

Criminal measures aimed at ensuring the enforcement of intellectual property rights

2005/0127(COD) - 25/04/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Nicola **ZINGARETTI** (PES, IT) amending the proposed directive on criminal measures aimed at ensuring the enforcement of intellectual property rights, by 374 votes in favour to 278 against with 17 abstentions. Parliament sought to reduce the directive's scope. Its amendments clarify that it should only apply to counterfeiting and piracy. Industrial property rights under a patent will be excluded from the provisions of this Directive. In particular, the Directive does not apply to any infringement of an intellectual property right related to patent rights, utility models and plant variety rights, including rights derived from supplementary protection certificates; and parallel importation of original goods from a third country which have been allowed by the rightholder. Accordingly, criminal sanctions shall not be applied in cases of parallel importation of original goods from a third country which have been allowed by the rightholder. The fair use of a protected work, including such use by reproduction in copies or audio or by any other means, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, does not constitute a criminal offence.

The remaining amendments were as follows:

Parliament introduced a number of definitions: "intellectual property rights" (this would include copyright and related rights, sui generis right of a database maker, rights of the creator of the topographies of a semiconductor product, trademark rights, "in so far as extending to them the protection of criminal law is not inimical to free market rules and research activities", design rights, geographical indications and trade names); "infringements on a commercial scale", and "intentional infringements of an intellectual property right";

- penalties will include criminal fines for natural persons and criminal or non-criminal fines for legal persons. These include an order requiring the infringer to pay the costs of keeping seized good;
- repeated offences committed by natural and legal persons in a Member State other than their country of origin or domicile must be taken into account when determining the level of penalty;
- Member States should ensure that the misuse of threats of criminal sanctions is prohibited and made subject to penalties. Member States should prohibit "procedural misuse, especially where criminal measures are employed for the enforcement of the requirements of civil law;
- Member States shall ensure that the rights of defendants are duly protected and guaranteed;
- with regard to joint investigation teams, Member States must put in place adequate safeguards to ensure that such cooperation does not compromise the rights of the accused person, for example by affecting the accuracy, integrity or impartiality of evidence;
- Article 8 of the Charter of Fundamental Rights of the European Union, which concerns the protection of personal data, and Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be fully respected in the course of investigations and judicial proceedings;

- lastly, a new article 10 provides that, where law enforcement authorities seize infringing items or obtain other evidence of infringement, the authorities must make such evidence available for use in pending or contemplated civil proceedings against the alleged infringer brought by the right-holder before a court of competent jurisdiction within the European Union. Where practicable, those authorities must inform the right-holder concerned that they are in possession of such items or evidence. Member States may require that any such provision of evidence to the right-holder be made subject to reasonable access, security or other requirements so as to ensure the integrity of the evidence and to avoid prejudice to any criminal proceedings that may ensue.