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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**concerning customs enforcement of intellectual property rights**

{SEC(2011) 597}

{SEC(2011) 598}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Background

The Commission's Communication on a strategy for smart, sustainable growth, 'Europe 2020'<sup>1</sup>, underlined the importance of innovation for growth and jobs and Intellectual Property Rights (IPR) are fundamental to this key priority, ensuring full benefits from research, innovation and creative activities. 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. In its Communication on a Single Market Act<sup>2</sup>, the Commission therefore recalled that customs authorities should be able to provide greater protection for intellectual-property rights through revised legislation.

Council Regulation (EC) No 1383/2003 provides for customs action against goods suspected of infringing certain intellectual property rights and is an important element in the EU's strategy to protect and enforce intellectual property rights. In September 2008 the Council<sup>3</sup> invited the Commission and the Member States to review this Regulation and suggest and evaluate the improvements to the legal framework on action against products found to have infringed such rights.

The Commission developed a new customs action plan to combat IPR infringements for the years 2009-2012. The main elements of the Action Plan<sup>4</sup>, prepared by the Commission and endorsed by the Council, cover legislation, operational performance, cooperation with industry, international cooperation and awareness-raising. The review of the Regulation was incorporated into the plan and was carried out by the Commission, in close collaboration with the Member States through a working group created under the Customs 2013 Programme, which was composed by experts of the customs administrations of the Member States.

Certain instances of detentions by customs authorities of shipments of medicines in transit through the EU, which occurred at the end of 2008, gave rise to concerns among certain Members of the WTO, Members of the European Parliament, NGOs and the civil society. It was claimed that such measures could hamper legitimate trade in generic medicines, thus contradicting the EU commitment to facilitating access to medicines in the developing world, and eventually violating WTO rules. The incidents of detentions triggered WTO disputes against the EU by India and Brazil, which together with the concerns expressed during the relevant 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.

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<sup>1</sup> Communication from the Commission, Europe 2020. A strategy for smart, sustainable and inclusive growth. Brussels - COM(2010) 2020, 3.3.2010.

<sup>2</sup> Commission Communication of 13 April 2011: Single Market Act - COM(2011) 206.

<sup>3</sup> Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan (OJ C 253, 4.10.2008, p. 1).

<sup>4</sup> Council Resolution of 16 March 2009 on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012 (OJ C 71, 25.3.2009 p. 1).

## **1.2. Consistency with other EU policies**

The proposal is in line with the Union's longstanding policy and strategy on the protection of IPR. This policy has been reflected in several Communications from the Commission, such as Europe 2020 and the Communication on a Single Market Act<sup>5</sup>. Protection of intellectual property stimulates innovation and effective enforcement has a positive impact on employment, consumers and society as a whole.

The border enforcement of IPR by customs complements enforcement on the internal market, as well trade initiatives with third countries and in international fora. The proposal is an integral part of the strategic framework outlined in the new Communication from the Commission on a Single Market for Intellectual Property Rights of [ May 2011].

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **2.1. Public consultation**

A public consultation was carried out to ensure that all stakeholders were given ample opportunity to contribute to the review of Regulation (EC) No 1383/2003. The response to the public consultation included 89 contributions from a wide range of stakeholders, including right-holders, providers of services related to international trade, such as forwarders and carriers, lawyers, academic institutions, NGOs, public authorities and citizens.

The main issues that attracted interest from the respondents were the scope of the Regulation in relation to the situations in which customs authorities can take action and the range of intellectual property rights covered by the Regulation, the simplified procedure in general and in relation to small consignments and the costs of storage and destruction of goods.

### **2.2. Impact Assessment**

The impact assessment report identified and assessed policy options concerning the customs measures and procedures related to the border enforcement of intellectual property rights. The main areas covered were the scope for strengthening IPR enforcement at the border, addressing the administrative and economic burdens of enforcement on customs, right-holders and other stakeholders, and the need to ensure effectiveness and consistency with all relevant legal obligations.

The impact assessment report looked at three different options, if relevant with a number of sub-options. The first option provided for the so-called 'baseline scenario', where the Commission would take no action and the *status quo* was maintained. The second option provided for certain non-legislative measures, where the Commission would propose training initiatives and the development of guidelines and exchange of best practises. The third option was for the Commission to propose amendments to the existing legal framework. Under this option different sub-options could be available for each of the identified problems.

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<sup>5</sup> Commission Communication of 11 November 2010: 'Towards a Single Market Act - COM(2010) 608 final/2.

- Option 1 should be excluded if the Commission was to respond adequately to the Council's request to review the legislation and to the concerns about the scope and implementation of the current legislation expressed by stakeholders during the consultation process.
- Option 2 would only partially address the identified problems. Guidelines and explanatory notes could help clarify applicable procedures or how to apply general principles of law. However, these non-legislative measures could not address some of the objectives of widening the scope of intellectual property rights or make procedures compulsory throughout the Union.
- Option 3 would give the maximum legal certainty that IP rights not covered by the present Regulation would be included, procedures would be harmonised and procedural clarifications would be given. Under this option, two sub-options were given. 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 affected persons.

### **3. LEGAL BASIS AND SUBSIDIARITY**

The commercial aspects of intellectual property are part of the framework of the common commercial policy. Article 207 of the Treaty on the Functioning of the European Union provides powers to adopt measures for implementing the common commercial policy. Therefore the legal basis for the proposal is Article 207 of the Treaty on the Functioning of the European Union.

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. Article 3(1) of the Treaty on the Functioning of the European Union provides exclusive competence on the European Union in the area of common commercial policy.

### **4. BUDGETARY IMPLICATION**

The proposal will not have an impact on human resources and on the European Union budget and is therefore not accompanied by the financial statement foreseen under Article 28 of the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities).

### **5. AMENDMENTS**

The review identified certain improvements to the legal framework that were considered necessary to strengthen the provisions concerning enforcement of intellectual property rights, whilst at the same time ensuring legal clarity of the provisions themselves. It is therefore

proposed to replace Council Regulation (EC) No 1383/2003, with the attached draft new Regulation.

In order to strengthen 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 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.

The Regulation would also introduce 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 case no agreement is reached, the right-holder would have to initiate legal proceedings to establish the infringement, otherwise the goods would 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.

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 in the Regulation. To this end, the Regulation would clarify 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. In this way, the new regulation would become a more robust enforcement tool thereby enhancing the legitimacy of customs action. The issue of costs of storage and destruction of infringing goods has attracted attention from different stakeholders. The Regulation would continue 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.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**concerning customs enforcement of intellectual property rights**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission <sup>6</sup>,

Having regard to the opinion of the European Data Protection Supervisor,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Council of the European Union requested, in its Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan<sup>7</sup>, that Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>8</sup>, be reviewed.
- (2) The marketing of goods infringing intellectual property rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be kept off the market and measures should be adopted to deal with this unlawful activity without impeding legitimate trade.
- (3) 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.
- (4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, with a view to enforcing intellectual property rights. Enforcing intellectual property rights at the border, wherever the

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<sup>6</sup> OJ C

<sup>7</sup> OJ C253, 4.10.2008, p. 1.

<sup>8</sup> OJ L 196, 2.8.2003, p. 7.

goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>9</sup>, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An exception should be made for goods released for free circulation under the end-use regime, as such goods remain under customs supervision, even though they have been released for free circulation. It is also appropriate not to apply the Regulation to goods carried by passengers in their personal luggage as long as these goods are for their own personal use and there are no indications that commercial traffic is involved.

- (5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements, such as infringements resulting from parallel trade, as well as other infringements of rights already enforced by customs authorities but not covered by Regulation (EC) No 1383/2003. For the same purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and devices to circumvent technological measures, as well as any exclusive intellectual property right established by Union legislation.
- (6) This Regulation contains procedural rules for customs authorities. Accordingly, this Regulation does not introduce any new criterion for ascertaining the existence of an infringement of the intellectual property law applicable.
- (7) This Regulation should not affect the provisions on the competence of courts, in particular, those of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>10</sup>.
- (8) Any person, whether or not the holder of an intellectual property right, who is able to initiate legal proceedings in his/her own name with respect to a possible infringement of that right, should be entitled to submit an application for action by the customs authorities.
- (9) In order to ensure that intellectual property rights are enforced throughout the Union, it is appropriate to provide that, where a person entitled to submit an application for action seeks enforcement of an intellectual property right covering the whole territory of the Union, that person may request the customs authorities of a Member State to take a decision requiring action by the customs authorities of that Member States and of any other Member State where enforcement of the intellectual property right is sought.
- (10) In order to ensure the swift enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of adequate evidence, that goods under their supervision infringe intellectual property rights, those customs authorities may suspend the release or detain the goods whether at their own initiative or upon application, in order to enable

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<sup>9</sup> OJ L 302, 19.10.1992, p. 1.

<sup>10</sup> OJ L 12, 16.1.2001, p. 1.

the persons entitled to submit an application for action of the customs authorities to initiate proceedings for determining whether an intellectual property right has been infringed.

- (11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be difficult to determine upon mere visual examination by customs authorities whether an intellectual property right might be infringed. It is therefore appropriate to provide that proceedings should be initiated, unless the parties concerned, namely the holder of the goods and the right-holder, agree to abandon the goods for destruction. It should be for the competent authorities dealing with such proceedings to determine whether an intellectual property right has been infringed and to take appropriate decisions concerning the infringements of intellectual property rights concerned.
- (12) Regulation (EC) No 1383/2003 allowed Member States to provide for a procedure allowing the destruction of certain goods without there being any obligation to initiate proceedings to establish whether an intellectual property right has been infringed. As recognised in the European Parliament Resolution of 18 December 2008 on the impact of counterfeiting on international trade<sup>11</sup>, this procedure has proved very successful in the Member States where it has been available. Therefore, such procedure should be made compulsory for those visible infringements that are easy to identify upon mere visual examination by the customs authorities and should be applied at the right-holder's request, where the declarant or holder of the goods does not object to destruction.
- (13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.
- (14) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing an intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, 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 counterfeit and pirated goods and to introduce a provision allowing the holder of the goods to express his/her views before the customs administration takes a decision which would adversely affect him/her.
- (16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be adapted to ensure a smooth application of

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<sup>11</sup> Resolution 2008/2133/INI.



the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, that period should be significantly extended.

- (17) Under the "Declaration on the TRIPS Agreement and Public Health" adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account of any substantial likelihood of diversion of these goods onto the market of the Union.
- (18) In the interest of efficiency, the provisions of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters<sup>12</sup>, should apply.
- (19) The liability of the customs authorities should be governed by the legislation of the Member States, though the granting by the customs authorities of an application for action should not entitle the holder of the decision to compensation in the event that such goods are not detected by a customs office and are released or no action is taken to detain them.
- (20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

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<sup>12</sup> OJ L 82, 22.3.1997, p. 1.

- (21) Customs enforcement of intellectual property law will entail the exchange of data on decisions relating to applications for action. Such processing of data covers also personal data which should be carried out in accordance with Union law, as set out, in particular, in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>13</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data<sup>14</sup>.
- (22) In order to ensure uniform conditions for the implementation of the provisions concerning the forms for the application for action by the customs authorities and for requesting the extension of the period during which customs authorities are to take action, implementing powers should be conferred on the Commission, namely to establish standard forms.
- (23) Those powers should be exercised in accordance with Regulation (EU) No 182/2011<sup>15</sup> of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. Although the subject of the provisions of this Regulation to be implemented falls within the scope of the common commercial policy, given the nature and impacts of the implementing acts, the advisory procedure should be used for their adoption.
- (24) Regulation (EC) No 1383/2003 should be repealed,

HAVE ADOPTED THIS REGULATION:

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<sup>13</sup> OJ L 281, 23.11.1995, p. 31.

<sup>14</sup> OJ L 8, 12.1.2001, p. 1.

<sup>15</sup> OJ L 55, 28.2.2011, p. 13.

## CHAPTER I

# SUBJECT MATTER, SCOPE AND DEFINITIONS

### *Article 1*

#### **Subject matter and scope**

1. This 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.
2. This Regulation shall not apply to goods that have been released for free circulation under the end-use regime within the meaning of Article 82 of Council Regulation (EEC) No 2913/92.
3. This Regulation shall not affect in any way the laws of the Member States and of the Union on intellectual property.
4. This Regulation shall not apply to goods of a non-commercial nature contained in travellers' personal luggage.

### *Article 2*

#### **Definitions**

For the purposes of this Regulation:

- (1) 'intellectual property rights' means:
  - (a) a trade mark;
  - (b) a design;
  - (c) a copyright or any related right as provided for by the legislation of a Member State;
  - (d) a geographical indication;
  - (e) a patent as provided for by the legislation of a Member State;
  - (f) a supplementary protection certificate for medicinal products as provided for in Regulation (EC) No 469/2009 of the European Parliament and of the Council<sup>16</sup>;
  - (g) a supplementary protection certificate for plant protection products as provided for in Regulation (EC) No 1610/96 of the European Parliament and of the Council<sup>17</sup>;

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<sup>16</sup> OJ L 152, 16.6.2009, p. 1.

- (h) a Community plant variety right as provided for in Council Regulation (EC) No 2100/94<sup>18</sup>;
  - (i) a plant variety right as provided for by the legislation of a Member State;
  - (j) a topography of semiconductor product as provided for by the legislation of a Member State;
  - (k) a utility model as provided for by the legislation of a Member State;
  - (l) a trade name in so far as it is protected as an exclusive intellectual property right by legislation of a Member State;
  - (m) any other right that is established as an exclusive intellectual property right by Union legislation;
- (2) ‘trade mark’ means:
- (a) a Community trade mark as provided for in Council Regulation (EC) No 207/2009<sup>19</sup>;
  - (b) a trade mark registered in a Member State, or, in the case of Belgium, the Netherlands or Luxembourg, at the Benelux Office for Intellectual Property;
  - (c) a trade mark registered under international arrangements which have effect in a Member State;
  - (d) a trade mark registered under international arrangements which have effect in the Union;
- (3) ‘design’ means:
- (a) a Community design as provided for in Regulation (EC) No 6/2002<sup>20</sup>;
  - (b) a design registered in a Member State;
  - (c) a design registered under international arrangements which have effect in a Member State;
  - (d) a design registered under international arrangements which have effect in the Union;
- (4) ‘geographical indication’ means:
- (a) a geographical indication or designation of origin protected for agricultural products and foodstuff as provided for in Council Regulation (EC) No 510/2006<sup>21</sup>;

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<sup>17</sup> OJ L 198, 8.8.1996, p. 30.

<sup>18</sup> OJ L 227, 1.9.1994, p. 1.

<sup>19</sup> OJ L 78, 24.3.2009, p. 1.

<sup>20</sup> OJ L 3, 5.1.2002, p. 1.

<sup>21</sup> OJ L 93, 31.3.2006, p. 12.

- (b) a designation of origin or geographical indication for wine as provided for in Council Regulation (EC) No 1234/2007<sup>22</sup>;
  - (c) a geographical designation for aromatised wine as provided for in Council Regulation (EEC) No 1601/1991<sup>23</sup>;
  - (d) a geographical indication of spirit drinks as provided for in Regulation (EC) No 110/2008 of the European Parliament and of the Council<sup>24</sup>;
  - (e) a geographical indication for products other than wines, spirits, agricultural products or foodstuff in so far as it is established as an exclusive intellectual property right by legislation of a Member State or the Union;
  - (f) a geographical indication as provided for in Agreements between the Union and third countries and as such listed in those Agreements;
- (5) ‘counterfeit goods’ means:
- (a) goods which are subject of an action infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;
  - (b) goods which are subject of an action infringing a geographical indication and bear or are described by a name or term protected in respect of that geographical indication;
- (6) ‘pirated goods’ means goods which are subject of an action infringing a copyright or related right or a design and which are or contain copies made without the consent of the holder of a copyright or related right or a design, regardless of whether it is registered, or of a person authorised by that holder in the country of production;
- (7) ‘goods suspected of infringing an intellectual property right’ means goods with regard to which there is adequate evidence to satisfy customs authorities that, in the Member State where these goods are found, are *prima facie*:
- (a) goods which are subject of an action infringing an intellectual property right under the law of the Union or of that Member State;
  - (b) devices, products or components which circumvent any technology, device or component that, in the normal course of its operation, prevents or restricts acts in respect of works which are not authorised by the right-holder of any copyright or right related to copyright and which infringe an intellectual property right under the law of that Member state;

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<sup>22</sup> OJ L 148, 6.6.2008, p. 1.

<sup>23</sup> OJ L 149, 14.6.1991, p. 1.

<sup>24</sup> OJ L 39, 13.2.2008, p. 16.

- (c) any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if such moulds or matrices infringe the right-holder's rights under Union law or the law of that Member State;
- (8) 'application' means a request made to the customs authorities to take action where goods are suspected of infringing an intellectual property right;
- (9) 'national application' means an application requesting the customs authorities of a Member State to take action in that Member State;
- (10) 'Union application' means an application submitted in one Member State and requesting the customs authorities of that Member State and of one or more other Member States to take action in their respective Member States;
- (11) 'applicant' means the person who submits an application in his/her own name;
- (12) 'holder of the goods' means the person who is the owner of the goods or who has a similar right of disposal over them or who has physical control over them;
- (13) 'declarant' means the declarant as referred to in Article 4(18) of Regulation (EEC) No 2913/92;
- (14) 'destruction' means the physical destruction, recycling or disposal of goods outside commercial channels, in such a way as to preclude injury to the holder of the decision granting the application;
- (15) 'customs supervision' means the supervision by customs authorities as referred to in Article 4(13) of Regulation (EEC) No 2913/92;
- (16) 'customs territory of the Union' means the customs territory of the Community as referred to in Article 3 of Regulation (EEC) No 2913/92;
- (17) 'release of the goods' means the act whereby the customs authorities make goods available for the purposes specified for the customs procedure under which they are placed.

### *Article 3*

#### **Applicable law**

Without prejudice to Article 8 of Regulation (EC) No 864/2007<sup>25</sup>, the law of the Member State where the goods are found in one of the situations referred to in Article 1(1) shall apply for the purpose of determining whether the use of those goods gives rise to suspicion of infringement of an intellectual property right or has infringed an intellectual property right.

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<sup>25</sup> OJ L 199, 31.7.2007, p. 40.

## CHAPTER II

# APPLICATIONS FOR ACTION BY THE CUSTOMS AUTHORITIES

### Section 1

#### SUBMISSION OF APPLICATIONS FOR ACTION

##### *Article 4*

#### **Persons entitled to submit an application**

1. The persons entitled to submit a national or a Union application shall be any of the following:
  - (a) holders of intellectual property rights;
  - (b) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of copyrights or related rights;
  - (c) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights;
  - (d) groups in the meaning of Article 5(1) of Regulation (EC) No 510/2006, groups of producers in the meaning of Article 118(e) of Regulation (EC) No 1234/2007 or similar groups of producers foreseen in the legislation of the Union governing geographical indications representing producers of a geographical indication or representatives of such groups; operators entitled to use a geographical indication; as well as inspection bodies competent for such a geographical indication;
2. In addition to the persons set out in paragraph 1, any of the following shall be entitled to submit a national application:
  - (a) all other persons authorised to use intellectual property rights;
  - (b) groups of producers foreseen in the legislation of the Member States governing geographical indications representing producers of a geographical indication or representatives of such groups, operators entitled to use a geographical indication, as well as inspection bodies competent for such a geographical indication;
3. In addition to the persons set out in paragraph 1, the holder of an exclusive license covering the customs territory of the Union shall be entitled to submit a Union application.
4. All persons entitled to submit an application under paragraphs 1, 2 and 3 must be able to initiate proceedings for infringement of intellectual property rights in the Member State where the goods are found.

## *Article 5*

### **Intellectual property rights covered by Union applications**

A Union application may be submitted with respect to any intellectual property right applying throughout the Union.

## *Article 6*

### **Submission of applications**

1. The persons referred to in Article 4 may request action by the customs authorities where the use of goods is suspected of infringing an intellectual property right by submitting an application to the competent customs department. The application shall be made out on the form referred to in paragraph 3.
2. Each Member State shall designate the customs department competent to receive and process applications. The Member State shall inform the Commission accordingly and the Commission shall make public the list of competent customs departments designated by the Member States.
3. The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2).

The form shall, in particular, require the following information to be provided by the applicant:

- (a) details of the applicant;
- (b) status of the applicant within the meaning of Article 4;
- (c) supporting documents to be provided to satisfy the customs department that the applicant is a person entitled to submit the application;
- (d) the empowerment of natural or legal persons representing the applicant, in accordance with the legislation of the Member State in which the application is filed;
- (e) the intellectual property right or rights to be enforced;
- (f) in the case of a Union application, the Member State or Member States in which customs action is requested;
- (g) specific and technical data on the authentic goods, including images where appropriate;
- (h) the information, to be attached to the form, needed to enable the customs authorities to readily identify the goods in question;
- (i) any information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned;



- (j) name(s) and address(es) of the representative(s) of the applicant in charge of legal and technical matters;
  - (k) undertaking by the applicant to notify the competent customs department of any of the situations laid down in Article 14;
  - (l) undertaking by the applicant to forward and update any information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned;
  - (m) undertaking by the applicant to assume liability under the conditions laid down in Article 26;
  - (n) undertaking by the applicant to bear the costs referred to in Article 27 under the conditions laid down in that Article;
  - (o) undertaking by the applicant to agree that the data provided by him/her will be processed by the Commission;
4. Where computerised systems are available for the purpose of receiving and processing applications, applications shall be submitted using electronic data-processing techniques.
5. Where an application is submitted after notification by the customs authorities of the suspension of the release or detention of the goods in accordance with Article 17(4), that application shall comply with the following additional requirements:
- (a) it shall be submitted to the competent customs department within four working days of the notification of the suspension of the release or detention of the goods;
  - (b) it shall be a national application ;
  - (c) it shall contain the information required in paragraph 3. However, the applicant shall be allowed to omit the particulars mentioned in paragraph 3, letters (g) to (i).

## Section 2

### **DECISIONS ON APPLICATIONS FOR ACTION**

#### *Article 7*

##### **Processing of applications**

1. Where, on receipt of an application, the competent customs department considers that it does not contain all the information required by Article 6(3), the competent customs department shall request the applicant to supply the missing information within 10 working days of dispatch of the notification.

In such cases, the time limit referred to in Article 8 first subparagraph shall be suspended until the relevant information is received.

2. Where the applicant does not provide the missing information within the period referred to in paragraph 1, the competent customs department shall reject the application.
3. The applicant shall not be charged a fee to cover the administrative costs resulting from the processing of the application.

#### *Article 8*

### **Notification of decisions granting or rejecting applications for action**

The competent customs department shall notify the applicant of its decision granting or rejecting the application within 30 working days of the receipt of the application.

However, where the applicant has been previously notified of the suspension of the release or detention of the goods by the customs authorities, the competent customs department shall notify the applicant of its decision granting or rejecting the application within one working day of the receipt of the application.

#### *Article 9*

### **Decisions concerning applications for action**

1. Decisions granting a national application, decisions revoking such decisions or amending them, and decisions extending the period during which customs authorities are to take action shall take effect in the Member State in which the national application was filed from the date of their adoption.
2. Decisions granting a Union application, decisions revoking such decisions or amending them and decisions extending the period during which customs authorities are to take action shall take effect as follows:
  - (a) in the Member State in which the application was filed, from the date of adoption ;
  - (b) in all other Member States where action by the customs authorities is requested, from the date on which the customs authorities are notified in accordance with Article 13(2) and provided that the holder of the decision has fulfilled his obligations under Article 27(3).

#### *Article 10*

### **Period during which the customs authorities are to take action**

1. When granting an application, the competent customs department shall specify the period during which the customs authorities are to take action.

That period shall begin from the date of adoption of the decision granting the application and shall not exceed one year.

2. Where an application submitted after notification by the customs authorities of the suspension of the release or detention of the goods in accordance with Article 17(4) does not contain the particulars referred to in Article 6(3) (g) to (i), it shall be granted only for the suspension of the release or detention of those goods.
3. Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, no action shall be taken by the customs authorities. The decision granting the application shall be revoked or amended accordingly by the customs authorities that granted the decision.

### *Article 11*

#### **Extension of the period during which the customs authorities are to take action**

1. On expiry of the period during which the customs authorities are to take action, and subject to the prior discharge by the holder of the decision of any debt owed to the customs authorities under this Regulation, the customs department which took the initial decision may, at the request of the holder of the decision granting the application, extend that period.
2. Where the request for extension of the period during which the customs authorities are to take action is made less than 30 working days before the expiry of that decision, the competent customs department may refuse the extension.
3. The request for extension of the period during which the customs authorities are to take action shall indicate any change in the information provided under Article 6(3).
4. The competent customs department shall notify its decision on the extension to the holder of the decision granting the application within 30 working days of the receipt of that request.
5. The extended period during which the customs authorities are to take action shall run from the date of adoption of the decision granting the extension and shall not exceed one year.

Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, no action shall be taken by the customs authorities. The decision granting the extension shall be revoked or amended accordingly by the customs authorities that granted the decision.

6. The holder of the decision shall not be charged a fee to cover the administrative costs resulting from the processing of the request for extension.
7. The Commission shall establish an extension request form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2).

## *Article 12*

### **Amending the decision with regard to intellectual property rights**

The competent customs department that adopted the decision granting the application may, at the request of the holder of that decision, modify the list of intellectual property rights in that decision.

In the case of a decision granting a Union application, any modification consisting in adding intellectual property rights shall be limited to those intellectual property rights covered by Article 5.

## *Article 13*

### **Notification obligations of the competent customs department**

1. The competent customs department to which a national application has been submitted shall forward the following decisions to the customs offices of its Member State, immediately after their adoption:
  - (a) its decisions granting a national application;
  - (b) its decisions revoking decisions granting a national application;
  - (c) its decisions amending decisions granting a national application;
  - (d) its decisions extending the period during which the customs authorities are to take action.
  
2. The competent customs department to which a Union application has been submitted shall forward the following decisions to the competent customs department of the Member State or Member States indicated in the Union application:
  - (a) decisions granting a Union application;
  - (b) decisions revoking decisions granting a Union application;
  - (c) decisions amending decisions granting a Union application;
  - (d) decisions extending or refusing to extend the period during which the customs authorities are to take action;
  - (e) decisions suspending the actions of the customs authorities under Article 15(2).

The competent customs department of the Member State(s) indicated in the Union application shall thereafter immediately forward those decisions to their customs offices.

3. Once the central database of the Commission referred to in Article 31(3) is in place, all exchanges of data on decisions concerning applications for action, accompanying documents and notifications between the customs authorities of the Member States shall be made via that database.

## *Article 14*

### **Notification obligations of the holder of the decision granting the application**

The holder of the decision granting the application shall notify the competent customs department that adopted that decision of any of the following:

- (a) an intellectual property right covered by his/her application ceases to have effect;
- (b) the holder of the decision ceases for other reasons to be the person entitled to submit the application;
- (c) modifications to the information required by Article 6(3).

## *Article 15*

### **Failure of the holder of the decision granting the application to fulfil his/her obligations**

1. Where the holder of the decision granting the application uses the information provided by the customs authorities for purposes other than those provided for in Article 19, the competent customs department may:
  - (a) suspend the decision granting the application in the Member State where the information was provided or used until the expiry of the period during which the customs authorities are to take action ;
  - (b) refuse to extend the period during which the customs authorities are to take action.
2. 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:
  - (a) does not fulfil his/her notification obligations under Article 14;
  - (b) does not comply with the requirements of Article 18(2) on returning samples;
  - (c) does not fulfil his/her obligations under Article 27(1) and (3) with respect to costs and translation;
  - (d) does not initiate proceedings as provided for in Articles 20(1), 23(4) or 24(9).

In the case of a Union application, the decision to suspend the actions of the customs authorities shall have effect only in the Member State where such decision is taken.

## CHAPTER III

# PROVISIONS GOVERNING ACTION BY THE CUSTOMS AUTHORITIES

### Section 1

## SUSPENSION OF THE RELEASE OR DETENTION OF GOODS SUSPECTED OF INFRINGING AN INTELLECTUAL PROPERTY RIGHT

### *Article 16*

#### **Suspension of the release or detention of the goods following the grant of an application**

1. Where the customs authorities of a Member State identify, in one of the situations referred to in Article 1(1), goods suspected of infringing an intellectual property right covered by a decision granting an application for action, they shall take a decision to suspend the release of the goods or to detain them.
2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any relevant information. The customs authorities may also provide the holder of the decision with information about the actual or supposed number of items, their nature and images of those items as appropriate.
3. Before adopting the decision of suspension of release or detention of the goods, the customs authorities shall, communicate their intention to the declarant or, in cases where goods are to be detained, the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.
4. The customs authorities shall notify the holder of the decision granting the application and the declarant or holder of the goods of their decision to suspend the release of the goods or to detain them within one working day of the adoption of their decision.

The notification to the declarant or holder of the goods shall include information on the legal consequences provided by Article 20 with respect to other goods than counterfeit and pirated goods and by Article 23 with respect to counterfeit and pirated goods.

5. The customs authorities shall inform the holder of the decision granting the application and the declarant or holder of the goods of the actual or estimated quantity, the actual or supposed nature of the goods, including images of those items as appropriate, whose release has been suspended or which have been detained.

6. Where several persons are considered to be holder of the goods, the customs authorities shall not be obliged to inform more than one person.

### *Article 17*

#### **Suspension of the release or detention of the goods without the grant of an application**

1. Where the customs authorities identify, in the course of action in one of the situations referred to in Article 1(1), goods suspected of infringing an intellectual property right, they may suspend the release of those goods or detain them before having been notified of a decision granting an application with respect to those goods.
2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may, without disclosing any information other than the actual or supposed number of items, their nature and images of those items as appropriate, request any person entitled to submit an application concerning the alleged infringement of intellectual property rights to provide them with any relevant information.
3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to the holder of the goods. The declarant or the holder of the goods shall be given the opportunity to express his/her views within three working days of dispatch of that communication.
4. The customs authorities shall notify the suspension of the release or the detention of the goods to any person entitled to submit an application concerning the alleged infringement of intellectual property rights within one working day of the suspension of the release or of the detention of the goods.
5. The customs authorities shall grant the release of the goods or put an end to their detention immediately after completion of all customs formalities in the following cases:
  - (a) where they have not identified any person entitled to submit an application concerning the alleged infringement of intellectual property rights within one working day from the suspension of the release or the detention of the goods;
  - (b) where they have not received or have rejected an application in accordance with Article 6(5).

The customs authorities shall notify the declarant or holder of the goods of their decision to suspend the release of the goods or to detain them within one working day of the adoption of their decision.

6. This Article shall not apply to perishable goods.

## *Article 18*

### **Inspection and sampling of goods whose release has been suspended or which have been detained**

1. The customs authorities shall give the holder of the decision granting the application and the declarant or holder of the goods the opportunity to inspect the goods whose release has been suspended or which have been detained.
2. The customs authorities may take samples and may provide samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

Where circumstances allow, the samples shall be returned on completion of the technical analysis and before the goods are released or their detention is ended.

3. The customs authorities shall, upon request and if known, provide the holder of the decision granting the application with the names and addresses of the consignee, the consignor, the declarant or the holder of the goods, the customs procedure and the origin, provenance and destination of goods suspected of infringing an intellectual property right.
4. The conditions of storage of the goods during the period of suspension of release or detention, including provisions regarding the costs, shall be determined by each Member State.

## *Article 19*

### **Permitted use of certain information by the holder of the decision granting the application**

Where the holder of the decision granting the application has received the information referred to in Article 18(3), the holder may only use that information for the following purposes:

- (a) to initiate proceedings to determine whether an intellectual property right has been infringed;
- (b) to seek compensation from the infringer or other persons where goods are destroyed in accordance with Articles 20(3) or 23(3).



## Section 2

### **INITIATION OF PROCEEDINGS AND ANTICIPATED RELEASE OF GOODS**

#### *Article 20*

##### **Initiation of proceedings**

1. Where goods other than those covered by Articles 23 and 24 are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of dispatch of the decision to suspend the release of the goods or to detain them.

In the case of perishable goods suspected of infringing an intellectual property right, the period for initiating the proceedings referred to in the first subparagraph shall be three working days of dispatch of the decision to suspend the release of the goods or to detain them.

2. The customs authorities shall grant the release of the goods or put an end to their detention immediately after completion of all customs formalities where they have not been informed by the holder of the decision granting the application, within the period referred to in paragraph 1, of any of the following:
  - (a) the initiation of proceedings to determine whether an intellectual property right has been infringed;
  - (b) a written agreement between the holder of the decision granting the application and the holder of the goods to abandon the goods for destruction.
3. In the case of an agreement to abandon the goods for destruction referred to in paragraph 2(b), the destruction shall be carried out under customs control at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed.
4. The customs authorities may extend the period referred to in the first subparagraph of paragraph 1 by a maximum of 10 working days upon request by the holder of the decision granting the application in appropriate cases.

In the case of perishable goods, the period referred to in the second subparagraph of paragraph 1 shall not be extended.

#### *Article 21*

##### **Anticipated release of goods**

1. Where the customs authorities have been notified of the initiation of proceedings to determine whether a design, patent, utility model or plant variety right has been infringed and the period

provided for in Article 20 has expired, the declarant or holder of the goods may request the customs authorities to release the goods or put an end to their detention.

The customs authorities shall release the goods or put an end to their detention only where all the following conditions are fulfilled:

- (a) the declarant or holder of the goods has provided a security;
  - (b) the authority competent for determining whether an intellectual property right has been infringed has not authorised precautionary measures;
  - (c) all customs formalities have been completed.
2. The security referred to in paragraph 1(a) shall be provided by the declarant or holder of the goods within 10 working days following the date on which the customs authorities receive the request referred to in paragraph 1.
  3. The customs authorities shall set the security at an amount sufficiently high to protect the interests of the holder of the decision granting the application.
  4. The provision of the security shall not affect the other legal remedies available to the holder of the decision granting the application.

#### *Article 22*

#### **Prohibited customs-approved treatment and use of goods abandoned for destruction**

1. Goods abandoned for destruction under Articles 20, 23 or 24 shall not be:
  - (a) released for free circulation;
  - (b) brought out of the customs territory of the Union;
  - (c) exported;
  - (d) re-exported;
  - (e) placed under a suspensive procedure;
  - (f) placed in a free zone or free warehouse.
2. The customs authorities may allow the goods referred to in paragraph 1 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.

## COUNTERFEIT AND PIRATED GOODS

### *Article 23*

#### **Destruction and initiation of proceedings**

1. Goods suspected of being counterfeit goods or pirated goods may be destroyed under customs control, without there being any need to determine whether an intellectual property right has been infringed under the law of the Member State where the goods are found, where all of the following conditions are fulfilled:
  - (a) the holder of the decision granting the application has informed the customs authorities in writing of his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them;
  - (b) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them.
2. Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the periods set out in paragraph 1(b) 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 may deem that the declarant or holder of the goods has agreed to their destruction.

The customs authorities shall inform the holder of the decision granting the application accordingly.

Where the declarant or holder of the goods objects to the destruction of the goods, the customs authorities shall inform the holder of the decision granting the application of such objection.
3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. Samples may be taken prior to destruction.
4. Where there is no agreement to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them.

The customs authorities may extend the periods referred to in the first subparagraph by a maximum of 10 working days upon request by the holder of the decision granting the application in appropriate cases.

In the case of perishable goods those periods shall not be extended.

5. The customs authorities shall grant the release of the goods or put an end to their detention, as appropriate, immediately after completion of all customs formalities, where they have not received information from the holder of the decision granting the application on any of the following:
  - (a) his/her agreement to the destruction within the periods referred to in paragraph 1(a);
  - (b) the initiation of proceedings to determine whether an intellectual property right has been infringed within the period referred to in paragraph 4.

#### *Article 24*

##### **Specific procedure for the destruction of goods in small consignments**

1. This Article applies to goods where all of the following conditions are fulfilled:
  - (a) goods suspected of being counterfeit or pirated goods;
  - (b) goods that are not perishable goods;
  - (c) goods covered by a decision granting an application;
  - (d) goods transported in small consignments.
2. Article 16 (3), (4) and (5) and Article 18(2) shall not apply.
3. When notifying, within one working day after its adoption, the decision to suspend the release of the goods or to detain them, the customs authorities shall inform the declarant or holder of the goods of the following:
  - (a) the customs authorities' intention to destroy the goods,
  - (b) the rights of the declarant or holder of the goods under paragraphs 4 and 5.
4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within 20 working days of dispatch of the decision to suspend the release of the goods or to detain them.
5. The goods concerned may be destroyed where, within 20 working days of dispatch of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.
6. Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the period referred to in paragraph 5, nor notified his/her opposition to destruction to

the customs office that adopted the decision to suspend the release of the goods or to detain them, the customs authorities may deem that the declarant or holder of the goods has agreed to their destruction.

7. The destruction shall be carried out under customs control and at the expense of the customs authorities.
8. Where the declarant or holder of the goods objects to the destruction of the goods, the customs authorities shall inform the holder of the decision granting the application of such objection and of the number of items and their nature, including images of those items where appropriate.
9. The customs authorities shall grant the release of the goods or put an end to their detention, as appropriate, immediately after completion of all customs formalities where they have not received information from the holder of the decision granting the application on the initiation of proceedings to determine whether an intellectual property right has been infringed within 10 working days of dispatch of the information referred to in paragraph 8.
10. The Commission shall be empowered to adopt delegated acts in accordance with Article 30 concerning the thresholds that define small consignments for the purpose of this Article.

#### CHAPTER IV

## LIABILITY, COSTS AND PENALTIES

### *Article 25*

#### **Liability of the customs authorities**

Without prejudice to the applicable legislation of the Member States, the decision granting an application shall not entitle the holder of that decision to compensation in the event that goods suspected of infringing an intellectual property right are not detected by a customs office and are released, or no action is taken to detain them.

### *Article 26*

#### **Liability of the holder of the decision granting the application**

Where a procedure duly initiated pursuant to this Regulation is discontinued owing to an act or omission on the part of the holder of the decision granting the application or where the goods in question are subsequently found not to infringe an intellectual property right, the holder of the decision granting the application shall be liable towards the persons involved in a situation referred to in Article 1(1) in accordance with the legislation of the Member State where the goods were found.

## *Article 27*

### **Costs**

1. Where requested by the customs authorities, the holder of the decision granting the application shall reimburse all costs incurred by the customs administration in keeping goods under customs supervision in accordance with Articles 16 and 17 and in destroying goods in accordance with Articles 20 and 23.
2. This Article shall be without prejudice to the right of the holder of the decision granting the application to seek compensation from the infringer or other persons in accordance with the legislation of the Member State where the goods were found.
3. The holder of a decision granting a Union application shall provide and pay for any translation required by the customs authorities which are to take action concerning the goods suspected of infringing an intellectual property right.

## *Article 28*

### **Administrative sanctions**

The Member States shall lay down the rules on administrative sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions provided for must be effective, proportionate and dissuasive.

The Member States shall notify those provisions to the Commission within six months from the date of entry into force of this Regulation and shall notify it without delay of any subsequent amendment affecting them.

## CHAPTER V

# **COMMITTEE, DELEGATION AND FINAL PROVISIONS**

## *Article 29*

### **Committee procedure**

1. The Commission shall be assisted by the Customs Code Committee established by Articles 247a and 248a of Council Regulation (EC) No 2913/92. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

## Article 30

### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 24(10) shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of powers referred to in Article 24(10) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 24(10) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months on the initiative of the European Parliament or the Council.

## Article 31

### Exchange of data on decisions relating to application for action between the Member States and the Commission

1. The competent customs departments shall notify the Commission of the following:
  - (a) applications for action, including any photograph(s), image(s), brochure(s);
  - (b) decisions granting applications;
  - (c) any decisions extending the period during which the customs authorities are to take action or decisions revoking the decision granting the application or amending it;
  - (d) any suspension of a decision granting the application.
2. Without prejudice to the provisions of Article 24(g) of Council Regulation (EC) No 515/97, where the release of the goods is suspended or the goods are detained, the customs authorities shall transmit to the Commission any relevant information, including details on the goods, intellectual property right, procedures and transport.
3. All information referred to in paragraphs 1 and 2 shall be stored in a central database of the Commission.

4. The Commission shall make the relevant information referred to in paragraphs 1 and 2 available to the customs authorities of the Member States in an electronic form.

#### *Article 32*

### **Data protection provisions**

1. The processing of personal data in the central database of the Commission shall be carried out in accordance with Regulation (EC) No 45/2001<sup>26</sup> and under the supervision of the European Data Protection Supervisor.
2. Processing of personal data by the competent authorities in the Member States shall be carried out in accordance with Directive 95/46/EC<sup>27</sup> and under the supervision of the public independent authority of the Member State referred to in Article 28 of this Directive.

#### *Article 33*

### **Periods, dates and time limits**

The rules applicable to periods, dates and time limits set out in Regulation (EEC, Euratom) No 1182/71 of the Council<sup>28</sup> shall apply.

#### *Article 34*

### **Mutual administrative assistance**

The provisions of Regulation (EC) No 515/97 shall apply.

#### *Article 35*

### **Repeal**

Regulation (EC) No 1383/2003 is repealed with effect from XX-XX-20XX.

References to the repealed Regulation shall be construed as references to this Regulation.

#### *Article 36*

### **Transitional provisions**

Applications for action granted in accordance with Council Regulation (EC) No 1383/2003 shall remain valid for the period specified in the decision granting the application during which the customs authorities are to take action and shall not be extended.

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<sup>26</sup> OJ L 8, 12.1.2001, p. 1.

<sup>27</sup> OJ L 281, 23.11.1995, p. 31.

<sup>28</sup> OJ L 124, 8.6.1971, p. 1.



*Article 37*

**Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

However, Article 24(1) to (9) shall apply from XX.XX.20XX.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*