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from the:	Presidency
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Subject:	Conclusions of the conference "Towards a more effective criminal enforcement of intellectual property rights"

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The conference "Towards a more effective criminal enforcement of intellectual property rights" organised by the Belgian Presidency of the Council of the European Union in collaboration with the European Commission, was held in Brussels on 29 and 30 November 2010.

The Belgian Presidency and the European Commission took that opportunity to relaunch the debate within Member States and with civil society on the need for a minimal convergence, at EU level, of criminal measures aimed at improving the enforcement of intellectual property rights.

This conference brought together experts from the fields of justice and intellectual property rights as well as civil society contributors, which helped to balance the different interests and permit an exchange of views on both the characteristics and the scale of crime linked to counterfeiting and on the appropriate means to combat it within the internal market.

Ninety experts from the 27 EU Member States, Europol, Eurojust and the European Commission attended the first day of the conference. Around one hundred private stakeholders joined these experts on the second day.

In recent years, Member States have been asked to consider the advisability of European action to harmonise criminal measures with a view to promoting respect for intellectual property rights.

Indeed, combating counterfeiting is one of the priorities set by the Lisbon Strategy, the Europe 2020 Strategy for Growth and Jobs, the Stockholm Programme, Regulation (EC) No 1383/2003 and Directive 2004/48.

Many bilateral and plurilateral negotiations are currently under way to strengthen criminal measures (ACTA, Korea FTA, EU-Canada CETA).

### **A legislative opportunity**

The Treaty of Lisbon provides a legal basis for a legislative initiative under Article 83(2) TFEU. This makes it possible to take convergence measures in criminal matters when these are essential to ensure the effective implementation of a Union policy in an area that has been subject to harmonisation measures.

Many EU instruments establish a regulatory framework for certain intellectual property rights. In addition, intellectual property rights are already reinforced at European level by a convergence of the civil and customs laws, such as Regulation (EC) No 1383/2003 or Directive 2004/48. These tools were mentioned during the discussions.

## **A practical necessity?**

These two days of discussions allowed experts from various fields (justice, police, economics, the Bar, associations, etc.) to examine the extent of the criminal phenomenon of counterfeiting in several sectors, including medicinal products, cigarettes and the Internet. The various presentations highlighted the threat that counterfeiting poses to public safety. In this regard, the transnational character of the counterfeiting phenomenon, its links with organised crime and the low-risk, high-return ratio were highlighted by some participants.

These practical experiences were complemented by the presentation of work comparing national laws on criminal measures aimed at enforcing intellectual property rights, which served mainly to highlight the disparities between definitions and the distortions in terms of the nature and severity of sentencing. Some of these differences are creating barriers to cooperation in police and judicial matters and leading to a fragmentation of the internal market in the field of intellectual property rights.

## **A choice for society**

Assessing the scale of this criminal phenomenon and the current actions in this area is a crucial element in considering the case for European action aimed at reconciling penal measures relating to intellectual property rights. This question, nevertheless, throws up a policy choice whose basis is to be found mainly in the Stockholm programme, but also in many other instruments.

This policy choice is not limited to the advisability of a certain action at EU level but, equally, to the type and content of the action to be undertaken: what should be the scope of application (all intellectual property rights or only some?), what should be the legal definition of a criminal offence, what kind of penalties should be imposed and how severe should they be, should these arrangements be supplemented by non-legislative measures? All these essential issues require detailed examination.

## CONCLUSION

In conclusion, the conference provided all those concerned with useful information for further substantive discussion of the need for harmonisation of criminal measures relating to intellectual property rights.

