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►B ►M1 **COMMISSION REGULATION (EC) No 1367/95**

of 16 June 1995

laying down provisions for the implementation of Council Regulation (EC) No 3295/94 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights ◄

(OJ L 133, 17.6.1995, p. 2)

Amended by:

		Official Journal		
		No	page	date
►M1	Commission Regulation (EC) No 2549/1999 of 2 December 1999	L 308	16	3.12.1999

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COMMISSION REGULATION (EC) No 1367/95

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laying down provisions for the implementation of Council Regulation (EC) No 3295/94 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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, and in particular Articles 12, 13 and 14 thereof [1],

Whereas Regulation (EC) No 3295/94 introduced common rules with a view to prohibiting the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods and dealing effectively with the illegal marketing of such goods without impeding the freedom of legitimate trade;

Whereas the nature of the proof of ownership of intellectual property required by the second indent of the first subparagraph of Article 3 (2) of Regulation (EC) No 3295/94 should be established;

Whereas Article 14 of Regulation (EC) No 3295/94 provides that Member States are to communicate to the Commission all relevant information for applying that Regulation and that the Commission is to communicate that information to the other Member States; whereas the procedure for exchanging that information should be laid down;

Whereas Commission Regulation (EEC) No 3077/87 [2] should be repealed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

►**M1** For the purposes of Article 1(2)(b) of Regulation (EC) No 3295/94 ◄, hereinafter referred to as 'the basic Regulation' the holder of a right or any other person authorized to use the right may be represented by a natural or legal person; such a person includes a collecting society which has as its sole or principal purpose the management or administration of copyrights or neighbouring rights.

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Article 2

The evidence that the applicant holds an intellectual property right referred to in Article 1(2)(a) of the basic Regulation, which must be submitted when applying for action in accordance with the second indent of the first subparagraph of Article 3(2) of that Regulation, shall be as follows:

(a) where the holder of the right makes himself the application:

— in the case of a right that is registered or for which an application has been lodged, proof of registration with the relevant office or lodging of the application,

[1] OJ No L 341, 30. 12. 1994, p. 8.
[2] OJ No L 291, 15. 10. 1987, p. 19.

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— in the case of a copyright, neighbouring right or design right which is not registered or for which an application has not been lodged, any evidence of authorship or of his status as original holder;

(b) where the application is made by any other person authorised to use one of the rights referred to in Article 1(2)(a) of the basic Regulation, in addition to the proof required under point (a) of this Article, the document by virtue of which the person is authorised to use the right in question;

(c) where a representative of the holder or of any other person authorised to use one of the rights referred to in Article 1(2)(a) of the basic Regulation applies, in addition to the proof required under points (a) and (b) of this Article, proof of authorisation to act.

Article 2a

1. The form on which the application for action referred to in Article 3(1), second subparagraph, of the basic Regulation, as well as the Decision granting the application referred to in Article 3(5) of the basic Regulation, shall conform to the specimen shown in the Annex to this Regulation.

Where additional pages are to be used, as referred to in the second subparagraph of paragraph 8, they shall be considered to be an integral part of the form.

The form shall be used in accordance with the provisions of the basic Regulation and of this implementing Regulation.

2. (a) the form shall be printed on white paper, without mechanical pulp, dressed for writing purposes and weighing not less than 55 g/m^2;

(b) the forms shall measure 210 millimetres × 297 millimetres, with a maximum tolerance as to length of 5 mm less and 8 mm more.

3. Without prejudice to the implementation of the provisions set out in Article 3(1), third subparagraph, of the basic Regulation, Member States shall print or have printed forms which bear an indication of the name and address of the printer or a sign allowing its identification.

4. Forms shall be printed and filled out in an official language of the Community designated by the competent authorities of the Member State in which the application for action is submitted.

5. Except in the case where the form is made available to the applicant in an electronic format, at one or more publicly available sites directly accessible via a computer, the application for action form shall be provided, on request, by the appropriate service of the customs authority referred to in Article 3(1) of the basic Regulation.

6. Forms shall be filled in by mechanical means or legibly by hand; in the latter case, they shall be filled in using ink and in block capitals. Whatever the process used, forms shall not contain erasures, overwritten words or other alterations.

Should the form be completed by computer, it may subsequently be reproduced by private printing methods.

7. The form shall be composed of two copies:

— one copy, marked number 1, for the Member State to which the application for action is submitted, and

— one copy, marked number 2, for the holder of the Community trade mark.

8. The applicant shall complete boxes 1 to 9 of the form, sign both copies and attach to it the justification and other relevant information referred to in Article 3(2) of the basic Regulation.

Should the space in box 4 of the form be insufficient, the applicant may provide, on additional pages, further details to assist in the identification

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of the goods. In this case, the applicant shall indicate the number of additional pages used in the space provided in box 4 of the form.

9. The duly completed and signed form, accompanied by a number of extracts corresponding to the number of Member States indicated in box 8 of the form, as well as the evidence and information referred to in paragraph 8, shall be submitted to the appropriate service of the customs authority referred to in Article 3(1) of the basic Regulation.

10. When the appropriate service of the customs authority referred to in Article 3(1) of the basic Regulation approves an application for action, it shall indicate the final date of validity of the decision and affix its signature and stamp. The copy for the holder of the Community trade mark as well as the validated extracts shall then be returned to the applicant.

When the request for assistance is rejected by the appropriate service of the customs authority referred to in Article 3(1) of the basic Regulation, it shall indicate not only the reasons for the refusal, but also the contact details of the authority to which an appeal can be made and shall affix its stamp and signature. The copy for the holder of the Community trade mark shall then be returned to the interested party.

In all cases, the copy of the form for the Member State in which the application for action is submitted shall be retained and preserved in its files for at least two years from the date of issue.

11. Only in cases where the extract of a decision granting the application is addressed to the Member State(s) where the applicant has requested that action be taken in accordance with Article 5(2), second subparagraph, second sentence, the Member State which receives this extract shall complete without delay the part ‘acknowledgement of receipt’ of the form by indicating the date of receipt, and return a photocopy of this extract to the relevant authority indicated in box 3.

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Article 3

The pertinent information referred to in the second subparagraph of Article 3 (2) of the basic Regulation shall include particulars of the goods, notably their value and their packaging, plus any information that could help distinguish them from goods for which there is a protected right. under the terms of the second subparagraph of Article 3 (2), this information should be as detailed as possible to enable the customs authorities, using risk analysis, to identify suspect consignments accurately and without excessive effort.

Article 4

If an application is lodged in accordance with Article 4 of the basic Regulation before expiry of the time-limit of three days, the time-limits referred to in Article 7 of the Regulation shall be counted from the day of receipt of the request for action.

If the customs authority suspends release of the goods or detains them in accordance with Article 4 of the basic Regulation, it shall forthwith inform the declarant.

Article 5

1. Each Member State shall, at the earliest opportunity, send the Commission details of:

(a) the laws, regulations or administrative provisions which it adopts in implementation of this Regulation. It shall likewise inform the Commission of any provisions of its national law which preclude informing the holder as provided for in the second subparagraph of Article 6 (1) and in Article 8 (3) of the basic Regulation;

(b) the competent customs department responsible for receiving and handling the holder’s written application, referred to in Article 3 (8) of the basic Regulation.

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2. To enable the Commission to monitor the effective application of the procedure laid down by the basic Regulation and draw up, in due course, the report referred to in Article 15 thereof, each Member State shall send the Commission:

(a) at the end of each calendar year, a list of all the written applications under Article 3 (1) of the basic Regulation, together with the name and address of the holder, a brief description of the goods and, where relevant, the trademark, and the action taken in response to the application;

(b) at the end of each quarter, a list of specific cases in which goods have been detained or their release suspended. The information provided on each case must include:

— the name and address of the holder of the right and a brief description of the goods and, where relevant, the trademark, and

— the customs situation, country of consignment or destination, description, quantity and declared value of the goods the release of which has been suspended or which have been detained, and the date of such suspension or detention.

3. The Commission shall, in an appropriate manner, communicate to all Member States such information as it receives pursuant to this Article. Details of cases provided for in point (b) of paragraph 2 shall be sent quarterly to the Member States by the Commission.

4. Details communicated pursuant to paragraphs 1, 2 and 3 may be used only for the purposes established by the basic Regulation.

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5. The Commission shall publish in the 'C' series of the *Official Journal of the European Communities* the list of the services within the customs authority which are referred to in Article 3(8) of the basic Regulation.

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Article 6

Regulation (EEC) No 3077/87 is hereby repealed with effect from 1 July 1995.

Article 7

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 July 1995.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX

Standard from for an application for action in respect of a Community trade mark

1

COPY FOR THE INITIAL MEMBER STATE

1. **Name, capacity and address of applicant**
[Holder of a Community trade mark within the meaning of Article 1(2)(b) of Regulation (EC) nº 3295/94]

Name:

Function:

Address:

Postal code: Town:

Country:

Phone:

Fax:

E-mail:

APPLICATION FOR ACTION BY CUSTOMS AUTHORITIES

under the second subparagraph of Article 3(1) of Regulation (EC) No 3295/94

2. **Status of applicant** (1)

☐ **holder of Community trade mark**

☐ **person authorised to use Community trade mark**

☐ **representative of Community trade mark holder**

☐ **representative of person authorised to use Community trade mark**

3. **Competent authority to which application is made**

1

4. **Essential information regarding the goods (type, CN code (2) marks, packing, etc.**

☐ **See also attached additional page(s), the number of pages being: (1)** ☐

5. **Member States in which action by customs authorities is requested** (1)

☐ AT	☐ DK	☐ FR	☐ LU	☐ FI	☐ XX
☐ BE	☐ EL	☐ IE	☐ NL	☐ SE	☐ YY
☐ DE	☐ ES	☐ IT	☐ PT	☐ GB	☐ ZZ

6. **Contact person:**

Phone:

Fax:

E-mail:

7. **Place:**

Date:

Signature:

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8. **Person to contact in other Member State(s) where action is requested** (1):

☐ **BE** Name: Address: Phone: Fax:	☐ **DK** Name: Address: Phone: Fax:	☐ **DE** Name: Address: Phone: Fax:	☐ **EL** Name: Address: Phone: Fax:
☐ **ES** Name: Address: Phone: Fax:	☐ **FI** Name: Address: Phone: Fax:	☐ **FR** Name: Address: Phone: Fax:	☐ **IE** Name: Address: Phone: Fax:
☐ **IT** Name: Address: Phone: Fax:	☐ **LU** Name: Address: Phone: Fax:	☐ **AT** Name: Address: Phone: Fax:	☐ **NL** Name: Address: Phone: Fax:
☐ **PT** Name: Address: Phone: Fax:	☐ **SE** Name: Address: Phone: Fax:	☐ **GB** Name: Address: Phone: Fax:	☐ Name: Address: Phone: Fax:

9. **Attached documentation indicating ownership of a Community trade mark for the purposes of Article 1(2)(b) of Regulation (EC) No 3295/94**

DECISION BY CUSTOMS AUTHORITY

☐ **This application has been approved (1) (3)** Decision valid until (3):	Place and date (3): Signature and stamp (3):
☐ **This application has been rejected. The grounds for refusal and the appeal procedure are explained in the annex to this document (1) (3)**	Place and date (3): Signature and stamp (3):

ACKNOLEDGEMENT OF RECEIPT (1)

☐ AT	☐ DK	☐ FR	☐ LU	☐ FI	Authority's name:
☐ BE	☐ EL	☐ IE	☐ NL	☐ SE	Place and date received (4):
☐ DE	☐ ES	☐ IT	☐ PT	☐ GB	Signature and stamp (4):

(1) Tick the appropriate box.
(2) Optional data.
(3) To be completed by the customs authority indicated in box 3.
(4) To be completed, where appropriate, by the competent authority of the Member State in which action has been requested in accordance with Article 5(2), second subparagraph, second sentence of Regulation (EC) No 3295/95.

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2

COPY FOR THE HOLDER OF THE COMMUNITY TRADE MARK

1. **Name, capacity and address of applicant**
[Holder of a Community trade mark within the meaning of Article 1(2)(b) of Regulation (EC) No 3295/94]

Name:

Function:

Address:

Postal code: Town:

Country:

Phone:

Fax:

E-mail:

APPLICATION FOR ACTION BY CUSTOMS AUTHORITIES

under the second subparagraph of Article 3(1) of Regulation (EC) No 3295/94

2. **Status of applicant** (1)

☐ **holder of Community trade mark**

☐ **person authorised to use Community trade mark**

☐ **representative of Community trade mark holder**

☐ **representative of person authorised to use Community trade mark**

3. **Competent authority to which application is made**

2

4. **Essential information regarding the goods (type, CN code (2), marks, packing, etc.**

☐ **See also attached additional page(s), the number of pages being: (1)** ☐

5. **Member States in which action by customs authorities is requested** (1)

☐ AT	☐ DK	☐ FR	☐ LU	☐ FI	☐ XX
☐ BE	☐ EL	☐ IE	☐ NL	☐ SE	☐ YY
☐ DE	☐ ES	☐ IT	☐ PT	☐ GB	☐ ZZ

6. **Contact person:**

Phone:

Fax:

E-mail:

7. **Place:**

Date:

Signature:

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8. **Representative of the holder of the trade mark in other Member State(s) where action is requested** (1):

☐ **BE** Name: Address: Phone: Fax:	☐ **DK** Name: Address: Phone: Fax:	☐ **DE** Name: Address: Phone: Fax:	☐ **EL** Name: Address: Phone: Fax:
☐ **ES** Name: Address: Phone: Fax:	☐ **FI** Name: Address: Phone: Fax:	☐ **FR** Name: Address: Phone: Fax:	☐ **IE** Name: Address: Phone: Fax:
☐ **IT** Name: Address: Phone: Fax:	☐ **LU** Name: Address: Phone: Fax:	☐ **AT** Name: Address: Phone: Fax:	☐ **NL** Name: Address: Phone: Fax:
☐ **PT** Name: Address: Phone: Fax:	☐ **SE** Name: Address: Phone: Fax:	☐ **GB** Name: Address: Phone: Fax:	☐ Name: Address: Phone: Fax:

9. **Attached documentation indicating ownership of a Communioty trade mark for the purposes of Article 1(2)(b) of Regulation (EC) nº 3295/94**

DECISION BY CUSTOMS AUTHORITY

☐ **This application has been rejected (1) (3)** Decision valid until (3)	Place and date (3): Signature and stamp (3):
☐ **This application has been rejected. The grounds for refusal and the appeal procedure are explained in the annex to this document (1) (3)**	Place and date (3): Signature and stamp (3):

ACKNOWLEDGEMENT OF RECEIPT (1)

☐ AT	☐ DK	☐ FR	☐ LU	☐ FI	Authority's name:
☐ BE	☐ EL	☐ IE	☐ NL	☐ SE	Place and date received (4):
☐ DE	☐ ES	☐ IT	☐ PT	☐ GB	Signature and stamp (4):

(1) Tick the appropriate box.
(2) Optional data.
(3) To be completed by the customs authority indicated in box 3
(4) To be completed, where appropriate, by the competent authority of the Member State in which action has been requested in accordance with Article 5(2), second subparagraph, second sentence of Regulation (EC) nº 3295/94 .