

Criminal measures aimed at ensuring the enforcement of intellectual property rights

2005/0127(COD) - 26/04/2006 - Legislative proposal

The Commission has decided, in application of Article 250 paragraph 2 TEC, to amend the proposed Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights. It puts into effect the Communication from the Commission of 23.11.2005 (COM(2005)583 final) on the implications of the Court's judgment of 13.09.2005 (Case C 176/03 Commission v Council). It was held in that judgment that provisions of criminal law required for the effective implementation of Community law come under the EC Treaty. The Commission states in its Communication that it will make the necessary changes to pending proposals as and when required. It specifically mentions the proposal for a Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights and the proposal for a Council Framework Decision to strengthen the criminal law framework to combat intellectual property offences (CNS/2005/0128). Consequently, the proposal for a Framework Decision has been withdrawn and a proposal drawn up amending the proposal for a Directive on criminal measures.

The provisions in the proposal for a Framework Decision relating to penalties and extended powers of confiscation have now been incorporated in the new proposal for a Directive.

The only provisions that have not been taken over are those relating to jurisdiction and the coordination of proceedings, contained in Article 5 of the proposal for a Framework Decision. The Commission plans to take a horizontal approach to this subject under its Green Paper on conflicts of jurisdiction and the principle of ne bis in idem in criminal proceedings, adopted on 23 December 2005. It does not consider it essential to lay down specific arrangements for the protection of intellectual property.