Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1793 (2007)[1]

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

Parliamentary Assembly

1. The Parliamentary Assembly recalls its earlier Recommendation 1673 (2004) on counterfeiting: problems and solutions, in which it expressed concern over the growing phenomenon of counterfeiting in Europe, pointing out substantial risks to public health and well-being and major losses incurred by the economies of the Council of Europe member states. This preoccupation is reflected in the general resolve of the member states at the 3rd Summit of Heads of State and Government of the Council of Europe, held in Warsaw in 2005, to foster "good governance at all levels" with the aim of promoting stability and economic and social progress. This has so far found only partial expression in the Council of Europe's work, notably as regards counterfeit and sub-standard medicines.

2. The Assembly, in this context, also refers to the Declaration of the G8 on Combating IPR (Intellectual Property Rights) Piracy and Counterfeiting, adopted in St Petersburg on 16 July 2006. This statement reaffirmed the multilateral commitment to "strengthening individual and collective efforts to combat piracy and counterfeiting, especially trade in pirated and counterfeit goods", noted "that such efforts will contribute to the sustainable development of the world economy, including through innovations, as well as to health and safety of consumers all over the world" and urged enhanced co-operation "in that area among the G8 and other countries, as well as competent international organisations, notably the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the World Customs Organization, Interpol, the Organisation for Economic Co-operation and Development (OECD), and the Council of Europe".

3. Given the accelerating pace of globalisation, counterfeiting, which forms a significant part of the shadow economy and accounts for up to 9% of world trade, is increasingly affecting European countries and is closely linked to organised crime networks. All member states of the Council of Europe are concerned as countries of origin, transit or destination for counterfeit goods. Not only fake medicines, but also many other products, such as spare parts, toys, personal care products, electric appliances, foodstuffs, alcoholic beverages and other goods, when counterfeited, can endanger consumers' health and safety, seriously damage the European economy (especially through counterfeit brands) and nurture criminal networks. The Assembly believes that the time has come for the Council of Europe and its member states to tackle the problem of counterfeiting in a more comprehensive manner than has been the case until now.

4. There is an urgent need for action to raise awareness of the dangers that counterfeiting represents to the individual and collective safety of the public and to shape a coherent European policy for the prevention, deterrence and repression of counterfeiting. It is disturbing that counterfeiting remains a low-risk, high-profit activity as prosecution is cumbersome, sanctions are relatively weak and often difficult to apply, and inter-state co-operation is deficient. The Assembly welcomes the prospect of elaborating a European convention on the fight against pharmaceutical- and health care-related crime and is convinced that a further similar initiative is necessary to fight all counterfeiting and trafficking in counterfeit goods.

1. Assembly debate on 20 April 2007 (18th Sitting) (see Doc. 11227, report of the Committee on Economic Affairs and Development, rapporteur: Mr Schreiner). Text adopted by the Assembly on 20 April 2007 (18th Sitting).

5. The Assembly is aware of the highly valuable work in this field carried out by various national and European authorities and specialised organisations, principally the European Union, the European Patent Office (EPO), Europol, Eurojust, the European Anti-fraud Office (OLAF), WTO, WIPO, Interpol, the World Health Organization (WHO) and the International Chamber of Commerce (ICC). It notes, however, the lack of a truly comprehensive and cross-sector strategy to fight counterfeiting in all its forms.

6. The Council of Europe, given its multidisciplinary approach, its political and legal authority, as well as its pan-European membership, is ideally placed to motivate and mobilise European states to tackle the complex challenge and threat that counterfeiting represents. While a legal instrument with a global reach would undoubtedly be desirable, this would hardly be feasible given the urgency required and the high standards to which the European countries aspire.

7. Intellectual property, and in particular patents, provide crucial support for innovation and are essential for developing a competitive, knowledge-based economy in Europe. Simplified patent procedures, lower patent registration fees and standardised dispute settlement mechanisms – as foreseen in the London Agreement and the European Patent Litigation Agreement framed under the aegis of the European Patent Organisation, but not yet in force – are major steps towards providing better legal protection for innovation in Europe and remedying the shortcomings of the present cross-border litigations. They constitute a significant effort with regard to deterring counterfeiting and piracy, and merit the strongest possible support of the contracting parties.

8. Despite the commendable work of the customs services in protecting Europe's external borders against counterfeit goods produced in third countries, too many consignments, especially the delivery of goods ordered on the Internet, go unchecked, with the result that many counterfeit products slip through. Moreover, increasing quantities of counterfeit goods are made in Europe itself and are thus even more difficult to intercept before they reach end-users. Investigating a product's authenticity and origin, for the purpose of detecting and intercepting fakes, calls for more harmonised civil and criminal law procedures, as well as an enhanced technical arsenal, in line with strategic priorities to combat organised crime.

9. 9. Reliable measurement of the real extent and impact of counterfeiting is essential in order to pursue adequate and pragmatic anti-counterfeiting action. For various reasons, currently available figures on counterfeiting (usually police and customs data on arrests and seizures and industry estimates) illustrate the large-scale nature of the phenomenon and reveal certain trends, but are not detailed enough to underpin effective countermeasures, an analysis of trends and policy adjustment. The establishment of an independent authority for statistical monitoring of counterfeiting in the Council of Europe member states should be envisaged.

10. The Assembly therefore recommends that the Committee of Ministers:

10.1. instruct the competent intergovernmental committee to work, in consultation with the European Union and other stakeholders, on the preparation of a European convention on the suppression of counterfeiting and trafficking in counterfeit goods, covering civil and criminal law aspects of the problem;

10.2. consider organising an information campaign on the dangers counterfeiting represents to European public safety;

10.3. urge member states to launch similar national campaigns against counterfeiting;

10.4. take the lead in shaping a coherent European policy designed to provide technical means for the prevention and deterrence of counterfeiting (especially regarding the delivery of goods ordered on the Internet), as an indispensable tool for gathering legal evidence and for the application of repressive measures against counterfeiters and traffickers;

10.5. urge member states of the European Patent Organisation to convene a diplomatic conference in order to adopt the European Patent Litigation Agreement and, for those which have not yet done so, to sign and ratify the London Agreement in order to ensure a smooth entry into force of that instrument.