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Committee on Legal Affairs

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AMENDMENTS

30 - 43

Draft opinion
Marielle Gallo
(PE478.335v01-00)

Customs enforcement of intellectual property rights

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

AM_Com_LegOpinion

Amendment 30
Christian Engström

Proposal for a regulation
Recital 4

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It is essential that citizens have legal certainty with regards to what they may carry in their personal luggage and that customs authorities are not perceived as harassing ordinary passengers for unclear reasons.

Amendment 31
Christian Engström

Proposal for a regulation
Recital 5

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In order to avoid general purpose computing devices (such as smart phones or laptops) to be subject to customs control with regards to infringements of intellectual property rights relating to circumvention of technological protection measures (TPMs), particular devices designed to circumvent TPMs should be explicitly included in the scope of this Regulation.

Amendment 32
Christian Engström

Proposal for a regulation
Recital 10

Text proposed by the Commission

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

Amendment

(10) In order to ensure the swift enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of adequate **indications resulting from the applicable legal procedures**, that goods under their supervision infringe 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.

Or. en

Justification

It is essential that customs authorities develop a methodology for assessing infringements of intellectual property rights which reflects the legal basis for their actions. See also end consumer information in recital 13 and 16.

Amendment 33
Christian Engström

Proposal for a regulation
Recital 13

Text proposed by the Commission

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

Amendment

(13) In order to reduce to the minimum the administrative burden and costs, **without prejudice to the end-consumer's right to be duly informed within a reasonable time of the legal basis for the actions taken by the customs authorities**, a specific

right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.

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

Or. en

Justification

Introducing a specific procedure for small consignments to reduce the administrative burden and costs must not undermine consumer confidence in electronic commerce, see recital 16 with justification.

Amendment 34 **Christian Engström**

Proposal for a regulation **Recital 16**

Text proposed by the Commission

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

Amendment

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

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

should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, ***the right to be duly informed within a reasonable time of the legal basis for the actions taken by the customs authorities, as well as the right to be heard before an adverse decision is taken by the customs authorities,*** should be ***established***.

Or. en

Justification

In order to not undermine consumer confidence in electronic commerce over the internet, and other infrastructures facilitating commerce like the postal system, end consumers shall be duly informed within a reasonable time of any action taken by the customs authorities which results in the non-delivery of the ordered goods.

Amendment 35
Christian Engström

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Including patents in this Regulation puts at serious risk effective customs enforcement of intellectual property rights. The arguments are numerous and well known; the Parliament excluded patents from the scope of IPRED2; patents are excluded from the Border Measures Section in ACTA; patent infringements are very hard to determine, even for trained judges; patent inflation is fostering uncertainty and risk according to the EPO, in particular in the digital environment; etc

Amendment 36
Christian Engström

Proposal for a regulation
Article 2 – point 6

Text proposed by the Commission

Amendment

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

(6) ‘pirated goods’ means goods acquired by acts of piracy as defined by Article 101 et seq. of the United Nations Convention on the Law of the Sea;

Or. en

Amendment 37
Christian Engström

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It is essential that customs authorities develop a methodology for assessing infringements of intellectual property rights which reflects the legal basis for their actions. See also end consumer information in recital 13 and 16.

Amendment 38
Christian Engström

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In order to avoid general purpose computing devices and their operational software (such as smart phones or laptops with installed browsers, word processors and multimedia applications) to be subject to customs control with regards to infringements of intellectual

property rights relating to circumvention of technological protection measures (TPMs), particular devices, products and components designed to circumvent TPMs should be explicitly included in the scope of this Regulation.

Amendment 39
Christian Engström

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 40
Christian Engström

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 41
Christian Engström

Proposal for a regulation
Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

Amending the decision with regard to intellectual property rights

The competent customs department that adopted the decision granting the application may, at the request of the holder of that decision, modify the list of intellectual property rights in that decision.

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

Or. en

Justification

In order to reduce to the minimum the administrative burden and costs of customs procedures, the additional workload of processing amendments to an adopted decision cannot be justified.

Amendment 42
Christian Engström

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

In order to not undermine consumer confidence in electronic commerce over the internet, and other infrastructures facilitating commerce like the postal system, end consumers shall be duly informed within a reasonable time of any action taken by the customs authorities which results in the non-delivery of the ordered goods.

Amendment 43
Christian Engström

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

In order to not undermine consumer confidence in electronic commerce over the internet, and other infrastructures facilitating commerce like the postal system, end consumers shall be duly informed within a reasonable time of any action taken by the customs authorities which results in the non-delivery of the ordered goods.