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 to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods

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Whereas Commission Regulation (EEC) No 3077/87 [2] should be repealed;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

For the purposes of Article 1 (2) (c) 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.

Article 2

The proof that the applicant holds one of the rights referred to in points (a) and (b) of Article 1 (2) 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 applies himself:

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

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

(b) where the application is made by any other person authorized to use one of the rights referred to in points (a) and (b) of Article 1 (2) of the basic Regulation in addition to the proof required under (a) hereof: the document by virtue of which the person is authorized to use the right in question;

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

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.

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

Article 4

If an application is lodged in accordance with Article 4 of the basic Regulation before epiry 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 detailes 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.

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, communciate 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.

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.

Done at Brussels, 16 June 1995.

For the Commission

Mario MONTI

Member of the Commission