

IP Enforcement in a Digital World:

Online Infringements, Goods in Transit, Cross-Border Enforcement

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Customs enforcement



Regulation (EU) No 608/2013

- In force since 2014
- Fast, simple and effective procedure
- **All customs procedures covered**
- **All IP rights covered**
- On request or ex officio
- Normal or small consignment procedure
- Infringing goods are destroyed as a general rule
 - Shorter procedures
 - Reduced administrative burden and costs
 - Increased efficiency



Customs enforcement

On request (AFA) OR ex-officio

**Goods suspected of infringing
an IPR**
(Art. 2. point 1)

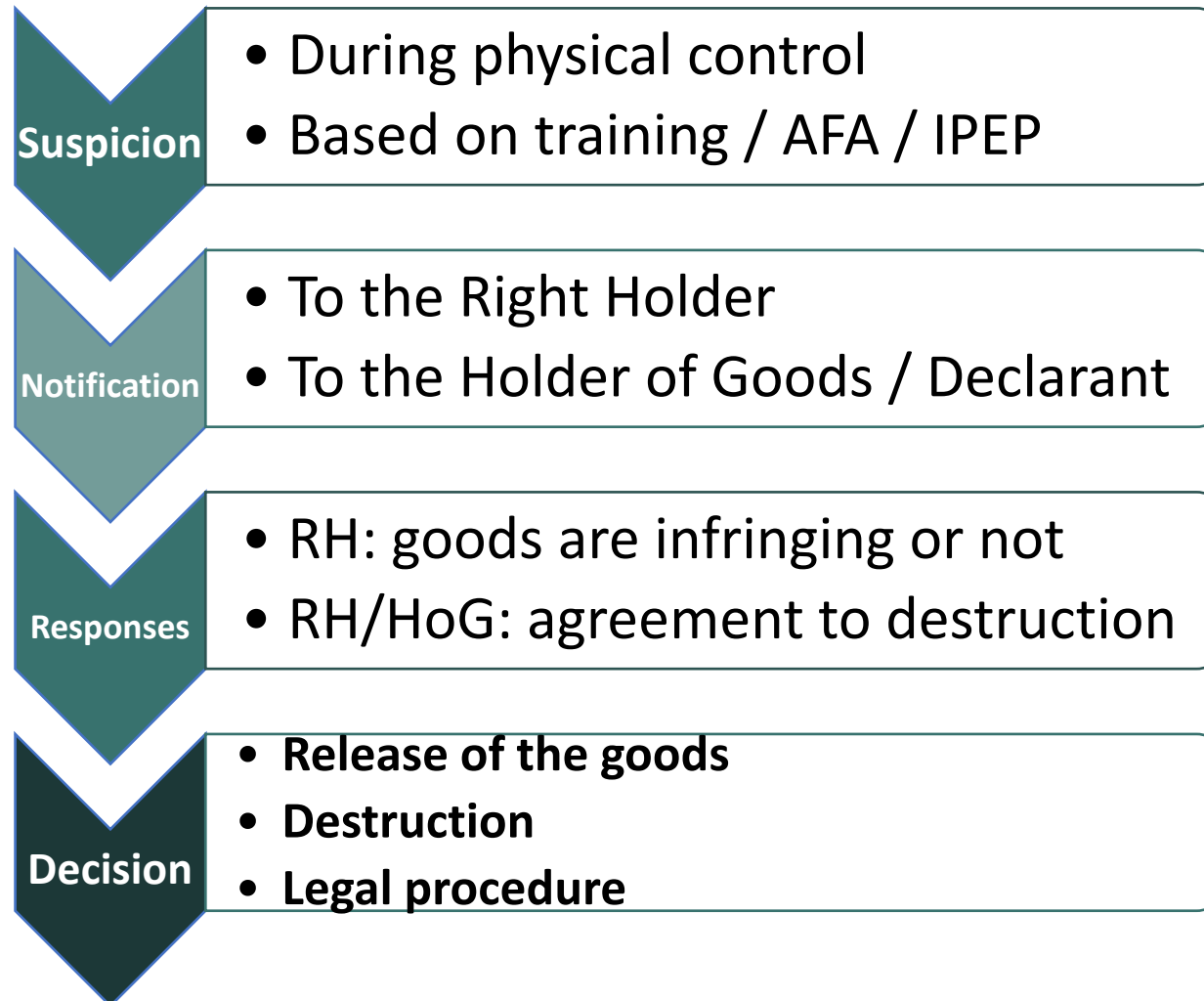
**Goods subject to customs
supervision or customs
control**
(not only import)

Exceptions:

- Overrun
- Parallel importation
- Goods contained in travellers' personal luggage (of a non-commercial nature)

How to enforce?

The procedure – the basics



How to enforce?

Basics + details (EU, national provisions)



- Flow of information
- Deadlines
- Forms of communication
- Roles and responsibilities
- AFA & ex-officio
- Small consignments
- Destruction
- Costs
- Databases
- Information sources
- ...

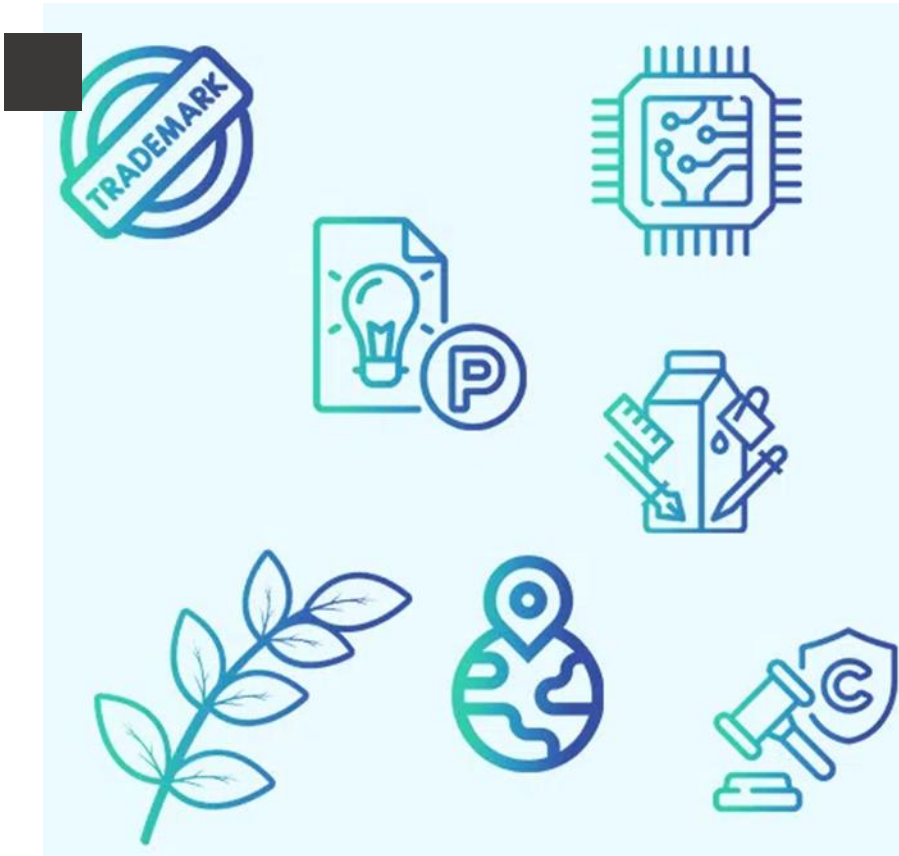
Which IP rights to enforce?

General understanding of IP rights

Intellectual Property Rights:

- ❖ Trade mark
- ❖ Design
- ❖ Copyright and related right
- ❖ Geographical indication
- ❖ Patents
- ❖ Supplementary protection rights (medicinal products, plant protection products)
- ❖ Plant variety
- ❖ Topography of semiconductors
- ❖ Utility models
- ❖ Trade names

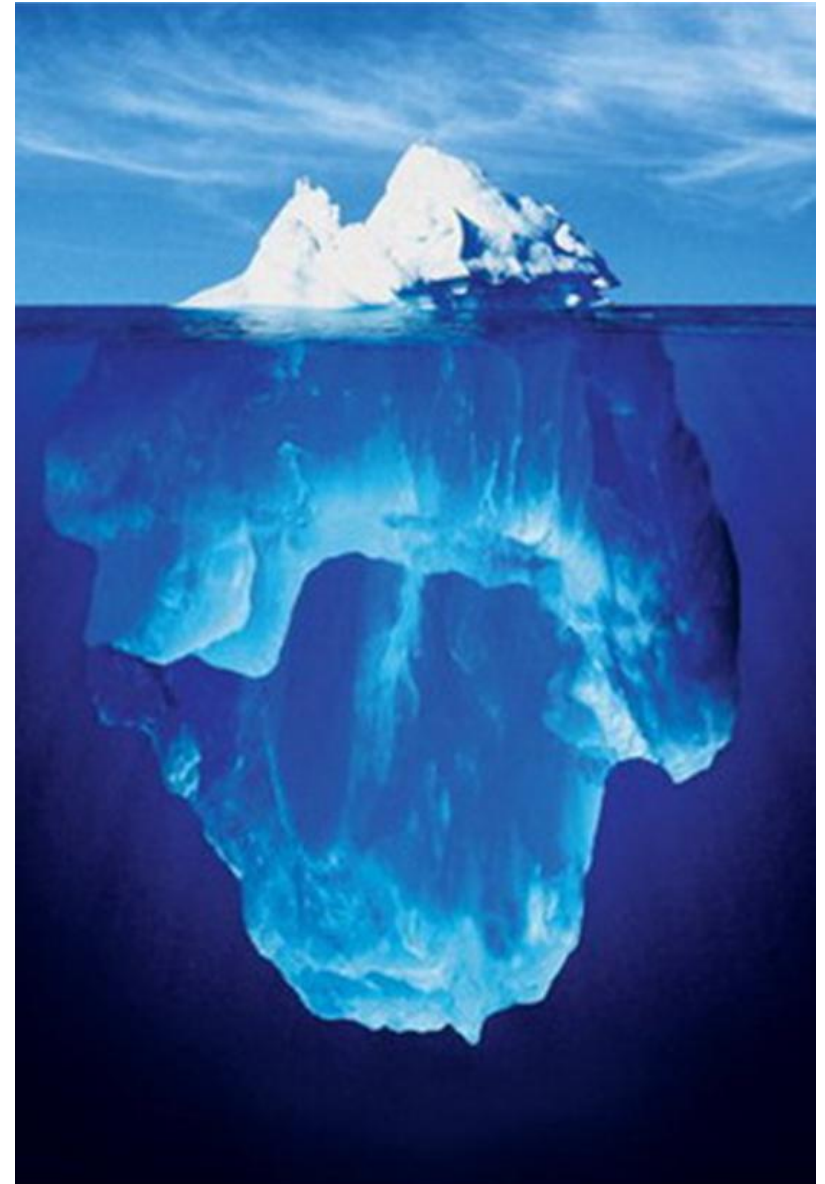
IP Rights



- All IP rights covered by Regulation (EU) No 608/2013
- Same procedure for all IP rights
- In practice: **mostly trade marks (~85%)**

The importance of enforcement

- Counterfeit and pirated goods accounted for up to 2.3% of global trade in 2021, valued at approximately 467 billion USD (OECD-EUIPO)
- Nearly 5% of EU import is affected (99 billion EUR)
- In certain product categories 10-15 or even 60-70% of goods bought on the internet might be counterfeit!



Challenges

International:

- e-Commerce
- Intra-EU trade
- Production in the internal market

International/National:
Active involvement of RH

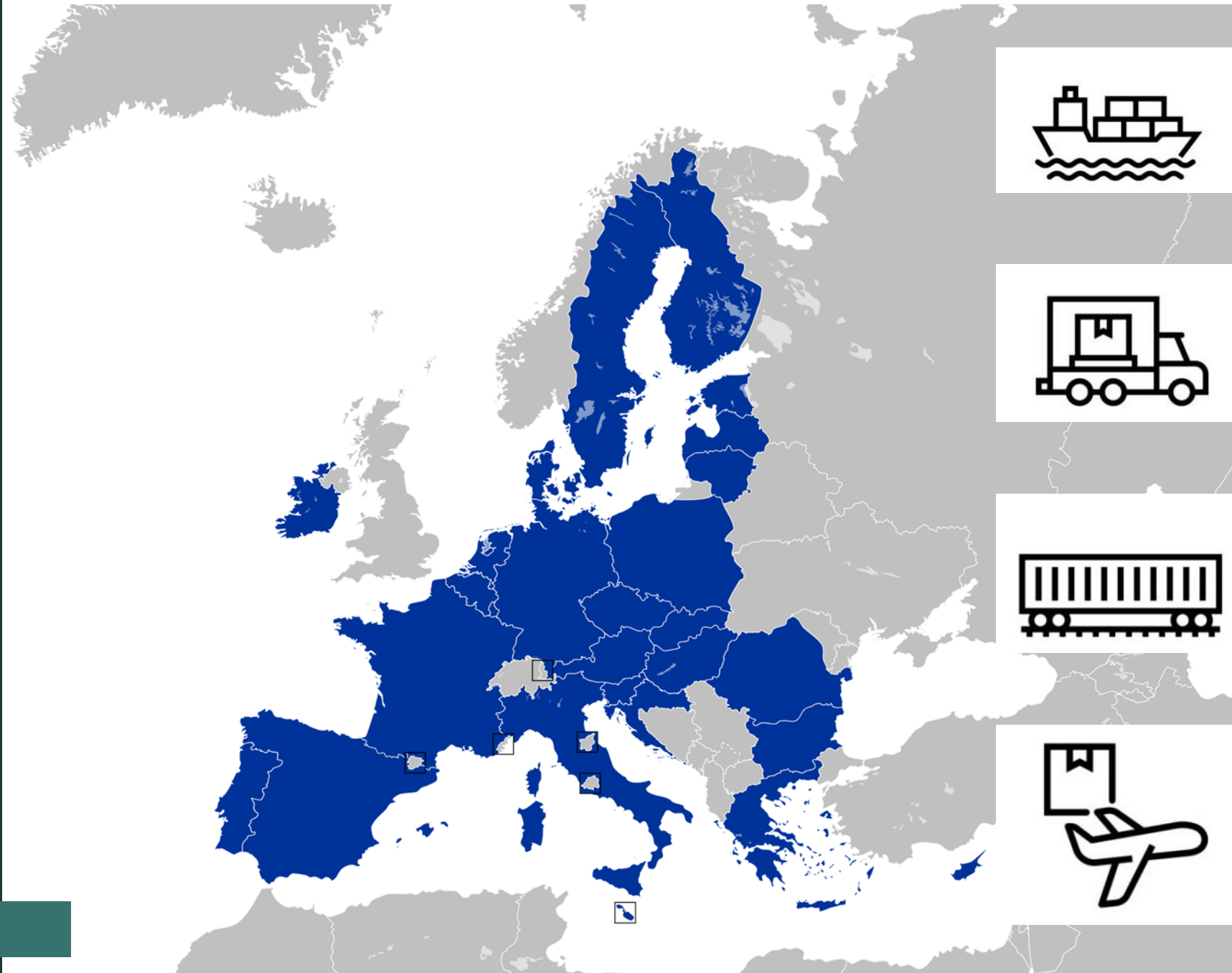
Internal:

- Priorities and allocated resources
- Enhanced communication and cooperation
- Use of available tools and information sources
- Effective control measures & risk analysis

Small consignments
Destruction
Resources
Right Holders
Risk information
Physical control

Trends

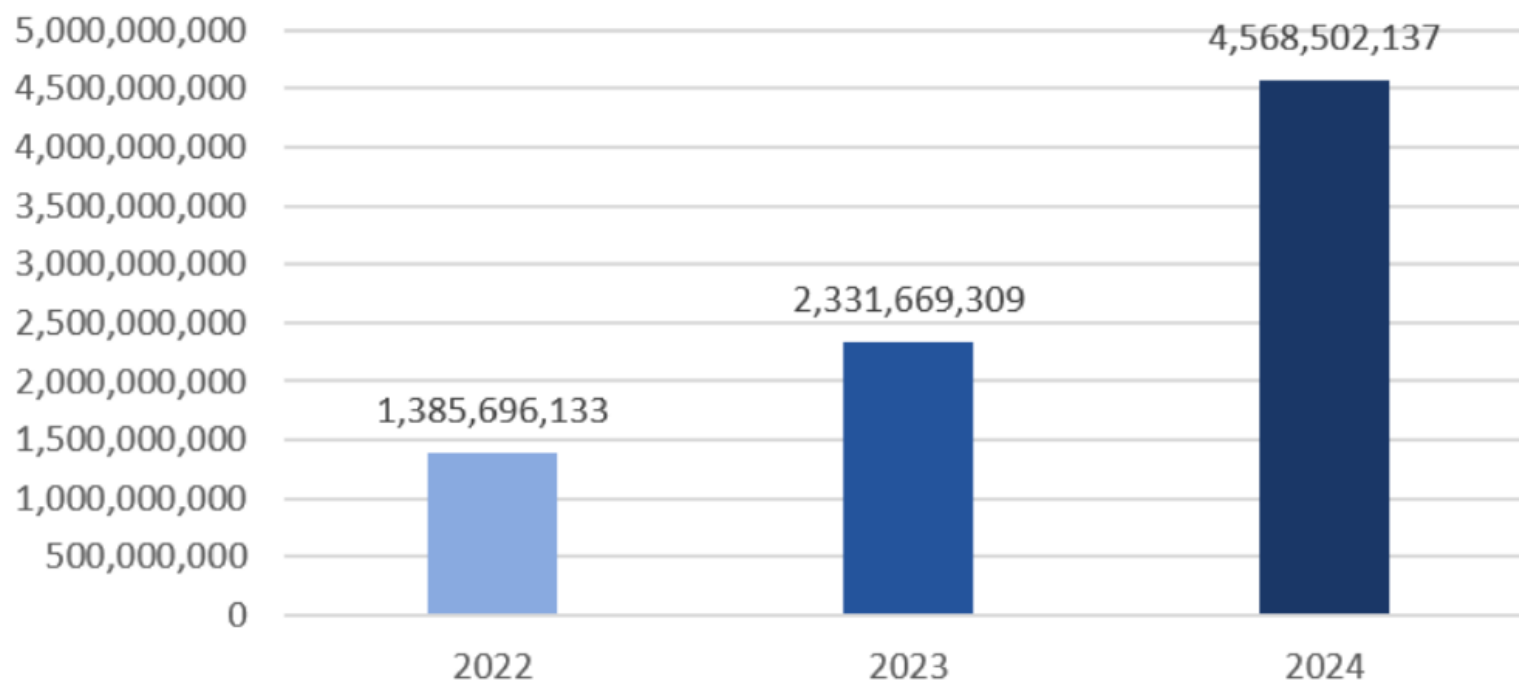
- Changing transport routes
- e-Commerce



Volume of trade (EU)

Number of low value items imported between 2022 and 2024 in the EU

Source : EU Surveillance data



Statistics (EU)



e-Commerce (postal/express courier traffic) gives

- More than 50% of all IPR cases
- 5% of detained goods
- 17% of detained value

Main countries of origin:

- CN
- (HK)

Typical goods:

- Toys
- Cosmetics
- Clothing & accessories
- Mobile phone accessories
- Bags, purses

Small consignments procedure

Definition:

Art. 2. (19) of Regulation 608/2013

- postal or express courier
- 3 units or less, OR
- less than 2 kg

Conditions:

Art. 26 of Regulation 608/2013

- requested in AFA
- non perishable goods

Simplification:

**No need to notify RH,
customs officer decides**

Difficulties:

- Not all RHs ask for it
- Thresholds used by RHs
 - Costs
 - Destruction

Goods in transit

Legal background

- **Union Customs Code – Regulation (EU) No 952/2013**
 - Customs authorities may carry out any control on non-Union goods brought into the customs territory of the EU which they find necessary
 - Proportionate
 - Based on risk analysis
- **Customs Enforcement of IPR – Regulation (EU) No 608/2013**
 - Customs authorities are competent to detain goods suspected of infringing an intellectual property right that are, or should have been, subject to customs supervision or customs control within the territory of the EU

Goods in transit

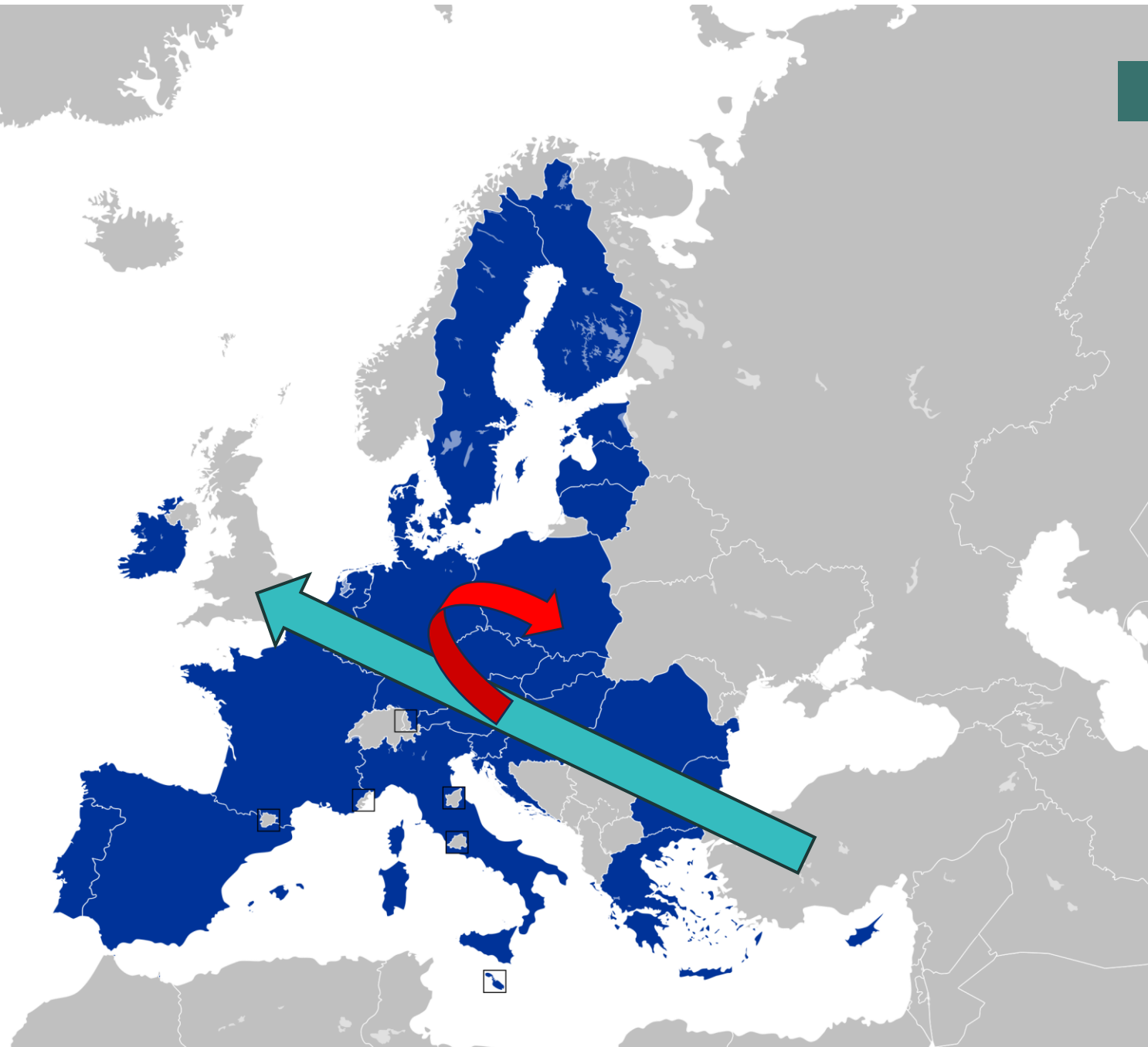
Commission Notice
2016/C 244/03

- **Philips/Nokia court cases (1/1 C-446/09)**
 - Goods brought into the customs territory of the EU
 - Without being released for free circulation
 - Goods subject to a commercial act directed at the market of the EU (eg. sale, offer, advertising), OR
 - Their diversion to the market of the EU is envisaged (documentary evidence, eg. contracts, instruction manuals) without the authorisation of the Right Holder
 - Any IP right

Example

Detention under transit

- From TR to UK
- No release for free circulation in the EU
- Suspicion & evidence that goods are intended to be placed on the market of the EU



Goods in transit

Commission Notice
2016/C 244/03

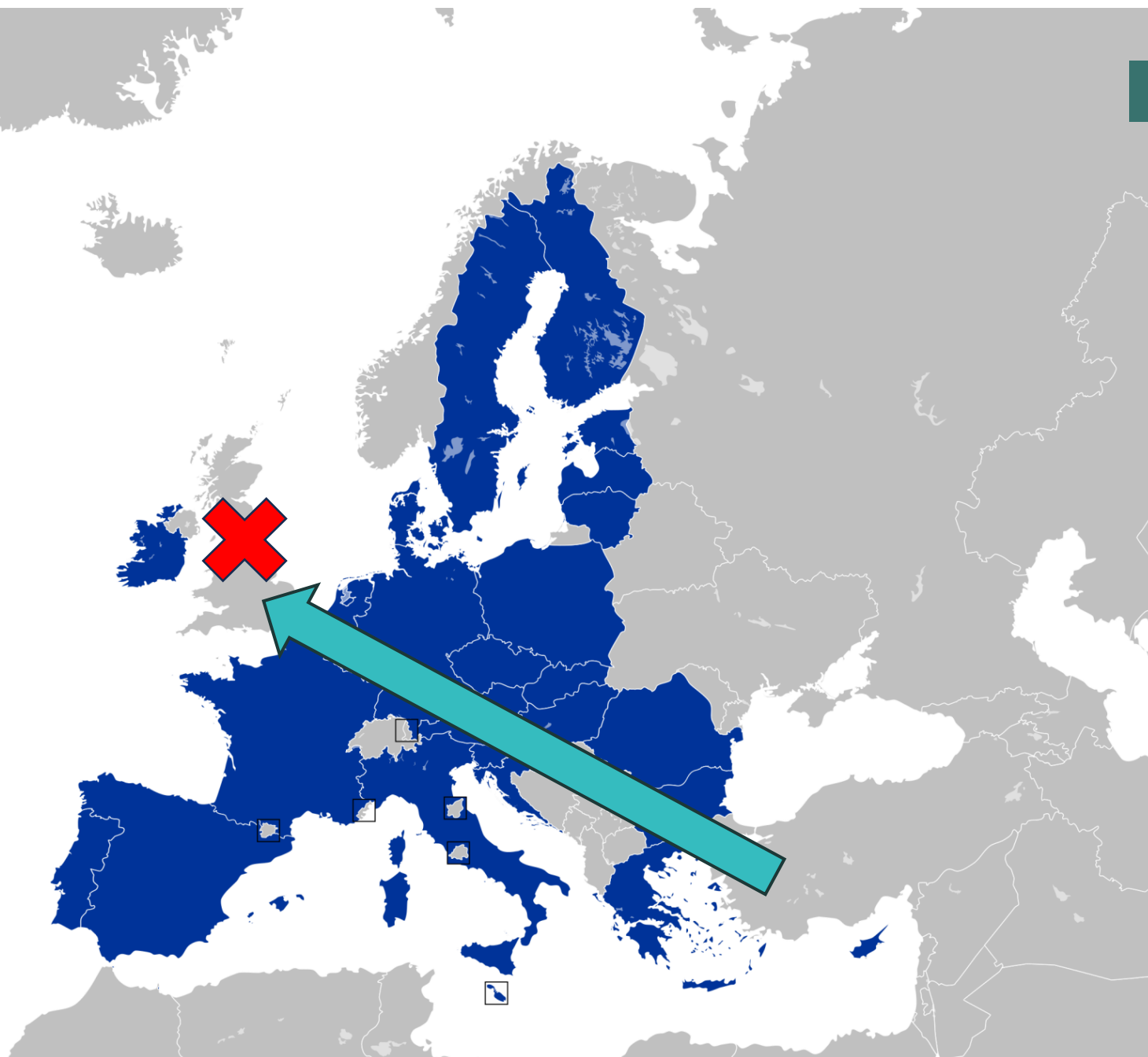
- **EU Trade mark regulation – Regulation (EC) No 207/2009)**
 - Goods brought into the customs territory of the EU
 - In the course of trade
 - Without being released for free circulation
 - Goods not intended for the EU market
 - Goods bearing without authorisation an identical or essentially identical trade mark
 - If the trade mark is protected at the final destination

- **Strengthened protection of trade marks**

Example

Detention under transit

- From TR to UK
- No release for free circulation in the EU
- Goods not intended for the EU market
- Identical or essentially identical trade mark goods (without authorisation)
- If the trade mark is protected at the final destination



Why is Risk Management important?



Risk analysis

FACILITATION

CONTROL



Risk analysis for e-Commerce

Senders

- Data uncontrollable
- Missing/incomplete data
- False data

Recipients

- Private persons
- Foreigners
- False data

Goods

- HS code not detailed enough
- Goods description – text
- False data

Control

- Documentary check
- X-ray
- Sniffer dogs
- PHYSICAL CONTROL **1%**

Risk indicators

**Best
information:
INTELLIGENCE**

- Provenance
- Place of production
- Transport route
- Transport means
- Loading (mixed brands)
- Packaging
- Labelling
- Typos
- Markings
- Unusual products
- Quality
- ...



Challenge



Possible solutions

- ❑ Cooperation
 - among Member States
 - with third countries
 - with Right Holders
- ❑ Joint operations
 - local (action days)
 - regional
 - international
- ❑ Trainings for officials
- ❑ Awareness raising





National Tax and
Customs Administration

Thank you for your attention