

## **Opinion of the Economic and Social Committee on "Counterfeiting"**

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(2001/C 221/02)

On 19 December 2000, the Economic and Social Committee, acting under Rule 23(2) of its Rules of Procedure, decided to draw up an additional opinion on "Counterfeiting".

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 May 2001. The rapporteur was Mr Malosse.

At its 382nd plenary session held on 30 and 31 May 2001 (meeting of 30 May) the Economic and Social Committee adopted the following opinion by 112 votes to one.

### 1. Introduction

1.1. The Economic and Social Committee, at its 361st plenary session (meeting of 24 February 1999) adopted an opinion(1) in response to consultation by the European Commission, in accordance with Article 198 of the Treaty establishing the European Communities, on the Green Paper on combating counterfeiting and piracy in the single market.

1.2. On 30 November 2000, the Commission submitted a Communication to the Council(2), the European Parliament and the Economic and Social Committee on the follow-up to be given to its Green Paper. The Committee Bureau decided at its meeting on 19 December 2000 to issue an additional opinion in order to send out a political signal to the Commission, the Council and the European Parliament and to European civil society, in view of the considerable impact this problem has within the Community.

1.3. The Committee opinion adopted on 24 February 1999 was the result of in-depth work; this had given rise to a hearing which brought together more than 30 economic and social organisations throughout Europe, all of which one way or another - were facing problems caused by counterfeiting and piracy. The recommendations of that opinion are set out in the appendix to this draft.

1.4. The Committee has closely followed the ideas and discussions surrounding this topic since the Green Paper was published. In particular, it took part in a hearing organised by the European Commission jointly with the Germany presidency of the Council in Munich on 2 and 3 March 1999 and in a European forum on combating counterfeiting and piracy organised by the French Council presidency in Paris on 20 and 21 November 2000.

1.5. This additional opinion is part of a series of initiatives taken by the Committee for promoting intellectual and industrial property rights in Europe. Thus, the own-initiative opinion on "The exhaustion of registered trade marks rights"(3), adopted on 24 January 2001, stresses the dangers of a flood of counterfeit products if there were to be a switch away from the Community exhaustion regime.

### 2. General comments on the Commission proposal

#### 2.1. Approval of the Commission's general approach

2.1.1. The Committee supports the European Commission's intention to submit a proposal for a Directive in the near future aimed at boosting the resources for ensuring that intellectual property rights are complied with and defining a general framework for exchanging information and for administrative cooperation. In view of the alarming recent upsurge in counterfeiting and piracy activities, the Committee would underline the urgency of issuing this proposed directive as quickly as possible. Most of the European organisations concerned, just like the ESC in its opinion on the Green Paper, had already stressed the need for this. In this connection the Committee underlines the right of economic and social organisations, including consumers organisations, to go to court to request the closure of establishments where acts of counterfeiting and piracy have been committed, as well as to request application of the procedure for recalling goods, the costs of which should be jointly borne by those responsible for producing and marketing the counterfeit or pirated goods. Lastly it

stresses the importance of establishing counterfeiting and piracy as crimes with minimum penalties which have a sufficiently deterrent effect, including penalties for distributors and private individuals when large quantities of counterfeit goods are involved; acquired with full knowledge of the facts. These penalties should include closure of production establishments with social support measures for staff whose situation has been abused. The Committee would wish this principle to be included at this stage in the draft directive, though more precise provisions may be included in initiatives undertaken as part of the creation of a European judicial area.

2.1.2. The Committee particularly welcomes the fact that the Commission is intending to introduce a right to information. In order to clamp down effectively on these crimes, the first condition is often that the holder of the rights has full information about the origin of the counterfeiting and the distribution networks. To do this, it is necessary for the right to information to be independent of the offence and therefore not subject to any conditions. The Committee thus would stress the need for right holders to be kept adequately informed so that they do actually contact the customs services with requests for action, all the more so since counterfeiting and piracy are otherwise difficult to detect.

2.2. The need for consistency between internal and external actions: "Everything but counterfeiting and piracy"

The Committee regrets the fact that this Communication does not adopt a global approach in tackling counterfeiting and piracy - particularly the aspects of these activities which occur outside the EU - since a large quantity of pirated and counterfeited products circulating within the EU comes from third countries. Recently the European Commission proposed an initiative entitled "Everything but Arms" designed to allow 48 of the poorest countries in the world to export all their products except for arms to the European Union, "without quotas, without tariffs, and without exception". Note that while arms generally come from developed countries, the same is not true of counterfeit and pirated products; incidentally, these follow the same route as drugs and illegal immigration and represent a real threat, undermining genuine development opportunities by stifling legal economic expansion. The Committee thus recommends using Article 9 of the regulation on generalised preferences to exert pressure on those countries which turn a blind eye to such practices. At the same time, as well as clamping down on offenders, it would also be up to the European Union to promote awareness - raising campaigns and training in its cooperation programmes with those countries most affected by this phenomenon.

2.3. A crucial issue for enlargement but also vital for current Member States

The Committee fully supports the determination that the Commission has demonstrated in ensuring that the fight against counterfeiting and piracy is a priority issue in the negotiations with the applicant countries, particularly those which are heavily involved in this problem. To this end, consistency must be secured between this Communication and the one recently presented by the Commission<sup>(4)</sup> analysing the major problems facing the customs services, especially after enlargement. However, the Committee urges the European Union to make sure that the obligations placed on the applicant countries and the practices asked of them are no greater than those applying to each of the current Member States. Otherwise the Community's position seems to us quite shaky. How, in fact, can drastic measures be imposed on applicant countries while some current Member States continue to be quite lax in their approach?

2.4. The Committee proposes a formal political act

So as to propel matters forward and endow the Union's efforts with a global dimension, the Committee advocates holding a "jumbo" Council, bringing together ministers responsible for justice and internal affairs, the single market, trade and foreign affairs. At this meeting, coordinated national and Community measures should be taken to combat counterfeiting and piracy, to step up sanctions against offenders, to bolster customs action against those countries turning a blind eye to these practices and to coordinate measures and instruments for protecting industrial and intellectual property rights. In addition, it would be appropriate to use such an occasion to issue a formal Council Declaration highlighting the economic and social harm caused by such practices, the dangers for personal health and safety, and the link with large-scale organised crime.

3. Specific proposals on training and awareness-raising

3.1. Awareness-raising and public information

The Committee had also called for awareness-raising and public information campaigns and it welcomes the fact that these are included in the urgent measures proposed by the European Commission. It is nevertheless concerned by the absence of detail on this point and the lack of resources released for this purpose. It stresses the key role played by civil society organisations: consumers, professional associations, the commercial sector, writers and artists associations and other representative bodies. It suggests that specific instruments be put in place for providing information: a Europe-wide campaign involving posters in ports and airports, and the immediate creation of a website accessible in particular to business organisations,

distributors and consumers' organisations through whom information about court decisions would be relayed (this latter suggestion is only mentioned as a "medium-term action" in the Commission's plan).

### 3.2. The key role played by the courts

The Committee regrets the fact the Commission makes no mention of the need for training and coordination measures to boost the effectiveness and resources of police and judicial bodies: most of the organisations and businesses concerned have stressed how urgent this is. In this connection the Committee suggests that Member States and the Commission put forward proposals soon for measures to be implemented in the framework of the European judicial area, for:

- strengthening and specialisation of EUROPOL units;
- putting in place training and exchange programmes for policemen and magistrates;
- developing a network of courts with the necessary qualifications for handling these cases, with back-up from a specialised European chamber dealing with the adoption of the Community patent;
- organising the exchange of information through the European network for mutual legal assistance.

To make the wheels of justice turn more quickly, the Committee would even suggest that when the draft European enforcement order is being prepared, the possibility be discussed of including the handling of counterfeiting and piracy cases.

### 3.3. Information for businesses

The Communication omits to broach the crucial issue of informing businesses about their rights and duties in the face of the increase in this criminal activity. The Commission merely points out that "responsibility relies primarily with holders of intellectual property rights, who must be on their guard", and seems to forget that more often than not this concerns small and medium-sized firms, tradesmen, craftsmen, freelance writers and researchers who do not have the resources to monitor the situation in this way and are often unaware of their rights. The Committee therefore calls for awareness-raising campaigns funded by the Union to be mounted in conjunction with professional bodies. Such projects are already in place in some member states and it would be appropriate to introduce these throughout Europe, adopting a transnational approach. Moreover, the Committee again stresses the value of providing businesses with specialised information tools such as data bases on designs and a European counterfeiting observatory in the form of an information network for businesses via the Euro-Info centres. More generally, the Committee feels bound to stress how urgent it is for effective Community instruments to be adopted for protecting property, such as the Community Patent and the Regulation on Community Design.

### 3.4. The central role to be played by European civil society in the new forms of regulation

3.4.1. The Committee also points out that the Communication does not directly tackle the central role which European civil society organisations could play straight away in what is known as "self-regulation and co-regulation". This involves amongst other things codes of good conduct for the distribution sector and the industry, as well as quality labels. Along the same lines, the "free-rider" approach, consisting of making blatant imitations (look-alikes), must also be blacklisted insofar as these unfair practices are damaging to the spirit of creativity and inventiveness.

3.4.2. The Committee suggests to the Commission that a working seminar on these subjects be held with all the major economic and social organisations, at which good practices for civil society operators would be presented and proposals worked out for these practices to be brought into widespread use.

## 4. Conclusion

4.1. The Committee underlines how urgent it is to adopt a coordinated global policy for combating the scourge of counterfeiting and piracy. Over and above the economic and social harm which is caused, the very health and safety of the general public is under threat while the spirit of invention and creativity is treated with disdain.

4.2. Any delay in providing the European Union with instruments for protecting creativity and invention (the Community patent and the regulation on Community design) and for fighting against counterfeiting and piracy (the draft directive announced by the European Commission) would be interpreted as a sign of weakness. Today, inventors, businessmen, designers and artists run the risk of seeing their work copied, and consumers and distributors are in danger of being cheated. It is important to turn the tables and ensure that it is the counterfeiters of innovation and the pirates of creativity who run the risks.

4.3. In this struggle, the Union's strongest allies will not only be the forces of order (police and the courts), but also civil society organisations. In fact, pressure from society can be a very effective weapon in terms of

staying on guard, sounding the alert, educating the public, and upholding moral standards.

Brussels, 30 May 2001.

The President

of the Economic and Social Committee

Göke Frerichs

(1) OJ C 116, 28.4.1999, p. 35.

(2) COM(2000) 789 final of 30.11.2000.

(3) OJ C 123, 25.4.2001.

(4) COM(2001) 51 final, of 24.1.2001, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee concerning a strategy for the Customs Union.

## APPENDIX

to the opinion of the Economic and Social Committee

Summary of the recommendations contained in the Economic and Social Committee's opinion on the Green Paper on Combating counterfeiting and piracy in the single market

1.1. All forms of counterfeiting, piracy and other parasitic acts cause severe damage to European firms and creative people.

1.2. Such acts deceive the customer and the consumer, and may involve serious risks to their safety and health.

1.3. They have a negative impact on employment and creativity in Europe.

1.4. Very often, illicit counterfeiting and piracy are tied up with undeclared work, tax avoidance, disregard for social and labour law and organised crime.

2.1. In view of all this, the ESC recommends that the EU adopt an overall approach to the phenomenon that takes account of the external and internal political aspects and introduces appropriate measures for preventing and stamping out all forms of counterfeiting, piracy and other parasitic acts.

2.2. Bearing in mind the importance of prevention, the ESC notes the importance of having a single set of laws containing uniform protection, at reasonable cost, for all forms of intellectual property, proper information for creative people and entrepreneurs about their rights, and campaigns to warn consumers and appeal to their sense of civic duty.

2.3. The ESC would stress the need to launch information campaigns for the general public, coordinated at European level and involving consumers' organisations, trade unions and the professional organisations concerned, including those in the distribution sector.

2.4. The ESC recommends the setting-up of a "European observatory to combat counterfeiting, piracy and other parasitic acts", operating in a network with all the organisations and associations concerned; it suggests pilot schemes to encourage projects on a European scale aimed at alerting and informing the public and training the authorities concerned.

2.5. The ESC stresses the urgent need to strengthen legal and police cooperation, in liaison with the organisations and associations concerned. It considers that to combat organised large-scale counterfeiting and piracy effectively, the proper way, together with prevention, is to apply the law very strictly with the support of effective cooperation at European level.

2.6. The ESC thinks it would be wise to allow the organisations and associations concerned to sue on behalf of wronged firms, inventors or consumers.

2.7. The ESC feels that justice must be encouraged to apply the laws strictly, especially in the event of repeated offences and organised crime, and that complainants should not have to bear the cost of destroying illegally-manufactured goods. Appropriate ways for achieving this would be to provide specialist training for judges, set up special courts and extend the provisions concerning the Community trade mark to cover other areas of intellectual and industrial property.

2.8. The ESC recommends that the combating of counterfeiting, piracy and other forms of parasitism should be closely linked to the combating of undeclared work, tax avoidance and organised crime. Cooperation between authorities should be extended and strengthened through European training programmes involving

and mobilising all the types of authority concerned.