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REPORT

on the draft Council framework decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro (SN 5116/1999 – C5-0332/1999 – 1999/0821(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Charlotte Cederschiöld

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members, except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Abbreviations for committees

- I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG Committee on Budgets
- III. CONT Committee on Budgetary Control
- IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON Committee on Economic and Monetary Affairs
- VI. JURI Committee on Legal Affairs and the Internal Market
- VII. INDU Committee on Industry, External Trade, Research and Energy
- VIII. EMPL Committee on Employment and Social Affairs
- IX. ENVI Committee on the Environment, Public Health and Consumer Policy
- X. AGRI Committee on Agriculture and Rural Development
- XI. PECH Committee on Fisheries
- XII. REGI Committee on Regional Policy, Transport and Tourism
- XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE Committee on Development and Cooperation
- XV. AFCO Committee on Constitutional Affairs
- XVI. FEMM Committee on Women's Rights and Equal Opportunities
- XVII. PETI Committee on Petitions

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PROCEDURAL PAGE

By letter of 15 November 1999 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the Federal Republic of Germany with a view to the adoption of a Council Framework Decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro (11302/1999 - 1999/0821(CNS)).

By letter of 9 December 1999 the Council forwarded a revised text to Parliament (SN 5116/1999 – 1999/0821(CNS)).

At the sittings of 19 November 1999 and 17 January 2000 the President of Parliament announced that she had referred these drafts to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Economic and Monetary Affairs for its opinion (C5-0244/1999 and C5-0332/1999).

At its meeting of 23 November 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Mrs Cederschiöld rapporteur.

It considered the drafts at its meetings of 7 December 1999 and 17 January and 27 January 2000.

At the latter/last meeting it adopted the draft legislative resolution by 31 votes to 2, with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman, Enrico Ferri, vice-chairman; Charlotte Cederschiöld, rapporteur; Jan Andersson (for Olivier Duhamel), Maria Berger (for Sérgio Sousa Pinto), Christian von Boetticher, Marco Cappato, Michael Cashman, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Carlo Fatuzzo (for Rocco Buttiglione pursuant to Rule 153(2)), Pernille Frahm, Evelyne Gebhardt (for Gianni Vattimo), Adeline Hazan (for Anna Terrón i Cusí), Jorge Salvador Hernandez Mollar, Anna Karamanou, Margot Keßler, Ewa Klamt, Alain Krivine (for Fodé Sylla), Klaus-Heiner Lehne (for Bernd Posselt), Baroness Sarah Ludford, Hartmut Nassauer, Arie M. Oostlander (for Daniel J. Hannan), Elena Ornella Paciotti, Hubert Pirker, Gerhard Schmid, Ingo Schmitt (for . Timothy Kirkhope), Martin Schulz, Joke Swiebel, Maurizio Turco (for Johan Van Hecke) and Jan-Kees Wiebenga .

The opinion of the Committee on Economic and Monetary Affairs is attached.

The report was tabled on 31 January 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Draft Council framework decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro (SN 5116/1999 – C5-0332/1999 – 1999/0821(CNS))

The proposal is amended as follows:

Text proposed by the Council¹

Amendments by Parliament

(Amendment 1)

TITLE

Draft Framework Decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro

Draft Framework Decision on increasing protection by penal and other sanctions against counterfeiting in connection with the introduction of the euro

Justification

The protection provided by the Framework Decision is broader in scope than that provided by penal law. The measures provided include administrative sanctions for legal persons, such as a judicial winding-up order, a temporary or permanent disqualification from the practice of commercial activities and exclusion from entitlement to public benefits or aid (Article 9 of the Framework Decision).

(Amendment 2)

Recital 9

Whereas 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;

Whereas 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;

¹ OJ not yet published.

Justification

The success of the introduction of the euro, as well as its economic performance depend to a large degree on the credibility attached to the new currency – especially during the introductory phase. This credibility could be seriously violated in cases of counterfeiting of the euro.

(Amendment 3)

Article 3(2)

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.

2. Each Member State shall take the necessary measures to ensure that participating in and instigating the conduct referred to in paragraph 1, as well as attempting the conduct referred to in paragraph 1, are punishable.

Justification

If the provisions under which attempting the conduct referred to is a punishable offence relate only to points (a) to (c) of paragraph 1, attempting to make instruments for counterfeiting (as referred to in point (d)) would not be punishable. This would mean that if, for example, a counterfeiter's workshop was discovered, in which the plates were not yet finished, criminal penalties would not be required to be imposed. This would be inconsistent with the objective of effective protection by penal sanctions of the euro.

(Amendment 4)

Article 5a (new)

Article 5a

Former legal tender

Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is also punishable if it relates to banknotes and coins which, as a result of the introduction of the euro, are no longer legal tender.

Justification

The framework decision ensures the protection by penal sanctions only of currency, the circulation of which is legally authorised (as defined in Article 1), or of currency which has

not yet been issued but which is intended for circulation (under Article 5). This means the euro is protected, but not the present national currencies which the euro replaces. As these currencies may continue to be exchanged for 20 years, they must still be protected by penal sanctions against counterfeiting when they are no longer in circulation.

(Amendment 5)
Article 7(3)

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 shall prosecute the offender or offenders with a view to centralising the prosecution in a single Member State where possible.

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 shall prosecute the offender or offenders with a view to centralising the prosecution in a single Member State where possible. A person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts.

Justification

Where more than one Member State has jurisdiction, it is necessary to ensure that a person suspected of a crime on whom final judgment has been delivered in a Member State is not prosecuted in another Member State in respect of the same facts. The requirement to cooperate provides no guarantee that the 'ne bis in idem' rule in criminal law will be observed. Account was taken of this in Article 10(1) of the convention on corruption (OJ C 195 of 25 June 1997, p. 2). Article 7(3) of the draft should be supplemented by a corresponding provision.

(Amendment 6)
Article 7(4) (new)

4. Jurisdiction for prosecution shall lie as a matter of priority with the Member State in which the offence has been committed. Where this criterion is not met, jurisdiction shall lie with the Member State of which the offender is a citizen, or else the place in which the perpetrators have been arrested.

Justification

The provisions of Article 7 refer to and are based on Articles 8 and 9 of the International Convention for the Suppression of Counterfeiting Currency (Geneva, 20 April 1929), which establishes the principle of universal jurisdiction. Under this principle, each Member State which has adopted the euro as a national currency has jurisdiction, by virtue of the importance of the legal asset being protected, namely the euro, irrespective of where the crime was committed. Article 7(3) is general in scope, since it does not refer to the form of cooperation between the Member States. In the event of a definite clash of jurisdictions, i.e. where many Member States have jurisdiction as regards the penal prosecution and trial of a case concerning one of the offences set out in Article 3, consideration of the criteria referred to in the proposed new paragraph will be of decisive importance in settling such clashes of jurisdiction.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the draft Council framework decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro (SN 5116/1999 – C5-0332/1999 – 1999/0821(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Council draft (SN 5116/1999),
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0332/1999),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Economic and Monetary Affairs (A5-0020/2000),
1. Approves the Council draft as amended;
 2. Calls on the Council to alter its draft accordingly;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the draft substantially;
 5. Instructs its President to forward its position to the Council and Commission.

EXPLANATORY STATEMENT

Introduction

On 1 January 2002 currency denominated in euros will start to be put into circulation. Since the euro, together with the yen and the dollar, will be a reserve currency and will be used as a means of payment not just in Europe, but throughout the world, counterfeiting is a particular cause for concern. It is therefore necessary for the Union to use all the means at its disposal to ensure effective protection of the euro throughout Europe.

Action urgently needs to be taken. The initial phase is a particularly critical one. As a new means of payment, the euro is unfamiliar to consumers and businesses. This makes it relatively easy for counterfeit currency to be put into circulation in supermarkets, bureaux de change and banks without being immediately spotted. In the case of euro coins, the problem of recognising the currency is aggravated by the fact that the design of one side of the coins will be left to each Member State.

Measures therefore need to be taken as soon as possible to ensure that the euro is protected from the moment it is put into circulation.

1. The Commission's approach

The Commission submitted a communication on this subject, 'Protection of the euro – combating counterfeiting'², in July 1998, in which it proposed an integrated approach to protection of the euro. It observed that not only criminal law provisions, but also other preventive and punitive measures needed to be adopted. There should be targeted provision of information to European citizens on the euro and its security features, and training seminars should be held for officials and other professional groups, in order to ensure a uniformly high level of awareness in this area throughout Europe. In addition, steps should be taken to ensure cooperation between Community and Member State institutions, and an information system for collecting and exchanging data on counterfeiting should be set up.

2. The need for measures to be adopted jointly

In the interests of the Union, it would seem desirable for all the Member States to participate in the measures to protect the euro, including Sweden, Denmark, the United Kingdom and Greece, which will not be introducing the euro on 1 January 2002. Even if the latter are not directly affected by financial losses resulting from counterfeiting of the euro, such activity may nevertheless have an indirect negative impact on their economies, as they are economically and politically closely linked with the Union. They should therefore not exclude themselves from carrying out measures to protect the euro. Such an approach is in accordance with the principle of solidarity between the Member States and based on the consideration that at least some of these countries will sooner or later introduce the euro, and it therefore seems right that they should contribute towards bearing the costs of protection in the initial stage.

² COM(1998) 474 final.

3. The draft framework decision

3.1 Limitation of the framework decision to harmonising criminal law

The draft framework decision in question deals with only part of the measures proposed by the Commission in its communication. It is confined to increasing protection by penal sanctions against counterfeiting, and its objective is to harmonise substantive criminal law by laying down minimum standards. There consequently continue to be no uniform criminal law provisions on counterfeiting, but 15 different national laws. However, these are to be harmonised so that conduct intended or serving to counterfeit or alter euros is a punishable offence in all the Member States.

It should be observed in this connection that, regrettably, harmonisation of rules on criminal matters is being carried out only in isolated areas. The conclusions of the Tampere Summit called for common definitions, elements of an offence and penalties to be determined for a series of offences in 'sectors of particular relevance', such as financial crime, drugs trafficking, trafficking in human beings, sexual exploitation of children, high-tech crime and environmental crime. It is desirable that these should be jointly discussed and worked out, in order to establish a coherent criminal law system in respect of such offences of particular relevance to the EU. It is to be hoped that work in this area will begin as soon as possible.

The failure to take the opportunity to do so in this particular instance, and the fact that the offence of counterfeiting is being discussed separately from other offences, can only be excused by the huge pressure of time under which the EU, like the Member States, is placed.

3.2 The need for criminal law provisions at Community level

New Community criminal law provisions are indeed essential and need to be adopted as soon as possible. Counterfeiting has long ceased to be an offence committed mainly by criminal organisations, and the number of 'amateurs' committing such acts has significantly increased in recent years. That is due not least to the fact that the most advanced technology is today available to everyone. By scanning banknotes into computers and using high-quality colour printers and colour photocopiers, it is possible to produce counterfeit currency which is difficult to distinguish from legally issued currency. The deterrent effect of criminal law urgently needs to be utilised to prevent counterfeiting. In addition, it is essential to avoid a situation in which Member States where prosecution appears more unlikely or less of a risk become 'counterfeiting centres'.

The Council has recognised this, and on 28 May 1999 it adopted a Resolution on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro³. The draft framework decision which is the subject of this report builds on a German initiative⁴ presented to the Council in July 1999.

³ OJ C 171, 18.6.1999.

⁴ Initiative of the Federal Republic of Germany with a view to the adoption of a Council Framework Decision on increasing protection by penal sanctions against counterfeiting in

A uniform Europe-wide level of protection by penal sanctions is also to be supported in connection with the next enlargement. It may be assumed that the euro will start to be widely circulated in countries applying for accession as soon as it is put into circulation in the 11 Member States. Although it may be years before the euro becomes the official currency in the countries in question, it will certainly frequently be used before that as a means of payment, in the same way as the Deutschmark, for example. Protection by penal sanctions against counterfeiting will therefore be as necessary in these countries as in the Member States. If European minimum rules exist, applicant countries will be required to adopt them as part of the '*acquis*' at the latest when they accede. There are reasons for hoping, however, that countries seeking to accede will take earlier steps in that direction.

This is all the more to be hoped for as national laws often limit the offence of counterfeiting to acts in respect of currency which is already in circulation. This means that producing counterfeit euros at present does not constitute an offence of counterfeiting. It may, it is true, constitute another offence, such as forgery of documents or fraud, where a person is already seeking to pay with the counterfeit euros. This has to be examined in each individual case. However, adequate protection of the euro during the period up to when it is put into circulation is not ensured. There is consequently a danger that certain acts preparatory to counterfeiting are already being carried out, which would be punishable in relation to currency in circulation, but are not yet punishable where they relate to the euro. It is essential to prevent criminals from being able quietly to make preparations for counterfeiting of the euro, without facing punishment, so as to be in a position immediately to put counterfeit euros into circulation on 1 January 2002. The draft framework decision is therefore required to ensure protection by penal sanctions of the euro before 1 January 2002.

3.3 The legal basis for the framework decision

Title VI of the EU Treaty, 'Provisions on police and judicial cooperation in criminal matters', provides for the possibility of harmonising rules on criminal matters. Article 31(e) permits measures to be adopted 'establishing minimum rules relating to the constituent elements of criminal acts and to penalties'.

The legal form of a framework decision (pursuant to Article 34(2)(b) of the TEU) has been chosen for the initiative in question. Framework decisions are explicitly intended for the purpose of approximation of laws and regulations. Like directives, they are binding as to the result to be achieved, but leave the choice of form and methods to the national authorities. This results in greater flexibility, enabling account to be taken of differences between legal systems, but uniform laws are not created. As only the result to be achieved is laid down, the rules are, moreover, not required to be as detailed as would otherwise be the case. This complies with the need for provisions to be introduced quickly, since it is easier to achieve political consensus and swift entry into force of the framework decision can be expected.

3.4 Assessment of the content of the framework decision

The draft framework decision in question does not lay down a new, individual approach to penal sanctions against counterfeiting, but is confined to supplementing the provisions of the

connection with the introduction of the euro (OJ C 322, 10.11.1999, p. 6).

International Convention of 20 April 1929 for the suppression of counterfeiting currency and its Protocol. The Member States' obligations arising from the Convention are, therefore, unaffected, and are only extended by the framework decision. The Convention, which was concluded under the League of Nations (the predecessor of the United Nations), has been ratified by all the Member States with the exception of Luxembourg and Sweden. Article 2(2) of the framework decision requires the Member States in question to accede to the Convention. Early ratification is anticipated.

A positive aspect of the framework decision is that it gives a comprehensive definition of conduct punishable as a counterfeiting offence (in Articles 3 and 4). The offences of import, receiving and obtaining for oneself of counterfeit currency with a view to uttering it, as laid down in the 1929 Convention, are supplemented by the offences of transport, export and obtaining for another person of counterfeit currency. In addition, account is taken of technical progress in protecting currency by means of certain security features: under the framework decision, making, receiving, obtaining or possessing holograms and other security devices for fraudulent purposes is a punishable offence. Criminal offences are also extended to cover conduct involving computer programs and other means particularly adapted for counterfeiting or altering currency. These comprehensive provisions are clear and, in particular, represent an improvement compared with the German initiative, which, in listing conduct, referred to the convention.

It should be observed, however, that the provisions of Article 3(2), under which attempting to counterfeit is a punishable offence, are not sufficiently comprehensive, as they relate only to points (a) to (c) of paragraph 1, and not to point (d). Attempting to make instruments for counterfeiting is, accordingly, not punishable. This would mean that if, for example, a counterfeiter's workshop was discovered, in which the plates were not yet finished, criminal penalties would not be required to be imposed. This is clearly inconsistent with the objective of effective protection by penal sanctions of the euro. Paragraph 2 must therefore require the Member States to make all attempts to counterfeit a punishable offence (Amendment 3).

Another positive aspect is that the framework decision provides for protection of the euro before the currency starts to be put into circulation. As stated above, it is absolutely essential that the currency is protected by penal sanctions even before 1 January 2002. This closes the loophole in the law existing in some Member States. However, it is not satisfactory that the framework decision covers the protection by penal sanctions only of currency, the circulation of which is legally authorised (as defined in Article 1), or of currency which has not yet been issued but which is intended for circulation (under Article 5). This protects the euro, but not the present national currencies which the euro replaces. It should not be forgotten that these currencies may continue to be exchanged for 20 years. They must therefore still be protected by penal sanctions against counterfeiting when they are no longer in circulation. A new Article 5a should therefore be inserted, which extends protection by penal sanctions to currency no longer in circulation (Amendment 4).

The provisions on penalties (Article 6) do not seem satisfactory. The wording of paragraph 1 is too general to signify real progress. Paragraph 2 provides for a 'minimum maximum penalty' for the offence laid down in Article 3(1)(a) (fraudulent making or altering of currency). Even if this is the main case to which the law in question applies, it nevertheless seems strange that

a rule on penalties should be adopted for only one type of offence. Provisions on the grounds for determining penalties are also not laid down. It is to be hoped, in this connection, that the Council will separately examine the harmonisation of criminal penalties and related matters regarding the determination of penalties and sentencing practice in respect of fines or terms of imprisonment, and of whether suspended or partly suspended sentences are delivered, as well as matters regarding the execution of custodial sentences and possibilities of early release.

As regards the provisions on jurisdiction, the approach adopted of universal jurisdiction in respect of criminal prosecution of counterfeiting of the euro (in Article 7(2)) is to be welcomed. However, the provisions on cases where more than one Member State has jurisdiction (in Article 7(3)) are not entirely satisfactory. In such cases, it is necessary to ensure that a person suspected of a crime on whom final judgment has been delivered in a Member State is not prosecuted in another Member State in respect of the same facts. The requirement to cooperate provides no guarantee that the '*ne bis in idem*' rule in criminal law will be observed. Account was taken of this in Article 10(1) of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union⁵. Article 7(3) of the draft should be supplemented by a corresponding provision (Amendment 5).

Attention should also be drawn to the new Articles 8 and 9 on the liability of legal persons, which were not contained in the German initiative. These provisions are intended to deter private companies from benefiting from counterfeiting. The fact that penalties are flexible and, in addition to criminal penalties, civil and administrative penalties may be imposed is particularly positive.

To sum up, a positive assessment may be given of the framework decision, and it should certainly be approved with the above amendments.

⁵ OJ C 195, 25.6.1997, p. 2.

25 January 2000

OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative of the Federal Republic of Germany with a view to the adoption of a Council Framework Decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro
(SN 5116/1999 – C5-0332/1999 – 1999/0821(CNS))
(report by Charlotte Cederschiöld)

Draftsman: Carles-Alfred Gasòliba i Böhm

PROCEDURE

The Committee on Budgets appointed Mr Gasòliba i Böhm draftsman at its meeting of 30 November 1999.

It considered the draft opinion at its meetings of 10 January 2000 and 25 January 2000.

At the latter meeting it adopted the amendments below by 34 votes to 2, with 2 abstentions.

The following were present for the vote: Randzio-Plath chairman; Abitbol, vice-chairman; García-Margallo y Marfil, vice-chairman; Theonas, vice-chairman; Gasòliba i Böhm, draftsman; Agag Longo, Balfe, Berenguer Fuster, Billiers, Bullmann, Callanan (for Burenstam Linder), Corbett, Dover (for Jonathan Evans pursuant to Rule 153(2)), Färm (for Torres Marques), Glante, Goebbels, Huhne, Karas, Katiforis, Kauppi, Knörr Borràs, Langen (for Konrad), Lipietz, Lulling, Thomas Mann (for Pomés Ruiz), Mantovani (for Sartori pursuant to Rule 153(2)), Marinos, Paasilinna (for Berès pursuant to Rule 153(2)), Peijs (for Madelin), Pérez Royo, Radwan, Rapkay, Riis-Jørgensen, Schmidt, Tannock, Thyssen, Trentin and von Wogau.

BACKGROUND

On 1 January 2002 euro banknotes and coins will start to be put into circulation, as laid down in Council Regulation No 974/98 of 3 May 1998 on the introduction of the euro⁽⁶⁾. The same regulation also obliges the participating Member States to ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins. According to Article 106 of the Treaty on European Union, the European Central Bank has the exclusive right to authorise the issue of banknotes, and both the ECB and national central banks may issue such banknotes. The Member States are responsible for the issuing of coins, subject to the approval by the ECB of the volume of the issue.

In accordance with Article 31(e) and 34(2)(b) of the Treaty on European Union, Germany in July tabled the proposal for a Council Framework Decision on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro. The framework decision is a new legal instrument introduced by the Amsterdam Treaty, and is binding upon the Member States as to the result to be achieved but leaves to the national authorities the choice of form and methods. The use of a framework decision makes the adoption of the text much quicker than would be the case if a convention, which must be adopted by at least eight Member States before entering into force, were to be used. Article 39 of the Treaty on European Union states that the Council shall consult the European Parliament before adopting such a measure.

The German proposal builds on work started during the Austrian Presidency in the autumn of 1998, as well as on the Council Resolution of 28 May 1999 on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro⁽⁷⁾. This resolution invites the Member States and the Commission to consider whether it is necessary to strengthen the existing measures in order to cooperate efficiently with the help of the European Central Bank and the European Police Office (Europol) for the suppression of counterfeiting of the euro. It also calls for the drawing-up of a legal instrument to supplement the protection already provided for by and to facilitate the application of the International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency and its Protocol (the so-called Geneva Convention). All Member States but two (which are intending to accede) are parties to this convention, which should be seen as a common minimum standard regarding protection by penal sanctions against counterfeiting.

As long ago as 1997, the Commission established an expert group on counterfeiting of the euro, bringing together police from the 15 EU Member States and representatives from the ECB, Europol and Interpol. Its first report was published in April 1998. In July 1998 the Commission published its communication called Protection of the euro – combating counterfeiting (COM(98)474)⁽⁸⁾, following a request from the European Parliament's Committee on Budgetary Control for initiatives at Community level to strengthen the protection of the euro. This document states that it is necessary to arrive at a situation which will make it possible as of 1 January 2002 to provide equivalent protection of the euro against

⁶ OJ L 139, 11.5.1998, p. 1.

⁷ OJ C 171, 18.6.1999, p. 1.

⁸ OJ C 379, 7.12.1998, p. 39.

counterfeiting. For this purpose the Commission proposes to formulate initiatives relating to training, information systems, cooperation and the use of criminal law.

In November 1998 the European Parliament produced a resolution on the Commission communication Protection of the euro – combating counterfeiting, based on the report by Mr Schmid on behalf of the Committee on Civil Liberties and Internal Affairs⁽⁹⁾. The Schmid report recommended an exchange of information between the European Central Bank and national central banks and the setting-up of a database containing technical particulars concerning false or counterfeit euro banknotes and coins. It called on the Commission to submit a proposal for multidisciplinary training programmes for officers responsible for combating counterfeiting of means of payment, and for the banking and trade sectors. The powers of Europol should be extended to include combating counterfeiting of means of payment.

The European Central Bank is obviously also closely involved in the present matter, and adopted on 7 July 1998 a recommendation regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins (ECB/1998/7)⁽¹⁰⁾ as well as a guideline on certain provisions regarding euro banknotes (ECB/1999/3)⁽¹¹⁾. The recommendation asks the Council, Member States, Europol and the Commission to take the measures required. In November 1999 the ECB produced a Report on the legal protection of banknotes in the European Union Member States, which covers various aspects of the legal regime for the protection of euro banknotes, one being counterfeiting. The ECB draws the conclusion that the legal situation in all Member States with regard to counterfeiting is reasonably satisfactory and that further convergence on this topic should be addressed in the framework of Title VI of the Treaty on European Union (justice and home affairs). The ECB states that it will establish a database containing technical and statistical data on counterfeit euro banknotes and coins (Counterfeit Currency Database), as well as a Counterfeit Analysis Centre (CAC) for banknotes/European Technical and Scientific Centre (ETSC) for coins.

The European Parliament was initially consulted on the original German proposal, but during internal work within the Council this text has been modified. The Council (Justice and Home Affairs) meeting on 2 December 1999 reached broad consensus on the draft framework decision, except for the question of liability of legal persons. Following this meeting a text was established by the General Secretariat of the Council.

ISSUES AT STAKE

The German initiative for the adoption of a Framework Decision supplements the 1929 Geneva Convention and facilitates its application. It sets out the additional offences that Member States shall make punishable by effective, proportionate and dissuasive criminal penalties. In particular, the general offences of fraudulent making or altering of currency shall be punishable by terms of imprisonment, the maximum being not less than 8 years. Full

⁹ OJ C 379, 7.12.1998, p. 39.

¹⁰ OJ C 11, 15.1.1999, p. 13.

¹¹ OJ L 258, 5.10.1999, p. 32.

harmonisation is, however, not the aim. Member States are also asked to ensure that counterfeiting is also punishable when it relates to future euro banknotes and coins and is committed before 1 January 2002, and relating to banknotes and coins not yet issued but designated for circulation and which are of a currency which is legal tender. The proposal also contains rules on jurisdiction aimed at ensuring that counterfeiting is in general always prosecuted, independently of the nationality of the offender and the place where the offence has been committed. It furthermore established the liability of legal persons and sets out possible sanctions, such as exclusion from entitlement to public benefits of aid or a judicial winding-up order. In a declaration annexed to the text, the Council states that the need for further measures should be examined, in particular on cooperation between Member States, the European Central Bank and national central banks in the area of counterfeiting of the euro.

The introduction of the euro will entail high risks of counterfeiting, since citizens will be unfamiliar with the new currency and the euro will have world-wide importance. Other factors creating special problems are the large number of different locations at which euro notes and coins will be printed or minted, the fact that coins will have a national side, the large number of transactions expected to take place during the period of dual circulation as well as the existence of modern reproduction techniques. Therefore, in order to preserve the necessary credibility of the new currency and thereby avoid serious economic consequences, it is absolutely vital that the euro is protected in an appropriate and equivalent way throughout the European Union - but also in the context of the accession countries as well as at the international level. This has to be ensured before the currency is put into circulation on 1 January 2002. Apart from the matters settled within the German initiative, it is vital that matters pertaining to the creation of a framework for cooperation between the Commission, the ECB and the NCBs, national authorities as well as Europol and Interpol are also decided upon as soon as possible. The respective responsibilities of these different actors must be clearly defined and the content and means of the proposed cooperation identified.

PROPOSALS FOR FUTURE ACTION

The draftsman supports the German proposal, since it is a first step to ensure equivalent protection of the euro against counterfeiting within the European Union concerning a number of matters relating to protection by penal sanctions. This first Framework Decision must, however, be complemented by further actions in order to guarantee the highest possible protection of the euro against counterfeiting, *before the end of the year 2000*.

In order to create an efficient *framework for cooperation* concerning procedures for rapid identification of counterfeits, police and legal action against counterfeiting as well as mechanisms for the withdrawal of counterfeits, the following issues must therefore be solved as soon as possible:

1. The setting-up of a body at EU level to be in charge of all the cooperation work in the area of counterfeiting of the euro;
2. The definition of the precise responsibilities of the ECB, NCBs, the Commission and Europol respectively pertaining to all matters relating to counterfeiting of the euro;

3. The establishment of an early warning system, functioning round the clock and guaranteeing confidentiality;
4. The introduction at the European level of a legal obligation to notify cases at an early stage as well as the sending of specimens to the ECB and/or Interpol;
5. Further work on the detection and analysis of counterfeits;
6. Agreement on common formats for information and an information system for the rapid exchange of data between authorities responsible for counterfeiting;
7. The establishment of detailed procedures for the dissemination of and access to data on counterfeiting;
8. The need to ensure that information systems on counterfeiting are compatible with existing systems within and between the Member States and Community institutions as well as with those operated by Interpol;
9. Matters relating to training of citizens and officials dealing with the euro.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Council¹²

Amendments by Parliament

(Amendment 1)
Recital 9

Whereas 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;

Whereas 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;

Justification

The success of the introduction of the euro, as well as its economic performance depend to a large degree on the credibility attached to the new currency – especially during the introductory phase. This credibility could be seriously violated in cases of counterfeiting of the euro.

(Amendment 2)
Recital 10a (new)

Whereas this Framework Decision must be complemented in the near future with an additional instrument including provisions for the designation of a body at EU level to be in charge of all the cooperation work needed in the area of counterfeiting of the euro, as well as provisions on the precise division of competencies between the ECB, NCBs, the Commission and Europol respectively pertaining to all matters relating to counterfeiting of the euro;

¹² OJ C .

Justification

This Framework Decision is a first step towards ensuring equivalent protection of the euro against counterfeiting within the European Union concerning a number of matters relating to protection by penal sanctions. It must, however, be complemented by further actions in the near future in order to guarantee the highest possible protection of the euro before the end of the year 2000. Therefore, matters pertaining to the creation of an efficient framework for cooperation concerning procedures for rapid identification of counterfeits, police and legal action against counterfeiting as well as mechanisms for the withdrawal of counterfeits, must be solved as soon as possible.