Criminal measures aimed at ensuring the enforcement of intellectual property rights

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The committee adopted the report by Nicola ZINGARETTI (PES, IT) amending - under the 1st reading of the codecision procedure - the proposed directive on criminal measures aimed at ensuring the enforcement of intellectual property rights. The key amendments were as follows:

- the scope of the directive should be defined more precisely so as to focus expressly on counterfeiting and piracy;

- commercial rights under a patent should be excluded from the scope of the directive;

- the directive should not apply to any infringement of an intellectual property right related to: patents, utility models and supplementary protection certificated; and parallel importation of original goods, which have been marketed with the agreement of the right-holder in a third country;

- the committee 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", "intentional infringements of an intellectual property right" and "legal person";

- Member States should ensure that the "fair use" of a protected work, including for such purposes as critcism, comment, news reporting and teaching, does not constitute a criminal offence;

- to make penalties effective and dissuasive, national courts should take into account repeated offences committed in Member States other than the offender's country of origin, when determining the level of penalty to be imposed;

- a new Article 6a stipulated that 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";

- a new Article 6b required Member States to ensure that the rights of defendants are duly protected and guaranteed;

- Member States should ensure that the holders of intellectual property rights cooperate with joint investigation teams;

- lastly, a new article 7a provided for right-holders to be entitled to receive information from law enforcement agencies, for example where they have obtained evidence of infringement, so that such evidence can be made available for use in pending or contemplated civil proceedings brought by the right-holder against the alleged infringer.