

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Regulation (EC) amending Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods ⁽¹⁾

(98/C 377/05)

COM(1998) 639 final — 98/0018(ACC)

(Submitted by the Commission pursuant to Article 189a(2) of the EC Treaty on 10 April 1998)

⁽¹⁾ OJ C 108, 7.4.1998, p. 63.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 1(5)

'Article 5

1. The decision granting the application by the holder of the right shall be forwarded immediately to the customs offices of the Member State which are liable to be concerned with the goods alleged in the application to be counterfeit or pirated.

2. Where an application is submitted under the second subparagraph of Article 3(1), the first indent of Article 250 of Regulation (EEC) No 2913/92 shall apply mutatis mutandis to the decision granting the said application and the decisions extending or repealing it.

The service which adopted those decisions shall forward certified copies thereof to the relevant service of the customs authority in the Member State or States where the applicant has requested that action be taken.

The Member State or States so notified shall immediately acknowledge receipt of the decisions referred to in the first subparagraph.

'Article 5

1. The decision granting the application by the holder of the right shall be forwarded immediately to the customs offices of the Member State which are liable to be concerned with the goods alleged in the application to be counterfeit or pirated.

2. Where an application is submitted under the second subparagraph of Article 3(1), the first indent of Article 250 of Regulation (EEC) No 2913/92 shall apply mutatis mutandis to the decision granting the said application and the decisions extending or repealing it.

The service which adopted those decisions shall forward certified copies thereof to the relevant service of the customs authority in the Member State or States where the applicant has requested that action be taken.

The Member State or States so notified shall immediately acknowledge receipt of the decisions referred to in the first subparagraph. Such decisions shall be forwarded immediately to customs offices liable to be concerned with the alleged counterfeit goods.

INITIAL PROPOSAL

The period referred to in the third subparagraph of Article 3(5) shall run from the date on which the decision granting the application was adopted. The Member States to which the said decision is addressed may suspend implementation until the fee referred to in the second subparagraph of Article 3(4) has been paid and the security referred to in Article 3(6) has been provided.'

AMENDED PROPOSAL

The period referred to in the third subparagraph of Article 3(5) shall run from the date on which the decision granting the application was adopted. The Member States to which the said decision is addressed may suspend implementation until the fee referred to in the second subparagraph of Article 3(4) has been paid and the security referred to in Article 3(6) has been provided.'

Article 1(5a)(new)

5a. The following second subparagraph is added to Article 6(1):

'In the case of goods suspected of breaching a patent or certificate and requiring regulated storage conditions, the customs authorities may only suspend their release or detain them if:

— they possess suitable storage facilities so as not to damage, interfere with or affect in any way the nature, quality or value of such goods

and

— the importer is unable to present a valid marketing authorisation certificate, where such authorisation is required for the products' sale within the territory of the Community or the Member State concerned.'

Article 1(9) (new)

9. The second sentence of Article 11 is replaced by the following:

'Such penalties must be effective and proportionate and constitute an effective deterrent.'
