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

EP Amendments on counterfeit products

	Commission Proposal	EP Mandate	Council General Approach	Draft Agreement
RECITAL 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 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.*** ***To this end, this Regulation should enable data sharing between customs authorities and market surveillance authorities on counterfeit products likely to be non-compliant.***

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50	(41) In that context, ***it is necessary to maintain and further develop the existing Information and Communication System for Market Surveillance (ICSMS)***. For the purpose of collecting information relating to the enforcement of Union harmonisation legislation on products, ICSMS should be upgraded and be accessible to the Commission, single liaison offices, and market surveillance authorities, as well as to the general public through a public interface. Furthermore, an electronic interface should be developed to allow effective exchange of information between national customs systems and market surveillance authorities.	(41) In that context, ~~it is necessary to maintain and further develop the existing Information and Communication System for Market Surveillance (ICSMS) . For~~ for the purpose of collecting information relating to the enforcement of Union harmonisation legislation on products, ICSMS should be upgraded and be accessible to the Commission, single liaison offices, and market surveillance authorities, as well as to the general public through a public interface. Furthermore, an electronic interface should be developed to allow effective exchange of information between national customs systems	(41) ~~In that context, i~~It is necessary to maintain and further develop the existing Information and Communication System for Market Surveillance (ICSMS). For the purpose of collecting information relating to the enforcement of Union harmonisation legislation on products, ICSMS should be upgraded and be accessible to the Commission, single liaison offices, ~~and~~ market surveillance **and customs** authorities~~, as well as to the general public through a public interface~~. Furthermore, an electronic interface should be developed to allow effective exchange of information between national ~~customs~~ systems **of customs** and market surveillance authorities. **With regard to the cases of mutual assistance requests the single liaison offices should give any**	(41) ~~In that context, i~~It is necessary to maintain and further develop the existing Information and Communication System for Market Surveillance (ICSMS). For the purpose of collecting information relating to the enforcement of Union harmonisation legislation on products, ICSMS should be upgraded and be accessible to the Commission, single liaison offices, ~~and~~ market surveillance **and customs** authorities~~, as well as to the general public through a public interface~~. Furthermore, an electronic interface should be developed to allow effective exchange of information between national ~~customs~~ systems **of customs** and market surveillance authorities***, including on counterfeit products***. **With**

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		and market surveillance authorities. AM 35	**support necessary for cooperation 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.**	**regard to the cases of mutual assistance requests the single liaison offices should give any support necessary for cooperation 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.**
ARTICLE 12 - PARAGRAPH 1 b (new)				
157D		***1b. Market surveillance authorities shall establish appropriate and effective***		

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		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**
ARTICLE 12 - PARAGRAPH 2 - POINT 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***	~~(a) the identified risks associated with:~~	**(a) possible hazards and non-compliances associated with the product and when available, its occurrence on the market;**

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		protection, the environment and public security, associated with: AM 85		~~**(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				**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.** **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).** ~~**Market surveillance authorities shall also develop communication and**~~

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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.~~
ARTICLE 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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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:*** ***(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)***
ARTICLE 26 - PARAGRAPH 5				

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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. AM 160	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, ***this information may include information on counterfeit products***.	

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ARTICLE 27 - PARAGRAPH 1 - POINT d a (new)				
311A		***(da) the product is a counterfeit and is subject to the procedures pursuant to Regulation (EU) 608/2013;*** AM 169		***Maintain Council mandate***
ARTICLE 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	4. Where relevant for the enforcement of Union harmonisation legislation and for the purpose~~s~~ 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 **products** ~~the~~ plac~~ing~~**ed** ~~of products~~ under the customs procedure 'release for free circulation' ~~and the results of controls~~	4. Where relevant for the enforcement of Union harmonisation legislation and for the purposes of minimising risk ~~and combating fraud~~, ***including, whenever possible, risks related to counterfeit products,*** 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 of controls related to~~

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	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 transmit it to the information and communication system**.
ARTICLE 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 the context of the EU Single Window environment for customs,~~ 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.** *(see para. 5a - row 407A Council text)*
ARTICLE 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 authorities shall recognise the validity of and shall make use of test reports

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	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 their counterparts in other Member States and which have been entered into the information and communication system.
ARTICLE 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 moved to para. 4 row 406* *para. 5a EP text partially redrafted and moved to para. 1 row 378)*