



Council of the European Union
General Secretariat

**Interinstitutional files:
2017/0353(COD)**

Brussels, 24 January 2019

WK 1092/2019 INIT

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WORKING PAPER

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From:	BG delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	BG comments on counterfeiting (following the WP meeting on 21 January)

EP Amendments on counterfeit products – RO PCY Proposal 21.01.2019

	Commission Proposal	EP Mandate	Council General Approach	Draft Agreement
	RECITAL 13 a (new)			
22A		<i>(13a) While this Regulation does not deal with the protection of intellectual property rights, it should nevertheless be borne in mind that often counterfeit products do not comply with the requirements set out in the Union harmonisation legislation, pose serious risks to health and safety of end-users, distort competition, endanger public interests and support other illegal activities. Therefore Member States should continue taking effective measures in preventing the entry of counterfeit products to the Union's market pursuant to Regulation (EU) 608/2013. In the interest of efficiency, customs authorities should be able to use their expertise and relevant information on risks, related to products infringing an intellectual property rights, also for the purpose of effective market surveillance of products entering the Union's market pursuant to this Regulation.</i> [AM 11]		<i>(13a) While this Regulation does not deal with the protection of intellectual property rights, it should nevertheless be borne in mind that often counterfeit products do not comply with the requirements set out in the Union harmonisation legislation, pose serious risks to health and safety of end-users, distort competition, endanger public interests and support other illegal activities.</i> <i>Therefore Member States should continue taking effective measures in preventing the entry of counterfeit products to the Union's market pursuant to Regulation (EU) 608/2013.</i> <i>To this end, this Regulation should enable data sharing between customs authorities and market surveillance authorities on counterfeit products likely to be non-compliant.</i>

Commented [a1]: Although BG is strongly against counterfeit products, we could show some flexibility on text in recital – row 22A.
Some redrafting with proper wording should be considered – “such as information related to goods suspected of infringing an intellectual property right, that are also likely to be non-compliant”. See comments on row 407A.

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	Commission Proposal	EP Mandate	Council General Approach	Draft Agreement
ARTICLE 12 - PARAGRAPH 1 b (new)				
157D		1b. Market surveillance authorities shall establish appropriate and effective communication and cooperation mechanisms with other market surveillance authorities and other relevant authorities within the Union. <i>With this regard, market surveillance authorities shall also develop appropriate and effective communication and cooperation mechanisms with customs authorities for the identification and examination of potential risks related to counterfeit products and withdrawal of such products from the market.</i> AM 83		Text moved to paragraph 3b row 168 B
ARTICLE 12 - PARAGRAPH 2 - POINT a				
159	(a) the identified risks associated with:	(a) the identified risks, which have the potential to affect	(a) the identified risks associated with:	<u>(a) possible hazards and non-compliances associated with the product and when</u>

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		<i>adversely health and safety of persons in general, health and safety in the workplace, consumer protection, the environment and public security</i>, associated with: AM 85		<u>available, its occurrence on the market;</u> (b) potential risks related to counterfeit products; [counterfeiting moved from EP text in Article 17 paragraph 1 point (c) to risk-based approach]
ARTICLE 12 - PARAGRAPH 3 b (new)				
168B				<u>3b. Market surveillance authorities shall establish appropriate and effective communication and cooperation mechanisms with other market surveillance authorities and other relevant authorities, in particular, authorities designated under Article 26(1), in other Member States.</u> <u>With a view to ensuring communication and coordination with their counterparts in other Member</u>

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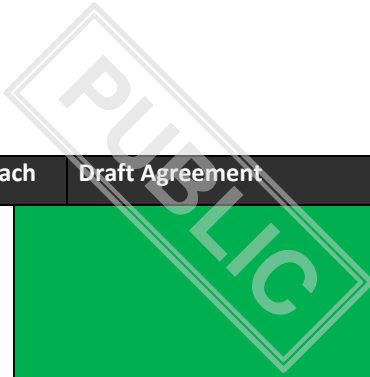
	Commission Proposal	EP Mandate	Council General Approach	Draft Agreement
				<u>States, market surveillance authorities shall actively participate in administrative coordination groups referred to in Article 32(6).</u> <u>Market surveillance authorities shall also develop communication and cooperation mechanisms with customs authorities for the identification and examination of potential risks related to counterfeit products and withdrawal of such products from the market.</u>
ARTICLE 14 - PARAGRAPH 1				
187	1. Member States shall confer on their market surveillance authorities the powers of market surveillance, investigation and enforcement necessary	1. Member States shall confer on their market surveillance authorities the powers of market surveillance, <i>including the market surveillance of counterfeit products and products sold online</i> , investigation and enforcement necessary for the	1. Member States shall confer on their market surveillance authorities the powers of market surveillance, investigation and enforcement necessary for the application of this	1. Member States shall confer on their market surveillance authorities the powers of market surveillance, investigation and enforcement necessary for the application of this Regulation and for the application of the Union

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	for the application of this Regulation and for the application of the Union harmonisation legislation set out in the Annex to this Regulation.	application of this Regulation and for the application of the Union harmonisation legislation set out in the Annex to this Regulation. and shall provide them with the necessary resources in that regard. AM 100	Regulation and for the application of the Union harmonisation legislation set out in the Annex to this Regulation.	harmonisation legislation set out in the Annex to this Regulation.
ARTICLE 17 - PARAGRAPH -1 (new)				
221A		-1. Market surveillance authorities shall take appropriate measures, including ensuring that the making available of the product on the market is prohibited or restricted or that a product is withdrawn or recalled from the market if, when it is being used either in accordance with its intended purpose or under conditions that can be reasonably foreseen and it is properly installed and maintained, either of the following conditions would be met:		See Article 15 paragraphs -1 and 1cb

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		<i>(a) the product is liable to compromise the health or safety of end-users;</i> <i>(b) the product does not conform to applicable requirements under Union harmonisation legislation;</i> <i>(c) the product is a counterfeit.</i> <i>For the purpose of this paragraph, market surveillance authorities may ask economic operator to provide information on which other product models have the same technical characteristics as a product in question that are relevant for compliance with the applicable requirements under Union harmonisation legislation.</i> AM 126		

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				 <i>This part is moved to Article 14 (powers of economic operators)</i>
ARTICLE 27 - PARAGRAPH 1 - POINT d a (new)				
311A		<i>(da) the product is a counterfeit and is subject to the procedures pursuant to Regulation (EU) 608/2013;</i> AM 169		Maintain GA
ARTICLE 34 - PARAGRAPH 5 a (new)				
407A		<i>5a. The information system shall allow file transmission between market surveillance authorities, and shall be the preferred instrument for requests for information</i>	<u>5a. The Commission shall develop an electronic interface to enable the transmission of data between national custom</u>	<u>5a. The Commission shall develop an electronic interface to enable the transmission of data, including identification and examination of potential</u>

Commented [A2]: We are sceptic about row 407A. Customs authorities also cannot perform either identification or examination of risks. Simply incorporating this wording here, is not good as it is not appropriate wording first – it should at least read as “including information related to goods suspected of infringing an intellectual property right”. Check the text of Regulation on counterfeit products. Art. 17 and 18 – “Where the customs authorities identify goods suspected of infringing an intellectual property right ...”

Pursuant to the concept of Regulation 608/2013 in cases of goods suspected by the customs authorities of infringing an intellectual property right, the goods are only detained or suspended for release at the customs but the holder is the one who can identify them.

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		<i>referred to in Article 22.</i> AM 198	<u>systems and the information and communication system.</u> <u>This interface shall be in place [four years] from the date of adoption of the implementing acts.</u>	<i>risks related to counterfeit products, between national custom systems and the information and communication system. This interface shall be in place [four years] from the date of adoption of the implementing acts.</i>

Commented [A3]: Check the text of Regulation on counterfeit products. Art. 22.