Customs enforcement of intellectual property rights

2011/0137(COD) - 17/05/2013 - Commission communication on Council's position

The Commission can **accept the amendments introduced by the Council to its proposal**. It fully supports the agreement reached in the trilogue between the Council, the European Parliament and the Commission, as concluded on 19 December 2012.

The main points of this agreement are as follows:

- to exclude parallel trade and overruns from the scope of the Regulation;
- to rule out provisions in the Regulation harmonising the right to be heard in favour of the persons concerned by the customs detention of goods. It is considered that national laws apply for granting the right to be heard;
- to clarify that customs authority may carry out customs controls and take identification measures provided for in the customs legislation to prevent operations in breach of intellectual property laws applicable in the territory of the Union, and in order to cooperate with third countries on the enforcement of intellectual property rights;
- to set out a common procedure for all kinds of IPR infringements falling within the scope of the Regulation, without prejudice of the specific procedure for small consignments. Under such common procedure, goods may be destroyed without the need for the right-holder to initiate legal proceedings where he so requests, on condition that the declarant or holder of the goods, after being properly notified of the detention of the goods by the customs authorities, does not object to destruction;
- to establish that the procedure for small consignments only applies upon previous request from the applicant in that regard, and that the customs authorities have the possibility to require that the applicant covers the costs incurred by the application of this procedure;
- to set out the definition of small consignments in the Regulation, which empowers the Commission to adopt delegated acts in respect of amending, under certain circumstances, the non-essential elements of that definition;
- to provide, in line with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), a legal basis for the swift exchange of information between customs authorities in the EU and in third countries on such trade;
- to broaden and clarify the list of cases in which the right-holder may use the information that customs disclosed to him following a customs detention of goods under the Regulation;
- to include provisions in the basic act on data collection, processing, retention periods, exercise of rights and responsibilities in accordance with existing legislation on data protection.