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Need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods

Reply to Recommendation[1]: Recommendation 1793 (2007)
Committee of Ministers

1. The Committee of Ministers examined with interest Recommendation 1793 (2007) of the Parliamentary Assembly on the need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods. It transmitted the recommendation to member states, to the European Committee on Crime Problems (CDPC) and the Public Health Committee (Partial Agreement) (CD-P-SP). The comments received from these committees are appended to this reply.

2. The Committee of Ministers refers to the replies adopted on 6 April 2005 and 26 September 2007 concerning Parliamentary Assembly Recommendations 1673 (2004) on counterfeiting: problems and solutions, and 1794 (2007) on the quality of medicines in Europe. It agrees with the Parliamentary Assembly about the dangers caused by counterfeiting and trafficking in counterfeit goods. It refers, in particular, to the opinion of the CD-P-SP concerning the serious, and often fatal, consequences for consumers linked to the use of pharmaceutical products, health care products, foodstuffs, alcoholic beverages and other consumer products and commodities that have been either counterfeited or adulterated. In this connection, the Committee of Ministers draws the Assembly's attention to the work of the Partial Agreement in the Social and Public Health Field and in particular the survey report on counterfeit medicine and the conclusions of the seminar on counterfeit medicine (2005).

3. With regard to paragraph 10.1 of the recommendation, the Committee of Ministers draws the Assembly's attention to the fact that, following a feasibility study on the possible preparation of a draft convention on combating pharmaceutical crime prepared by the CDPC, on 10 October 2007, the Committee of Ministers gave a specific mandate to the Group of Specialists on Counterfeit Pharmaceutical Products (PC-S-CP). The group of specialists will prepare a report focusing on the key elements which could be included in a binding international legal instrument to fight crime concerning counterfeit pharmaceutical products. The report, which should be completed by December 2008, will address the criminal law aspects of counterfeit medicines and other medical products including means of preventing such crime and strengthening international co-operation. The European Commission will be associated with the group during their meetings. In the light of these developments, the Committee of Ministers will reconsider the preparation of a legal instrument in this field, being convinced that the elaboration of such an instrument would be a relevant contribution to the fight against counterfeiting and trafficking in counterfeit goods. The Committee of Ministers will later examine the advisability of possibly broadening the reflection to other types of counterfeit goods.

4. The Committee of Ministers notes with interest recommendations 10.2, 10.3 and 10.4 and recognises a heightened awareness of member states to the issue of counterfeit medicines. Like the CDPC, it is convinced of the need to establish an efficient national legislation and strengthen administrative mechanisms to successfully prevent counterfeiting of pharmaceutical products and prosecute its perpetrators. In this context and given the growing problem of counterfeiting, the Committee of Ministers urges the relevant authorities of

1. Adopted by the Committee of Ministers on 21 November 2007, at the 1011th meeting of the Ministers' Deputies.

member states to implement Resolution ResAP(2007)2 on good practices for distributing medicines via mail order which protect patient safety and the quality of the delivered medicine, adopted by the Committee of Ministers on 5 September 2007.

5. Moreover, the Committee of Ministers encourages all states to launch national campaigns against counterfeiting and trafficking in counterfeit products to make consumers aware of dangers linked to such practices. These campaigns could give clear and practical explanations of the risks involved in the use of counterfeit products and urge people not to buy them.

6. Finally, with regard to recommendation 10.5, the Committee of Ministers will forward Parliamentary Assembly Recommendation 1793 (2007) and this reply to the European Patent Organisation.

Appendix 1 – Opinion of the European Committee on Crime Problems (CDPC) on Parliamentary Assembly Recommendation 1793 (2007) on the need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods

1. Following the adoption by the Parliamentary Assembly of Recommendation 1793 (2007) on the need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods, the Committee of Ministers decided to communicate it to the European Committee on Crime Problems (CDPC), for information and possible comments. The CDPC had examined the above recommendation and decided to contribute to the response of the Committee of Ministers by providing the following comments within its fields of competence:

2. The CDPC shared the view of the Parliamentary Assembly concerning the dangers inherent in the counterfeiting of goods and trafficking in such goods. It took full account of the difficulties in preventing this phenomenon, given the need for various measures that need to be taken into consideration at national and international levels not only in legal but also in policy and law-enforcement areas.

3. The CDPC recalled that it is currently considering the preparation of key elements, which could be included in a possible binding international legal instrument to fight counterfeit pharmaceutical products, and which would contribute to the overall fight against counterfeiting and trafficking in counterfeit goods.

4. The CDPC reiterated its support for the general idea of the Council of Europe's possible work on fighting counterfeiting and trafficking in counterfeit goods and expressed its readiness to embark on any future activity to that end in its field of competences.

5. However, before initiating work on a binding international legal instrument in this field, the CDPC will examine the results of the work of the PC-S-CP, which, subject to the approval of the Committee of Ministers, will begin its work this year.

Appendix 2 – Opinion of the Public Health Committee (CD-P-SP) on Parliamentary Assembly Recommendation 1793 (2007) on the need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods

1. Background

The Parliamentary Assembly adopted Recommendation 1793 (2007) on the need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods at the second part of the 2007 Ordinary Session (16-20 April 2007).

At its 994*bis* meeting on 7 and 9 May 2007, the Ministers' Deputies examined the above recommendation and decided to bring it to the attention of their governments, and also agreed to communicate it to the European Committee on Crime Problems (CDPC) and to the Public Health Committee (CD-P-SP) for information and possible comments by 15 June 2007. It invited its Rapporteur Group on Social and Health Questions (GR-SOC) to prepare, in the light of comments, a draft reply for adoption at one of their forthcoming meetings (CM/Del/ Dec(2007)994*bis*).

This Assembly recommendation deals with the Assembly's preoccupation with the growing phenomenon of counterfeiting in general in Europe, its substantial risk to public health and losses incurred by economies in Europe. The Assembly's recommendation aims at enforcing its earlier Recommendation 1673 (2004) on counterfeiting: problems and solutions (see also the opinion of the Committee of Experts on Pharmaceutical Questions (P-SP-PH) on Parliamentary Assembly Recommendation 1673 (2004) on counterfeiting: problems and solutions, submitted via the Public Health Committee (CD-P-SP) in December 2004).

2. Opinion

1. The CD-P-SP welcomes this Assembly recommendation as a very important initiative at political level to highlight not only the complexity of counterfeiting as a whole, the lacunae and obstacles existing as regards effective specific legal tools and their practical enforcement and the overall devastating effects it has on public health and the sustainable development and growth of society in Europe, but also outlining possible contributions to tackle the problem.

2. The CD-P-SP takes note with appreciation that the Assembly welcomes the prospect of elaborating a European convention on the fight against pharmaceutical and health carerelated crimes (see also its opinion on Parliamentary Assembly Recommendation 1794 (2007) on the quality of medicines in Europe, examined by the Committee of Ministers on 26 September 2007).

3. The CD-P-SP shares the concerns of the Assembly about the serious, often fatal, consequences for the consumer through the use of counterfeit or adulterated pharmaceutical products, health care products, food, alcoholic beverages, and other consumer products and commodities. This concern is based on the long-standing commitment and competencies of the CD-P-SP in consumer health protection, which is reflected in its programme of activities, in particular on the safe use of pharmaceuticals and pharmaceutical practice as well as on consumer health protection as regards cosmetic products and nutrition, including food packaging materials and flavourings.

3. Conclusions

1. In conclusion, and without prejudice to the foregoing comments, the CD-P-SP takes note with appreciation of Assembly Recommendation 1793 (2007) – drawn up in the spirit of the core values of the Council of Europe, indicating a possible approach to a highly complex problem and arriving at a sensitive approach outlining measures to protect society and economies from the scourge of counterfeit products while at the same time emphasising public health protection.

2. The CD-P-SP calls for an adequate consideration of the needs of consumer and patient protection, in particular as regards pharmaceuticals, cosmetics and nutrition in every possible follow-up given to Recommendation 1793 (2007) on the need for a Council of Europe convention on the suppression of counterfeiting and trafficking in counterfeit goods.