Enforcement of intellectual property rights

2003/0024(COD) - 29/04/2004 - Final act

PURPOSE : to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market. LEGISLATIVE ACT : Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights. CONTENT : the Council, by approving the European Parliament's first reading amendments, adopted the Directive as amended, with Austria and Italy abstaining, on measures and procedures to ensure the enforcement of intellectual property rights. To recall, the disparities between the systems of the Member States as regards the means of enforcing intellectual property rights are prejudicial to the proper functioning of the Internal Market and make it impossible to ensure that intellectual property rights enjoy an equivalent level of protection throughout the Community. This situation does not promote free movement within the Internal Market or create an environment conducive to healthy competition. The current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the Internal Market in this field. This causes a loss of confidence in the Internal Market in business circles, with a consequent reduction in investment in innovation and creation. Infringements of intellectual property rights appear to be increasingly linked to organised crime. Increasing use of the Internet enables pirated products to be distributed instantly around the globe. Effective enforcement of the substantive law on intellectual property should be ensured by specific action at Community level. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite for the proper functioning of the Internal Market. The aim of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market. This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights. This Directive shall not affect : - the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC, in general, and Articles 12 to 15 of Directive 2000/31/EC in particular; - Member States' international obligations and notably the TRIPS Agreement, including those relating to criminal procedures and penalties; - any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights. The Directive stipulates that : - as regards measures, procedures and remedies : Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not beunnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. For the purposes of applying the measures, procedures and remedies provided for in this Directive, - for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his name to appear on the work in the usual manner; - the provision above shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter. As regards sanctions by Member States, the Directive states that Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed. On the issue of codes of conduct : industry should take an active part in the fight against piracy and counterfeiting. The development of codes of conduct in the circles directly affected is a supplementary means of bolstering the regulatory framework. The Member States, in collaboration with the Commission, should encourage the development of codes of conduct in general. In particular, Member States shall encourage: - the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture; - the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct. On the exchange of

information and correspondents : for the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more national correspondents for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the national correspondent to the other Member States and to the Commission. Lastly, measures are provided with a view to protecting the confidentiality of information sources or the processing of personal data. ENTRY INTO FORCE : 20 /05/2004. TRANSPOSITION : 29/04/2006.