AMENDMENTS 001-106
by the Committee on the Internal Market and Consumer Protection

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights


Amendment 1

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. For this reason, consumers need to be well-informed about the risks involved in purchasing those goods.

Amendment 2

Proposal for a regulation
Recital 3
(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.

(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.

Amendment

Proposal for a regulation
Recital 4

(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.

(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 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.
traffic is involved.

Amendment 4
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
Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

(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.

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 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, 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.
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 6

Proposal for a regulation
Recital 5 b (new)

Text proposed by the Commission

(5b) This Regulation, when fully implemented, should further contribute to a single market which ensures more effective protection to right-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.

Amendment 7

Proposal for a regulation
Recital 5 c (new)

Text proposed by the Commission

(5c) The Commission should take all measures necessary to ensure harmonised application, without unnecessary delay, by the customs authorities of the new legal framework throughout the Union to ensure efficient enforcement of intellectual property rights, which would protect right-holders without hampering trade. The implementation of the Modernised Customs Code and in particular an inter-operable 'eCustoms' system could, in the future, facilitate such enforcement.

Amendment 8

Proposal for a regulation
Recital 5 d (new)
Text proposed by the Commission

(5d) 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.

Amendment

(5d) 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.

Amendment 9
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.

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 10
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

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

application for action of the customs authorities to initiate proceedings for determining whether an intellectual property right has been infringed.

Amendment 11
Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

(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, the declarant or holder 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. 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.

Amendment 12
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.

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 13
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 not object to destruction.

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 or holder of the goods does not object to destruction.

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
### Amendment 14

**Proposal for a regulation**

**Recital 13**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(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. <strong>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.</strong></td>
<td>(13) In order to reduce to the minimum the administrative burden and costs, <strong>without prejudice to the consumer's right to be duly informed within a reasonable time of the legal basis of the actions taken by the customs authorities</strong>, a specific procedure should be introduced for small consignments, which would allow for goods to be destroyed without the agreement of the right-holder <strong>where the right-holder has requested the use of the specific procedure in his application.</strong></td>
</tr>
</tbody>
</table>

**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.

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### Amendment 15

**Proposal for a regulation**

**Recital 14**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(14) <strong>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.</strong></td>
<td>deleted</td>
</tr>
</tbody>
</table>

**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 16
Proposal for a regulation
Recital 15

(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.

Amendment 17
Proposal for a regulation
Recital 16

(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

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, the right to be heard should be granted for all types of goods and the period allowing for that right should be extended. Taking into account the potential workload of the customs enforcement provided for in this Regulation, the customs authorities should give preference to handling large consignments.

Amendment 18
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.

Amendment 19

Proposal for a regulation
Recital 17 a (new)

Text proposed by the Commission

authorities ensure that any measures taken up by them are in line with the Union’s international commitments and do not detain or suspend the release of generic 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 grounds to suspect that they are intended for sale in the Union. In order to determine the risk 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.

Amendment (17a) Medicines that bear a false trademark or trade description misrepresent their origin and quality level and thus should be treated as falsified medicinal products 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 products. 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. By ...* the Commission should present a report analysing the effectiveness of current customs measures aimed at combating
trade in falsified medicines.

\footnote{OJ L 174, 1.7.2011, p. 74.}

\* OJ: please insert the date: 24 months after the date of entry into force of this Regulation.

### Amendment 20

**Proposal for a regulation**

**Recital 17 b (new)**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(17b) 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.</td>
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</table>

### Amendment 21

**Proposal for a regulation**

**Recital 17 c (new)**

<table>
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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(17c) Countering intellectual property rights infringements at the Union's external borders should be combined with targeted efforts at source. This requires cooperation both with third countries and at international level, where the Commission and Member States should build respect and promote high standards of protection for intellectual property rights. This should consist of endorsing the inclusion and enforcement of intellectual property rights in trade agreements, of technical cooperation, of encouraging discussion in the various international fora, of communication and exchange of information, as well as of further steps in operational cooperation with third countries and the industries</td>
<td></td>
</tr>
</tbody>
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Concerned.

Justification

Countering intellectual property right infringements should benefit from enhanced bilateral cooperation as well as coordinated international action.

Amendment 22

Proposal for a regulation
Recital 17 d (new)

Text proposed by the Commission

(17d) With a view to eliminating international trade in goods infringing intellectual property rights, Article 69 of the TRIPS Agreement provides that WTO Members are to promote the exchange of information between customs authorities on trade in goods infringing intellectual property rights. Such exchange of information should allow trafficking networks to be tracked in order to stop the manufacture and distribution of goods infringing intellectual property rights at an earlier stage of the supply chain. It is therefore necessary to establish the conditions for the exchange of information between customs authorities in the Union and relevant authorities in third countries, including on data protection.

Justification

Due to the international nature of counterfeiting and counterfeiters' expansive networks across borders, it is critical that the customs authorities be able to share and use information, including with third countries, in order to track networks and routes used by counterfeiters.

Amendment 23

Proposal for a regulation
Recital 17 e (new)

Text proposed by the Commission

(17e) In line with the Union's goal of strengthening international cooperation in the fight against counterfeiting,
piracy and illicit parallel trade in goods infringing the intellectual property of registered right-holders, the new European Observatory on Counterfeiting and Piracy has a key role to play by providing all customs authorities of Member States with relevant and timely information to conduct appropriate controls of authorised importers and distributors of goods suspected of infringing an intellectual property right in the internal market as well as exporters thereof to foreign markets. That role could be further enhanced by the creation of a database of genuine Union products and services protected by registered trademarks, designs and patents and which could also be made available to foreign customs authorities cooperating with the Union on better intellectual property rights protection and enforcement.

Amendment 24

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

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

Amendment 25
Proposal for a regulation
Recital 20 a (new)

Text proposed by the Commission

(20a) This Regulation introduces the possibility for customs authorities to allow goods abandoned for destruction to be moved, under customs supervision, between different places within the customs territory of the Union. Customs authorities should be encouraged to make use of that possibility in order to facilitate the economically and environmentally sound destruction of those goods, as well as for educational and exhibition purposes, while providing for appropriate security measures.

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, 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 26
Proposal for a regulation
Recital 21 a (new)

Text proposed by the Commission

(21a) The following elements of the database should be defined in Union legislation: the entity which will control and manage 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 other than for that purpose.

Amendment 27
Proposal for a regulation
Article 1 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. This Regulation shall apply to goods in transit through the customs territory of the Union which are suspected of infringing an intellectual property right.

Justification
For the sake of clarity, the treatment of goods in transit should be explicitly addressed in the new Regulation. Where there is suspicion of infringement of the rights conferred by the EU’s and Member States' substantive IP law and a concrete risk of diversion of the goods onto the internal market while in transit, customs may legitimately detain the goods.

Amendment 28
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;

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

Amendment 29
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 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, as well as any trade mark sign, even if presented separately, and packaging bearing the trade marks of
the counterfeit goods;

Amendment 30

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 sufficient reasons to satisfy customs authorities that, in the Member State where these goods are found, are prima facie:

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

Amendment 31

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;

Amendment 32

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 under Union law or the law of that Member State;

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 in the Member State where the goods are found;
Amendment 33
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;

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 34
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;

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 35
Proposal for a regulation
Article 2 – point 17 a (new)

Text proposed by the Commission
(17a) ‘small consignment’ means a single package of commercial nature which:
(a) includes fewer than three items; or
(b) includes items of a total weight of less than 2 kilograms;

Amendment

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 36
Proposal for a regulation
Article 2 – point 17 b (new)

Text proposed by the Commission

(17b) '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.

Amendment 37
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;

Amendment 38
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;

Amendment 39
Proposal for a regulation
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

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.
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 40

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.

Justification

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

Amendment 41

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point g

Text proposed by the Commission

(g) specific and technical data on the authentic goods, including images where appropriate;

Amendment

(g) specific and technical data on the authentic goods, including marking, such as bar-coding, and images where appropriate;

Justification

In order to facilitate the traceability of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorized distributors.
Amendment 42
Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point i

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

Amendment
(i) information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned, such as the authorised distributors;

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. In order to facilitate the traceability of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorized distributors.

Amendment 43
Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point o

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

Amendment
deleted

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 44
Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission
The application shall contain the information that must be provided to the data subject pursuant to Regulation (EC) No 45/2001 and the national laws

Amendment
implementing Directive 95/46/EC.

Justification

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

Amendment 45

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.**

Justification

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

Amendment 46

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. ***In that event the competent customs department shall provide reasons for its decision and include information on the appeal procedure.***

Amendment 47

Proposal for a regulation
Article 14 – paragraph 1 – introductory part
<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The holder of the decision granting the application shall notify the competent customs department that adopted that decision of any of the following:</td>
<td>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:</td>
</tr>
</tbody>
</table>

### Amendment 48

#### Proposal for a regulation

**Article 15 – paragraph 2 – subparagraph 1 – point b**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) does not comply with the requirements of Article 18(2) on returning samples;</td>
<td>deleted</td>
</tr>
</tbody>
</table>

#### 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 prejudge what would be future actions taken by the right holder, the text should provide a sufficiently flexible approach to protect the EU market.

### Amendment 49

#### Proposal for a regulation

**Article 15 – paragraph 2 – subparagraph 1 – point d**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d) does not initiate proceedings as provided for in Articles 20(1), 23(4) or 24(9).</td>
<td>(d) does not initiate proceedings as provided for in Article 20(4) or Article 24(9).</td>
</tr>
</tbody>
</table>

### Amendment 50

#### Proposal for a regulation

**Article 16 – paragraph 1**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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</td>
<td>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</td>
</tr>
</tbody>
</table>
of the goods or to detain them. detain them.

Justification

The suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. Therefore, it is proposed to delete the word "decision".

Amendment 51

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 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 photographs of those items as appropriate.

Justification

The suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. Therefore, it is proposed to delete the word "decision". 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 52

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 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

Amendment

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
*dispatch* of that communication.

opportunity to express his/her views within three working days of *receipt* of that communication.

Amendment 53

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 receipt 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.</td>
<td></td>
</tr>
</tbody>
</table>

By ....* the Commission shall adopt implementing acts establishing guidelines for customs authorities to assess the risk of deviation of the goods referred to in the first subparagraph onto the market of the Union. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2). |

* OJ: please insert the date: 12 months from the date of entry into force of this Regulation.

Amendment 54

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The customs authorities shall notify the</td>
<td>The customs authorities shall notify the</td>
</tr>
</tbody>
</table>
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 55
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.

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 56
Proposal for a regulation
Article 16 – paragraph 5

Text proposed by the Commission

5. The customs authorities shall inform the holder of the decision granting the application and the declarant or holder of the goods of the actual or estimated quantity, the actual or supposed nature of the goods, including images of those items as appropriate, whose release has been

Amendment

5. The customs authorities shall inform the holder of the decision granting the application and the declarant or holder of the goods of the actual or estimated quantity, the actual or supposed nature of the goods, including photographs of those items as appropriate, whose release has
suspended or which have been detained. been suspended or which have been detained.

Amendment 57

Proposal for a regulation
Article 17 – 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, 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.

Amendment

2. Before suspending the release of or detaining the goods, the customs authorities may, without disclosing any information other than the actual or supposed number of items, their nature and photographs 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.

Justification

The suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. Therefore, it is proposed to delete the word "decision".

Amendment 58

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

deleted

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 59**

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>By ... * the Commission shall adopt implementing acts establishing guidelines for customs authorities to assess the risk of deviation of the goods referred to in the first subparagraph onto the market of the Union. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2).</td>
<td></td>
</tr>
</tbody>
</table>

* OJ: please insert the date: 12 months from the date of entry into force of this Regulation.

**Justification**

Since it is 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, it is proposed 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 60**
Proposal for a regulation  
Article 17 – paragraph 4 a (new) 

Text proposed by the Commission  

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.

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 61 

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

Text proposed by the Commission  

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.

Justification

The suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. Therefore, it is proposed to delete the word "decision".

Amendment 62

Proposal for a regulation  
Article 17 – paragraph 6

Text proposed by the Commission  

6. This Article shall not apply to perishable goods. 

Amendment 63
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 or send 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.

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 64

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.

Amendment 65

Proposal for a regulation
Article 19 – point a

Text proposed by the Commission

(a) to initiate proceedings to determine

Amendment

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

Amendment 66
Proposal for a regulation
Article 19 – point a (new)

Text proposed by the Commission
Amendment
(aa) to take further action in order to identify the infringer of the intellectual property right;

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 67
Proposal for a regulation
Article 19 – point a b (new)

Text proposed by the Commission
Amendment
(ab) to initiate criminal proceedings or in the course of such proceedings;

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 68
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).

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 69**

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(ba) for or in connection with a criminal investigation or criminal proceeding, including information related to an intellectual property right.</em></td>
<td></td>
</tr>
</tbody>
</table>

**Amendment 70**

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(bb) in settlement negotiations out of court.</em></td>
<td></td>
</tr>
</tbody>
</table>

**Amendment 71**

**Proposal for a regulation**  
**Article 19 a (new)**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
</table>
| **Article 19a**  
Sharing of information and data between customs authorities  
Subject to appropriate data protection safeguards, the Commission may decide that information and data collected under Article 18(3) is to be shared between customs authorities in the Union and relevant authorities in third countries and establish the conditions of such sharing. |

**Justification**

Cooperation with third countries is essential for countering the proliferation of trade in IPR infringing goods. In order for this cooperation to be effective, EU customs authorities should be able to share information and data on IPR violations with their counterparts in third countries, under confidentiality, and provided stringent data protection safeguards are in place.
Amendment 72  
Proposal for a regulation  
Section 2 – title

Text proposed by the Commission

Initiation of proceedings and anticipated release of goods

Amendment

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

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 73  
Proposal for a regulation  
Article 20 – title

Text proposed by the Commission

Initiation of proceedings

Amendment

Destruction of goods and initiation of proceedings

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 74  
Proposal for a regulation  
Article 20 – paragraph 1
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.

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.

1. Goods the release of which has been suspended or which have been detained in accordance with 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:

(a) the holder of the decision granting the application has, based on the information provided to him/her in accordance with 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 within 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;

(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 within 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;

(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 within 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.

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. 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 75  
Proposal for a regulation  
Article 20 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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:</td>
<td>2. Where the declarant or holder of the goods within the periods set out in point (c) of paragraph 1 has not confirmed his or her agreement to destruction nor notified his or 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.</td>
</tr>
<tr>
<td>(a) the initiation of proceedings to determine whether an intellectual property right has been infringed;</td>
<td></td>
</tr>
<tr>
<td>(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.</td>
<td></td>
</tr>
</tbody>
</table>

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 76  
Proposal for a regulation  
Article 20 – paragraph 3
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. *Samples may be taken prior to destruction.*

**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** 77

**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.

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

In the case of perishable goods, the period referred to in the second subparagraph of paragraph 1 shall not be extended.

**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 78
Proposal for a regulation
Article 20 – paragraph 4 a (new)

Text proposed by the Commission

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 or 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.

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 79
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:

Amendment 80
Proposal for a regulation
Article 22 – paragraph 1 a (new)

Text proposed by the Commission

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.

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 81
Proposal for a regulation
Article 22 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>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.</td>
</tr>
</tbody>
</table>

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 82
Proposal for a regulation
Section 3 – title

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3</td>
<td>deleted</td>
</tr>
</tbody>
</table>
Counterfeit and pirated goods

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 83
Proposal for a regulation
Article 23

Text proposed by the Commission

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 23 deleted</td>
</tr>
</tbody>
</table>

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.

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 84
Proposal for a regulation
Article 24 – paragraph 1 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) goods suspected of being counterfeit or pirated goods;</td>
<td>(a) goods suspected of infringing an intellectual property right;</td>
</tr>
</tbody>
</table>

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 85
Proposal for a regulation
Article 24 – paragraph 1 – point c a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ca) the holder of the decision granting the application has requested the use of the specific procedure in his application;</td>
<td></td>
</tr>
</tbody>
</table>

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 86
Proposal for a regulation  
Article 24 – paragraph 2

**Text proposed by the Commission**

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

**Amendment**

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

Amendment 87
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 receipt of the decision to suspend the release of the goods or to detain them.

**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.

Amendment 88
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. **Such destruction shall be carried out under customs control at the expense of the holder of the decision granting the application.**

**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 21. Finally, Article 24(7) in its amended form is included in this paragraph.
Amendment 89
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
deleted

Amendment 90
Proposal for a regulation
Article 24 – paragraph 7 a (new)

Text proposed by the Commission
7a. The customs authorities shall provide the holder of the decision granting the application with access to information about the actual or presumed number of destroyed items and their nature where appropriate.

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 91
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 10 working days of receipt of the decision to suspend the release of the goods or to detain them has not confirmed his or her agreement to destruction or notified his or 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 or samples where appropriate.

Amendment 92
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

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 93
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 24. 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 such storage, and shall be given the opportunity to comment on that storage.

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty, since it is not clear which procedure should be applied when goods also infringe other IPRs. Right-holders should also reimburse the costs in the specific procedure for small consignments. Moreover the requirement for the right holder to make an economic calculation when submitting an application for action can be problematic for SMEs and may in turn lead to the
right holder choosing not to submit an application, thus letting infringing goods cross the border."

**Amendment 94**  
Proposal for a regulation  
Article 27 – paragraph 2 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td></td>
</tr>
</tbody>
</table>

**Justification**

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

**Amendment 95**  
Proposal for a regulation  
Article 27 – paragraph 2 b (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2b. Paragraph 2a shall not apply to the procedure set out in Article 24.</td>
<td></td>
</tr>
</tbody>
</table>

**Justification**

In the case of small consignments, where the consignees are often consumers acting in good faith, Article 2a (new) should not apply.

**Amendment 96**  
Proposal for a regulation  
Article 28 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Member States shall <strong>lay down</strong> the rules on administrative sanctions <strong>applicable</strong> 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,</td>
<td></td>
</tr>
</tbody>
</table>

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

Amendment 97
Proposal for a regulation
Chapter 5 – title

Text proposed by the Commission Amendment

COMMITTEE, DELEGATION AND COMMITTEE AND FINAL PROVISIONS
FINAL PROVISIONS

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 98
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.

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 99

Proposal for a regulation
Article 31 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The competent customs departments shall notify the Commission of the following:</td>
<td>1. The competent customs departments shall notify the Commission of the necessary information relating to the following:</td>
</tr>
<tr>
<td>(a) applications for action, including any photograph(s), image(s), brochure(s);</td>
<td>(a) decisions granting applications, including applications for action and any photograph(s), image(s), brochure(s);</td>
</tr>
<tr>
<td>(b) decisions granting applications;</td>
<td>(c) any decisions extending the period during which the customs authorities are to take action or decisions revoking the decision granting the application or amending it;</td>
</tr>
<tr>
<td>(c) any decisions extending the period during which the customs authorities are to take action or decisions revoking the decision granting the application or amending it;</td>
<td>(d) any suspension of a decision granting the application.</td>
</tr>
<tr>
<td>(d) any suspension of a decision granting the application.</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 100

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. Once the central database of the Commission is in place, the transmission of the information referred to in paragraphs 1 and 2 shall be made via that database.

Amendment 101

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.

4a. For the purposes of ensuring processing of the information referred to in paragraphs 1 to 4, the central database referred to in paragraph 3 shall be established in an electronic form. The central database shall contain the information, including personal data, referred to in the second subparagraph of Article 6(3), Article 13 and paragraphs 1 and 2 of this Article.

4b. The customs authorities of the Member States and the Commission shall have access to the information contained in the central database.

4c. The customs authority shall introduce into the central database information related to the applications submitted to the competent customs department. The customs authority which has introduced information into the central database shall, where necessary, amend, supplement, correct or delete such information. Each customs authority that has introduced information in the central database shall be responsible for the
accuracy, adequacy and relevancy of that information.

4d. The Commission shall establish and maintain adequate technical and organisational arrangements for the reliable and secure operation of the central database. The customs authority of each Member State shall establish and maintain adequate technical and organisational arrangements to ensure the confidentiality and security of processing with respect to the processing operations carried out by their customs authorities and with respect to terminals of the central database located on the territory of that Member State.

4e. The processing of personal data in the central database shall be carried out in compliance with Article 32.

Amendment 102

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 45/2001 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 45/2001 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.

Amendment 103

Proposal for a regulation
Article 32 – paragraphs 2 a - 2 f (new)

Text proposed by the Commission

2a. Personal data shall be collected and used solely for the purposes of this Regulation. Personal data so collected shall be accurate and shall be kept up to
date.

2b. Each customs authority that has introduced personal data into the central database shall be the controller with respect to the processing of those data.

2c. A data subject shall have a right of access to the personal data relating to him or her that are processed through the central database and, where appropriate, the right to the rectification, erasure or blocking of personal data in accordance with Regulation (EC) No 45/2001 or the national laws implementing Directive 95/46/EC.

2d. All requests for the exercise of the right of access, rectification, erasure or blocking shall be submitted to and processed by the competent customs department. Where a data subject has submitted a request for the exercise of the right of access, rectification, erasure or blocking to another office of customs authorities or to an office of the Commission, the office which received the request shall forward such request to the competent customs department.

2e. Personal data shall not be kept longer than six months from the date the relevant decision granting the application has been revoked or the relevant period during which the customs authorities are to take action has expired.

2f. Where the holder of the decision granting the application has initiated proceedings in accordance with Article 20(1) or Article 24(9) and has notified the competent customs department of the initiation of such proceedings, personal data shall be kept for six months after proceedings have determined in a final way whether an intellectual property right has been infringed.

Amendment 104
Proposal for a regulation
Article 37 – title
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.

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.

Amendment 106
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

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).