Customs enforcement of intellectual property rights

2011/0137(COD) - 12/06/2013 - Final act

PURPOSE: to improve the legal framework regarding customs enforcement of intellectual property rights.

LEGISLATIVE ACT: Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003.

CONTENT: the new Regulation shall replace existing Regulation No 1383/2003. It **sets out the conditions and procedures for action by the customs authorities** where goods suspected of infringing an intellectual property right are, or should have been, subject to customs supervision or customs control within the customs territory of the Union.

More specifically, the Regulation:

- **expands the range of IPR infringements** covered and maintains the competence of customs authorities to control all goods under customs supervision irrespective of their customs treatment. This Regulation shall not apply to goods of a non- commercial nature contained in travellers' personal luggage. Infringements resulting from so-called illegal parallel trade and overruns are excluded from the scope of Regulation;
- **it ensures that high quality information** is provided to customs to enable a good analysis and assessment of the risk of infringement of IPR;
- sets out the legal basis for a **central database** for recording applications for customs action and detentions as well as exchange of information between customs authorities (COPIS).

With a view to reducing the administrative burden, the Regulation :

- sets out a **common procedure** for all kinds of IPR infringements falling within the scope of the Regulation. 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;
- **establishes 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. A small consignment shall mean a postal or express courier consignment, which: (a) contains three units or less; or (b) has a gross weight of less than two kilograms.

In addition, the new Regulation:

- stipulates that **national laws shall apply for granting the right to be heard** in favour of the persons concerned by the customs detention of goods;
- broadens and clarifies 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;
- includes provisions in the basic act on **data collection, processing, retention periods**, exercise of rights and responsibilities in accordance with existing legislation on data protection.

ENTRY INTO FORCE: 19/07/2013.

APPLICATION: from 01/01/2014, with the exception of certain measures.

DELEGATED ACTS: the Commission shall be empowered to adopt delegated acts concerning the term small consignments. The power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time **from 19 July 2013**. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification (this delay may be extended by two months). If the European Parliament or the Council object, the delegated act shall not enter into force.