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# **WORKING PAPER**

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## **WORKING DOCUMENT**

From:	Presidency
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	Counterfeiting: proposal from the EP of 24.01.2019

	Commission Proposal	EP Mandate	Council General Approach	Draft Agreement
RECIT	ΓAL 13 a (new)			
22A		(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.  [AM 11]		(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 endusers, 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.  To this end, this Regulation should enable data sharing between customs authorities and market surveillance authorities on counterfeit products likely to be non-compliant.

	Commission Proposal EP Ma	andate	Council General Approach	Draft Agreement
	(41) In that context, it is	(41) In that context, it is	(41) <del>In that context, i</del> <u>I</u> t is	(41) <del>In that context, i</del> <u>l</u> t is
	necessary to maintain and	necessary to maintain and	necessary to maintain and	ecessary to maintain and
	further develop the existing	further develop the existing	further develop the existing	further develop the existing
	Information and	Information and	Information and Communication	//nformation and
	Communication System for	Communication System for	System for Market Surveillance	Communication System for
	Market Surveillance (ICSMS).	Market Surveillance (ICSMS)	(ICSMS). For the purpose of	Market Surveillance (ICSMS).
	For the purpose of collecting	<del>. For</del> for the purpose of	collecting information relating to	For the purpose of collecting
	information relating to the	collecting information	the enforcement of Union	information relating to the
	enforcement of Union	relating to the enforcement	harmonisation legislation on	enforcement of Union
	harmonisation legislation on	of Union harmonisation	products, ICSMS should be	harmonisation legislation on
	products, ICSMS should be	legislation on products,	upgraded and be accessible to	products, ICSMS should be
50	upgraded and be accessible to	ICSMS should be upgraded	the Commission, single liaison	upgraded and be accessible to
	the Commission, single liaison	and be accessible to the	offices, <del>and</del> market surveillance	the Commission, single liaison
	offices, and market surveillance	Commission, single liaison	and customs authorities, as well	offices, and market surveillance
	authorities, as well as to the	offices, and market	as to the general public through a	and customs authorities, as
	general public through a public	surveillance authorities, as	<del>public interface</del> . Furthermore, an	well as to the general public
	interface. Furthermore, an	well as to the general public	electronic interface should be	through a public interface.
	electronic interface should be	through a public interface.	developed to allow effective	Furthermore, an electronic
	developed to allow effective	Furthermore, an electronic	exchange of information	interface should be developed
	exchange of information	interface should be	between national <del>customs</del>	to allow effective exchange of
	between national customs	developed to allow	systems <u>of customs</u> and market	information between national
	systems and market surveillance	effective exchange of	surveillance authorities. With	customs systems of customs
	authorities.	information between	regard to the cases of mutual	and market surveillance
		national customs systems	assistance requests the single	authorities <u>, <i>including on</i></u>
			liaison offices should give any	counterfeit products. With

	Commission Proposal	EP Mandate	Council General Approach	Draft Agreement
		and market survei authorities.  AM 35		regard to the cases of mutual assistance requests the single liaison offices should give any soport necessary for coperation between the relevant authorities. Therefore, ICSMS should provide the functions enabling an automated indication to the single liaison offices when the period of time according to Article 24(2) is not met. When sectoral legislation already foresees electronic systems for cooperation and data exchange, as is the case for example for medical devices by the EUDAMED system, those systems should be kept in use when appropriate.
157D	CLE 12 - PARAGRAPH 1 b (ne	1b. Market surveillan authorities shall establis	h	

	Commission Proposal	EP Mandate	Council General Approach	Draft Agreement
		communication and cooperation mechanisms with other market surveillance authorities and other relevant authorities within the Union.  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.  AM 83		Text moved to paragraph 3b row 168 B
ARTIC	LE 12 - PARAGRAPH 2 - POI	NT a		
159	(a) the identified risks associated with:	(a) the identified risks, which have the potential to affect adversely health and safety of persons in general, health and safety in the workplace, consumer	with:	(a) possible hazards and non- compliances associated with the product and when available, its occurrence on the market;

Commission Proposal EP Mandate protection, the environment and public security, associated with:  AM 85  ARTICLE 12 - PARAGRAPH 3 b (new)	Draft Agreement   (b)   potential   risks   related   to   counterfeit   products;   [counterfeiting   moved   from   EP   text   in   Article   17   paragraph   1   point   (c)   to   risk-based   approach]     3b.   Market surveillance
ARTICLE 12 - PARAGRAPH 3 b (new)	
168B	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.  With a view to ensuring communication and coordination with their counterparts in other Member States, market surveillance authorities shall actively participate in administrative coordination groups referred to in Article 32(6).

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				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.
ARTIC	LE 14 - PARAGRAPH 1			
187	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 harmonisation legislation set out in the Annex to this Regulation.	1. Member States shall confer on their market surveillance authorities the powers of market surveillance, including the market surveillance of counterfeit products and products sold online, investigation and enforcement necessary for the 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	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 harmonisation legislation set out in the Annex to this Regulation.	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 harmonisation legislation set out in the Annex to this Regulation.

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ARTIC	LE 17 - PARAGRAPH -1 (ne	w)		
221A		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:  (a) the product is liable to compromise the health or safety of end-users;  (b) the product does not conform to applicable requirements under Union harmonisation legislation;  (c) the product is a counterfeit.  For the purpose of this paragraph, market surveillance authorities may ask economic operator to provide		See Article 15 paragraphs -1 and 1cb

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	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.		
	AM 126		
			This part is moved to Article 14 (powers of economic operators)

	Commission Proposal	EP Mandate	Col	uncil Gener	al Approach	Draft Agreement
296	Where, in relation to products subject to Union harmonisation legislation that are either in temporary storage or placed under a customs procedure other than release for free circulation, customs authorities at the first point of entry have reason to believe that those products present a risk, they shall transmit all relevant information to the competent customs office of destination.	Where, in relation to products subject to Union harmonisation legislation that are either in temporary storage or placed under a customs procedure other than release for free circulation, customs authorities at the first point of entry have reason to believe that those products are not compliant with applicable Union legislation or present a risk, they shall transmit all relevant information to the competent customs office of destination.	Where, in relation to products subject to that are either in tenstorage or placed uncustoms procedure of than release for free circulation, customs authorities at the first of entry have reason believe that those propresent a risk, they stransmit all relevant information to the competent customs of destination.	Union ation mporary ider a pother continuity in to products shall in office	where in lation to public to Unit harm egistion that an eithempore vistor age or inder a customs procedulation, customs and the first point of enterson to believe that products are not compared to the publicable Union egislation or present they shall transmit all information to the consustoms office of destination on counterproducts.	products conisation her in placed edure free uthorities try have those pliant a risk, relevant inpetent ination, include
		AM 160				

	Commission Proposal	EP Mandate		Council Gen	eral Approach	Draft Agre	eement	
ARTIC	LE 27 - PARAGRAPH 1 - POI	NT d a (new)						
311A		(da) the product is a counterfeit and is subject to the procedures pursuant to Regulation (EU) 608/2013;		Maintain Council m		cil mandate		
ARTICL	E 34 - PARAGRAPH 4							
405	4. Where relevant for the enforcement of Union harmonisation legislation and for the purposes of minimising risk and combating fraud, customs authorities shall extract from national customs systems and transmit to the information and communication system data relating to the placing of products under the customs procedure 'release for free	4. Where relevant for the enforcement of Union harmonisation legislation and for the purposes of minimising risk and combating fraud, customs authorities shall extract from national customs systems and transmit to the information and communication system data relating to the placing of products under the customs procedure 'release for free circulation' and the results	enforcement harmonisation the purrisk and concustoms are extract from systems are information communication placinged of the custom frelease for the properties of the custom frelease for the custom for the custom frelease for the custom for the custom frelease for the custom	elevant for the ent of Union tion legislation and poses of minimising mbating fraud, athorities shall m national customs ad transmit to the ent and eation system data products the of products under as procedure of free circulation's sults of controls	4. Where relevant enforcement of Unharmonisation leg the purposes of mand combating frawhenever possible to counterfeit produthorities shall enational customs stransmit to the informunication syrelating to the plaunder the customs frelease for free cithe results of containing to the plaunder the customs free citheresults of containing to the results of containing to the plaunder the customs free citheresults of containing to the plaunder the customs free citheresults of containing the purpose of the results of containing the purpose of the	nion islation and for inimising risk ud, including, e, risks related ducts, customs extract from systems and formation and estem data cing of products s procedure rculation' and		

	<b>Commission Proposal</b>	EP Mandate	Council Ger	ieral Approach	Draft Agreement
	circulation' and the results of controls related to product safety.	of controls related to product safety.	related to product safety the enforcement of Union harmonisation legislation and transmit it to the information and communication system.	product safety and transmitted	
ARTICI	LE 34 - PARAGRAPH 4				
406	The Commission, in the context of the EU Single Window environment for customs, shall develop an electronic interface to enable the transmission of such data. This interface shall be in place [four years] from the date of adoption of the implementing acts.	The Commission, in the context of the EU Single Window environment for customs, shall develop an electronic interface to enable the transmission of such data. This interface shall be in place [four years] from the date of adoption of the implementing acts.	The Commission, in the context of the EU Single Window environment for customs, shall develop an electronic interface to enable the transmission of such data. This interface shall be in place [four years] from the date of adoption of the implementing acts.	5a. The Commission, in context of the EU Single environment for custor develop an electronic in enable the transmission between national custor and the information and communication system interface shall be in plant years] from the date of of the implementing according to the implementation	e-Window ms, shall nterface to n of data om systems nd n. This nce [four f adoption cts.
ARTICI	LE 34 - PARAGRAPH 5				
407	5. Market surveillance authorities shall recognise the validity of and shall	5. Market surveillance authorities shall recognise the validity of and shall	5. Market surveillance authorities shall recognise the validity of and shall make use	5. Market surveillance a shall recognise the valid shall make use of test re	dity of and

	<b>Commission Proposal</b>	EP Mandate	Council Gen	eral Approach	Draft Agre
	make use of test reports prepared by or for their counterparts in other Member States and which have been entered into the information and communication system.	make use of test reports prepared by or for their counterparts in other Member States and which have been entered into the information and communication system.	of test reports prepared by or for their counterparts in other Member States and which have been entered into the information and communication system.	prepared by or for the counterparts in other states and wich have energy into the info communication systems.	r Member ve been rmation and
ARTICI	E 34 - PARAGRAPH 5 a (new)				
407A		5a. The information system shall allow file transmission between market surveillance authorities, and shall be the preferred instrument for requests for information referred to in Article 22.  AM 198	5a. The Commission shall develop an electronic interface to enable the transmission of data 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.	(para. 5a Council text para. 4 row 406 para. 5a EP text part and moved to para. 1	ially redrafted