

Criminological Aspects Regarding the Smuggling of Counterfeit Products. Ways of Legal and Criminal Protection at European Level

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Abstract: The object of the topic is represented by the analysis of criminogenic factors that generate and facilitate smuggling in the Eastern part of the European Union, a phenomenon in which a main place is occupied by counterfeit products. The result sought is given by the identification of the sides and the highlighting of the criminogenic elements, many of them related to organized crime, which obtain huge profits by carrying out the criminal activity of smuggling. The conclusion consists in identifying and dynamizing the juridical-criminal ways of cooperation in order to combat the phenomenon of cross-border smuggling of counterfeit products.

Keywords: acts of infringement; notion of counterfeiting; legislator; counterfeit goods; victim

Romanian law on copyright and related rights does not use the term and does not define the notion of “counterfeiting” with which, however, often both doctrine (Eminescu, 1987) and jurisprudence refer to the violation of copyright and related rights. The Romanian legislator seems to have reserved this term only with reference to the violation of industrial property rights, but the assigned meaning is not always the same. Indeed, the term of counterfeiting is used with at least **two meanings**, the first to designate the **act of unlawful reproduction** of the original of a work, deed or creation and the result of this action, the second to designate, generically, **acts of infringement of intellectual property rights sanctioned as crimes**. In the usual language, counterfeiting (*in Romanian: a word composed of <counter> and <to do>*) means the reproduction of an original document, object or preparation for fraudulent purposes, giving them as authentic (DEX, 1986, p. 436).

In this sense, counterfeiting is synonymous with forging². The result of counterfeiting is a good or a product with appearances of originality. It is also the

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² Regulation of the National Bank of Romania no. 8/2002 regarding the procedure in case of finding forged or counterfeit euro banknotes and coins (Official Gazette no. 5/08.01.2003) in art. 3 points 1.3

meaning attributed to the word “counterfeiting” in our law, when it sanctions as a crime the illicit reproduction of the object of an invention. But in other cases, by counterfeiting, our legislator understood any violation of a right over a kind of intellectual creation. Such is, for instance, for counterfeiting of integrated circuit topographies¹ and in the case of violation of the rights over industrial designs and models².

Moreover, in terms of terminology, by the **notion of counterfeiting** we mean the reproduction of a document, an object, an original preparation for fraudulent purposes (giving them as authentic); to forge (Encyclopedic Dictionary, vol. I, 1993).

We can talk nowadays about a certain trademark piracy. This piracy is materialized by what we call *counterfeiting*. Counterfeit trademarks can no longer certify and guarantee the quality required by consumers. Counterfeiting thus represents a course contrary to the smooth running of trade.

The main victims of counterfeiting are found especially in the luxury goods industry: leather goods, textiles, perfumes, watches, electronics and home appliances, computer programs, etc. (Roş, Octavia & Bogdan, 2003, p. 462). The registration of the trademark grants its owner an exclusive right³ over the trademark and, consequently, confers thereto an action against those who infringe his right.

Counterfeiting is not defined in the national law, but in Law no. 84/1998 republished in 2010, art. 90, the counterfeiting is incriminated, and the acts of violation, the ways in which this crime can be committed are enunciated. Thus:

and 1.4, however, makes the following distinction between counterfeiting and forging: “1.3. Euro counterfeiting - fraudulent production of a euro banknote or coin, regardless of the means used, for the purpose of circulation; 1.4. Euro forging - the change in the face value of a euro banknote or coin, regardless of the means used, for the purpose of circulation”.

¹ Art. 40 of Law no. 16/1995 on the protection of topographies of integrated circuits (Official Gazette no. 45/9.03.1995);

² Article 51 paragraph (1) of Law no. 129/1992, republished, provides that: “Reproduction, without right, of the industrial design for the purpose of manufacturing products with identical appearance, manufacture, offering for sale, sale, import, use or storage of such products for the purpose of movement or use, without the consent of the holder of the registration certificate of the industrial design, during its validity period, constitutes the crime of counterfeiting the industrial design and shall be punished with imprisonment from 6 months to 2 years or with a fine from 15 million lei to 30 million lei.” But by art. 49 of the same law it is distinctly incriminated, “appropriation without right, in any way, of the quality of author of the industrial design or model”, an offense that constitutes a crime and shall be punished with imprisonment from 6 months to 2 years or with a fine from 15 million to 30 million.

³ The term “exclusive” shall be seen in relation to the subordination of the trademark right to the principle of specialty and territoriality: the exercise of this right, like any right, is carried out within the limits provided by law.

Paragraph (1) It constitutes an offense and shall be punished with imprisonment from 3 months to 2 years or with fine the unlawful commission of the following offenses:

- a) counterfeiting a trademark;
- b) putting into circulation a product bearing an identical or similar trademark with a registered trademark for identical or similar products;
- c) putting into circulation products bearing geographical indications indicating or suggesting that the product in question originates in a geographical region other than the actual place of origin.

Paragraph (2) Counterfeiting of a trademark means the making or use without the consent of the owner by third parties, in the commercial activity, of a sign:

- a) identical to the trademark for products or services identical to those for which the trademark was registered;
- b) which, given the identity or resemblance to a trademark or given the identity or resemblance of the products or services to which the sign applies to the products or services for which the mark was registered, would cause the public to perceive a risk of confusion, including the risk of association of the mark with the sign;
- c) identical or similar to the trademark for products or services other than those for which the trademark is registered, when it has acquired a reputation in Romania and if by using the sign without good reason one could take advantage of the distinctive character of the trademark reputation or use the sign would cause trademark damage.

Paragraph (3) The putting into circulation means offering the products or the sale or possession thereof for this purpose or, as the case may be, offering or provision of services under this sign, as well as the import, export or transit of products under this sign.

Paragraph (4) The offenses provided in paragraph (1) do not constitute crimes if they were committed before the date of publication of the trademark.

Paragraph (5) In the case of the crime provided in paragraph (1) letter a), reconciliation removes criminal liability¹.

¹ According to Law no. 84/1998 republished and updated on 26.05.2014. The act includes amendments to the following acts: - Government Emergency Ordinance no. 28/2014 published in the Official Gazette, Part I no. 388 of 26/05/2014.

A not very careful look at the provisions of the above law highlights an important word that characterizes the crime of counterfeiting, namely: error (because counterfeiting is based on misleading).

The Romanian legislator, leaving the French model that inspired us countless times, but also the model of the Romanian copyright law of 1923 (like the one of 1862)¹, avoided using the word “counterfeiting” to designate copyright infringement, using it, however, as we have already shown, in the matter of **industrial property**, in the Criminal Code, which defines the crime of “counterfeiting the object of an invention”, in art. 299, as “unlawfully counterfeiting or using the object of an invention”, as well as other laws in the field of industrial property, in which the word “counterfeiting” is used with a meaning similar or close to that in the Criminal Code, but also the broader meaning to which we referred above and which includes any infringement of property rights over certain intellectual creations.

These are the **two meanings** with which the term is used in art. 58² of Law no. 64/1991 of the patents for invention, in art. 90³ Law no. 84/1998 on trademarks and geographical indications, in art. 40⁴ of Law no. 16/1995 regarding the protection of

¹ In a decision in 1900, Galati Court of Appeal noted that “as regards the elements of the crime of fraud, they also exist, but being in question an attack on literary property, this fact must be qualified by its legal name of counterfeiting of writings provided and punished by art. 399 and art. 341 C.pen.” (Galati Court of Appeal, section II, hearing of April 20th, 1900, in Law no. 57 / 21.09.1900, p. 461).

² Art. 58 of Law no. 64/1991 has the following content: “The offenses committed in violation of the provisions of art. 33 para. 2 constitute counterfeiting and shall be punished with imprisonment from 3 months to 2 years or with a fine from 10,000 lei to 30,000 lei.”

³ Art. 90 of Law no. 84/1998 on trademarks and geographical indications has the following content: “It constitutes an offense and shall be punished with imprisonment from 3 months to 2 years or with a fine the commission, without right, of the following acts: a) counterfeiting a trademark; b) t putting into circulation a product bearing an identical or similar trademark with a registered trademark for identical or similar products; c) placing on the market products bearing geographical indications indicating or suggesting that the product in question originates in a geographical region other than the actual place of origin”.

⁴ Art. 40 of Law no. 16/1995 has the following content: “It constitutes an offense of counterfeiting, within the meaning of this law, the commercial exploitation or production without right of a protected topography or of a semiconductor product in which a protected topography or a circuit element incorporating such a semiconductor product, in so far as this element continues to contain a topography. The actions provided in paragraph (1) are qualified as counterfeiting if they were committed after the date of publication of the topography registration in the National Register of Topographies and shall be punished with imprisonment from 3 months to 2 years or with a fine from 10,000 lei to 30,000 lei. The criminal action is incoated upon the prior complaint of the injured person or ex officio. For the damages caused, the holder has the right to compensation, according to the common law, and may request the competent court to order the measure of confiscation or, as the case may be, of the destruction of the counterfeit products; these provisions also shall also apply to equipment that has directly served to commit the crime of counterfeiting”

the topographies of the integrated circuits and in art. 51¹ of Law no. 129/1992 of industrial designs (Roş, Octavia & Bogdan, 2003, pp. 513-515).

As counterfeiting has become one of the world's economic crimes covering an almost unlimited range of products and fueling both the economies of industrialized and developing countries, special attention should be paid to it, especially in Romania for the fact that there is legislation in the field of intellectual property rights.

Intellectual Property Rights (IPR) include: copyright, related rights, the right on registered product or service marks, the right on industrial designs and models, the right on geographical indications, the right on patents and the right on additional protection, according to the law.

By definition, **countereit goods** represent:

- a) any goods, including their packaging, which bear, without authorization, a product or service trademark identical to a legal product or service trademark registered for said goods or which cannot be distinguished, in its essential aspects, from a registered trademark of a product or service and which, for this reason, infringes the rights of the holder of that trademark;
- b) any trademark of product or service entrusted without authorization to be affixed on goods, even if it is presented separately, and which is in the same situation as the goods mentioned in letter a);
- c) any goods bearing a protected product or service trademark or which do not differ substantially from it and which are likely to constitute an infringement by being used in relation to goods or services other than those for which a product or service mark has been registered, causing confusion as to source or origin;
- d) any packaging bearing marks of counterfeit products, presented separately, under the same conditions as the goods defined in letter a).

¹ Art. 51 of Law no. Regulation (EC) No 129/1992 has the following content: in order to put into circulation or use, without the consent of the holder of the registration certificate of the industrial design or model, during its validity period, constitutes the crime of counterfeiting the industrial design or model and shall be punished with imprisonment from 6 months to 2 years or a fine from 15 million lei to 30 million lei. The criminal action is incoated upon the prior complaint of the injured person or ex officio. For the damages caused, the holder has the right to compensations, according to the common law, and can request the competent court to order the measure of confiscation or, as the case may be, of the destruction of the counterfeit products; these provisions shall also apply to materials and equipment that have directly served to commit the crime of counterfeiting.”

Also by definition, **pirated goods** are all copies made without the consent of the holder of the right or of the person legally authorized thereby in the country of production and which are executed, directly or indirectly, after a product bearing copyright or related rights or a right on industrial models and designs, if the making of such copies would constitute an infringement of the respective intellectual property right.

Also, any pattern or mold intended or adapted for the manufacture of a counterfeit trademark, for goods bearing such a mark or for the manufacture of pirated goods is a commodity infringing an intellectual property right.

Increasing the efficiency of combating and piracy is a priority concern of the Romanian legislator and in this sense the national legislation in the field of IPR has been adopted, which is based on the Regulations of the Council of Europe which includes certain aspects, namely:

1. Counterfeiting consists in imitating or using a trademark without having any right, in order to mislead the consumer as to the quality of the products, works or services, or to obtain certain advantages. The goods are sold at derisory prices and compete unfairly with the companies that manufacture the original products, causing them damages of millions of dollars.
2. The disadvantages of counterfeiting and piracy are very great both for producers by the considerable damage they cause and for consumers in terms of public health and safety - by purchasing a product - packaged under a counterfeit logo - either very expensive or very cheap, but of poor quality in both cases. Losses are also quantified by reducing revenues to the state budget, but also on the job market left unused.

Here are some examples of counterfeit products: clothing, footwear, leather goods; audio/video cassettes, CDs, games, perfumes, cosmetics, alcohol, medicines, watches etc. and the list goes on.

There are many examples of products that bear a striking resemblance to the names of traditional trademarks, both in resonance and in the form of the letters used in the emblem, as an example: Panasonic - Pawasonic, Hitachi - Futachi, Sanyo - Sanwa, Gillette - Giraffe, Galeries Lafayette - Galeries Layette, Zip - Cip, Levi's - Levy's or Lewis, Evian - Vivian, Moulinex - Mammoulex - the first being registered trademarks.

Another dangerous aspect related to the fraudulent phenomenon of counterfeiting is presented by piracy. The concrete ways of piracy take the form of imitating the

product, by using symbols or brand names similar to those of world-famous brands. Among the transnational companies most affected by piracy is Microsoft.

In this regard, recognized by designing and developing products, packaging or trademarks as close as possible to the original are residents of countries located in South Asia, namely: Taiwan, Hong Kong, Singapore, South Korea, plus Latin American countries, namely: Mexico, Brazil and North Africa. Notable are the positions occupied by countries such as India and China for CDs, cassettes (world leader in terms of losses in music recordings) and countries in the process of transition to a market economy, including Russia, Romania, Bulgaria, etc.

It was observed that in recent years thousands of products of this kind have also been introduced in the country and on the Romanian market and that is why the Romanian authorities have taken various measures to prevent and combat this phenomenon of international magnitude. (Moldovan, 2006, pp. 206-207).

The direct **victim** of the crime of counterfeiting is the person who acquires a good. The relationship through which the perpetrator, intentionally, misleads his victim, takes place due to misinformation thereof and the perpetrator's abilities to reach the market with counterfeit products and make an attractive offer to the consumer. However, there are also cases in which the victim deliberately acquires a counterfeit good, by virtue of economic or social circumstances.

Regardless of the relationship between the consumer and the perpetrator, it is certain that the phenomenon of counterfeiting is: the supply of products of dubious quality, misleading the consumer and certain risks to the life and health of consumers.

We conclude that the object of counterfeiting can be any product, regardless of destination, size, utility or value. Although counterfeit medicines are most often associated with risks to the lives and health of consumers, practice shows that there are other equally dangerous products¹ that can affect public safety². As an example, we can also point to the counterfeiting of spare parts, which are imported from China and Turkey and which is a major problem for the road traffic system, especially since 60% of all accidents registered in 2019 were caused by drivers, being sanctioned contraveniently for the operation of means of transport with technical defects.

¹ According to the Union of Manufacturers (UNFAB), 10% of car parts sold in the European Union are counterfeit.

² According to the Customs Service, of the total products detained at the border as counterfeit, 39% were mobile phones and accessories, 10% were cosmetics, 4% were toys, and 2% were sunglasses, all the mentioned goods being included in the group of public health and safety risk products.

Thus, stopping the import of counterfeit car parts can be an effective tool to prevent traffic deaths.

Moreover, it must be mentioned that counterfeiting is a danger to the economic and social order arising from the introduction of counterfeit products in trade relations.

Regarding the impact of counterfeit products on rightholders, it should be noted that unfair competition establishes an illegal, defective, unbalanced and chaotic economic system, which is manifested by:

a) *the reduction of the sales* which represents the first signal notified by the honest producer, in case of the emergence on the market of the counterfeit products.

b) *the reduction of jobs* is represented by the negative influence on the business plan, which leads to the dismissal of employees due to the reduction of sales, which the rights holder bears.

c) *affecting the image and reputation* which consists in the fact that the intellectual property objects contribute massively on the development of the company's image and reputation, in which the reputation of the original product focuses on a series of unknown elements such as market analysis, creation concept, investments in high-performance technologies, production of goods according to quality requirements, identification and promotion of marketing strategy etc., which favours the emergence of a product, which is identified by a strong, valuable¹ and easily recognizable brand. At the same time, they are considered sufficient grounds for rights holders to individually protect their trademarks against any counterfeiting and to require States to secure their rights, which result from private property.²

d) *the decrease of the trust in the original products* consists in the fact that, the intention, in the case of the counterfeiting crime, is made by the illegal, integral or partial use of an object of intellectual property likely to create confusion with those used legally.

e) *the decrease of investments in research - development* tends to reshape the current economic principles. Given the high costs of the research process, rights holders need guarantees from the state, inclusively in order to reduce counterfeiting indicators.

¹ According to Interbrand, the most valuable brand acknowledged in 2019 was Apple, which is valued at 214 billion dollars.

² The preamble to the Trips Agreement states that the adoption of the document takes place in the context of "the acknowledgment of intellectual property rights as private rights".

Regarding the impact on the state, it should be noted that criminal activity is characteristic of any society, regardless of its maturity, complexity or development. The impact on the state is reflected, in particular, by:

a) reduction of taxes and duties to the budget - according to the International Chamber of Commerce, the volume of counterfeit goods is between 5% and 7% of world trade or approximately 600 billion dollars annually. The European Commission mentions in a 2019 report that customs services alone seized more than 100 million counterfeit items, which represents more than 1.1 billion euros.

b) the limitation of the competition principles - the phenomenon of counterfeiting has no tangent with the mentioned values but creates an unfair competition in relation to fair producers.

c) affecting the labour market - the extent of the phenomenon of counterfeiting on the labour market has been the subject of several studies resulting in job losses.

d) reduction of foreign investments - foreign companies analyze the opportunity of their presence on the territory of a state through the prism of national regulations and the safety of business.

States take care to ensure these needs through visionary policies, clear legislation, accessible economic systems, balanced legal instruments etc. The field of intellectual property is usually of interest to most foreign investors.

e) the development of the shadow economy and the increase of criminality - any form of criminality creates a social discomfort, therefore the state has the role of providing security among the population and the business environment.

f) increase of expenses for countermeasures - the phenomenon of counterfeiting arouses defensive reactions from all its victims. Under current conditions, both states and rights holders have adjusted their strategies to combat counterfeiting.

The companies have increased budgets for the establishment of national representations and the establishment of international associations for the protection of rights.

The legal framework defining both intellectual property rights and trademark standards is set out in Directive 2004/48/EC of the European Parliament and of the Council of April 29th, 2004 and EU Directive 2015/2436 of the European Parliament and of the Council respectively of December 16th, 2015. The second Directive applies to individual trademarks, guarantee or certification or collective marks

relating to goods or services, trademarks which have been registered or applied for in a Member State or Benelux Office for Intellectual Property or which have been the subject of an international registration which takes effect in a Member State.

Moreover, EU Directive no. 2015/2436 on the approximation of the laws of the Member States relating to trademarks was adopted and published very recently in the Official Journal of the European Union no. L 336 of December 23rd, 2015 and entered into force on January 13th, 2016. The Directive was adopted as part of a legislative package, together with Regulation no. 2015/2424 on the European Union trademark, published in the Official Journal of the European Union no. 341 of December 24th, 2015 and entered into force on March 23rd, 2016.

At the same time, the European Union Directive and the Regulation are drafted simultaneously and contain identical legal provisions, in order to “reduce the elements of divergence in the European trademark system as a whole, while maintaining the protection of national trademarks as an attractive option for applicants¹” and to ensure “the coexistence and balance of trademark systems at national and Union level²”.

This article analyzes in detail the content of these normative provisions insofar as they represent a reform of the European trademark law and impose changes of the Romanian legislation regarding trademarks: Law no. 84/1998 on trademarks and geographical indications (republished in the Official Gazette no. 337 of May 8th, 2014, hereinafter referred to as “Law no. 84/1998”) and the Regulation for the application of Law no. 84/1998 on trademarks and geographical indications, approved by Government Decision no. 1134 of November 10th, 2010, published in the Official Gazette no. 809 of December 3rd, 2010 (hereinafter referred to as “Regulation for the application of Law no. 84/1998”).

According to the provisions of art. 54 of the Directive, Romania has the obligation, by January 14th, 2019, to adopt “acts with the force of law, regulations and administrative provisions necessary to comply with Articles 3 to 6, Articles 8 to 14, Articles 16, 17 and 18, Articles 22 to 39, Article 41, Articles 43 to 50” of the Directive, which contain substantial rules of trademark law.

Until January 14th, 2023, Romania has the obligation to adopt “acts with the force of law and regulations necessary to comply with Article 45”, which contains rules on

¹ Preamble to the Directive, paragraph (5).

² Preamble to the Directive, paragraph (3).

the procedure for revocation of the right conferred by the registered national trademark and the annulment procedure of the registered national trademark.

The article identifies the divergences between the regulations of the Directive and those of national law and the necessary legislative changes, so that the transposition of the Directive into national law corresponds to the objectives of the Directive, specified in paragraph (12) of the Preamble: that „the acquisition and retention of the right to a registered trademark is in principle subject, in all Member States, to the same conditions.” Some of the novelty provisions of the Directive, which are divergent from the rules of national law, contain procedural provisions similar to those stipulated in the European Trademark Regulation.

In the field of intellectual property rights (which include industrial property rights, copyright and copyright-related rights), the tendency of the European legislator to adopt procedural rules through provisions of the Regulations or Directives is obvious¹.

What is a novelty in terms of legislative technique is the adoption, through the instrument of the Directive, of rules of procedural law whose transposition into national law involves changes in the rules of national civil procedural law, the aim being to harmonize national provisions of procedural law applicable in the matter of the right to a national trademark with the procedural rules regulated by the European Trademark Regulation.

In conclusion, the transposition of Directive no. 2015/2436 in domestic law will not produce radical changes in Romanian legislation, but will require clarifications of the legal regime applicable to national trademarks, so as to ensure the coherent functioning of the internal market, coexistence and harmony between national systems and the European trademark protection system (Florea, 2014).

The procedural rules contained in the Directive, concerning the obligation of Member States to regulate in national law, until January 14th, 2023, administrative procedures for revocation of proprietors of trademark rights or for cancellation of trademark registration, are symmetrical to the rules regulated by the European

¹ Regulation (EU) No. 608/2013 of the European Parliament and of the Council of June 12th, 2013 on ensuring the observance of intellectual property rights by customs authorities and repealing Council Regulation (EC) No. 1383/2003 (published in the Official Journal of the EU No L 181 /29.06.2013) stipulates provisions of procedural law to ensure compliance with intellectual property rights in customs, and the transposition into national law of the provisions of Directive no. 2004/48 / EC of the European Parliament and of the Council of April 29th, 2004 on the observance of intellectual property rights imposed changes to national civil procedural law..

Trademark Regulation, encourage conducting commercial transactions at European Union level and facilitate the acquisition, administration and defense of trademark rights in several European jurisdictions.

The case-law of the Court of Justice of the European Union in Case C-360/12, which states that the concept of “territory as a Member State in which the offense of counterfeiting was committed” in Article 93 paragraph (5) of Regulation (EC) no. 40/94 on the Community trademark must be interpreted as meaning that, in the case of a sale and delivery of a counterfeit product carried out in the territory of a Member State, followed by a resale by the acquirer in the territory of another Member State, that provision does not make it possible to establish a jurisdiction to bring an action for counterfeiting against the original seller who did not himself act in the Member State to which the court seized belongs.

As a comparative law study, in the United States, the crime of counterfeiting products, from a legal point of view, examines the use and non-use of state status for prosecuting and convicting a counterfeit trademark. In this regard, the criminal law framework prohibiting trademark counterfeiting is important for several reasons, including the protection of intellectual property rights, economic damage caused by counterfeiting, health and safety issues and potential connections to other criminal enterprises (including organized crime and terrorism).

Federal prosecutors can prosecute under either the Counterfeit Trademark Act of 1984 or the Antitrust Consumer Protection Act of 1996. Several defendants can be prosecuted for trafficking in counterfeit goods 18 USC § 371.93 (1994) and 18 USC § 2320 (a) (2016).

Federal prosecutors must also consider several factors when deciding whether to sue for trademark counterfeiting, including current federal law enforcement priorities, the nature and gravity of the offense, the deterrent effect of the prosecution, the person’s guilt in connection with the crime, the person’s history regarding the criminal activity, the person’s willingness to cooperate in the investigation or prosecution of others; and the probable sentence or other consequences if the person is convicted.

At the same time, in *China - Intellectual Property Rights*, the Special Committee has taken into account the nature and general scope of the provisions of Article 61. The TRIPS Agreement, unless otherwise provided. For example, the second sentence refers to “crimes of appropriate gravity”, which could refer to internal practice in other areas. However, the first *sentence* of Article 61 makes no reference.

Despite the fact that trademark counterfeiting and copyright piracy infringe the rights of rightholders and, despite the fact that they may be serious, the two qualifications of cunning and “on a commercial scale” indicate that Article 61 does not require members to provide for criminal procedures and sanctions to be applied in this regard.

It is also worth mentioning that “in the legislation of Turkey, we can indicate Law no. 5607 and the Customs Law no. 4458 of 27/10/1999, which regulates the term “Customs duties” in which all the import duties or export taxes applied are provided.

One of the most important means of crime policy developed by the state to protect the economic policies it seeks to implement in foreign trade and the internal market is undoubtedly the Anti-Smuggling Act. To this end, during the studies of harmony with the New Turkish Penal Code no. 5237, Anti-Smuggling Act no. 5607 of 2007 entered into force but was significantly amended by laws no. 6455 and 6545. In this context, the offenses in Article 3 of the Anti-Smuggling Act were included in another law and the said article became to regulate only smuggling crimes.

The crime of smuggling goods into the country, which is one of these crimes and is the subject of this study, is provided for in the first paragraph of the article.

Moreover, in the United Kingdom, for a summary conviction (in the Magistrates’ Court), an offender can be sentenced to a maximum of six months’ imprisonment and/or a fine not exceeding £5,000 (ie approximately EUR 5,750).

For an indictment (Crown Court, before a judge), an offender can be sentenced to a maximum of ten years’ imprisonment and/or an unlimited fine. In addition to fines and custody, courts can impose a variety of orders, such as clearing orders, restitution orders and confiscation orders.

In connection with the manufacture, import and distribution of infringing articles, a fine of up to £ 5,000 (ie approximately EUR 5,750) or imprisonment for a term not exceeding six months, or both, may be imposed if there is a summary conviction. Upon indictment, a fine or unlimited imprisonment for one year may be imposed for a term not exceeding ten years or both.

The UK Government is currently conducting a consultation on sanctions for copyright infringement, with the aim of being consistent with online sanctions and physical copyright infringement (sanctions are now less severe for online infringements). Another key recommendation is to increase the maximum penalty that a copyright infringement can be imposed from £ 5,000 (ie around € 5,750) to £

50,000 (ie around € 57,500). Other crimes under Section 107 CDPA 1988 are triable only briefly (only before the Court of Magistrates and not in a Crown Court before a judge). A fine not exceeding £ 5,000 (ie approximately EUR 5,750) or a prison sentence not exceeding six months, or both may be imposed.

Also, in Germany, both for trademark counterfeiting and for copyright piracy, the laws provide for fines or imprisonment for up to three years. If criminals act on a commercial basis, they can be sentenced to five years in prison. There is no minimum jail time. In 2006, no prison sentence was imposed on the offender; rather, the prison was merely “probative custody.” Fines can go up to several thousand euros. The minimum fine is EUR 5,000, set on a “daily rate” basis; ie a minimum of EUR 1 per day for a minimum of 5 days (Article 40 ff of the German Criminal Code).

Currently, the maximum fine is EUR 1.8 million, ie 360 daily installments at EUR 5,000. In addition, the goods can be confiscated (for example, Article 143 (5) of the Trademark Law, Article 110 of the Copyright Law and Article 74 of the German Criminal Code). In addition, Article 73 of the German Criminal Code provides for the possibility of all acquired assets of the offender becoming state property. However, in practice, this possibility is an absolute exception.

Finally, the Court may order the judgment to be published at the request of the injured party (see Article 143 (5) of the Trademark Law; Article 111 of the Copyright Law).

For both trademark counterfeiting and copyright piracy, the crime is prosecuted only at the request of the right holder, unless the prosecutor considers that *ex officio* intervention is imperative because of a special public interest in prosecuting the crime (see Article 143 paragraph 4) Trademark Law, Article 109 Copyright Law).

Criminal complaints must be submitted to the criminal prosecutor at the court where the criminal offense was committed or the residence of the offender. The prosecutor decides whether or not to prosecute. If the criminal offense is “only” a crime for which the minimum statutory punishment is a fine or less than one year in prison, the offender’s guilt is deemed low and, if the court agrees, the prosecutor may decide not to continue the proceedings (see Article 153 of the German Code of Criminal Procedure).

Under certain conditions, the prosecutor may also close the procedure setting out certain conditions that the offender must comply with (see Article 153a of the German Code of Criminal Procedure). If the proceedings are followed, the court orders that the case be tried.

In conclusion, I believe that better coordination at Community level is needed in order to achieve major results in the fight against counterfeiting, by setting up a single European authority responsible for combating counterfeiting and capable of coordinating Member States' efforts. This new authority should be guaranteed sufficient resources and powers to be able to fulfill its mandate while respecting the competences of the Member States.

One of the aspects of the fight against counterfeiting that both the Member States and the European Commission should insist on is the protection of SMEs, both in Europe and in third countries. The role of companies is vital to the success of the anti-counterfeiting strategy, and industry should play an important role.

Saturating traditional markets and opening up new markets, such as those in emerging countries such as Turkey, Russia, India, also requires a new operational strategy, not limited to tracking counterfeits in Europe, but addressing the problem in those fields where counterfeiting is more deeply rooted, and action should also take place in third countries where counterfeit European products manufactured elsewhere are often received.

In addition, customs procedures can be increasingly improved and harmonized within the EU and a common criminal law system can be established in all Member States.

A strong system of common rules generally approved in the EU shall be an essential condition for combating counterfeiting and piracy both in European and non-European countries.