Customs enforcement of intellectual property rights

2011/0137(COD) - 03/07/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 397 votes to 259, with 26 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights.

The European Parliament's position adopted at first reading, under the ordinary legislative procedure, amends the Commission proposal as follows:

Goods in transit: Parliament stipulates that this Regulation shall apply to goods in transit through the customs territory of the Union which are suspected of infringing an intellectual property right.

Submission of applications: to avoid the filing of multiple applications for the same IPR and parallel submissions of national and Union applications, the persons entitled to submit an application shall only submit **one application** for each intellectual property right protected in a Member State or in the Union.

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 authorised distributors.

The undertaking by the applicant to agree that the data provided by him/her will be processed by the Commission has been deleted. 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 implementing Directive 95/46 /EC.

Members call for **computerised systems** 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**.

Processing of applications: where the applicant does not provide the missing information within the period, 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.

Returning samples: the Commission proposal provides that the competent customs department may decide to suspend the actions of the customs authorities until the expiry of the period during which those authorities are to take action, where the holder of the decision does not comply with the requirements on returning samples. Member, however, propose deleting this possibility given that 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.

Suspension of the release of the goods or their detention: Members consider that the suspension of the release or detention of goods pending the decision from the rightholder is not a decision point. Therefore, they propose deleting the word "decision".

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

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.

The additional **obligation for customs authorities allowing for a right to be heard** before an adverse decision is taken would create a disproportionate administrative burden for customs authorities, potentially resulting in a decreased level of IPR protection. Therefore, Members **propose deleting this obligation**.

Sharing of information and data between customs authorities: the resolution underlines that 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.

Destruction of goods and initiation of proceedings: whilst welcoming the proposal from the Commission to make the implementation of the **simplified procedure** mandatory in all Member States, Members consider that this procedure should be applicable not only to counterfeit and pirated goods, but for **all IPR infringements**.

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.

An amendment also states that where the declarant or holder of the goods within the periods set out in regulation has not confirmed his/her agreement to destruction nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities shall deem that the declarant or holder of the goods has agreed to their destruction.

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.

Before the destruction of abandoned goods, the customs authorities may allow the goods 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.

Specific procedure for the destruction of goods in small consignments: the definition of the term "small consignment" constitutes an essential element of the proposed Regulation and should therefore be defined therein. The resolution proposes a **definition** based on the number of items (less than three) and their total weight (less than 2kg) contained in a single package.

Members consider that 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.

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.

The amended text stipulates that 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.

Lastly, right holders should obtain **access to information** about the goods destroyed under this procedure, which they can use for their investigations.

Costs: 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**.

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

Exchange of data on decisions relating to application for action between the Member States and the Commission: the Commission shall make the relevant information available to the customs authorities of the Member States in an electronic form as soon as possible and not later than 1 January 2015.

Entry into force and report: by three years after the entry into force of the this Regulation, the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation, as well as an analysis of this Regulation's impact on the availability of generic medicines, in the Union as well as globally. If necessary, that report shall be accompanied by appropriate proposals and/or recommendations.