Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

1999/0190(CNS) - 30/04/2004 - Follow-up document

The Commission makes this report due to its obligation under Article 14 of the Council Framework Decision of 28 May 2001 on counterfeiting fraud. The general purpose of the Framework Decision is to ensure an equivalent level of criminal law protection in the EU of non-cash means of payment against fraud and counterfeiting by measures to be taken by the Member States; these measure include defining specific punishable conduct and providing effective, proportionate and dissuasive criminal penalties. Each Member State must take the necessary measures to establish its jurisdiction with regard to the offences referred to in the Framework Decision. The latter covers different subjects concerning national substantive criminal law and matters such as national jurisdiction. It should be noted that, under the present Treaties, the Commission has no power to bring a legal action before the Court of Justice to enforce transposition legislation for the Framework Decision. The report details the action taken by Member States with respect to the timely and accurate transposition of the Framework decision. Like directives, Framework Decisions must be implemented within the period prescribed. National legislation necessary to comply with the Framework Decision should therefore have been adopted and entered into force. The report states that some Member States have not transmitted on time to the Commission all relevant texts of the provisions transposing into their national law the obligations imposed on them under the Framework Decision. The factual assessment and conclusions subsequently drawn are therefore sometimes based on incomplete information. Five Member States (France, Germany, Italy, Ireland and the United Kingdom) have been able to meet the deadline by taking all measures to comply with the provisions of the Framework Decision by 2 June 2003. Finland adopted measures transposing the Framework Decision after the deadline. Belgium has stated that its national legislation already complies with the provisions of the Framework Decision and that no transposition is required, without giving further explanation on the relevant legislation. Austria and Greece have informed the Commission that they are in the process of drafting their national legislation. Austria pledged that it would be ready by end 2003. Greece informed the Commission that a special legal preparatory committee was expected to hand over its work in the middle of July 2003. Luxembourg sent an informal message to the Commission in July 2003, mentioning that its national legislation would be finalised in October 2003. None of these three Member States has transmitted anything formally so far. The Netherlands has taken measures which have not yet entered into force. Denmark and Portugal have not answered the Commission. With regard to specific provisions, the following points should be noted: - The implementation of Article 6, which applies to criminal penalties, is quite heterogeneous. Almost all Member States who have replied to the Commission have, or will have when their legislation enters into force, succeeded in meeting the obligation imposed by Article 6 that the fraudulent making or altering of currency provided for in Article from 2 to 4 shall be punishable by criminal penalties. Since Swedish criminal legislation does not provide for punishment of the fraudulent use of a stolen or otherwise unlawfully appropriated, or of acounterfeited or falsified, payment instrument and since Spanish legislation does not provide for punishment of altering of currency, no sanction can be imposed nor would extradition be possible for those offences. - The evaluation of whether or not the criminal penalties which can be imposed in Member States are sufficiently dissuasive, could on the face of it be affirmative, given the fact that all Member States who have sent information to the Commission have in respect to the conduct referred to in Article 2, provided for a (maximum) imprisonment penalty. The probability of detecting the criminal conduct, the type of prosecution (mandatory or facultative prosecution) and the practice of sentencing by the judiciary of each Member State, beyond doubt, have an impact on the perception of sanctions especially as to whether they can really be considered dissuasive and effective. The Commission states that several Member States considered that for the most part, their current legislation already corresponds to the obligations of the Framework Decision. Consequently, only

certain clarifications and additions to national legislation were required. At the time of completion of this report, it is to be regretted that those Member States which had not sent legislation or which were in the process of transposing the Framework Decision, have not done so.