



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 February 2006 (06.02)  
(OR. de)**

**5979/06**

**LIMITE**

**DROIPEN 10  
PI 9  
CODEC 98**

**NOTE**

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from : Presidency  
to : Working Party on Substantive Criminal Law

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No. Cion prop.: COM(2005) 276 (11245/05 DROIPEN 35 PI 17 CODEC 629)

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Subject : Proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights  
Proposal for a Council framework decision to strengthen the criminal law framework to combat intellectual property offences  
– Request for written opinions by **20 February 2006**, on which of the intellectual property rights listed in Statement 2005/295/EC by the European Commission concerning Article 2 of Directive 2004/48/EC should be removed from the scope of the Directive (Article 1)

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1. Article 1 of the Commission 's proposal for a Directive ("Objective and scope") provides that:  
"This Directive lays down the criminal measures necessary to ensure the enforcement of intellectual property rights.

These measures shall apply to intellectual property rights provided for in Community legislation and/or national legislation in the Member States."

2. This wording corresponds to Article 2(1) of Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights.<sup>1</sup>

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<sup>1</sup> OJ L 157, 30.4.2004, p. 45. Directive as corrected and republished in OJ L 195, 2.6.2004, p. 16.

The Commission takes up this provision and lists in Statement 2005/295/EC<sup>1</sup> concerning Article 2 of Directive 2004/48/EC those intellectual property rights which in any case should be covered by the scope of the Directive.

They are as follows:

- copyright,
- rights related to copyright,
- *sui generis* right of a database maker,
- rights of the creator of the topographies of a semiconductor product,
- trademark rights,
- design rights,
- patent rights, including rights derived from supplementary protection certificates,
- geographical indications,
- utility model rights,
- plant variety rights,
- trade names, in so far as these are protected as exclusive property rights in the national law concerned.

3. At the meeting of the Working Party on Substantive Criminal Law on 9 January 2006, the majority of delegations which spoke called for a limitation of the scope and a specific reference to certain property rights. Merely referring to the Commission's statement was regarded as inappropriate for this purpose.

4. The Presidency therefore requests the delegations to submit written opinions by **20 February 2006**, on which of the intellectual property rights listed in Statement 2005/295/EC by the European Commission concerning Article 2 of Directive 2004/48/EC should be removed from the scope of the Directive (Article 1).

Delegations are asked to send their replies to the Presidency and to the Council Secretariat: irene.simantoni@consilium.eu.int

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<sup>1</sup> OJ L 94, 13.4.2005, p. 37.