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Protecting European innovation and creativity at EU borders

As a European growth-driverⁱ it has become clear to us that **one of the fundamental requirements for growth is to safeguard innovation and increase consumer and business trust throughout the business value chain** through a solid Intellectual Property framework that protects consumers and businesses from illicit and even dangerous practises. The economic significance of efficient IP protection is evident from a recent study published by Frontier Economics: **a further increase in IP infringements in the high-end sector could result in an output loss of 43-79 billion Euros**. This level of output loss would be associated with the **loss of between 100,000 and 180,000 direct jobs within the sector**, and **tax losses of between 14 and 26 billion Euros**.

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In this context, ECCIA welcomes the European Parliament's and Council's work on the Commission proposal for the revision of the Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights, which suggests improvements in several areas of the current Regulation that will raise the overall level of enforcement of IPR. We believe it is in particular important to

- Take into account new routes of counterfeit goods resulting from internet sales, by adopting a specific procedure for small consignments
- Take action against infringing goods, even if only transiting through EU territory
- Take action against parallel traded goods
- Improving efficiency of customs controls by adopting a simplified procedure
- Making infringer information available to right holders and authorities also in other countries
- Sharing responsibilities along the value chain by shifting partial liability on transport intermediaries should they comply with their due diligence (for example, ensuring the identity of their customers)

In the context of the ongoing triologue negotiations between the Council, the European Parliament, and the European Commission, we would like to take this opportunity to highlight in particular that recognizing and taking action against fake **goods in transit** is an important element of the overall IPR protection regime in Europe.

We would like to **reiterate our serious concern regarding actions against fake goods in transit: we believe that the Commission's Proposal has taken a step backwards in addressing this trend by removing the expressed prohibition of transhipment of counterfeit goods in Recital 3 of the current Regulation 1383/2003**.

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The issue of fake goods in transit as being of paramount importance because, according to the most recent European Commission statistics, **over 60 % of the suspect goods intercepted by the Customs authorities of the European Union were blocked while in transit or under another suspensive procedure** (including i.a. the customs warehousing procedure). In addition, recent findings by the authorities show that the goods-in-transit status is not merely used by traffickers to disguise that the goods delivered are destined to the European Union market, but to give them a touch of authenticity by pushing them through the European Union in order to disguise their real origin (e.g. fake medicines from Asia en route to Africa, an example cited by the European Commission in COM(2005) 479 final of 11 October 2005).

Allowing customs officers to control products in transit does not disrupt the free movement of (lawful) goods, nor (lawful) international trade. Customs officers have neither the time nor the resources to check every consignment; their controls are based on risk analysis, experience and received intelligence, thus they only detain consignments if they have a strong suspicion that they contain illicit items. This is borne out by the latest report on EU customs interventions, which shows that **only in 3.03% of cases of customs detention were the goods in fact genuine**. Should detained items be genuine – including lawful generics – that do not contravene any laws, they are immediately placed back into the channels of trade.

ECCIA therefore calls on EU policy makers to rapidly reach an agreement, maintaining the Custom's ability to take action against fake goods in transit.

ⁱ *The European Cultural and Creative Industries Alliance (ECCIA) is composed of the five major European Cultural and Creative luxury industry associations: Círculo Fortuny (Spain), Comité Colbert (France), Fondazione Altagamma (Italy), Meisterkreis (Germany), and Walpole British Luxury (UK). Its members together represent a strong network of SMEs embedded in European regions gathering approximately 300 of Europe's leading luxury brands covering 14 different high-end product and service markets.*