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

1999/0190(CNS) - 14/09/1999 - Initial legislative proposal

PURPOSE : to combat fraud and counterfeiting of non-cash means of payment. CONTENT : the entry into force of the Treaty of Amsterdam has meant that Joint Actions are no longer available as legal instruments; Framework Decisions are introduced as the new relevant legal instruments at the Council's disposal. The main purpose of this Communication is to replace the Draft Joint Action on Combating Fraud and Counterfeiting of Non-cash Means of Payment, with a reformatted Framework Decision, using the format provided for in Article 34 in the Treaty on European Union. The aim of the proposed instrument remains to ensure that fraud invoving all forms of non-cash means of payment is recognised as a criminal offence and is punishable by effective, proportionate and dissuasive sanctions in all EU Member States, and that appropriate mechanisms of cooperation are put in place in order to prosecute these offences efficiently. The Framework Decision deliberately avoids the use of strictly defined qualifications under existing criminal law because they do not cover the same elements everywhere. The approach taken instead is to describe the various types of behaviour which should be criminal offences throughout the Union, that is: - misappropriation of a payment instrument; - counterfeiting or falsification of a payment instrument; - knowingly handling a payment instrument, without the holder's authorisation; - knowingly possessing a misappropriated, counterfeited or falsified payment instrument; - knowingly using a misappropriated, counterfeited or falsified payment instrument; or knowingly accepting a payment made in such circumstances; - knowingly using unauthorised identification data for initiating or processing a payment transaction; - knowingly using ficticious identification data for initiating or processing a payment transaction; - manipulation of relevant data including account information, or other identical data, for initiating or processing a payment transaction; - unauthorised transmission of identification data for initiating or processing a payment transaction; - unauthorised making, handling, possession or use of specifically adapted equipments or elements of paymentinstruments for the purpose of: manufacturing or altering any payment instrument or part thereof; committing the fraudulent acts described in the points above. For the purposes of the application of this Framework Decision, the term "payment instrument" or 'non-cash payment instrument' means an instrument other than legal tender (bank notes and coins), enabling, alone or in conjuntion with another (payment) instrument, the legitimate holder or payer, to make or receive payments in respect of goods, services or any other thing of value, or to issue an order or message requesting or otherwise authorising the transfer of funds to the order of a payee.