



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 February 2009

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REV 1**

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NOTE

from: General Secretariat
to: Delegations

Subject: Draft Council Resolution on the EU Customs Action Plan to Combat IPR
Infringements for the Years 2009 to 2012

Delegations will find attached the revised text of the above draft Council Resolution, as agreed by the Working Party on Customs Union (Customs Legislation and Policy) at its meeting on 3 February 2009.

DRAFT COUNCIL RESOLUTION

on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012

THE COUNCIL OF THE EUROPEAN UNION,

CONSIDERING

1. the Commission's strategic report¹ and the new cycle of the renewed Lisbon strategy for growth and jobs (2008-2010) launched by the European Council on 14 March 2008;
2. the Commission Communication of 16 July 2008 on an industrial property rights strategy for Europe;
3. Council Regulation No 1383/2003 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;
4. the Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan;

¹ Communication from the Commission to the European Council "Strategic report on the renewed Lisbon Strategy for growth and jobs: launching the new cycle (2008-2010) – Keeping up the pace of change" COM(2007) 803 final.

TAKING NOTE OF

5. the growing threat posed by counterfeit goods to health and safety and to the environment;
6. the latest trends in the area of counterfeiting and piracy, especially with regard to the new challenges posed by the globalisation of world trade and Internet sales;
7. the need for customs to address these issues more effectively, which requires reinforced administrative cooperation, and closer cooperation between customs and business;

ENDORSES

8. the EU customs action plan to combat IPR infringements for the years 2009 to 2012 set out in the Annex, prepared by the Presidency in co-operation with the Member States and the Commission following on from the Council Resolution mentioned under point 4;

INVITES

9. the Member States and the Commission to implement the action plan effectively;
10. the Commission, in collaboration with the Presidency, to conduct an annual review of the implementation of the action plan;
11. the Commission, in co-operation with the Member States, to submit to the Council in 2012 a final report on the implementation of the action plan.

EU Customs Action Plan to Combat IPR Infringements 2009 - 2012

Introduction

The Commission and the Member States reviewed activities in the EU relating to customs enforcement of intellectual property rights (IPR) from 2005-2008, for the period of the previous anti-counterfeiting² customs action plan. The implementation of Council Regulation 1383/2003 and the activities contained in the action plan were considered to have provided a successful response to the trade in counterfeit goods. The annual statistics published by the Commission showed an upward trend in customs activity, as well as increased cooperation with right holders.

Nevertheless, it was recognised that the increasing diversity of products seized and new trends, such as the importation of small consignments resulting from Internet sales, indicated that further measures were required and that there was no room for complacency. The need to respond to this growing problem was underlined as the trade in counterfeit goods represented a real threat to each citizen and society as a whole.

The Commission considered that the efforts undertaken by the customs authorities to protect the economic interests and the health and safety of citizens must continue and a further action plan was recommended. Such a plan should cover the main areas contained in the previous plan, namely legislation, operational performance, industry cooperation, international cooperation, and communication. The new plan should take into account relevant developments in the customs area, such as the modernised Community Customs Code, as well as external factors, such as the increase in sales over the Internet. In particular, the new EU Action Plan should focus on:

- improving and where necessary modifying, existing IPR legislation;
- improving cooperation with right holders;

² This document uses the term ‘counterfeiting’ as a general term to cover infringements of intellectual property rights covered by the provisions of Council Regulation No. 1383/2003.

- strengthening operational cooperation between customs in the EU and with third countries;
- developing further international cooperation on IPR enforcement;
- improving publicity and awareness; and
- responding to the problem of Internet sales and delivering ad hoc training to customs officers.

The new plan should also take into account other new trends and forms employed in the distribution of counterfeit goods dangerous to society, resulting from the globalisation of world trade, and growing involvement of organised crime.

Member States and the Commission collaborated closely on a range of issues related to the examination of the current framework for customs activities related to IPR enforcement. All Member States indicated that IPR protection represented a clear priority for them and many considered that in order to make the activities of customs in IPR more efficient, it would be appropriate to develop and start using a joint information database containing the approved applications for action.

The Council, in its Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan, invited the Commission and the Member States to submit a new anti-counterfeiting customs plan for the period 2009-2012.

Conclusions of the High Level Seminar on the fight against counterfeiting

The examination of customs activities related to IPR enforcement culminated in a High Level Seminar organised in Paris on 25-26 November 2008, towards the end of the French Presidency.

The aim of this seminar was to consider the customs response to the fight against counterfeiting. The Customs Directors General of the Member States and the Commission concluded that the future customs action plan should tackle four main challenges presented by counterfeiting:

1. Dangerous counterfeit goods

The consumer should be informed of the consequences, sometimes dramatic, associated with counterfeit goods, by awareness-raising campaigns at the EU level, to which customs could be associated. Legislation and procedures at both the Community and national level should, where necessary, be modified to strengthen the ability of customs to intercept counterfeit goods. Particular attention should be given to the harmonisation of measures relating to simplified procedures and small quantities of infringing goods.

2. Organised crime

A European Observatory, where customs could make a significant contribution and where best practices could be exchanged, would make a regular evaluation and analysis of the growing phenomenon of organised crime in counterfeiting possible. Cooperation between stakeholders should be reinforced through the development of electronic information exchange systems. Risk analysis at the Community level is necessary and should be developed, taking advantage of existing mechanisms. Joint European customs actions will be developed, focussing on themes or particular sectors. The essential partnership between customs and industry will be strengthened.

3. Globalisation of counterfeiting

The customs action plan with China, which has been finalised by the Commission services, would allow the exchange of information, as well as officials with this country to fight against counterfeiting. Member States and the Commission will continue to work towards the adoption of effective border measures in the current negotiations on the ACTA, the proposed anti-counterfeiting trade agreement. International cooperation in the form of information exchange and joint operations will be strengthened with key partner countries.

4. Sale of counterfeits over the Internet

All Member States should examine carefully the phenomenon of sales over the Internet and share “best practices”. Seminars and working groups will be organised in order to conclude memoranda of understanding with Internet platforms and the financial institutions involved in on-line payments, to exchange information, and to share practices on monitoring and identifying professional sellers of counterfeits.

The EU Customs Action Plan to Combat IPR Infringements 2009-2012

It is recognised that there are issues having an impact on the work and efficiency of customs, where customs administrations are, at least to a certain extent, dependent on developments in other policy areas, especially the harmonisation of legislation relating to intellectual property rights, as well as the sanctions applicable to the trade in IPR infringing goods. Furthermore, it is necessary to strengthen cooperation with other law enforcement authorities at the national level. Those requirements are preconditioned on the Member States recognising the threats ensuing from counterfeiting and on their sharing a common interest in fighting these threats in a coordinated and harmonised way. Moreover, a new EU Action Plan could easily be used as a good basis for drafting a national Action Plan to combat IPR infringements in each of the Member States.

It is also noted that the Commission and the Member States' Customs Administrations have a significant contribution to make towards the European Anti-Counterfeiting Observatory in combating the trade in counterfeit goods. Appropriate information on customs activities related to border enforcement of IPR should be provided to the Observatory, once it has been established.

Review mechanism

The Commission also considered that a review mechanism should be put in place to monitor the implementation of the activities contained in the plan. To this end, a review will be presented by the Commission, in collaboration with the Council Presidency at the end of each year of the Action Plan. In the last year of the Action Plan, a more detailed report will be prepared by the Commission, together with the Member States.

Conclusion

The 2009-2012 EU Customs Action Plan to combat IPR infringements is annexed and constitutes a response to the Council's invitation, providing for extensive activities by customs to combat the trade in IPR infringing goods.

	Event	Lead Responsibility	Progress
1.	Legislation and data tools		
1.1	Review Council Regulation (EC) No.1383/2003 and the relevant implementing provisions contained in Commission Regulation (EC) No. 1891/2004 with the aim to clarify and harmonise interpretation, in particular with regard to:	European Commission	
	<ul style="list-style-type: none"> External Transit, Trans-shipment - this point needs to be examined in conjunction with other legislation, with a view to the possible establishment of an infringement in cases where fake goods are found in transit; 		
	<ul style="list-style-type: none"> Provisions concerning small consignments involving importations by passengers and via the post/fast parcels - this point may need to be examined in conjunction with other legislation; 		
	<ul style="list-style-type: none"> Provisions concerning the application of the simplified procedure (Art. 11 of Council Regulation (EC) No. 1383/2003); 		
	<ul style="list-style-type: none"> Costs of storage and destruction and the concerns raised by right holders regarding their financial responsibilities under current legislation; 		
	<ul style="list-style-type: none"> Donations to charities and recycling as alternatives to the destruction of counterfeit goods; 		
	<ul style="list-style-type: none"> Definition of counterfeit goods, in relation to a potential extension of the scope of Council Regulation (EC) No. 1383/2003; 		
	<ul style="list-style-type: none"> Provision of additional statistics relating to the value of seizures to ensure a high-quality collection of data about seized goods and application of this procedure in drafting risk profiles; 		
	<ul style="list-style-type: none"> Introduce the possibility to suspend the application for action and other measures against inactivity or abuse of information by right holders; 		

	<ul style="list-style-type: none"> Introduction of any required additional provisions with regard to the development of an electronic system for applications for action. 		
1.2	Prepare proposal to modify EC customs legislation, in accordance with conclusions of review of legislation.	European Commission	
1.3	Develop and introduce a Community-level electronic system for applications for action to replace current paper distribution.	European Commission	
1.4	Develop and introduce a database for recording customs seizures and related statistics.	European Commission	
2.	Operational performance		
2.1	Develop activities for sharing best practices, e.g., benchmarking exercises, training and exchange visits to improve the mutual sharing and exchange of relevant information by experts from the individual Member States.	European Commission and/or Member States	
2.2	EU-level actions, based on the Community Risk Management System, with the aim of improving the effectiveness of anti-counterfeiting controls, especially at the EU external border.	European Commission	
2.3	EU-coordinated activities for:	European Commission	
	<ul style="list-style-type: none"> Dangerous products, such as pharmaceuticals, representing the highest risks to the health and safety of consumers and to the environment; 		
	<ul style="list-style-type: none"> Selective IPR targeted joint operations that will focus on counterfeiting in connection with significant cultural, social, and sporting events (Olympics etc.). 		
2.4	Promote use of the RIF (Risk Information Form) for wider and more efficient utilisation in the area of IPR enforcement:	European Commission	
	<ul style="list-style-type: none"> Establish dedicated group of RIF users; 		
	<ul style="list-style-type: none"> Promote and establish a national network of experts at the operational level. 		

2.5	Examine implications of growing problem concerning the trade in counterfeit goods via the Internet:	European Commission and Member States	
	<ul style="list-style-type: none"> • Create Working Group of experts to examine the distribution of counterfeit goods via the Internet and to promote cooperation between the Member States on this issue; 		
	<ul style="list-style-type: none"> • Organise seminars for customs and stakeholders with a special emphasis on detailed analyses of the Internet phenomenon and on identifying <i>best practices</i> in this area. 		
2.6	Develop training material on IPR enforcement, including creation of e-learning courses on IPR and organise training courses as appropriate.	European Commission and Member States	
2.7	Compile and maintain an updated list of IPR customs experts from the Member States.	European Commission	
3.	Business cooperation		
3.1	Promote submission of applications for action by right holders to raise awareness of this option on the side of right holders.	European Commission and Member States	
3.2	Promote conclusions of special arrangements with right holders and other stakeholders, concerning cooperation and exchange of information:	European Commission Member States and right holders	
	<ul style="list-style-type: none"> • Conclude Memoranda of Understanding with relevant stakeholders, such as Internet service providers; 		
	<ul style="list-style-type: none"> • Collaborate with the Commission to improve exchange of information and experiences. 		
3.3	Organise for industry/right holders:	European Commission and Member States	

	<ul style="list-style-type: none"> Targeted seminars (such as training, regional and operational seminars) with emphasis on new trends and forms of distribution of counterfeit goods, particularly dangerous commodities and Internet sales; 		
	<ul style="list-style-type: none"> Regular meetings at both the EU and national level organised according to their specific requirements and needs. 		
3.4	Promote introduction of electronic exchange of information with the private sector, to the greatest possible extent.	European Commission and Member States	
3.5	Promote use of red alert/trend forms to keep customs informed about the latest trends and threats regarding counterfeiting.	European Commission and Member States	
3.6	Provide information to right holders concerning customs procedures relating to IPR enforcement.	European Commission and Member States	
4.	International cooperation		
4.1	Support ACTA (Anti-Counterfeiting Trade Agreement) negotiations:	European Commission and Member States	
	<ul style="list-style-type: none"> Provide for ambitious provisions concerning border enforcement; 		
	<ul style="list-style-type: none"> Provide for customs experts' group to manage implementation of border measures. 		
4.2	Support Action Plan with China:	European Commission and Member States	
	<ul style="list-style-type: none"> Conclude concrete action plan; 		
	<ul style="list-style-type: none"> Implement key activities of the action plan; 		
	<ul style="list-style-type: none"> Review the level of its implementation (annually). 		

4.3	Enhance cooperation with key partners (e.g. US, Japan and others):	European Commission and Member States	
	<ul style="list-style-type: none"> Strengthen exchange of information (statistical data, <i>best practices</i> etc.); 		
	<ul style="list-style-type: none"> Organise joint actions such as Joint Customs Operations; 		
	<ul style="list-style-type: none"> EC coordination in international fora, including the WTO and the WCO; 		
	<ul style="list-style-type: none"> EC coordination of capacity building activities. 		
5.	Raising awareness and communication		
5.1	Develop awareness-raising activities:	European Commission and Member States	
	<ul style="list-style-type: none"> Campaigns on the results achieved by Customs in the IPR area at the EU and national level relating to health and safety aspects, such as the pharmaceutical sector. Consumers should be made aware of the risks associated with the purchase of counterfeit goods; 		
	<ul style="list-style-type: none"> Leaflets and posters at the airports, ports, train stations and border crossings. TV spots; information notices; pop-up alerts on Internet; mass media and exhibitions; 		
	<ul style="list-style-type: none"> Combat sales via the Internet by stressing the risk connected with Internet sales. 		
5.2	Promote cooperation on communication with other enforcement agencies.	Member States	
5.3	Coordination of communication actions at the EU level, including:	European Commission	
	<ul style="list-style-type: none"> Annual publication of statistics; 		
	<ul style="list-style-type: none"> Awareness days (open days, anti-counterfeiting day, etc.); 		
	<ul style="list-style-type: none"> Press releases; 		

	<ul style="list-style-type: none"> Publishing of specific cases (seizures, new trends, etc.). 		
5.4	Strengthen IPR enforcement content of Commission and national websites.	European Commission and Member States	
