification

There should be one harmonised procedure for all IPR infringements. A right to be heard would create a disproportionate administrative burden for customs authorities, potentially resulting in a reduction of possible seizures. Economic operators who import goods to the EU are well aware that their consignments may be subject to customs controls. This does not infringe the rights of the importer, since the customs authority only makes use of its legally enshrined rights and obligations.

Amendment 10
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

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. In the case of the specific procedure for

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.*

small consignments, where consumers are likely to be directly concerned, *a provision should be introduced allowing the holder of the goods to express his/her views before the customs administration takes a decision which would adversely affect him/her.*

Or. en

(See justification of Amendment 9 to Recital 15, Amendment 24 to Article 16(3), Amendment 27 to Article 17(3) and Amendment 45 to Article 24(4))

Justification

A general right to be heard would create a disproportionate administrative burden for customs authorities, potentially resulting in a reduction of possible seizures. However, in the case of small consignments, where consumers are likely to be affected, a right to be heard should be granted.

Amendment 11 **Proposal for a regulation** **Recital 16 a (new)**

Text proposed by the Commission

Amendment

(16a) Where goods coming from third countries are placed under a suspensive procedure on the customs territory of the Union and are suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right, the customs authority may suspend the release of or detain those goods when it has indications before it that one or more of the operators involved in the manufacture, consignment or

distribution of the goods, while not having yet begun to direct the goods towards Union consumers, are about to do so or are disguising their commercial intentions. Those indications may include, inter alia, the fact that the destination of the goods is not declared but the procedure requested requires such a declaration, a 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 likely to be a diversion of those goods to Union consumers. Such a suspicion should, in all cases, be based on the facts of the case.

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 (external transit or customs warehousing) in the EU and that are suspected to be pirated or counterfeit goods may be detained by the customs authorities of the Member States. For sake of legal certainty, these specifications should be added to this Regulation in a Recital.

Amendment 12 **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

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. ***It is therefore of particular importance that customs***

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.

authorities do not detain or suspend the release of medicines the passage of which across *the* territory of the 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, ***where there are no sufficient indications that they are intended for sale in the Union. In order to determine the*** substantial likelihood of diversion of ***medicines onto*** the market of the Union, ***customs authorities should take into account, inter alia, whether the consignee or the holder of the goods has a marketing authorisation or reimbursement status in a Member State.***

Or. en

(See Amendment 11 (Recital 16 (new)))

Justification

While the same conditions under which goods in transit may be detained by customs authorities should apply to all products (as specified in Amendment 11 (Recital 16 (new))), this Recital is to give additional guidance to customs authorities for their risk assessment in order to facilitate the legitimate trade of generic medicines, which are of special importance to protect public health and to promote access to medicines in developing countries.

Amendment 13 **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

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.

compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned, ***such as the consignee or intermediaries. Where the infringer cannot be identified, is not tangible or unable to provide compensation, the holder of the decision should be able to seek compensation from the consignee. The holder of the decision should be able to seek compensation from intermediaries such as carriers or freight forwarders when both the infringer and the consignee cannot be identified, are not tangible or unable to provide compensation and the intermediary has failed to exercise due diligence in the handling of the consignment.*** 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

(See Amendment 53 (Article 27(2)(a) (new)) and Amendment 54 (Article 27(2)(b) (new)))

Justification

Both the consignee and the intermediary are closer to the commercial transaction than the right-holder. Where the infringer cannot be identified, is intangible (e.g. because he/she is based in a third country) or unable to pay, it should therefore be possible for the right-holder, who has pre-financed the costs of storage and destruction, to seek compensation from those parties, taking into account that the consignee is more directly involved in the transaction than the intermediary.

Amendment 14 Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) This Regulation introduces the possibility for customs authorities to allow

Amendment 16
Proposal for a regulation
Article 2 – point 13

Text proposed by the Commission

(13) ‘declarant’ means the ***declarant as referred to in Article 4(18) of Regulation (EEC) No 2913/92;***

Amendment

(13) ‘declarant’ means the ***person lodging a declaration in his own name or the person in whose name a customs declaration is made;***

Or. en

Justification

To ensure legal clarity it is appropriate to define the terms in the proposed Regulation itself rather than providing an external reference to another legislative act.

Amendment 17
Proposal for a regulation
Article 2 – point 15

Text proposed by the Commission

(15) ‘customs supervision’ means the ***supervision by customs authorities as referred to in Article 4(13) of Regulation (EEC) No 2913/92;***

Amendment

(15) ‘customs supervision’ means ***action taken in general by the customs authorities with a view to ensuring that customs legislation and, where appropriate, other provisions applicable to goods subject to such action are observed;***

Or. en

Justification

To ensure legal clarity it is appropriate to define the terms in the proposed Regulation itself rather than providing an external reference to another legislative act.

Amendment 18
Proposal for a regulation
Article 2 – point 17 a (new)

Text proposed by the Commission

Amendment

(17a) ‘small consignment’ means a single package which:

- (a) includes less than three items; or*
(b) includes items of a total weight of less than 2 kilograms.

Or. en

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of this Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 19
Proposal for a regulation
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The persons referred to in Article 4 shall only submit one application for each intellectual property right protected in a Member State or in the Union.

Or. en

Justification

This is to avoid the filing of multiple applications for the same IPR and parallel submissions of national and Union applications, which has led to confusion in the past.

Amendment 20
Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point i

Text proposed by the Commission

Amendment

(i) ***any*** information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned;

(i) information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned;

Or. en

Justification

It is too much to ask from the right holders to forward and update "any" relevant information,

since even the most minor detail can arguably considered relevant.

Amendment 21
Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point o

Text proposed by the Commission

Amendment

(o) undertaking by the applicant to agree that the data provided by him/her will be processed by the Commission; ***deleted***

Or. en

Justification

This extremely sensitive and confidential information is intended for the exclusive use of customs for the purposes of this regulation. This paragraph does not specify for what purposes the Commission would use the data and who else would have access to it. This could raise problems with regard to enforcement and endanger the commercial interests (confidentiality, anti-trust etc.) of right holders.

Amendment 22
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).

(d) does not initiate proceedings as provided for in **Article 20(4)** or **Article 24(9)**.

Or. en

(See Amendment 42, i.e. deletion of Article 23)

Amendment 23
Proposal for a regulation
Article 16 – 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 ask the

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.

holder of the decision granting the application to provide them with any relevant information. The customs authorities *shall* also provide the holder of the decision, *at his/her request*, with information about the actual or supposed number of items, their nature and images of those items as appropriate.

Or. en

Justification

It should be an obligation for customs authorities to provide the right-holder at his/her request with information about the items. This will help the right-holder to identify infringements and take further action against the infringer.

Amendment 24
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

Justification

This additional obligation would create a disproportionate administrative burden for customs authorities, potentially resulting in a reduction of possible seizures. Economic operators who import goods into the EU are very well aware that their consignments may be subject to customs controls, which may entail the suspension of their release. This does not infringe the rights of the importer, since the customs authority only makes use of its legally enshrined rights and obligations.

Amendment 25
Proposal for a regulation
Article 16 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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

Or. en

Justification

It would be more efficient if the two parties of the procedure communicated with each other directly to speed up the procedure and reduce administrative burden for customs authorities. Therefore, the right-holder should notify the declarant or holder of the goods after establishing that an intellectual property right has been infringed. All remaining questions can be addressed directly between the two parties.

Amendment 26
Proposal for a regulation
Article 16 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The notification to the declarant or holder of the goods shall include information on the legal consequences provided by Article 20 **with respect to other goods than counterfeit and pirated goods and by Article 23 with respect to counterfeit and pirated goods.**

Amendment

The notification to the declarant or holder of the goods shall include information on the legal consequences provided by Article 20.

Or. en

(See Amendments 34-38 to Article 20)

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 replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 27
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

(See Amendment 24 to Article 16(3))

Justification

This additional obligation would create a disproportionate administrative burden for customs authorities, potentially resulting in a reduction of possible seizures. Economic operators who import goods into the EU are very well aware that their consignments may be subject to customs controls, which may entail the suspension of their release. This does not infringe the rights of the importer, since the customs authority only makes use of its legally enshrined rights and obligations.

Amendment 28
Proposal for a regulation
Article 19 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) to make that information available to customs authorities in third countries;

Or. en

Justification

Right holders should be entitled to forward information about infringements of intellectual property rights to customs authorities in third countries, notably in the countries of origin, so that they can take the necessary actions to deter goods infringing intellectual property rights before they reach Europe.

Amendment 29

Proposal for a regulation

Article 19 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) to take further action in order to identify the infringer of the intellectual property right;

Or. en

Justification

Right-holders should be entitled to use the information in order to take further action to determine the infringer, e.g. starting investigations and forwarding information to enforcement authorities, including in third countries.

Amendment 30

Proposal for a regulation

Article 19 – paragraph 1 – point a c (new)

Text proposed by the Commission

Amendment

(ac) to initiate criminal proceedings or in the course of such proceedings;

Or. en

Justification

Right holders should be entitled to use the information in order to initiate criminal proceedings against infringers or in the course of such proceedings.

Amendment 31

Proposal for a regulation

Article 19 – paragraph 1 – 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, i.e. deletion of Article 23)

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 replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 32
Proposal for a regulation
Section 2 – title

Text proposed by the Commission

Amendment

Initiation of proceedings and anticipated release of goods

Destruction of goods, initiation of proceedings and anticipated release of goods

Or. en

(See Amendment 42, i.e. deletion of Article 23)

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 replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 33
Proposal for a regulation
Article 20 – title

Text proposed by the Commission

Amendment

Initiation of proceedings

Destruction of goods and initiation of proceedings

Or. en

(See Amendment 42, i.e. deletion of Article 23)

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 replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 34
Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission

Amendment

1. 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.

1. Goods of which the release has been suspended or which have been detained according to Article 16 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:

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.

(a) the holder of the decision granting the application has, based on the information provided to him/her according to Article 16(2), confirmed in writing to the customs authorities that an intellectual property right has been infringed, indicating which intellectual 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;

(b) the holder of the decision granting the application 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;

(c) 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.

Or. en

(See Amendment 42, i.e. deletion of Article 23)

Justification

Amended Article 23(1): In addition to confirming his/her agreement to destruction, the right-holder should also confirm that an IPR has been infringed and indicate which IPR is concerned, based on the information he/she has received from the customs authorities. Only then, and provided the agreement of the declarant/holder of the goods, may be abandoned for destruction.

Amendment 35 **Proposal for a regulation** **Article 20 – paragraph 2**

Text proposed by the Commission

2. The customs authorities shall grant the release of the goods or put an end to their detention immediately after completion of all customs formalities where they have not been informed by the holder of the decision granting the application, within the period referred to in paragraph 1, of any of the following:

Amendment

2. Where the declarant or holder of the goods within the periods set out in point (c) of paragraph 1 has not confirmed his/her agreement to destruction 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.

- (a) the initiation of proceedings to determine whether an intellectual property right has been infringed;*
- (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.*

Or. en

(See Amendment 42, i.e. deletion of Article 23)

Justification

Amended Article 23(2): For reasons of legal clarity the syntax position of the reference to the period in paragraph (1)(c) is modified to apply to both agreement to destruction and opposition to destruction. Moreover, it should be ensured that the concept of implied consent is applied if the declarant or holder of the goods fails to notify his opposition to destruction by replacing "may" with "shall", as it is already practice in some Member States.

Amendment 36
Proposal for a regulation
Article 20 – paragraph 3

Text proposed by the Commission

3. *In the case of an agreement to abandon the goods for destruction referred to in paragraph 2(b), 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.*

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 may be taken prior to destruction.***

Or. en

(See Amendment 42, i.e. deletion of Article 23)

Justification

The original text of Article 23(3) is moved to Article 20, because Article 23 in its amended form should apply to all IPR infringements.

Amendment 37
Proposal for a regulation
Article 20 – paragraph 4

Text proposed by the Commission

4. The customs authorities may extend the period referred to in the first subparagraph of paragraph 1 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, the period referred to in the second subparagraph of paragraph 1 shall not be extended.

Amendment

4. Where there is no agreement to destruction or the declarant or the holder of the goods objects to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 20 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.

Or. en

(See Amendment 34 to Article 20(1) and Amendment 42, i.e. deletion Article 23)

Justification

Amended wording of Article 23(4): Right-holders should be allowed to wait for the declarant or holder of the goods to oppose to the destruction within the period indicated in paragraph 1(c) before deciding to initiate proceedings. This requires an extension of the period beyond 10 working days.

Amendment 38
Proposal for a regulation
Article 20 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. 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 point (b) of paragraph 1;

(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

(See Amendment 34 to Articles 20(1) and Amendment 42, i.e. deletion of Article 23)

Justification

The original text of Article 23(5) is moved to Article 20, because Article 23 in its amended form should apply to all IPR infringements.

Amendment 39

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 under Articles 20 or 24 shall not be:

Or. en

(See Amendment 42, i.e. deletion of Article 23)

Amendment 40

Proposal for a regulation

Article 22 – paragraph 2

Text proposed by the Commission

2. The customs authorities may allow the goods referred to in paragraph 1 to be moved under customs supervision between different places within the customs territory of the Union with a view to their destruction under customs control.

Amendment

2. The customs authorities may allow the goods referred to in paragraph 1 to be moved under customs supervision between different places within the customs territory of the Union with a view to their destruction under customs control *or their use for education and exhibition purposes accompanied by appropriate security measures.*

Or. en

(See Amendment 14 (Recital 20a (new)))

Justification

Goods should also be allowed to be moved for the purpose of education and exhibition purposes. On the one hand, they could be used to train customs officials, in particular with regard to new and complex IPR infringements. On the other hand they could serve to teach consumers how they can recognise such goods and to raise the awareness of the risks associated with them.

Amendment 41
Proposal for a regulation
Section 3 – title

Text proposed by the Commission

Amendment

Section 3

deleted

Counterfeit and pirated goods

Or. en

(Article 20)

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 replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 42
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

(Article 20)

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 replace the paragraphs of Article 20 with the adapted wording of

Article 23, which would then apply to all IPR infringements.

Amendment 43
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 suspected of ***infringing an intellectual property right***;

Or. en

Justification

The specific procedure for small consignments should apply to all IPR infringements in order to simplify its application and to improve the effectiveness of IPR protection.

Amendment 44
Proposal for a regulation
Article 24 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the holder of the decision granting the application has requested the use of the specific procedure in his application;

Or. en

(See Amendment 46 to Article 24(5))

Justification

An "opt-in" by the right-holder should be required in order to apply this specific procedure to infringements covered by his/her application, because he/she will also have to pre-finance the costs of storage and destruction.

Amendment 45
Proposal for a regulation
Article 24 – paragraph 4

Text proposed by the Commission

Amendment

4. The declarant or holder of the goods shall be given the opportunity to express

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.

his/her point of view within **10** working days of dispatch of the decision to suspend the release of the goods or to detain them.

Or. en

Justification

Granting the declarant or holder of the goods a period of 20 working days to confirm his/her agreement to the destruction of the goods seems unjustified and disproportionate. This would unnecessarily slow down procedures and increase storage costs. Therefore, the time period should be aligned with that referred to in Amendment 34 to Article 20(1).

Amendment 46 **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 the declarant or holder of the goods has confirmed ***in writing*** to the customs authorities his/her agreement to the destruction of the goods. ***The destruction shall be carried out under customs control at the expense of the holder of the decision granting the application.***

Or. en

(See Amendment 34 to Article 20(1) and Amendment 48 to Article 24(7))

Justification

There is no need to limit the period in which the declarant/holder of the goods can confirm his agreement to destruction. This way, the procedure can be applied more flexibly, e.g. if the customs authorities receive the agreement one day later or after the right-holder has contacted the holder of the goods/declarant. Further, the method of confirmation should be aligned with the method specified in Amendment 34 to Article 20(1). Finally, Article 24(7) in its amended form is included in this paragraph.

Amendment 47 **Proposal for a regulation** **Article 24 – paragraph 6**

Text proposed by the Commission

Amendment

6. Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the period referred to in paragraph 5, nor notified his/her opposition to destruction to the customs office 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. **deleted**

Or. en

(See Amendment 50 to Article 24(8))

Justification

An amended version of this paragraph has been included in Amendment 50 to Article 24(8).

Amendment 48
Proposal for a regulation
Article 24 – paragraph 7

Text proposed by the Commission

Amendment

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

Or. en

(See Amendment 46 to Article 24(5))

Amendment 49
Proposal for a regulation
Article 24 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. The customs authorities shall provide the holder of the decision granting the application with access to information about the actual or supposed number of

destroyed items and their nature where appropriate.

Or. en

Justification

Right holders should obtain access to information about the goods destroyed under this procedure, which they can use for their investigations. An efficient way of organising this without creating a disproportionate burden for customs authorities could be an electronic database in which all goods covered by a decision granting an application are registered. Right holders of a decision granting the application would get access to information only on these goods.

Amendment 50
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 ***within 15 working days of dispatch of the decision to suspend the release of the goods or to detain them has not confirmed his/her agreement to destruction or notified his/her opposition to destruction***, the customs authorities shall inform the holder of the decision granting the application of such ***missing agreement or*** objection and of the number of items and their nature, including images of those items where appropriate.

Or. en

(See Amendment 45 to Article 24(4))

Justification

The period of 15 days is chosen to allow for 5 days of potential postal delay after the expiry of the period granted to the holder of the goods/declarant to express his/her point of view according to Amendment 45 Article 24(4).

Amendment 51
Proposal for a regulation
Article 24 – paragraph 10

Text proposed by the Commission

Amendment

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.

deleted

Or. en

(See deletion of Article 30)

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 52
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~~ **24**.

Or. en

(See Amendment 42, i.e. deletion of Article 23 and Amendment 46 to Article 24(5))

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). Right-holders should also reimburse the costs in the specific procedure for small consignments.

Amendment 53
Proposal for a regulation
Article 27 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where the infringer cannot be identified, is not tangible or unable to provide compensation, the holder of the decision granting the application may seek compensation from the owner of the goods or the person who has a similar right of disposal over them.

Or. en

Justification

The right-holders should be entitled to first seek compensation from the consignees, because they are directly involved in the commercial transaction.

Amendment 54
Proposal for a regulation
Article 27 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The holder of the decision granting the application may seek compensation from 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 tangible or are unable to provide compensation, and where the person who has physical control over the goods:

(a) cannot produce names, addresses and VAT numbers, if applicable, of the consignor, the consignee or the declarant;
or

(b) has transported or kept the goods despite prior notice from customs authorities or the holder of the decision granting the application of the involvement of the same consignor or

consignee with regard to previous infringements of intellectual property rights.

Or. en

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 55

Proposal for a regulation

Article 27 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Paragraphs 2a and 2b shall not apply to the procedure set out in Article 24.

Or. en

Justification

In the case of small consignments, where the consignees are often consumers acting in good faith, Article 2a (new) should not apply. Further, Article 2b (new) should not apply in the case of small consignments, because checking the required information would put a disproportionate administrative burden on intermediaries.

Amendment 56

Proposal for a regulation

Chapter 5 – title

Text proposed by the Commission

Amendment

COMMITTEE, ***DELEGATION*** AND
FINAL PROVISIONS

COMMITTEE AND FINAL
PROVISIONS

Or. en

Justification

The definition of 'small consignment' and in particular the thresholds that define small

consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 57
Proposal for a regulation
Article 30

Text proposed by the Commission

Amendment

Article 30

deleted

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The delegation of power referred to in Article 24(10) shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.***
- 3. The delegation of powers referred to in Article 24(10) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***
- 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***
- 5. A delegated act adopted pursuant to Article 24(10) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period the European Parliament and the Council have both informed the Commission that they will not object. That***

period shall be extended by 2 months on the initiative of the European Parliament or the Council.

Or. en

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 58
Proposal for a regulation
Article 37 – title

Text proposed by the Commission

Amendment

Entry into force and **application**

Entry into force and **reporting**

Or. en

Justification

See justifications for Amendment 59 (Article 37 first paragraph a (new)) and Amendment 60 to Article 37 second paragraph.

Amendment 59
Proposal for a regulation
Article 37 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By 1 January 2016 and every three years thereafter, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

Or. en

Justification

The report will provide useful information on the functioning and enforcement of this

Regulation and in particular on the experience gained in this area.

Amendment 60
Proposal for a regulation
Article 37 – paragraph 2

Text proposed by the Commission

Amendment

However, Article 24(1) to (9) shall apply from XX.XX.20XX. *deleted*

Or. en

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are established in this Regulation, therefore it is not necessary to provide for a deterred application of Article 24(1) to (9).

EXPLANATORY STATEMENT

Background

Intellectual Property Rights (IPR) are fundamental to innovation, which is a key priority of the Europe 2020 strategy for smart, sustainable and inclusive growth. Given the increase of IPR infringements and international trade in infringing goods, large parts of economic growth and jobs in the EU depend on the effective enforcement of IPR. It is estimated that piracy and counterfeiting cost European businesses EUR 250 billion each year.

In addition to the negative implications for businesses, violations of these rights can also pose a serious threat to the health and safety of consumers. In 2010, 14,5% of the total amount of detained articles were products for daily use and products that would be potentially dangerous to the health and safety for consumers (i.e. foods and beverages, body care articles, medicines, electrical household goods and toys).

The customs authorities are in a comparatively good position to enforce IPRs effectively at the EU's external borders, before the goods enter the internal market. Once the goods spread across different Member States, it becomes much more difficult and costly to trace them and to initiate proceedings.

The importance of improved customs enforcement of IPR is underlined by the fact that, between 2009 and 2010, the number of registered cases of counterfeiting and piracy almost doubled. In 2010, customs registered 79,112 cases, as compared to 43,572 in 2009. Online sales in particular caused a spectacular increase of detentions in postal traffic by 200%, where most cases concerned clothing, shoes and electrical goods and 69% of the goods detained were medicines.

As part of its IPR strategy, the European Commission proposed to revise Regulation (EC) 1383/2003 in order to strengthen the enforcement of IPR by customs authorities as well as to improve legal clarity, adapting the provisions of the Regulation to new developments. The revision of the Regulation was also included in the Customs Action Plan 2009-2012, which was endorsed by the Council, and the Single Market Act.

Recommendations

The rapporteur welcomes the revision of the Regulation, but would like to submit the following recommendations:

Scope

It is important to underline that the proposed Regulation should only lay down the procedures

enabling the customs authorities to prevent the movement of goods which they suspect of infringing IPR. By contrast, the determination of IPR infringements itself will be exclusively based on the EU's substantive IP legislation or the national laws of the Member States. This means that many significant problems related to the enforcement of IPR cannot be addressed by the proposed Regulation, but only by revision of substantive legislation, such as the Trade Mark Directive and the Community Trademark Regulation.

However the Commission does not follow this approach consistently when it proposes to maintain the exclusion of travellers' luggage for private use. The question of whether importing of fake goods by end-users qualifies as an action infringing an IPR is already addressed by substantive law. Therefore the current exemption is merely of declaratory character, but it sends the wrong message to customs authorities, consumers and commercial enterprises that importing infringing goods for personal use is acceptable.

The rapporteur is of the opinion that the substantive IP law should recognise the principle that fake goods also constitute infringements of IPR when they are for private use and encourages the Commission to address this problem by revising the respective legislation.

The rapporteur welcomes the extension of the scope to all types of IPR infringements contemplated by the EU's and Member States' substantive legislation, including parallel trade and overruns. Parallel imports are illegal according to the substantive legislation of various Member States and customs authorities should be enabled to enforce the provisions of substantive IP law. Often mixed with fake goods and lacking quality control, parallel imports deceive consumers and can endanger their health and safety.

Suspension of the release or detention of goods suspected of infringing an IPR

Where the customs authorities of a Member State identify goods suspected of infringing an IPR covered by a decision granting an application for action, before adopting the decision of suspension of release or detention of the goods, they should be obliged to provide the right-holder at his/her request with information about the items. This would help the right-holder to identify infringements and take further action against the infringer.

The additional obligation for customs authorities allowing for a right to be heard before an adverse decision is taken would create a disproportionate administrative burden for customs authorities, potentially resulting in a decreased level of IPR protection. Besides, economic operators who import goods into the EU are aware that their consignments may be subject to customs controls. These do not infringe the rights of the importer, since the customs authority merely makes use of its legally enshrined rights and obligations. However, this should not preclude the right to be heard in the special procedure for small consignments, where consumers are likely to be directly concerned.

Initiation of proceedings

The rapporteur welcomes the proposal from the Commission to make the implementation of the simplified procedure mandatory in all Member States. However, the rapporteur believes

that the simplified procedure should be applicable not only to counterfeit and pirated goods, but for all IPR infringements. 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 infringe both trademark rights /copyrights and other IPRs (e.g. patents).

Small consignments

The rapporteur welcomes the proposal to have a specific, simplified procedure for small consignments, but suggests various modifications:

The definition of the term "small consignment" constitutes an essential element of the proposed Regulation and should therefore be defined therein. The rapporteur proposes a definition based on the number of items (less than three) and their total weight (less than 2kg) contained in a single package. These criteria and thresholds are based on various replies from stakeholders to the public consultation. The rapporteur decided not to include the value of the items, since there is no agreement as to which value should be applied (value of the suspect goods or of the genuine goods?) and there are no objective criteria for customs authorities to determine the value of fake goods.

The procedure should be applicable to all IPR infringements, consistent with the approach taken for the other goods.

The destruction of goods by customs without confirmation of an IPR infringement from the right-holder or a court would constitute an unacceptable interference with the fundamental right of property. Therefore, right-holders should have to "opt-in", i.e. they should request the use of the small consignments procedure in their application for customs intervention. With this request, the right-holders would accept that they would pre-finance the costs of storage and destruction.

The declarant/holder of the goods, who is likely to be a consumer, should be granted a right to be heard. However the period should be shortened in order not to unnecessarily slow down procedures and increase storage costs.

Finally, right-holders should obtain access to information about the goods destroyed under this procedure, which they can use for their investigations. An efficient way of organising this could be an electronic database in which all goods covered by a decision granting an application are registered. The "Interface Public Members" (IPM) developed by the World Customs Organisation could serve as a model for such a system.

Costs

The rapporteur welcomes the clarification in the proposal that the right-holder, whilst having to pre-finance all costs for storage and destruction, shall be entitled to seek compensation from the infringer or other persons.

However, the rapporteur would like to clarify some of the conditions under which persons

other than the infringer who are involved in the commercial transaction may be held liable. This would help the right-holders in seeking reimbursement for their expenses where the infringers have concealed their identity, are not tangible (e.g. because they are located in a third country) or unable to pay.

In such a case, the right-holders should be entitled to first seek compensation from the consignees, because they are directly involved in the commercial transaction.

If the consignee cannot be identified either, is not tangible or unable to pay, the right-holder should be able to seek compensation from intermediaries such as carriers or freight forwarders (physical holders of the goods), where they have failed to exercise due diligence in the handling of the consignment. The criteria to establish such failure should be specified in the proposed Regulation.

Goods in transit

The rapporteur welcomes the clarifications proposed with regard to the treatment of goods from third countries suspected to infringe an IPR protected in the EU that are placed in an external transit procedure, which will help to solve the WTO dispute against the EU and facilitate the access to medicines in developing countries.

The proposal maintains the ability of customs authorities to check goods, in order to enforce IPRs, wherever the goods are under their supervision in the customs territory of the EU. However, it is important to note that, according to the EU's substantive IP legislation, such goods can only be classified as infringing IPR protected in the EU if it can be established that they are for sale in the EU.

The ECJ has recently specified under which conditions the customs authorities can suspect that goods declared as transit are in fact intended for sale in the EU (Joint Cases C-446/09 and C-495/09). These specifications should be included in the proposed Regulation for the sake of legal certainty.

The principle of freedom of transit was never intended to apply to illicit trade, including goods which infringe IPRs. Therefore the rapporteur encourages the Commission to ensure in future revisions of substantive IP law that goods placed under suspensive procedures that are imitations or copies of goods protected in the EU by IPRs can always be classified as counterfeit and pirated goods.