Basic information

2011/0137(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Customs enforcement of intellectual property rights **Subject** 2.10.01 Customs union, tax and duty-free, Community transit 3.50.15 Intellectual property, copyright 3.50.16 Industrial property, European patent, Community patent, design and pattern 6.20.01 Agreements and relations in the context of the World Trade Organization (WTO) 6.20.02 Export/import control, trade defence, trade barriers	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
IMCO Internal Market and Consumer Protection	CREUTZMANN Jürgen (ALDE)	13/07/2011
	Shadow rapporteur BOULLIER GALLO Marielle (PPE) HEDH Anna (S&D) ENGSTRÖM Christian (Verts/ALE) MCCLARKIN Emma (ECR) DE JONG Dennis (GUE/NGL) SALVINI Matteo (EFD)	

Former committee responsible	Former rapporteur	Appointed
IMCO Internal Market and Consumer Protection	CREUTZMANN Jürgen (ALDE)	13/07/2011

Former committee for opinion	Former rapporteur for opinion	Appointed
INTA International Trade (Associated committee)	ANDRÉS BAREA Josefa (S&D)	13/07/2011

	JURI Legal Affairs (Associated committee)	BOULLIER GALLO Marielle (PPE)	20/06/2011

Council of the European Union	Council configuration	Meetings	Date
	General Affairs	3231	2013-03-11
	Competitiveness (Internal Market, Industry, Research and Space)	3133	2011-12-05

European Commission	Commission DG	Commissioner
	Taxation and Customs Union	ŠEMETA Algirdas

Key events

Date	Event	Reference	Summary
24/05/2011	Legislative proposal published	COM(2011)0285	Summary
07/06/2011	Committee referral announced in Parliament, 1st reading		
17/11/2011	Referral to associated committees announced in Parliament		
05/12/2011	Debate in Council		Summary
29/02/2012	Vote in committee, 1st reading		
02/04/2012	Committee report tabled for plenary, 1st reading	A7-0046/2012	Summary
02/07/2012	Debate in Parliament		
03/07/2012	Decision by Parliament, 1st reading	T7-0272/2012	Summary
03/07/2012	Results of vote in Parliament		
16/05/2013	Council position published	06353/1/2013	Summary
23/05/2013	Committee referral announced in Parliament, 2nd reading		
30/05/2013	Vote in committee, 2nd reading		
31/05/2013	Committee recommendation tabled for plenary, 2nd reading	A7-0185/2013	Summary
10/06/2013	Debate in Parliament		
11/06/2013	Decision by Parliament, 2nd reading	T7-0241/2013	Summary
12/06/2013	Final act signed		
12/06/2013	End of procedure in Parliament		
29/06/2013	Final act published in Official Journal		

Technical information

Procedure reference	2011/0137(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 207
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/7/12006

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE470.069	13/12/2011	
Committee opinion	INTA	PE476.120	19/01/2012	
Committee opinion	JURI	PE478.335	26/01/2012	
Amendments tabled in committee		PE480.583	26/01/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0046/2012	02/04/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0272/2012	03/07/2012	Summary
Committee draft report		PE513.007	24/05/2013	
Committee recommendation tabled for plenary, 2nd reading		A7-0185/2013	31/05/2013	Summary
Text adopted by Parliament, 2nd reading		T7-0241/2013	11/06/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	06353/1/2013	16/05/2013	Summary
Draft final act	00027/2013/LEX	12/06/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0285	24/05/2011	Summary
Document attached to the procedure	SEC(2011)0597	24/05/2011	
Document attached to the procedure	SEC(2011)0598	24/05/2011	
Commission response to text adopted in plenary	SP(2012)627	19/09/2012	
	COM(2013)0282		

Commission communication on Council's position		17/05/2013	Summary
Follow-up document	COM(2017)0233	15/05/2017	Summary
Commission document (COM)	COM(2018)0077	22/02/2018	
For information	SWD(2021)0052	26/02/2021	
For information	SWD(2022)0156	25/05/2022	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	RO_CHAMBER	COM(2011)0285	24/10/2011	
Contribution	PT_PARLIAMENT	COM(2011)0285	15/11/2011	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0001/2012 OJ C 363 13.12.2011, p. 0001	12/10/2011	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2013/0608
OJ L 181 29.06.2013, p. 0015 Summary

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.

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.

Customs enforcement of intellectual property rights

2011/0137(COD) - 31/05/2013 - Committee recommendation tabled for plenary, 2nd reading

The Committee on the Internal Market and Consumer Protection adopted a recommendation for second reading contained in the report by Jürgen CREUTZMANN (ADLE, DE) on the Council 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 and repealing Council Regulation (EC) No 1383/2003.

The committee recommends that the European Parliament approves, unamended, the Council position at first reading.

Customs enforcement of intellectual property rights

2011/0137(COD) - 11/06/2013 - Text adopted by Parliament, 2nd reading

The European Parliament approved, at second reading of the ordinary legislative procedure, the Council 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 and repealing Council Regulation (EC) No 1383/2003.

The act is adopted in accordance with the Council position.

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.

Customs enforcement of intellectual property rights

2011/0137(COD) - 05/12/2011

Ministers took note of the progress made on three files under examination by the Council preparatory bodies in the field of intellectual property:

- a draft directive on the protection of orphan works;
- a draft regulation for entrusting the Office for Harmonisation in the Internal Market with certain tasks related to the protection of intellectual property; and

- **a draft regulation concerning customs enforcement of intellectual property right**s.

Customs enforcement of intellectual property rights

2011/0137(COD) - 12/10/2011 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on the proposal for a regulation of the

European Parliament and of the Council concerning customs enforcement of intellectual property rights.

The EDPS recalls that the proposal establishes the procedure through which right holders can apply to require the customs department of a Member State to take action in that Member State ('national application') or the customs departments of more than one Member State to take action in each and respective Member State ('EU application').

The proposal also establishes the process through which the relevant customs departments take a decision on the application, the actions that the customs authorities (or offices) should consequently take (i.e. suspension of the release, detention or destruction of goods) and the connected rights and obligations.

In this context, the processing of data provided by the draft regulation does not only cover the personal data of the holder of the right in the context of the transfer of applications and decisions from right holders to custom authorities, between the Member States and between Member States and the Commission. It also covers the consignor, consignee, the declarant or holder of the goods as well as other information related to the goods.

The EDPS welcomes the specific reference in the proposal to the applicability of Directive 95/46/EC and Regulation (EC) No 45/2001 to the personal data processing activities covered by the Regulation.

He highlights the following points with a view to improving the text from a data protection perspective:

Right of information of the data subject: whilst the Commission is empowered to adopt implementing acts, Article 6(3) already contains a list of required information to be provided by the applicant, including the applicant's personal data. In determining the essential content of the application, Article 6(3) should also require the customs authorities to provide to the applicant and any other potential data subject (e.g. consignor, consignee or holder of the goods) with the information pursuant to the national rules implementing Article 10 of Directive 95/46/EC. In parallel, the application should also embody the similar information to be provided to the data subject for processing by the Commission pursuant to Regulation (EC) No 45/2001 (in view of the storing and processing operations in COPIS).

The EDPS therefore recommends that Article 6(3) includes, in the list of information to be provided to the applicant, the information to be provided the data subject pursuant to Article 10 of Directive 95/46/EC and Article 11 of Regulation (EC) No 45/2001.

In addition, the EDPS asks to be consulted when the Commission exercises its implementing power, in order to **ensure that the new model (national or EU) application forms are 'data protection compliant'.**

Time limit for the retention of personal data: the EDPS would like to stress that the application submitted by the right holder (and in particular, the personal data therein) **should not be stored or retained by the national customs authorities and in the COPIS database beyond the date of expiry of the decision.** He suggests inserting a provision in the proposalwhich imposes a limit to the retention of personal data linked to the duration of the period of validity of the decisions. Any extension of the duration of the retention date should be avoided or, if justified, should fulfil the principles of necessity and proportionality in relation to the purpose, which needs to be clarified. Including a provision in the proposal, which would be equally applicable throughout the Member States and to the Commission, would guarantee simplification, legal certainty and effectiveness, as it would avoid conflicting

interpretations.

Legal basis for establishment of COPIS: the legal basis for the creation of the COPIS database seems currently to be limited to the combined provisions of the new Articles 6(4) and 31. However, **there is at this stage no further detailed legal provision adopted through the ordinary legislative procedure in which the purpose and characteristics of COPIS are determined.** This is particularly worrying in the EDPS' view. Personal data of individuals (names, addresses and other contact details as well as related information on suspected offences) will be the object of an intense exchange between the Commission and Member States and will be stored for an undefined period of time within the database, yet there is no legal text on the basis of which an individual could verify the legality of such processing. Furthermore, the specific access rights and management rights in relation to the various processing operations are not explicitly clarified.

The EDPS stresses that the legal basis for instruments which restrict the fundamental right to the protection of personal data, as recognised by Article 8 of the Charter of Fundamental Rights of the Union and in the case law on the basis of Article 8 of the European Convention on Human Rights, and which is recognised by Article 16 of the TFEU, must be laid down in a legal instrument based on the Treaties and that can be invoked before a judge. This is necessary in order to guarantee legal certainty for the data subject, who must be able to rely on clear rules and invoke them before a court.

The EDPS therefore urges the Commission to clarify the legal basis of the COPIS database by introducing a more detailed provision in an instrument adopted according to the ordinary legislative procedure under the TFEU. Such a provision must comply with the requirements of Regulation (EC) No 45 /2001 and, where applicable, Directive 95/46/EC. In particular, the provision establishing the database involving the electronic exchange mechanism must:

- identify the purpose of the processing operations and establish which are the compatible uses;

- identify which entities (customs authorities, Commission) will have access to which data stored in the database and will have the possibility of modifying the data;
- ensure the right of access and information for all the data subjects whose personal data may be stored and exchanged;
- define and limit the retention period for the personal data to the minimum necessary for the performance of such purpose.

Lastly, the EDPS stresses that the following elements of the database should be defined in the main legislative act:

- the entity which will be controlling and managing the database
- the entity in charge of ensuring the security of the processing of the data contained in the database.

Customs enforcement of intellectual property rights

2011/0137(COD) - 02/04/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection adopted the report drafted by Jürgen CREUTZMANN (ADLE, DE) on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights.

It recommends that the European Parliament's position adopted at first reading, under the ordinary legislative procedure, should amend the Commission proposal as follows:

Goods in transit: Members stipulate that this Regulation shall apply to goods in transit through the customs territory of the Union which are suspected of infringing an intellectual property right.

Submission of applications: to avoid the filing of multiple applications for the same IPR and parallel submissions of national and Union applications, the persons entitled to submit an application shall only submit **one application** for each intellectual property right protected in a Member State or in the Union.

In order to facilitate the **traceability** of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorised distributors.

The undertaking by the applicant to agree that the data provided by him/her will be processed by the Commission has been deleted by the committee. The application shall contain the information that must be provided to the data subject pursuant to Regulation (EC) No 45/2001 and the national laws implementing Directive 95/46/EC.

Members call for **computerised systems** for the purpose of receiving and processing applications, applications shall be submitted using electronic data processing techniques. Member States shall make such systems available no later than **1 January 2014**.

Processing of applications: where the applicant does not provide the missing information within the period, the competent customs department may reject the application. In that event the competent customs department shall provide reasons for its decision and include information on the appeal procedure.

Returning samples: the Commission proposal provides that the competent customs department may decide to suspend the actions of the customs authorities until the expiry of the period during which those authorities are to take action, where the holder of the decision does not comply with the requirements on returning samples. Member, however, propose deleting this possibility given that the returning of samples cannot always take place and the text is not precise on who judges if the circumstances allow the returning of samples or not.

Suspension of the release of the goods or their detention: Members consider that the suspension of the release or detention of goods pending the decision from the rightholder is not a decision point. Therefore, they propose deleting the word "decision".

The customs authorities may also **provide the holder of the decision with information about the actual or supposed number of items**, their nature and photographs of those items as appropriate.

Where goods suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right are placed under a **suspensive procedure**, the customs authorities shall request the declarant or holder of the goods to provide **adequate evidence** that the final destination of the goods is beyond the territory of the Union within three working days of dispatch of that request. Where no adequate evidence to the contrary is provided, customs authorities shall presume the final destination to be the territory of the Union.

The additional **obligation for customs authorities allowing for a right to be heard** before an adverse decision is taken would create a disproportionate administrative burden for customs authorities, potentially resulting in a decreased level of IPR protection. Therefore, Members **propose deleting this obligation**.

Sharing of information and data between customs authorities: the report underlines that cooperation with third countries is essential for countering the proliferation of trade in IPR infringing goods. In order for this cooperation to be effective, EU customs authorities should be able to share information and data on IPR violations with their counterparts in third countries, under confidentiality, and provided stringent data protection safeguards are in place.

Destruction of goods and initiation of proceedings: whilst welcoming the proposal from the Commission to make the implementation of the **simplified procedure** mandatory in all Member States, Members consider that this procedure should be applicable not only to counterfeit and pirated goods, but for **all IPR infringements**.

In addition to confirming his/her agreement to destruction, the **right holder should also confirm that an IPR has been infringed and indicate which IPR is concerned**, based on the information he/she has received from the customs authorities. Only then, and provided the agreement of the declarant/holder of the goods, may be abandoned for destruction. In order to avoid problems linked to the sending of the notification, the deadline should be set with reference to the receipt of the notification, and not its dispatch.

An amendment also states that where the declarant or holder of the goods within the periods set out in regulation has not confirmed his/her agreement to destruction nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities shall deem that the declarant or holder of the goods has agreed to their destruction.

Where there is no agreement to destruction or the declarant or the holder of the goods objects to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 20 working days, or three working days in the case of perishable goods, of the receipt of the notification of the suspension of the release of the goods or their detention.

Before the destruction of abandoned goods, the customs authorities may allow the goods to be moved under customs supervision between different places within the customs territory of the Union with a view to their destruction under customs control or their use for education and exhibition purposes accompanied by appropriate security measures.

Specific procedure for the destruction of goods in small consignments: the definition of the term "small consignment" constitutes an essential element of the proposed Regulation and should therefore be defined therein. The report proposes a **definition** based on the number of items (less than three) and their total weight (less than 2kg) contained in a single package.

Members consider that the specific procedure for small consignments should apply to all IPR infringements in order to simplify its application and to improve the effectiveness of IPR protection.

An "opt-in" by the right-holder should be required in order to apply this specific procedure to infringements covered by his/her application, because he /she will also have to pre-finance the costs of storage and destruction.

The amended text stipulates that the goods concerned may be destroyed where the declarant or holder of the goods has **confirmed in writing** to the customs authorities his/her agreement to the destruction of the goods. Such destruction shall be carried out under customs control at the expense of the holder of the decision granting the application.

Lastly, right holders should obtain **access to information** about the goods destroyed under this procedure, which they can use for their investigations.

Costs: the holder of a decision shall, upon request, be given information by the customs authorities on where and how the detained goods are being stored and on the costs associated with such storage, and shall be **given the opportunity to comment on that storage**.

If the consignee cannot be identified either, is not tangible or unable to pay, the right-holder should be able to seek compensation from intermediaries such as carriers or freight forwarders (physical holders of the goods), where they have failed to exercise due diligence in the handling of the consignment.

Exchange of data on decisions relating to application for action between the Member States and the Commission: the Commission shall make the relevant information available to the customs authorities of the Member States in an electronic form as soon as possible and not later than 1 January 2015.

Customs enforcement of intellectual property rights

2011/0137(COD) - 03/07/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 397 votes to 259, with 26 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights.

The European Parliament’s position adopted at first reading, under the ordinary legislative procedure, amends the Commission proposal as follows:

Goods in transit: Parliament stipulates that this Regulation shall apply to goods in transit through the customs territory of the Union which are suspected of infringing an intellectual property right.

Submission of applications: to avoid the filing of multiple applications for the same IPR and parallel submissions of national and Union applications, the persons entitled to submit an application shall only submit **one application** for each intellectual property right protected in a Member State or in the Union.

In order to facilitate the **traceability** of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorised distributors.

The undertaking by the applicant to agree that the data provided by him/her will be processed by the Commission has been deleted. The application shall contain the information that must be provided to the data subject pursuant to Regulation (EC) No 45/2001 and the national laws implementing Directive 95/46/EC.

Members call for **computerised systems** for the purpose of receiving and processing applications, applications shall be submitted using electronic data processing techniques. Member States shall make such systems available no later than **1 January 2014**.

Processing of applications: where the applicant does not provide the missing information within the period, the competent customs department may reject the application. In that event the competent customs department shall provide reasons for its decision and include information on the appeal procedure.

Returning samples: the Commission proposal provides that the competent customs department may decide to suspend the actions of the customs authorities until the expiry of the period during which those authorities are to take action, where the holder of the decision does not comply with the requirements on returning samples. Member, however, propose deleting this possibility given that the returning of samples cannot always take place and the text is not precise on who judges if the circumstances allow the returning of samples or not.

Suspension of the release of the goods or their detention: Members consider that the suspension of the release or detention of goods pending the decision from the rightholder is not a decision point. Therefore, they propose deleting the word "decision".

The customs authorities may also **provide the holder of the decision with information about the actual or supposed number of items**, their nature and photographs of those items as appropriate.

Where goods suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right are placed under a **suspensive procedure**, the customs authorities shall request the declarant or holder of the goods to provide **adequate evidence** that the final destination of the goods is beyond the territory of the Union within three working days of dispatch of that request. Where no adequate evidence to the contrary is provided, customs authorities shall presume the final destination to be the territory of the Union.

The additional **obligation for customs authorities allowing for a right to be heard** before an adverse decision is taken would create a disproportionate administrative burden for customs authorities, potentially resulting in a decreased level of IPR protection. Therefore, Members **propose deleting this obligation**.

Sharing of information and data between customs authorities: the resolution underlines that cooperation with third countries is essential for countering the proliferation of trade in IPR infringing goods. In order for this cooperation to be effective, EU customs authorities should be able to share information and data on IPR violations with their counterparts in third countries, under confidentiality, and provided stringent data protection safeguards are in place.

Destruction of goods and initiation of proceedings: whilst welcoming the proposal from the Commission to make the implementation of the **simplified procedure** mandatory in all Member States, Members consider that this procedure should be applicable not only to counterfeit and pirated goods, but for **all IPR infringements**.

In addition to confirming his/her agreement to destruction, the **right holder should also confirm that an IPR has been infringed and indicate which IPR is concerned**, based on the information he/she has received from the customs authorities. Only then, and provided the agreement of the declarant/holder of the goods, may be abandoned for destruction. In order to avoid problems linked to the sending of the notification, the deadline should be set with reference to the receipt of the notification, and not its dispatch.

An amendment also states that where the declarant or holder of the goods within the periods set out in regulation has not confirmed his/her agreement to destruction nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities shall deem that the declarant or holder of the goods has agreed to their destruction.

Where there is no agreement to destruction or the declarant or the holder of the goods objects to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 20 working days, or three working days in the case of perishable goods, of the receipt of the notification of the suspension of the release of the goods or their detention.

Before the destruction of abandoned goods, the customs authorities may allow the goods to be moved under customs supervision between different places within the customs territory of the Union with a view to their destruction under customs control or their use for education and exhibition purposes accompanied by appropriate security measures.

Specific procedure for the destruction of goods in small consignments: the definition of the term "small consignment" constitutes an essential element of the proposed Regulation and should therefore be defined therein. The resolution proposes a **definition** based on the number of items (less than three) and their total weight (less than 2kg) contained in a single package.

Members consider that the specific procedure for small consignments should apply to all IPR infringements in order to simplify its application and to improve the effectiveness of IPR protection.

An "opt-in" by the right-holder should be required in order to apply this specific procedure to infringements covered by his/her application, because he /she will also have to pre-finance the costs of storage and destruction.

The amended text stipulates that the goods concerned may be destroyed where the declarant or holder of the goods has **confirmed in writing** to the customs authorities his/her agreement to the destruction of the goods. Such destruction shall be carried out under customs control at the expense of the holder of the decision granting the application.

Lastly, right holders should obtain **access to information** about the goods destroyed under this procedure, which they can use for their investigations.

Costs: the holder of a decision shall, upon request, be given information by the customs authorities on where and how the detained goods are being stored and on the costs associated with such storage, and shall be **given the opportunity to comment on that storage**.

If the consignee cannot be identified either, is not tangible or unable to pay, the right-holder should be able to seek compensation from intermediaries such as carriers or freight forwarders (physical holders of the goods), where they have failed to exercise due diligence in the handling of the consignment.

Exchange of data on decisions relating to application for action between the Member States and the Commission: the Commission shall make the relevant information available to the customs authorities of the Member States in an electronic form as soon as possible and not later than 1 January 2015.

Entry into force and report: by three years after the entry into force of the this Regulation, the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation, as well as an analysis of this Regulation's impact on the availability of generic medicines, in the Union as well as globally. If necessary, that report shall be accompanied by appropriate proposals and/or recommendations.

Customs enforcement of intellectual property rights

2011/0137(COD) - 24/05/2011 - Legislative proposal

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

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: Intellectual Property Rights (IPR) infringements and the resulting trade in infringing goods are of growing concern, particularly in a globalised economy. In addition to the economic consequences for industry, the infringing products may pose serious health and safety risks to consumers.

Certain instances of detentions by customs authorities of shipments of medicines in transit through the EU, which occurred at the end of 2008, which together with the concerns expressed during the WTO consultations between India and Brazil and the EU, have shown that the relevant EU legislation for intellectual property enforcement by customs authorities could benefit from further clarification to increase legal certainty.

In its Communication on a Single Market Act, the Commission recalled that customs authorities should be able to provide greater protection for intellectual-property rights through revised legislation. The Commission developed a new customs action plan to combat IPR infringements for the years 2009-2012. The main elements of the Plan were endorsed by the Council.

The review of Regulation (EC) No 1383/2003 showed that certain improvements to the legal framework were necessary to strengthen the enforcement of intellectual property rights, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas.

IMPACT ASSESSMENT: the impact assessment report looked at three different options, with a number of sub-options.

Option 1: 'baseline scenario', where the Commission would take no action and the status quo was maintained.

Option 2 : this provided for certain non-legislative measures, where the Commission would propose training initiatives and the development of guidelines and exchange of best practises;

Option 3: the Commission proposes amendments to the existing legal framework. Under this option different sub-options could be available for each of the i problems:

- **Sub-option 1** provided for the extension of the possible types of infringements to rights already covered by the current Regulation, for example, as regards goods involving any infringement of trade mark rights, not just counterfeiting.
- **Sub-option 2** included sub-option 1 and extended the current scope of the Regulation in terms of IPR covered.

The impact assessment concluded that the best suitable solution would be to amend the Regulation to respond to all the problems identified and to ensure a balanced outcome for all categories of persons affected.

LEGAL BASIS: Article 207 of the Treaty on the Functioning of the European Union provides powers to adopt measures for implementing the common commercial policy. The Regulation concerns the commercial aspects of intellectual property rights in that it deals with measures enabling customs to enforce intellectual property rights at the border on goods that are internationally traded.

CONTENT: the draft Regulation 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 within the customs territory of the Union. The main points are as follows:

Strengthening enforcement: it is proposed to broaden the scope covered by Regulation (EC) No 1383/2003, by including trade names, topographies of semiconductor products and utility models. It is also proposed to widen the scope of the Regulation by including infringements resulting from parallel trade and devices to circumvent technological measures, as well as other infringements of rights already enforced by customs.

The new Regulation would maintain the ability for customs to control for the purpose of enforcement of intellectual property rights, in all situations where the goods were under their supervision and the distinction between the procedural nature of the legislation and substantive law on intellectual property would be emphasised.

Destruction of goods: the proposal also introduces procedures enabling customs, under certain conditions, to have goods abandoned for destruction without having to undergo formal and costly legal proceedings. These would be differentiated according to the type of infringement.

- for counterfeit and pirated goods, the agreement of the owner to destroy the goods could be presumed if the destruction had not been explicitly opposed, whereas for other situations, the owner of the goods would have to agree explicitly to their destruction;
- in a case where no agreement is reached, the right-holder would have to initiate legal proceedings to establish the infringement, otherwise the goods will be released.

A specific procedure is also proposed for small consignments of suspected counterfeit and pirated goods covered by an application, which would allow for goods to be destroyed without the involvement of the right- holder.

Protection of the interests of legitimate traders: additional provisions are proposed to ensure the protection of the interests of legitimate traders from possible abuse of the customs enforcement procedures and to integrate the principles of the Charter of Fundamental Rights into the Regulation. To this end, the proposal clarifies the timelines for detaining suspected goods, the conditions in which information about consignments would be passed on to right-holders by customs, the conditions for applying the procedure allowing for destruction of the goods under customs control for suspected infringements of intellectual property rights other than for counterfeiting and piracy, and the right of defence.

Costs of storage and destruction of goods: the draft Regulation continues to provide that storage and destruction costs directly incurred by customs be assumed by the right-holders requesting customs action, though this would not preclude them from taking legal action to recover such costs from the primary liable party. However, it is proposed to introduce an important exception for small consignments, for which storage and destruction costs would be assumed by customs.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.

Customs enforcement of intellectual property rights

2011/0137(COD) - 15/05/2017 - Follow-up document

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.