## Basic information

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|---|---|
| **1993/1024(CNS)**<br>CNS - Consultation procedure<br>Regulation | Procedure completed |
| Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit<br>Amended by 1998/0018(CNS)<br>**Subject**<br>7.30.30.10 Action against counterfeiting | |

## Key players

### European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| RELA External Economic Relations | CHESA Raymond (RDE) | 26/07/1994 |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| ECON Economic and Monetary Affairs, Industrial Policy | GASÒLIBA I BÖHM Carles-Alfred (LDR) | 11/10/1993 |
| ENVI Environment, Public Health and Consumer Protection | WHITEHEAD Phillip (PSE) | 30/08/1994 |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Competitiveness (Internal Market, Industry, Research and Space) | 1769 | 1994-06-16 |
| Health | 1823 | 1994-12-22 |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 13/07/1993 | Legislative proposal published | COM(1993)0329 | Summary |
| 13/10/1993 | Committee referral announced in Parliament | | |
| 26/01/1994 | Vote in committee | | Summary |
| 08/02/1994 | Debate in Parliament | | Summary |
| 18/02/1994 | Modified legislative proposal published | COM(1994)0043 | Summary |

| | | | |
|---|---|---|---|
| 16/06/1994 | Amended legislative proposal for reconsultation published | 05132/1994 | |
| 20/07/1994 | Formal reconsultation of Parliament | | |
| 21/11/1994 | Vote in committee | | Summary |
| 21/11/1994 | Committee report tabled for plenary, reconsultation | A4-0078/1994 | |
| 15/12/1994 | Debate in Parliament |  | |
| 22/12/1994 | Act adopted by Council after consultation of Parliament | | |
| 22/12/1994 | End of procedure in Parliament | | |
| 30/12/1994 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| **Procedure reference** | 1993/1024(CNS) |
| **Procedure type** | CNS - Consultation procedure |
| **Procedure subtype** | International agreement |
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Amended by 1998/0018(CNS) |
| **Legal basis** | Rules of Procedure EP 170<br>EC Treaty (before Amsterdam) E 113 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | RELA/4/05843<br>RELA/3/04978 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee report tabled for plenary, 1st reading/single reading | | A3-0037/1994<br>OJ C 061 28.02.1994, p. 0004 | 26/01/1994 | |
| Text adopted by Parliament, 1st reading/single reading | | T3-0063/1994<br>OJ C 061 28.02.1994, p. 0058-0079 | 09/02/1994 | Summary |
| Committee final report tabled for plenary, reconsultation | | A4-0078/1994<br>OJ C 363 19.12.1994, p. 0002 | 21/11/1994 | |
| Text adopted by Parliament after reconsultation | | T4-0214/1994<br>OJ C 018 23.01.1995, p. 0422-0426 | 16/12/1994 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Amended legislative proposal for reconsultation | 05132/1994 | 16/06/1994 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(1993)0329<br>OJ C 238 02.09.1993, p. 0009 | 13/07/1993 | Summary |
| Modified legislative proposal | COM(1994)0043<br>OJ C 086 23.03.1994, p. 0014 | 18/02/1994 | Summary |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EESC | Economic and Social Committee: opinion, report | CES1312/1993<br>OJ C 052 19.02.1994, p. 0037 | 21/12/1993 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| European Commission | EUR-Lex | |

**Final act**

Regulation 1994/3295
OJ L 341 30.12.1994, p. 0008 Summary

# Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit

1993/1024(CNS) - 18/02/1994 - Modified legislative proposal

The Commission amended its initial proposal following Parliament's opinion. The amendments seek to: - extend the scope of the regulation to other customs schemes (re-export and suspensive procedures); - extend the scope to any material used to manufacture counterfeit or pirated goods; - improve the definition of pirated goods; - allow customs authorities to intervene ex officio so that the holder of an intellectual property right can make an application if he has not already done so; - improve the efficiency of the system by proposing specific time frames for certain stages of the administrative procedure; - introduce the need for the express authorisation of the holder of the infringed right before derogating from the obligation to destroy goods recognised to be counterfeit or pirated; - make the Commission responsible for coordinating the fight against the trade in counterfeit or pirated goods. However, the Commission was unable to accept amendments seeking to: - allow a Member State in which an application is made to take recourse to the legislation applicable in another Member State; - abolish the possibility for a Member State to make provision for a second competent authority, separate from the customs authority, to deal with the application; - delete the reference to the responsibility of the customs authorities; - include parallel imports in the scope of the regulation; - refer to patents as the intellectual property right to be included when the text is next amended.

# Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit

1993/1024(CNS) - 09/02/1994 - Text adopted by Parliament, 1st reading/single reading

The European Parliament tabled a very large number of amendments, mainly seeking to extend the scope to goods subject to other customs schemes (re-export and suspensive procedures), provide for a Member State in which an application is made to take recourse to legislation applicable in another Member State, improve the definition of pirated goods, set specific time frames for certain stages of the administrative procedure, allow the competent

authority to retain goods provisionally, before an application is made, if it suspects that the goods are counterfeit or pirated, abolish the possibility for a Member State to make provision for a second competent authority to deal with the application, delete the reference to the responsibility of the customs authorities and the civil responsibility of the holder of the right and, finally, calling on the Commission to prepare its report within one year from the entry into force of this regulation.

# Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit

1993/1024(CNS) - 21/12/1993 - Economic and Social Committee: opinion, report

# Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit

1993/1024(CNS) - 16/12/1994 - Text adopted by Parliament after reconsultation

Parliament approved the draft regulation subject to the 16 amendments it tabled. These amendments aimed to: - amend the legal basis, which would be limited to Article 113 of the Treaty, and set out the position of the European Parliament; The Commission accepted this amendment. - include patent rights among the property rights that the regulation planned to include in a subsequent extension of its scope; The Commission did not accept this amendment. - include among counterfeit goods products manufactured without the agreement of the holder of a patent relating to them which, as a result, infringed the rights of the patent holder under Community laws or the law of the Member State in which the application for action was made; The Commission did not accept this amendment. - introduce the concept of a "work" in the definition of pirated goods; The Commission did not accept this amendment. - include federations, associations and societies empowered to defend and administer their rights under holders of rights; The Commission would accept this amendment with a new wording. - include any tool or similar material among the goods treated as counterfeit or pirated goods; The Commission accepted this amendment. - exclude from the application of the first subparagraph of Article 1(4) cases where the holder opposed the subsequent marketing of his products when the state of the products had been changed or adulterated after their placing on the market; The Commission did not accept this amendment. - set a time frame of five working days for the competent customs services to deal with the applications they received; The Commission accepted this amendment. - make it compulsory for Member States to require the holder of a right, where his application had been granted, to provide a security; The Commission did not accept this amendment. - ensure that the opportunity to inspect goods whose release had been suspended or which had been detained was limited to the applicant; The Commission did not accept this amendment. - add the holders of product patents to the holders of trade marks referred to in the first subparagraph of Article 8(1); The Commission did not accept this amendment. - do away with the reference to the provisions of national laws when destroying goods found to be counterfeited; The Commission did not accept this amendment. - ensure that the derogation of the disposal of goods found to be counterfeited outside commercial channels for socially useful purposes was subject to the express authorisation of the holder of the right together with the removal of trade marks which had been affixed to counterfeit goods without authorisation; The Commission accepted these amendments. - specify that the aim of the penalties to be introduced by the Member States was to punish offenders and discourage people from taking such action in the future by pointing out that these penalties should be punitive, proportional and dissuasive; The Commission accepted this amendment. - accord the Commission responsibility for coordinating action to combat the trade in counterfeit and pirated goods; The Commission accepted this amendment. - clarify the timetable for the Commission to submit its first report to Parliament and stress that the report should be updated every year, including in its assessment the impact of counterfeiting together with its social consequences; The Commission accepted this amendment.

# Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit

1993/1024(CNS) - 22/12/1994 - Final act

Council Regulation (EC) No 3295/94 laid down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods. The regulation aimed mainly to: - resolve certain operating difficulties of the existing system of protection (applicable since 1 January 1988) by facilitating the request from the holder of a right for action on the part of the customs authorities; - extend protection to other intellectual property rights in addition to those presently covered, on the basis of the TRIPS project (copyright and connected rights) and by including designs and models. The existing protection instrument was modified as follows: - application of the instrument to trade marks and packaging materials, presented separately, as well as tools and moulds used for the manufacture of a product infringing intellectual property rights; - extension of the ban to the export and transit regime; - clarification of the information to be provided in support of the request by the holder of the right; - opportunity for the holder of the right to make his request directly to the customs authorities; - opportunity for the applicant and the importer to inspect goods whose release had been suspended; - opportunity to obtain the name and address of the manufacturer of counterfeit goods; - inclusion in the scope of the regulation of goods in small consignments and clarification of the terms under which the import of counterfeit goods was admitted, where they were intended for strictly personal use. The regulation would apply from 1 July 1995.

# Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit

1993/1024(CNS) - 13/07/1993 - Legislative proposal

Council Regulation (EEC) No 3842/86 laying down measures designed to prohibit the release for free circulation of counterfeit goods, effective since 1 January 1988, introduced an instrument which provides protection at borders against trade mark infringements but is also careful not to impede the freedom of legitimate trade. The proposed regulation sought essentially to: - resolve certain operating difficulties in the existing system by making it easier for the holder of a right to request action from the customs authorities; - extend protection to other intellectual property rights in addition to those presently covered, on the basis of the TRIPS plan (copyright and allied rights) and including designs and models. Modification of the protection instrument was proposed as follows: - application of the instrument to trade mark signs and packaging materials, presented separately, as well as tools and moulds used for the manufacture of a product infringing intellectual property rights; - extension of the ban to the export and transit system; - clarification of the information to be provided in support of the right holder's request; - opportunity for the holder of the right to make his request direct to the customs authorities; - opportunity for the applicant and the importer to inspect goods whose release has been suspended; - opportunity to obtain the name and address of the manufacturer of counterfeit goods; - inclusion in the scope of the Regulation of goods in small consignments and clarification of the terms on which counterfeit goods may be imported where they are intended strictly for personal use.