

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION
of 29 May 2000
on increasing protection by criminal penalties and other sanctions against counterfeiting in
connection with the introduction of the euro

(2000/383/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(e) and Article 34(2)(b) thereof,

Having regard to the initiative by the Federal Republic of Germany ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro ⁽³⁾, lays down that currency denominated in euro shall start to be put into circulation as from 1 January 2002 and obliges the participating Member States to ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.
- (2) Commission communication of 23 July 1998 to the Council, the European Parliament and the European Central Bank entitled 'Protection of the euro — combating counterfeiting' should be noted.
- (3) The resolution of the European Parliament of 17 November 1998 concerning the Commission communication of 23 July 1998 to the Council, the European Parliament and the European Central Bank entitled 'Protection of the euro — combating counterfeiting' ⁽⁴⁾ should be noted.
- (4) The recommendation of the European Central Bank of 7 July 1998 regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins ⁽⁵⁾ should be noted.
- (5) The provisions of the International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency and its Protocol should be taken into account.
- (6) Regard should be paid to the special European significance of the euro, and the principle of non-discrimination in Article 5 of the 1929 Convention, which

make it necessary to ensure that severe criminal penalties and other sanctions can be imposed for serious counterfeiting offences involving the euro or other currencies.

- (7) The worldwide importance of the euro means it will be particularly open to the risk of counterfeiting.
- (8) Account should be taken of the fact that there is already evidence of fraudulent activity with regard to the euro.
- (9) It should be ensured that the euro is protected in an appropriate way in all Member States by efficient criminal law measures, even before the currency starts to be put into circulation as from 1 January 2002, in order to defend the necessary credibility of the new currency and thereby avoid serious economic consequences.
- (10) Account should be taken of the Council resolution of 28 May 1999 on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro ⁽⁶⁾ with its guidelines for a binding legal instrument,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this framework Decision:

- 'Convention' means the International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency and its Protocol ⁽⁷⁾,
- 'currency' means paper money (including banknotes) and metallic money, the circulation of which is legally authorised including euro banknotes and euro coins, the circulation of which is legally authorised pursuant to Regulation (EC) 974/98,

⁽¹⁾ OJ C 322, 10.11.1999, p. 6.

⁽²⁾ Opinion delivered on 17 February 2000 (not yet published in the Official Journal).

⁽³⁾ OJ L 139, 11.5.1998, p. 1.

⁽⁴⁾ OJ C 379, 7.12.1998, p. 39.

⁽⁵⁾ OJ C 11, 15.1.1999, p. 13.

⁽⁶⁾ OJ C 171, 18.6.1999, p. 1.

⁽⁷⁾ No 2623, p. 372. League of Nations Treaty Series 1931. Signed in Geneva on 20 April 1929.

— 'legal person' shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 2

Relation to the Convention

1. The purpose of this framework Decision is to supplement the provisions and to facilitate the application of the Convention by the Member States in accordance with the following provisions.
2. To this end, the Member States that have not yet done so undertake to accede to the Convention.
3. The obligations under the Convention shall remain unaffected.

Article 3

General offences

1. Each Member State shall take the necessary measures to ensure that the following conduct is punishable:
 - (a) any fraudulent making or altering of currency, whatever means are employed;
 - (b) the fraudulent uttering of counterfeit currency;
 - (c) the import, export, transport, receiving, or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;
 - (d) the fraudulent making, receiving, obtaining or possession of
 - instruments, articles, computer programs and any other means peculiarly adapted for the counterfeiting or altering of currency, or
 - holograms or other components of currency which serve to protect against counterfeiting.
2. Each Member State shall take the necessary measures to ensure that participating in and instigating the conduct referred to in paragraph 1, and attempting the conduct referred to in points (a) to (c) of paragraph 1, are punishable.

Article 4

Additional offences

Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 3 is punishable also with respect to banknotes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which the competent authorities may issue currency, without these authorities' agreement.

Article 5

Currency not issued but designated for circulation

Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is punishable if:

- (a) it relates to the future banknotes and coins of the euro and is committed before 1 January 2002;
- (b) it relates to banknotes and coins which are not yet issued but are designated for circulation, and are of a currency which is legal tender.

Article 6

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 3 to 5 is punishable by effective, proportionate and dissuasive criminal penalties, including penalties involving deprivation of liberty which can give rise to extradition.
2. The offences of fraudulent making or altering of currency provided for in Article 3(1)(a) shall be punishable by terms of imprisonment, the maximum being not less than eight years.

Article 7

Jurisdiction

1. Without prejudice to paragraph 2 of this Article:
 - each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 5, where the offence is committed in whole or in part within its territory,
 - Articles 8 and 9, as well as Article 17 of the Convention are applicable to the offences referred to in Articles 3 to 5 of this framework Decision.
2. At least the Member States in which the euro has been adopted shall take the appropriate measures to ensure that the prosecution of counterfeiting, at least in respect of the euro, is possible, independently of the nationality of the offender and the place where the offence has been committed.
3. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which Member State shall prosecute the offender or offenders with a view to centralising the prosecution in a single Member State where possible.

Article 8

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 3 to 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
 - a power of representation of the legal person, or
 - an authority to take decisions on behalf of the legal person, or
 - an authority to exercise control within the legal person,
 as well as for involvement as accessories or instigators in such offences or the attempted commission of the offences referred to in Article 3(1)(a) and (b).

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has rendered possible the commission of an offence referred to in Articles 3 to 5 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 3 to 5.

Article 9

Sanctions for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 10

Territorial application

This framework Decision shall apply to Gibraltar.

Article 11

Implementation

1. Member States shall take the necessary measures to comply with this framework Decision by 31 December 2000 as far as Article 5(a) is concerned and not later than 29 May 2001 as far as the other provisions are concerned.

2. By the same dates, the Member States shall transmit to the General Secretariat of the Council, the Commission and the European Central Bank the text of the provisions transposing into their national law the obligations imposed on them under this framework Decision. The Council will, by 30 June 2001 at the latest, on the basis of a report established on the basis of this information and a written report by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this framework Decision.

Article 12

Entry into force

This framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Brussels, 29 May 2000.

For the Council

The President

A. COSTA

ANNEX

DECLARATION BY THE REPUBLIC OF AUSTRIA

Austria refers to the possibility afforded to it in Article 18(2) of the second Protocol to the Convention on the Protection of the European Communities' Financial Interests (OJ C 221, 19.7.1997, p. 11) not to be bound by Articles 3 and 4 of that Protocol for five years, and hereby states that it will fulfil its obligations under Articles 8 and 9 of the framework Decision within the same period.
