Counterfeit and pirated goods: measures to prohibit the release for free circulation, export or transit

1993/1024(CNS) - 16/12/1994 - Text adopted by Parliament after reconsultation

Parliament approved the draft regulation subject to the 16 amendments it tabled. These amendments aimed to: - amend the legal basis, which would be limited to Article 113 of the Treaty, and set out the position of the European Parliament; The Commission accepted this amendment. - include patent rights among the property rights that the regulation planned to include in a subsequent extension of its scope; The Commission did not accept this amendment. - include among counterfeit goods products manufactured without the agreement of the holder of a patent relating to them which, as a result, infringed the rights of the patent holder under Community laws or the law of the Member State in which the application for action was made; The Commission did not accept this amendment. - introduce the concept of a "work" in the definition of pirated goods; The Commission did not accept this amendment. - include federations, associations and societies empowered to defend and administer their rights under holders of rights; The Commission would accept this amendment with a new wording. - include any tool or similar material among the goods treated as counterfeit or pirated goods; The Commission accepted this amendment. - exclude from the application of the first subparagraph of Article 1(4) cases where the holder opposed the subsequent marketing of his products when the state of the products had been changed or adulterated after their placing on the market; The Commission did not accept this amendment. - set a time frame of five working days for the competent customs services to deal with the applications they received; The Commission accepted this amendment. - make it compulsory for Member States to require the holder of a right, where his application had been granted, to provide a security; The Commission did not accept this amendment. - ensure that the opportunity to inspect goods whose release had been suspended or which had been detained was limited to the applicant; The Commission did not accept this amendment. - add the holders of product patents to the holders of trade marks referred to in the first subparagraph of Article 8(1); The Commission did not accept this amendment. - do away with the reference to the provisions of national laws when destroying goods found to be counterfeited; The Commission did not accept this amendment. - ensure that the derogation of the disposal of goods found to be counterfeited outside commercial channels for socially useful purposes was subject to the express authorisation of the holder of the right together with the removal of trade marks which had been affixed to counterfeit goods without authorisation; The Commission accepted these amendments. - specify that the aim of the penalties to be introduced by the Member States was to punish offenders and discourage people from taking such action in the future by pointing out that these penalties should be punitive, proportional and dissuasive; The Commission accepted this amendment. - accord the Commission responsibility for coordinating action to combat the trade in counterfeit and pirated goods; The Commission accepted this amendment. - clarify the timetable for the Commission to submit its first report to Parliament and stress that the report should be updated every year, including in its assessment the impact of counterfeiting together with its social consequences; The Commission accepted this amendment.