Criminal measures aimed at ensuring the enforcement of intellectual property rights

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The Council discussed specific questions relating to a proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights.

The Council focused its debate on the need for criminal measures in the field of intellectual property rights, on whether and to what extent the Community has competence to adopt criminal law measures in the field of intellectual property rights on the basis of Article 95 of the Treaty establishing the European Community, and on the scope of the Directive (the list of rights which should be included in the Directive: only those harmonised at Community level or also the possibility of including national rights).

The Council broadly agreed with the following:

1) the protection of intellectual property rights is of utmost importance. Bearing in mind the principle of subsidiarity and the fact that the use of criminal law is considered as a means of last resort, further scrutiny is needed regarding the need for criminal measures at EU level in order to protect intellectual property rights;

2) noting further that the current evaluation of Directive 2004/48/EC should provide information on the efficacy of EU provisions on civil and administrative measures to protect intellectual property rights, and that fundamental questions concerning Community competence in adopting criminal law measures can better be addressed after the Court of Justice has given its judgment in case C-440/05, discussions should nonetheless be continued at Working Party level on the substantive provisions of the proposed instrument;

3) these substantive provisions of the proposed instrument should be discussed on the basis of a limitation of its scope to intellectual property rights harmonised in Community legislation, in line with the principles stated in the conclusions of the informal JHA meeting in Vienna on 13 and 14 January 2006.

By judgment of 13 September 2005, the European Court of Justice annulled Framework Decision 2003/80 /JHA on the protection of the environment through criminal law (C-176/03 Commission v. Council). The European Court was of the view that Article 175 TEC, which refers to Community measures intended to protect the environment, gave the Community competence to adopt measures relating to the criminal law of the Member States. On this basis, the European Court ruled that the framework decision encroached on Community competence, and did not respect Article 47 TEU.

The Commission submitted a communication to the Council and the Parliament on the consequences of the Court’s judgment (COM(2005) 583 final). The proposal which was examined by the Council was issued in line with that communication.