Customs enforcement of intellectual property rights

2011/0137(COD) - 16/05/2013 - Council position

The Council unanimously adopted its position at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights.

The European Parliament delivered its opinion on 3 July 2012, amending the proposal with **108 amendments**.

The Council, in its position at first reading, shares the proposal's overall objective with regard to the need to strengthen the enforcement by customs of intellectual property rights. However, it takes the view that:

i. **the scope of the Regulation** should not be extended to parallel trade and overruns;

ii. **the right to be heard** should be granted in accordance with national law, and in addition introduces a number of technical changes to the proposal.

The main points of the common position which differ from the Commission's proposal concern:

- the **customs controls and identification measures** that customs authorities may carry out 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;
- the **common procedure** to apply to all IPR infringements falling within the scope of the Regulation, without prejudice to the specific procedure for small consignments;
- the **procedure for small consignments**, which only applies upon request from the applicant, and the costs of which the applicant may be requested to cover;
- the **definition of small consignments** in the Regulation (as requested by the Parliament), with regard to which the Commission is empowered to adopt delegated acts in view of amending, under certain circumstances, its non-essential elements;
- the necessary legal basis, in line with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), for the **swift exchange of information between customs authorities in the EU and in third countries**. Implementing powers are conferred on the Commission to define the elements of the practical arrangements for the exchange of data with third countries;
- the situations in which the right-holder may use the information that customs disclosed to him following a detention of goods;
- the provisions in the basic act on data collection, processing, retention periods, exercise of rights and responsibilities in accordance with existing legislation on data protection.