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

1999/0190(CNS) - 20/02/2006 - Follow-up document

This report from the Commission is the second report based on Article 14 of the Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.

To recall, the Council adopted the Framework Decision of 28 May 2001 with a view to achieving equivalent and increased protection by criminal law against fraud and the counterfeiting of non-cash means of payment throughout the Union. Under Article 14 of the Framework Decision, the Commission, on the basis of the initial information received, presented a report to the European Parliament and the Council on the measures taken by the Member States to comply with the Framework

Decision. In response to the Council conclusions of 25-26 October 2004, the Commission is now to produce a new report on the basis of the additional information it has received.

It should be noted that this second report is not a consolidated version of the Commission's earlier report but relates primarily to those Member States not covered at the time (AT, DK, GR, LU, NL and PT) and, secondarily, to those whose treatment in the first reports needs amplifying or amending (BE and SE). In the latter case, the report is consolidated as regards those two Member States. It was also agreed that the new Member States that acceded on 1 May 2004 should now be covered as they were not, of course, covered by the first report.

To allow the two reports to be read in parallel and compared, this second report follows the same structure and presentation as the first wherever possible. The comparative tables on transposal and the annexes also follow the same structure. To avoid repetition, this report has been pared down, particularly by removing the general considerations (nature of a Framework Decision) and points of methodology (evaluation criteria) in the first report.

More specifically, the report concludes that most of the Member States that replied to the Commission in this second exercise comply explicitly or, in some cases, implicitly with the Framework Decision. This is the case for **Articles 2 (offences related to payment instruments), 3 (offences related to computers)** and 5. Two Member States (GR and LU) have not yet taken all the measures required to fully transpose the Framework Decision as the legislation is still before Parliament. CY has not given the Commission adequate information for a full evaluation of the conformity of its legislation with the Framework Decision.

Article 4 (offences related to specifically adapted devices)has been transposed by most of the Member States, although in some of them only via very general provisions. PT in particular states that the offences under the first indent of Article 4 are covered by provisions applicable to counterfeiting and falsification of securities, and the law will need to be amended in relation to the second indent of Article 4.

The transposal of **Article 6 (criminal penalties)** is compliant, though far from uniform.