Customs enforcement of intellectual property rights

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The Commission presents a report on Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning the customs enforcement of intellectual property rights. Entering into application on 1 January 2014, the Regulation is a fundamental component of the EU system to enforce IPR at the border.

Based on the latest available data from 2013, international trade in counterfeit products represents up to 2.5% of world trade, or as much as EUR 338 billion. The impact of counterfeiting is particularly high in the European Union, with counterfeit and pirated products amounting up to 5% of imports, or as much as EUR 85 billion.

The report aims at reporting on the feedback gathered by the Commission on the implementation of Regulation (EU) No 608/2013 since 1 January 2014. As regards implementation by Member States, the report covers a three-year period from 1 January 2014 to December 2016.

Legislative framework: the Regulation provides for a wide range of protection and procedures. The major new features introduced by Regulation (EU) No 608/2013 in relation to past regulations, are the following:

- **extension of the rights and infringements** covered by customs actions;
- the simplified procedure for destruction has become the **mandatory standard procedure**;
- the introduction of **specific small consignment procedure**, such consignments usually entering the Union through the postal service or via a commercial courier company;
- the possibility of using the **deemed agreement** of the holder of the goods/declarant instead of his explicit agreement to destruction.

Implementation by Member States: at this stage, the Commission considers that the implementation of Regulation No 608/2013 **is functioning satisfactorily** in the 28 Member States. However, it suggests that there is a need to reinforce the efforts made in certain areas such as:

1) the quality of the information contained in the applications for action, notably the Union applications for action: the administrative enforcement system for customs functions on the basis of the request right-holders have to lodge with customs authorities. Most Member State customs authorities consider that, on average, the applications for action they receive still lack the necessary quality information, which leads, in a low percentage of cases, to refusal of the decision granting the application.

2) the use of the standard procedure: this procedure is used in all Member States. In most Member States the procedure is used from the beginning to the end. In 2014, 69.12% of all cases were handled under the "standard procedure" (72.14% in 2015).

The private sector considered, however, that the **ten-day deadline** for initiating proceedings is too short. Some suggest that the holder of the decision should be given the opportunity to initiate legal proceedings

during a lapse of time, which should be calculated from the day of the customs notification of the objection to the destruction by the holder of the goods/declarant.

The Commission considers that some Member States may need to update the way they implement the standard procedure, in order to fully adapt to the details of the procedure defined in Regulation (EU) No 608/2013.

These points will be followed up in the context of the measures provided in the **EU Customs Action Plan** to combat IPR infringements for the years 2013-2017 and in the follow-up exercise to the Customs 2020 Seminar on Application for Actions.

Small consignments: small consignment functioning and handling remains a challenge as **sales over internet** are constantly increasing, notably sales of IPR infringing products. Work on this issue will be pursued in the working group on small consignment, whose activities will be resumed in 2017.

Observations from the private sector: associations of right-holders and of express courier companies praise most of the novelties introduced by Regulation (EU) No 608/2013. However, associations have raised questions about the interpretation of certain points in the Regulation and noted a **lack of common EU-wide implementation on certain issues**, such as the information which is considered to be mandatory in an application for actions, the deadline for request a renewal of the customs decision granting the application for actions, and the way to implement the standard procedure.

The concerns raised by the private sector will also be discussed with Member State customs authorities with a view to assessing if they are well established and if solutions could then be envisaged. The Commission concludes that, for the time being, there would be **no justification for revising** any provisions of Regulation (EU) No 608/2013.