

**COUNCIL OF
THE EUROPEAN UNION**

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(OR. s)

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LIMITE

ENFOCUSTOM 40
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NOTE

from :	Finnish Presidency
to :	Customs Cooperation Working Party
Nos prev. docs:	7167/1/95 ENFOCUSTOM 14 Rev 1; 7332/96 ENFOPOL 90; 6095/1/97 ENFOCUSTOM 11 Rev 1; 9299/1/98 ENFOCUSTOM 35 Rev 1 + Cor 1; EYVL OJ L 341, 30.12.1994, p. 8; EYVL OJ L 27, 2.2.1991, p. 1
Subject :	Preparation of risk analysis concerning counterfeit and pirated goods

I. INTRODUCTION

The counterfeiting and pirating of goods has become a rapidly and increasingly widespread branch of organised crime with links with other economic crime and also traditional crime. The growth figures are given in particular in the International Chamber of Commerce report from 1997 and the OECD's 1998 study on the economic effects and the extent of counterfeiting as well as in the European Commission's statistics. According to the OECD study, it is estimated that counterfeit and pirated goods already account for as much as 7% of world trade, causing 200 000 job losses, 100 000 of which in the EU.

It is stated in 7167/1/95 Enfocustom 14 that combating counterfeiting and its international networks requires increased cooperation between customs authorities, in particular through information exchange. The measures provided for in Regulation (EC) No 3295/94 (counterfeit goods Regulation) are considered inadequate for this purpose and this document is intended to help to improve the use of current instruments by means of risk analysis. During the Austrian Presidency guidelines were drawn up for the use of risk analysis in combating smuggling in general air transport (9299/1/98 Enfocustom 35 Rev 1), but comprehensive risk analysis for the purpose of combating counterfeiting has not yet been carried out on an international scale.

Risk analysis is an important instrument in crime prevention, but as an updatable working method in itself it yields abundant data for use in crime detection. In particular the possibility of directing reporting systems towards crime detection should be examined. This means that cooperation in the area of surveillance and crime detection should essentially also be stepped up.

The counterfeit goods Regulation came into force on 1 July 1995 and over the last four years the EU Member States' customs authorities have taken many detention measures in accordance therewith. In the first two years of the Regulation's application the customs authorities detained 4133 consignments, whereas in the calendar year 1998 alone 4561 consignments were stopped, so that detention measures by the customs authorities have doubled in a short time.

The scope of the counterfeit goods Regulation was extended by a Council Decision of 25 January 1999 (OJ L 27 of 2.2.1999, p. 1), and amending Regulation (EU) No 241/99 came into force on 1 July 1999. That amendment brought within the scope of the Regulation goods which are in a free zone or free warehouse or in temporary storage. The Regulation will thus cover all situations in which counterfeit or pirated goods may find themselves in practice. In addition, the Regulation will be extended to cover goods which infringe patent rights. Cases of detention will increase as a result e.g. of the extension of the Regulation, which will also serve to increase the number of criminal cases to be investigated.

II. GUIDELINES FOR THE APPLICATION OF RISK ANALYSIS CONCERNING COUNTERFEIT AND PIRATED GOODS

1. DATA

1.1. INTERNAL DATA SOURCES

- local customs administrations
- regional customs administrations
- central customs administrations

- other national authorities (tax, registration, police, distraint, bankruptcy, money-laundering investigation authorities)
- ministries

1.2. EXTERNAL DATA SOURCES

- airlines
- shipping
- forwarding agents
- port operators
- port authorities

- Commission
 - FIS
 - counterfeit subgroup of the Customs Code Committee

- other Member States

- Internet, homepages of right holders and shipping companies
- databases of global undertakings
- REACT database
- MUSYC (Multimedia Systems for Customs), not yet operational
- WCO

- media

2. RISK AREAS

2.1. Forms of customs clearance:

- release for free circulation
- export
- re-export
- entry for a suspensive procedure
- free zones
- temporary storage

2.2. Modes of transport

- maritime transport
- air transport
- road transport
- rail transport
- parcel post
- courier services

3. GOODS KNOWN TO BE COUNTERFEITED AND PIRATED

3.1. TEXTILES

- clothes
- shoes
- sports accessories
- sports shoes
- bags

3.2. MULTIMEDIA

- video films
- music recordings: CDs, cassettes, LPs
- bootleg tapes / illicit concert recordings
- compilation tapes
- DVDs
- tickets for cinemas and sports competitions
- holograms
- karaoke products, tapes etc.
- computer games
- computer programs, operating programs
- books, especially English language books

3.3. SPARE PARTS

- spare parts for cars
- brake pads
- collapsible steering axles
- nuts and screws
- spare parts for planes
- spare parts for helicopters

- surgical instruments
- mobile phone accessories and spare parts
- batteries, chargers, cases for mobile phones, especially low-tech items for high-tech products

3.4. LEATHER GOODS

- coats
- shoes
- belts
- bags

3.5. ALCOHOLIC DRINKS

- strong alcoholic drinks
- wines
- alcoholic drink cans, mixers

3.6. MEDICINES

3.7. CLOCKS AND WATCHES

3.8. COSMETICS

- perfumes
- deodorants
- shampoos
- make-up

3.9. COMPUTER PARTS

- microprocessors
- mice

3.10. JEWELLERY

3.11. FOODSTUFFS

- baby foods
- teabags + holders
- cocoa products

3.12. SPECTACLES AND SUN GLASSES

3.13. TOYS

4. FACTORS INDICATING RISK – RISK INDICATORS

The following lists contain crucial risk indicators for detecting flows of counterfeit and pirated goods. There is no order of priority and importance may vary according to product group when the risk profiles referred to in Chapter 5 are drawn up.

4.1. Risk indicators applicable in document checks

1. Goods coming from countries in which there is known to be inadequate protection of intellectual property rights. It is especially important that account be taken of countries which the holder of a right considers, on the basis of his own observations, to be risky.
2. Goods coming from countries or places known to produce counterfeit items.
3. Goods coming from countries adjacent or close to the countries referred to in point 2.
4. Goods addressed to a P.O. Box number or sent to a private address (and possibly left in letter boxes). Even goods with a hotel room address.
5. Small items, especially from South East Asia, requiring a cash settlement on customs clearance.

6. Goods dispatched by an unknown carrier or goods sent to companies not listed in the telephone directory.
7. Consignments containing expensive consumer goods, luxury items, the latest in goods fashions or design products.
8. Consignments containing labels, name tags, brand names or marks of the known products described in point 7.
9. The same consignment may be accompanied by several documents containing contradictory data – consignee/number of parcels/ number of items/ weights/description of goods.
10. The prior notification given for opening the TIR carnet tallies with neither the carnet nor the previous transport document, e.g. ship's manifest.
11. The documents are a confusion of different language texts.
12. There may be two completely dissimilar copies of the same document.
13. Names, addresses have been altered or counterfeit stamps used in the documents.
14. Documents show the consignor to be an extra, geographically remote party having no obvious links with the transaction/transport concerned.
15. Risky goods in transit via the EU to nearby territories in which the level of protection of incorporeal rights is known to be low and law enforcement inadequate.
16. Unclear invoice entries.
17. Absence of trademark details or details of trademark holder logo on the invoices.

18. Taped or illustrated material described as empty or incomplete.
19. Small goods consignments. Postal consignments.
20. Goods items sent COD.
21. Obvious undervaluation, including low unit price for the type of product and/or under-insured goods.
22. Free zones.
23. Transport routes: uneconomic, unusual or via a "risk" country.
24. Transport: unusual mode of transport.
25. Indicators of operator-linked risk: dubious shipping agent or declarer
26. Consignor and consignee; previously known operator or operator whose area of activity does not cover the goods in question. Consignee other than known official importer, transport company the only stated consignor. Particulars of consignee/consignor found on customs list showing persons implicated in cases detected.
27. Exceptional interim storage arrangements, e.g. trademark holders' central warehouses for Scandinavia and certain Central European countries.

4.2. Risk indicators applicable in physical searches

1. Printing on the packaging is stained and defective; spelling mistakes or poor quality ink.

2. Product colour codes are different from normal (compared with manuals and authentic product models found on the internet)

3. Specifications or instructions misspelt or mistranslated.
4. Goods shipped in other than standard packaging, e.g. watches in bags rather than boxes.
5. Goods imported in bulk instead of consumer packaging.
6. Copied material, including manuals.
7. Low-grade goods or packaging.
8. Absence of holograms and other protective marks.
9. IFPI marks (mould and matrix codes) missing from CD disks.
10. No demonstration leaflet with CD disk or poor quality or single-page colour copy only.
11. CDs without accompanying text (subtitles).
12. Recording does not feature name of the artist and/or work(s) or of composer and writer of lyrics.
13. More than one trademark on the same product.
14. Competing trademarks on the same consignment.
15. Product inspection involving a comparison with the originals and the use of confidential product manuals in order to distinguish forgeries from the originals.
16. Marks of origin on the goods other than those indicated in the customs declaration.

17. No certificate of guarantee with the goods.
18. No fibre content marks on textiles and/or no washing instructions.

19. No copyright marks, trademarks or product marks on the goods.

20. No EC mark.

21. Non-standard size products.

5. RISK PROFILES

It is recommended that practical risk analysis work be standardised with the help of a special risk profile document, which is a complete document in paper or electronic form adapted to the needs of regional and/or local traffic and provides assistance to a customs post in the risk analysis process; this document identifies risk areas, detected risks and risk indicators, provides an estimate of the scale of risk and draws up an inspection plan by dividing up available resources accordingly.

Risk profiles should be drawn up by product and their effectiveness requires them to be flexible and regularly updated. The preparation of risk profiles calls for a basic systematic approach (collection of data – analysis – decision – action – feedback). Data in the possession of the central and local customs authorities should be used in the process.

Risk profiles should fulfil at least the following functions:

- be a source of information on the activity of operators and on goods
- define risk areas
- help evaluate risk-area – related risks
- help in the definition of inspection plans
- ensure the efficiency of inspections
- produce on-line crime investigation data on the phenomenon, those involved in crimes, their background and individual cases.