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Delegations will find attached the partially declassified version of the above-mentioned document.

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ANNEX

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 August 2010

**12926/1/10
EXT 1 REV 1 (1.10.2012)**

**JAI 693
PI 91
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NOTE

from :	Presidency
to :	Delegations
Subject :	Pluri-lateral Anti-Counterfeiting Trade Agreement (ACTA) - Chapter 2 Section 3 "Criminal Enforcement"

The « Criminal Enforcement » Section of ACTA was discussed during the negotiating round in Washington (16 – 20 June 2010). The next final round will take place in Tokyo from 23 September to 1 October.

In order to finalise the ACTA Agreement at the next round, a list of technical and political issues has been drawn up. ACTA parties will meet on 23 September in Tokyo with a view to overcoming all technical difficulties so that the final formal round, which starts on 27 September, can focus on substantial political issues.

Concerning the criminal section, three political issues remain:

- Definition of commercial scale
- Unauthorized camcording
- Ex officio criminal enforcement

Moreover, several technical issues still need to be solved.

It should be reminded that the Italian delegation entered a general reservation on the whole section on “criminal enforcement”.

The Presidency intends to reach an agreement on the EU Member States position for the criminal section during the meeting of the Friends of the Presidency on 3 September. In the cover note the remaining issues that have to be resolved have been highlighted. Delegations are invited to raise other issues which would still be problematic in the last consolidated version of ACTA.

Delegations will find in Annex the coordinated position of the EU Member States resulting from the meeting of the Friends of the Presidency of 22 July and taking into account the round of Washington.

1. Article 2.14.1 – Definition of commercial scale

In the last consolidated text of ACTA, Article 2.14.1. is worded as follows :

“1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on commercial scale.

Option 1 = [NOT DECLASSIFIED: Willful trademark counterfeiting] [NOT DECLASSIFIED: Willful trademark counterfeiting or] copyright or related rights piracy on a commercial scale includes at least those infringements carried out in the context of commercial activity for direct or indirect economic or commercial advantage.]

Option 2 : [EU: For the purposes of this section, acts carried out on a commercial scale are those carried out in the context of commercial activity for direct or indirect economic or commercial advantage.]

[EU/ **NOT DECLASSIFIED** : *Each Party may decide whether to include or exclude such acts carried out by end consumers.]”*

During the negotiating round in Washington, four issues have been highlighted:

(a) Explicit reference to the act of piracy (and counterfeiting) in the definition of commercial scale

Most non-EU ACTA parties ask for an explicit reference to the act of copyright and related rights piracy (and possibly of trademark counterfeiting, see below) in the definition of commercial scale.

In principle, the EU Member States have indicated a preference for a definition focused on the concept of commercial scale without any direct link with wilful trademark counterfeiting or copyright or related right piracy.

Therefore, the Presidency is of the opinion that this issue is not fundamental and that it should be possible to accept, on this part, the wording preferred by other ACTA partners.

Delegations are invited to agree on this.

(b) Reference to both wilful trademark counterfeiting and copyright or related right piracy or only to copyright or related right piracy

NOT DECLASSIFIED

In the EU Member States fallback position, the definition of commercial scale would apply to both acts. The Presidency is of the opinion that this orientation is preferable as it would be confusing to define commercial scale with regard to one concept only while it is applicable, in the first sentence of Article 2.14.1. to both trademark counterfeiting and copyright or related rights piracy.

Nevertheless, the Presidency is also of the opinion that this issue is not fundamental. Moreover, as EU Member States would prefer to have no definition at all of commercial scale, it would be strange to insist on giving a broad scope to such definition.

Therefore, the Presidency suggests the following position :

- Preference for a definition of commercial scale applicable to both wilful trademark counterfeiting or copyright or related rights piracy;
- Flexibility towards a limitation of this definition to the copyright or related rights piracy.

Delegations are invited to confirm this.

(c) “include at least”

NOT DECLASSIFIED request the use of the terms “include at least” in the definition (option 1) or can accept such wording. The use of these terms emphasises the fact that this definition is to be seen only as a minimum. It seems also to invite parties to go further.

The EU Member States proposal, based on the term “are”, is more limitative.

Legally speaking, it could be argued that the consequences are similar because, even with the EU Member States wording, ACTA parties would always be allowed to go further and give a wider scope to the notion of commercial scale. **NOT DECLASSIFIED**

In order to reach a compromise, and as a last resort, the Presidency suggests the use of the term “include”, without the terms “at least”. This would more explicitly make it possible for ACTA parties to go further but without an invitation to do so.

Therefore, the Presidency suggests the following :

- to recall the fact that EU Member States have always been against any definition of commercial scale and to insist on the fact that, should there be a definition, it has to be limited;
- to maintain its proposal for a limitative definition based on the terms “are”;
- to accept, as a last resort, a less limitative definition based on the term “include” but without the terms “at least”.

Delegations are invited to agree on this.

(c) Exclusion of end consumers from the definition of commercial scale

In the EU Member States position, the definition of commercial scale, whether based on option 1 or option 2, should be accompanied with the following sentence :

“Each Party may decide whether to include or exclude such acts carried out by end consumers”.

The exclusion of end consumers is taken from the recital 14 of Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights.

NOT DECLASSIFIED

With this in mind, the Presidency suggests to limit the sentence as follows :

“Each Party may decide whether to include or exclude such acts carried out by individual end consumers”.

Delegations are invited to agree on this.

2. Article 2.14.1 – Footnote – Definition of related rights

During the negotiating round in Washington, a definition of “counterfeit trademark goods” and “pirated copyright goods” has been inserted in the General Definitions of the Agreement¹.

These definitions apply to the whole Agreement. In that context, an explicit reference to the fact that these definitions should be used as context for the Section on Criminal Enforcement does no longer seem necessary. **NOT DECLASSIFIED** are therefore in favour of deleting the Negotiator’s Note under the title “criminal enforcement” which is worded as follows :

“Definitions of “counterfeit trademark goods” and pirated copyright goods” provided for in the General Definitions should be used as context for this section.”

Delegations are asked to confirm the deletion of the Negotiator’s Note.

¹ «Counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set out in [Section X are invoked.]
Pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country in which the procedures set out in [Sections X are invoked.]»

3. Article 2.14.1 – Footnote – Exportation and importation

In the last consolidated version of ACTA, the footnote under Article 2.14.1. on importation and exportation is worded as follows :

*“Each Party shall treat willful importation [**NOT DECLASSIFIED**: or exportation] [**NOT DECLASSIFIED**: ~~or exportation~~] of counterfeit trademark goods or pirated copyright goods on a commercial scale [EU:, in accordance with its laws and regulations,] as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to exportation and importation of pirated copyright or counterfeit trademark goods through its measures concerning distribution. ”*

The concern initially raised by EU Member States regarding this footnote is related to the obligation to criminalize the importation. Indeed, in some EU Member States, the importation of counterfeit trademark goods or pirated copyright goods on a commercial scale is criminalized only for the purpose of distribution or through measures concerning distribution.

With a view to taking into account the EU Member States concern, ACTA parties agreed during the negotiating round in Washington to add the possibility of complying with the criminalization of importation through national measures concerning distribution.

However, **NOT DECLASSIFIED** contest the insertion of the terms “in accordance with its laws and regulations”. According to them, other provisions of the Agreement which do not contain such reference to national law can be interpreted *a contrario*, while Article 1.2 provides that “each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”.

The Presidency considers that the different systems of the Member States have been taken into account in the footnote. Therefore, the reference to the national laws and regulations is no longer necessary. In consequence, the Presidency suggests accepting the deletion of the EU proposal “in accordance with its law and regulations”.

Delegations are asked to agree on this deletion.

4. Article 2.14.2 – Labels

During the Friends of the Presidency meetings of 15 and 22 July, the issue of the wording “and unauthorised” or “without the consent of the right holder” was discussed.

NOT DECLASSIFIED expressed concerns on the limitation to the authorization of the right holder. Moreover, these delegations would have preferred to maintain this requirement in the introductory sentence in order to apply it to both (a) and (b).

At the negotiating round in Washington, an agreement has been reached on the use of the terms “without authorization”. However, this requirement still does not apply to the introductory sentence of the paragraph, as initially provided, but only to point (a).

Taking into account the fact that the authorization requirement is mainly necessary for the application of a label to a mark and that Parties are allowed to go beyond this provision according to the Article 1.2.1, the Presidency suggests accepting Article 2.14.2. as it currently stands.

Delegations are asked to accept this provision as it stands.

5. Article 2.14.3 – Unauthorized camcording

(a) New wording

At the negotiating round, **NOT DECLASSIFIED** recalled their strong interest in including such provision. **NOT DECLASSIFIED** would like to cover the situation of copying a cinematographic work from a theatre or cinema generally open to the public even if the public is actually not present.

In the last version of the ACTA consolidated text, Article 2.14.3. is worded as follows :

*“**NOT DECLASSIFIED**: Each Party shall **NOT DECLASSIFIED**: ~~shall~~ may] provide criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public.]”*

NOT DECLASSIFIED

Delegations are asked to agree on this.

(b) Reference to unauthorized camcording in Article 2.15 and 2.16

NOT DECLASSIFIED

Delegations are asked to give their opinion on this.

6. Article 2.14.4 – Aiding and abetting

All ACTA parties agreed on the insertion of a provision on aiding and abetting. However, some other ACTA parties proposed a new wording that focuses on the liability for aiding and abetting.

The objective of both proposals is to make it clear that aiding and abetting the offences referred to in this Section is criminalized. The Presidency is of the opinion that both wording can be accepted. In addition, the Presidency considers that it could be worth clarifying that the liability in the provision on aiding and abetting is criminal.

Delegations are invited to agree on this.

7. Article 2.14.5 - Liability of legal persons

EU Member States have put forward a proposal according to which each party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 2.14. The EU Member States proposal also contains a sentence which clarifies that this liability “may be criminal or non-criminal”.

NOT DECLASSIFIED

In order to find a compromise, the following new wording has been proposed by **NOT**
DECLASSIFIED:

“Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences referred to in this Article. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.”

NOT DECLASSIFIED

Delegations are asked to agree on this.

8. Article 2.15 - Penalties

During the negotiating round in Washington, the Presidency insisted on the need to maintain the reference to proportionality to balance the reference to deterrence.

However, according to **NOT DECLASSIFIED** parties, this need for proportionality already exists in the general obligations and a cross-reference was therefore not necessary.

NOT DECLASSIFIED

The EU Member States proposal is reflected in the last consolidated version of ACTA where Article 2.15 is worded as follows:

For the offences referred to in Article 2.14.1, 2.14.2, [2.14.3], each Party shall provide penalties that include imprisonment and monetary fines¹ sufficiently high to provide a deterrent to future acts of infringement [EU: consistently with the level of penalties applied for crimes of a corresponding gravity].

This EU proposal balances the deterrence requirement and has to be read in conjunction with Article 2.X.3 which provides for the proportionality need in the whole Agreement.

Because of lack of time, this new EU Member States proposal was not really discussed but seemed to receive support. **Therefore, the Presidency will insist on the need to incorporate this wording in the final text.**

9. Article 2.16.1, 2.16.3 and 2.16.4 - Related rights

The notion of “suspected counterfeit trademark goods or pirated copyright [or related rights] goods” is used in Article 2.16.1 (seizure), 2 (forfeiture or destruction) and 4 (disposal outside the channels of commerce).

NOT DECLASSIFIED

NOT DECLASSIFIED note that the reference to “related rights” is already included in the notion of “pirated copyright goods” which is now defined in Article 1.X, Chapter One, Section B.

¹ It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

It was also noted that the reference to “pirated copyright goods” needs to be consistent throughout the text. It would not make sense to have the explicit reference to related rights only in Article 2.16 but not in other references to “pirated copyright goods”.

NOT DECLASSIFIED

Delegations are invited to agree on this.

10. Article 2.16.2. – Requirement of description of items to be seized

In the position of EU Member States, Article 2.16.2. is worded as follows :

“Each Party shall, if a prerequisite for such an order, according to its national law, is the identification of the items, ensure that the order need not determine the items that are subject to seizure in more detail than necessary to allow their identification for the purpose of the seizure.”

In the last consolidated text of ACTA, Article 2.16.2. is worded as follows :

“Where a Party requires the identification of items subject to seizure as a prerequisite for such an order, that Party shall not require the items to be described in greater detail than necessary to identify them for purposes of seizure.”

This new version is acceptable for **NOT DECLASSIFIED**.

The Presidency is of the opinion that this new version is in substance very close to the EU Member States position. The only difference is that the EU Member States position contains a reference to “national law”. **NOT DECLASSIFIED**

The reference to national law was inserted in the EU Member States position to avoid any impression of approximation of whether or not the identification of items is necessary. This seems sufficiently clear with the new version of the paragraph which starts with “where a Party requires the identification of items ...”.

The Presidency is therefore of the opinion that the new paragraph 2.16.2. provided for in the last consolidated text of ACTA is acceptable.

Delegations are invited to agree on this.

11. Article 2.16.3. – Limitation to “serious offences”

NOT DECLASSIFIED

This issue was very briefly discussed during the meeting of the Friends of the Presidency of 15 July 2010 (see doc. 11932/10 DROIPEN 75 WTO 250 PI 79 RESTREINT UE, point 6.1.c., page 12). Most delegations were flexible on this but some insisted on the need to oppose such limitation.

Based on the discussion which took place on this point during the last round in Washington, the Presidency is of the opinion that lack of flexibility on this issue, on a point which is important for a number of ACTA partners, would undermine the EU Member States position on other points where the EU Member States is in need of more flexibility, such as on the issue of the commercial scale.

Therefore, the Presidency proposes to accept, as part of a possible global compromise, the possible limitation of Article 2.16.3. to “serious offences”.

Delegations are invited to agree on this.

12. Article 2.16.4. – Destruction and disposal outside the channels of commerce

In the last consolidated text of ACTA, Article 2.16.4. is worded as follows :

*“Each Party shall provide that its competent authorities shall have the authority to [EU: ~~provide that its competent authorities shall have the authority to~~] ensure that the counterfeit trademark goods and pirated copyright goods that have been forfeited under paragraph 3 shall, if not destroyed, be disposed outside the channels of commerce, [NOT **DECLASSIFIED**: except in exceptional circumstances.] in such a manner as to avoid any harm caused to the right holder.”*

The EU Member States position is that the paragraph should be strictly mandatory. It is not enough to provide that competent authorities shall have the authority to ensure the destruction or the disposal outside the channels of commerce because this means that there is a margin of manoeuvre left to these authorities. Therefore, the EU Member States position is that the paragraph should start with: “Each Party (...) shall ensure that ...”.

It was argued in Washington that, in some countries, the forfeited goods are transferred to the right holder who is free to decide to reinsert the counterfeit trademark goods or pirated copyright goods inside the channel of commerce. Therefore, these countries asked for more flexibility regarding the application of this provision.

NOT DECLASSIFIED

The Presidency is of the opinion that this issue would deserve further discussion even within the EU Member States to evaluate the current situation. The Presidency is also of the opinion that this does not constitute a red line for EU Member States. In addition, given the late stage of the negotiation and the necessity to take into account the particularities of the other ACTA-parties systems, the Presidency suggests to be flexible on this point.

Delegations are invited to agree on this.

13. Article 2.16.5. – Destruction without compensation to the defendant

In the last consolidated version of ACTA, Article 2.16.5. is worded as follows :

“Each Party shall further [NOT DECLASSIFIED]: provide that its competent authorities shall have the authority to] ensure that forfeiture and destruction under this subparagraph shall occur without compensation of any kind to the defendant”.

Regarding the proposal made by NOT DECLASSIFIED, the Presidency is of the opinion that it should be rejected. However, should a wide majority of other ACTA partners support this proposal or be flexible on it in the last negotiating round, and given the fact that this is not a red line for EU Member States, the Presidency is of the opinion that the proposal could be acceptable in the search for a final compromise.

Delegations are invited to agree on this.

14. Article 2.17. – Ex Officio Criminal Enforcement

In the last consolidated version of ACTA, Article 2.17. is worded as follows :

“Each Party shall provide that its competent authorities may act upon their own initiative to initiate investigation or legal action [NOT DECLASSIFIED: in appropriate cases] with respect to the criminal offences described in Article 2.14 [EU: at least in cases of significant public interest, in accordance with national law.] [NOT DECLASSIFIED: at least for serious offences].”

During the discussion on this point in the Friends of Presidency meeting of 22 July, it was clear that the reference to “serious offences” instead of “significant public interest” created major difficulties for some Member States.

In Washington, a limitation to “appropriate cases” emerged as an alternative proposal. Most ACTA partners have a preference for this wording already used in Article 61 TRIPS.

The Presidency is of the opinion that such limitation offers the same flexibility, if not more, compared to the limitation to significant public interests.

Therefore the Presidency suggests to accept Article 2.17 with the wording “in appropriate cases” (and therefore without the reference to “significant public interests, in accordance with national law” and the reference to “serious offences”).

Delegations are invited to agree on this.

CHAPTER TWO

LEGAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 3: Criminal Enforcement¹

ARTICLE 2.14: CRIMINAL OFFENSES

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale.^{2 3 4}

¹ This provision is under internal examination in the EU.
Negotiator's Note: Definitions of "counterfeit trademark goods" and "pirated copyright goods" provided for in the General Definitions should be used as context for this section. **Fallback position:**
Deletion of this Negotiator's Note.

² See cover note.
Fallback position 1: Inclusion of wording: "For the purpose of this Agreement, acts carried out on a commercial scale are those carried out in the context of commercial activity for direct or indirect economic or commercial advantage".
Fallback position 2: Inclusion of the wording: "Willful trademark counterfeiting or copyright or related rights piracy on a commercial scale includes those infringements carried out in the context of commercial activity for direct or indirect economic or commercial advantage".
Fallback position 3: Inclusion of the wording: "Copyright or related rights piracy on a commercial scale includes those infringements carried out in the context of commercial activity for direct or indirect economic or commercial advantage".

³ See cover note. In addition to fallback position 1, 2 and 3 in footnote 2.
Fallback position 1: Inclusion of the wording: "Each Party may decide whether to include or exclude such acts carried out by end consumers".
Fallback position 2: Inclusion of the wording: "Each Party may decide whether to include or exclude such acts carried out by individual end- consumers".

⁴ Each Party shall treat willful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale in accordance with its laws and regulations as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to exportation and importation of pirated copyright or counterfeit trademark goods through its measures concerning distribution.
See cover note. **Fall back position:** Use of the wording: "Each Party shall treat willful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale (...) as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to exportation and importation of pirated copyright or counterfeit trademark goods through its measures concerning distribution".

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of willful importation¹ and domestic use, in the course of trade and on a commercial scale, of labels or packaging:
- a. to which a mark has been applied without authorization² which is identical to or cannot be distinguished from a trademark registered in its territory³; and
 - b. which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which the trademark is registered.

[3. Unauthorised cam- cording] ⁴

4. The provisions of this section shall apply to aiding and abetting the offences referred to in Article 2.14⁵.

5.

- (a) Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 2.14.
- (b) Subject to the legal principles of the Party, the liability of legal persons may be criminal or non-criminal.
- (c) Such liability shall be without prejudice to the criminal liability of the natural persons

¹ A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

² **See cover note.**

³ To be checked in legal scrubbing.

⁴ **See cover note.**

Fallback position: A provision in the text could be acceptable but only if non mandatory (“may” provision) : “Each Party may provide criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public”.

⁵ **See cover note. Fall back position: Use of the wording: “With respect to the offences specified in this Section, each Party shall ensure that criminal liability for aiding and abetting is available under its law”.**

- (d) who have committed the criminal offences¹.

ARTICLE 2.15: PENALTIES

For the offences specified in Article 2.14.1, 2.14.2, [2.14.3], and 2.14.4, each Party shall provide (...) ² penalties that include imprisonment and monetary fines³ sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.

ARTICLE 2.16. SEIZURE, FORFEITURE AND DESTRUCTION

1. For the offences specified in Article 2.14.1, Article 2.14.2, [2.14.3], and 2.14.4, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright (...) ⁴ goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and the assets derived from, or obtained directly or indirectly through the alleged infringing activity.
2. Each Party shall, if a prerequisite for such an order, according to its national law, is the identification of the items, ensure that the order need not determine the items that are subject to seizure in more detail than necessary to allow their identification for the purpose of the seizure⁵.

¹ See cover note. **Fallback position:** Use of the wording: “Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences referred to in this Article. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences”.

² See cover note.

³ Negotiator’s note: It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

⁴ See cover note.

⁵ See cover note. **Fallback position:** Use of the wording: “Where a Party requires the identification of items subject to seizure as a prerequisite for such an order, that Party shall not require the items to be described in greater detail than necessary to identify them for purposes of seizure.”

3. For the offences specified in Article 2.14.1, 2.14.2., [2.14.3], and 2.14.4, each Party shall provide that its competent authorities shall have the authority to order forfeiture or destruction of all counterfeit trademark goods or pirated copyright (...) ¹ goods, of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright (...) ² goods ³, and of the assets derived from, or obtained directly or indirectly, through the infringing activity.
4. Each Party shall ⁴ ensure that the counterfeit trademark goods and pirated copyright (...) ⁵ goods that have been forfeited under this subparagraph shall, if not destroyed, be disposed of outside the channels of commerce (...) in such a manner as to avoid any harm caused to the right holder.
5. Each Party shall further ⁶ ensure that forfeiture and destruction under this subparagraph shall occur without compensation of any kind to the defendant.
6. Each Party may provide that its judicial authorities have the authority to order:
- a) the seizure of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the allegedly infringing activity; and
- b) the (...) forfeiture of assets (...) the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the infringing activity.

¹ See cover note.

² See cover note.

³ See cover note. **Fallback position:** Inclusion of the wording: “at least for serious offences”.

⁴ See cover note. **Fallback position:** Inclusion of the wording: “provide that its competent authorities shall have the authority to”.

⁵ See cover note.

⁶ See cover note. **Fallback position:** Inclusion of the wording: “provide that its competent authorities shall have the authority to”.

ARTICLE 2.17: *EX OFFICIO* CRIMINAL ENFORCEMENT

Each Party shall provide that its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences described in Article 2.14 at least in cases of significant public interest, in accordance with national law¹.

¹ See cover note. **Fallback position** : Use of the wording: “Each Party shall provide that its competent authorities may act upon their own initiative to initiate investigation or legal action in appropriate cases with respect to the criminal offences described in Article 2.14”.