

Protection of the euro and other currencies against counterfeiting by criminal law

2013/0023(COD) - 05/02/2013 - Legislative proposal

PURPOSE: to draw up minimum rules concerning the definition of criminal offences and sanctions in the area of counterfeiting of the euro and other currencies.

PROPOSED ACT: Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA.

PARLIAMENT'S ROLE: Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the euro continues to be a target of organised crime groups active in the forgery of money. Counterfeiting of the euro has led to a financial damage of at least **EUR 500 million since the introduction of the euro in 2002**. Europol considers that there is a long-term trend towards an increase in the crime level and notes that the criminal threat remains serious.

Council Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro aims at supplementing, on the territory of European Union, the provisions of the **Geneva Convention of 1929** which lays down rules ensuring that severe criminal penalties and other sanctions can be imposed for offences of counterfeiting currency.

Although all Member States have, with minor exceptions, formally implemented the Framework Decision correctly, Member States have adopted **diverging rules** and consequently often diverging levels of protection and practices within their national legal systems. In particular, **considerable differences exist with respect to the levels of sanctions** which are applicable in the Member States to the main forms of counterfeiting. It is therefore essential to ensure that effective and efficient criminal law measures protect the euro and any other currency whose circulation is legally authorised in all Member States.

IMPACT ASSESSMENT: the Commission conducted an impact assessment of policy alternatives, taking into account the consultations of the interested parties. After considering the possible options, the impact assessment concludes that the following solution would be preferred: (i) maintenance of most of the provisions from Council Framework Decision 2000/383/JHA in a new proposal, with minor modifications, taking into account the Treaty of Lisbon; (ii) modification of the provisions on penalties; and (iii) introduction of a new provision obliging Member States to provide for the possibility to use certain investigative tools.

LEGAL BASIS: Article 83 (1) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the purpose of this Directive is to supplement the provisions and to facilitate the application of the Geneva Convention by the Member States. It builds on and updates Council Framework Decision 2000/383/JHA seeking to **increase protection by criminal penalties and other sanctions against counterfeiting** in connection with the introduction of the euro. The proposal:

- requires Member States to criminalise all forms of **preparation and participation**. Criminal responsibility for attempt is included for the majority of offences;

- requires Member States to apply effective, proportionate and dissuasive **penalties** in line with jurisprudence of the Court of Justice. For more serious cases of the offences of production and distribution of counterfeit currency, it sets out a **sanction of imprisonment within a range of at least six months and eight years** for natural persons;
- requires Member States to ensure **liability of legal persons**, while excluding that such liability is alternative to that of natural persons, and to apply effective, proportionate and dissuasive sanctions on legal persons;
- requires **jurisdiction of the judicial authorities** which allow them to initiate investigations, pursue prosecutions and bring to judgment cases relating to currency counterfeiting;
- obliges Member States whose currency is the euro to exercise **universal jurisdiction** on euro counterfeiting offences under certain conditions;
- ensures that **investigative tools** which are provided for in national law for organised crime or other serious crime cases can also be used in cases of counterfeiting of currency;
- requires from Member States to ensure that the **National Analysis Centres** and the National Coin Analysis Centres can analyse euro counterfeits also during on-going judicial proceedings for the purpose of detecting further counterfeits;
- requests that Member States are **contracting parties of the International Geneva Convention of 20 April 1929**.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Budget of the European Union.