



**EUROPEAN UNION
THE COUNCIL**

Brussels, 1 June 1999

**8356/1/99
REV 1**

LIMITE

**CRIMORG 53
JUSTPEN 36
ECO 185**

NOTE

from :	Presidency
to :	Working Party on Substantive Criminal Law
No. prev. doc.:	8356/99 CRIMORG 53 JUSTPEN 36 ECO 185
Subject :	Communication from the Commission on a framework for action on combating fraud and counterfeiting of non-cash means of payment.

Delegations will find attached a revised Presidency proposal regarding Article 2 of the future framework decision as an alternative to the Commission's proposal of a draft Joint Action on fraud and counterfeiting of non-cash means of payment in document 10537/98 CRIMORG 119 JUSTPEN 76 ECO 274.

SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

COUNTERFEITING AND FRAUD
IN RELATION TO NON-CASH MEANS OF PAYMENT

ALTERNATIVE PROPOSAL
TO ARTICLE 2
DESCRIPTION OF BEHAVIOUR

[In order to combat counterfeit, fraud and other abuses in relation to non-cash payment instruments and payment transactions, each Member State undertakes to review their national laws concerning the measures set out in Article 3 to 6 relating to the following behaviour committed intentionally :]

1. a) **Theft or other unlawful appropriation** of a credit card, eurocheque card, traveller's cheque ... or of another corporal payment instrument;
- b) **Counterfeiting or falsification** of a credit card, eurocheque card, traveller's cheque ... or of another payment instrument in order for it to be used fraudulently;
- c) **Procuring for himself (alt: Receiving or obtaining) (or for another person), or sale or transfer to another person** of a stolen or otherwise unlawfully appropriated , or of a counterfeited or falsified credit card, eurocheque card, traveller's cheque ... or other (qualified ?) payment instrument in order for it to be used fraudulently;
- [d) **Unlawful possession** of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified credit card, eurocheque card, traveller's cheque ... or other (qualified ?) payment instrument in order to use it or to let it be used fraudulently] ;

- e) **Fraudulent use** of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified credit card eurocheque card, traveller's cheque ... or other payment instrument ;
 - [f) Acceptance of a payment by use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified credit card, eurocheque card, traveller's cheque ... or other guaranteed payment instrument together with the request for reimbursement from the institution issuing such payment instruments ;]
2. a) **The input, alteration, erasure or suppression of computer data or computer programs, or other interference with the course of data processing in relation to a payment transaction that influences the result of data processing, thereby causing economic or possessory loss of property of another person with the intent of procuring an unlawful economic gain for himself or another person**
- [b) Transmission of identification data for the purpose of committing a payment transaction computer fraud as described in a)] ;
3. **Manufacture, procuring for himself or another person, or sale, or transfer to another person of devices specifically adapted**
- for counterfeiting or falsifying credit cards, eurocheque cards, traveller's cheques ... or other guaranteed payment instruments ;
 - [- for the purpose of committing a payment transaction computer fraud as described in 2. a)] .

[cases of attempt, aiding and abetting, of receiving stolen property (« recel » ; « Hehlerei »), as far as not already covered by N°1 c et seq, and perhaps also of money laundering should be dealt with separately].



**EUROPEAN UNION
THE COUNCIL**

Brussels, 19 May 1999

8356/99

LIMITE

**CRIMORG 53
JUSTPEN 36
ECO 185**

NOTE

from :	Presidency
to :	Working Party on Substantive Criminal Law
No. prev. doc.:	10537/98 CRIMORG 119 JUSTPEN 76 ECO 274
Subject :	Communication from the Commission on a framework for action on combating fraud and counterfeiting of non-cash means of payment.

Delegations will find attached a Presidency proposal regarding Article 2 of the draft Joint Action on fraud and counterfeiting of non-cash means of payment in document 10537/98 CRIMORG 119 JUSTPEN 76 ECO 274.

SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

COUNTERFEITING AND FRAUD
IN RELATION TO NON-CASH MEANS OF PAYMENT

ALTERNATIVE PROPOSAL
TO ARTICLE 2
DESCRIPTION OF BEHAVIOUR

[In order to combat counterfeit and fraud of non-cash payment instruments and payment transactions, each Member State undertakes to review their national laws concerning the measures set out in Article 3 to 6 relating to the following behaviour committed intentionally.:]

1. a) **Theft or other unlawful appropriation** [acquisition] of a credit card, eurocheque card, traveller's cheque ... or of another payment instrument (by another person than the original legitimate cardholder) ;
- b) **Counterfeiting or falsification** of a credit card, eurocheque card, traveller's cheque ... or of another payment instrument in order to use it or to let it be used fraudulently (in legal relationships) ;
- c) **Procuring for himself or for another person, or sale or transfer to another person** of a stolen or otherwise unlawfully appropriated [acquired], or of a counterfeited or falsified credit card, eurocheque card, traveller's cheque ... or other (qualified ?) payment instrument in order to use it or to let it be used fraudulently (in legal relationships) ;
- [d) **Unlawful possession** of a stolen or otherwise unlawfully appropriated [acquired], or of a counterfeited or falsified credit card, eurocheque card, traveller's cheque ... or other (qualified ?) payment instrument in order to use it or to let it be used fraudulently (in legal relationships)] ;

- e) **Fraudulent use** of a stolen or otherwise unlawfully appropriated [acquired], or of a counterfeited or falsified credit card eurocheque card, traveller's cheque ... or other payment instrument ;
2. a) **The input, alteration, erasure or suppression of computer data or computer programs, or other interference with the course of data processing in relation to a payment transaction that influences the result of data processing**, thereby causing economic or possessory loss of property of another person with the intent of procuring an unlawful economic gain for himself or another person
[« payment transaction computer fraud », in line with the proposal on computer fraud in the guidelines on computerrelated crimes of the European Committee on Crime Problems of the Council of Europe ; it would cover, at least by the inclusion of the attempt of computer fraud, Article 2 g,h,i of the Commission's proposal] ;
- [b) Acceptance of a payment by use of a stolen or otherwise unlawfully appropriated [acquired], or of a counterfeited or falsified credit card, eurocheque card, traveller's cheque ... or other guaranteed payment instrument together with the request for reimbursement from the institution issuing such payment instruments ;]
- [c) Unauthorized transmission of identification data for the purpose of committing an offence as described in a)] ;
3. **Manufacture, procuring for himself or another person, or sale, or transfer to another person of devices specifically adapted**
- for counterfeiting or falsifying credit cards, eurocheque cards, traveller's cheques ... or other guaranteed payment instruments ;
- [- for the purpose of committing an offence as described in 2. a)] .

[cases of attempt, aiding and abetting, of receiving stolen property (« recel » ; « Hehlerei ») and of money laundering should be dealt with separately].