



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 April 2001

8114/01

LIMITE

**CRIMORG 48
DROIPEN 36**

OUTCOME OF PROCEEDINGS

of : Article 36 Committee

on : 10 and 11 April 2001

No. prev. doc. : 7656/01 CRIMORG 38 DROIPEN 26
7693/01 CRIMORG 39 EUROPOL 29

Subject: Protection of the euro:
- draft Council Decision on the protection of the euro against counterfeiting
- draft Council conclusions on Europol's role in protecting the euro

The Article 36 Committee examined the above two proposals at its meeting on 10 and 11 April 2001 on the basis of documents 7656/01 CRIMORG 38 DROIPEN 26 (draft Decision) and 7693/01 CRIMORG 39 EUROPOL 29 (draft conclusions). The result thereof is set out below.

a) Draft Council Decision on the protection of the euro against counterfeiting

The text resulting from the meeting is set out in Annex I.

The following questions remain:

General:

- The Netherlands delegation entered a parliamentary scrutiny reservation.

Article 4(1):

- Scrutiny reservation by the Netherlands delegation.

Article 4(2):

- The German and Greek delegations thought that the provision should be optional (“shall” should be changed to “may”);
- The Commission called for the deletion of “where appropriate”;
- The French delegation thought that the words “and, subsequently, the facilities offered by Eurojust” should be replaced by “and, subsequently, cooperate with Eurojust”;
- The French delegation and the Commission called for the addition of a text along the following lines: “For that purpose they shall communicate all relevant information to Eurojust”.

Article 5:

The Irish and United Kingdom delegations maintained their reservations as they thought that Article 5 constituted law harmonisation and could therefore not be adopted in a Decision under Article 34(2)(c) TEU. The United Kingdom delegation, however, did not exclude the adoption of the text in the form of a Framework Decision at a later stage.

Conclusions

It was concluded that the JHA Counsellors would examine Articles 4 and 5 further with a view to reaching agreement on the draft Decision at the next meeting of the Article 36 Committee.

b) Draft Council conclusions on Europol's role in protecting the euro

The text resulting from the proceedings is set out in Annex II.

The text is subject to a reservation by the Netherlands delegation.

COUNCIL DECISION**of**

on the protection of the euro against counterfeiting

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative by the French Republic,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro¹ 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) The measures to protect the euro put in place by previous instruments should be supplemented and strengthened by provisions ensuring close cooperation between the competent authorities of the Member States, the European Central Bank, the national central banks, Europol and Eurojust to suppress offences involving counterfeiting of the euro,

¹ OJ L 139, 11.5.1998, p. 1.

- (3) The Council adopted on 29 May 2000 Framework Decision 2000/383/JHA) on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro,
- (4) The Council adopted on2001 Council Regulation (EC) No/2001 laying down measures necessary for the protection of the euro against counterfeiting and Council Regulation (EC) No/2001 extending the effects of Regulation (EC) No/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency,

HAS DECIDED AS FOLLOWS:

Article 1
Definitions

For the purposes of this Decision:

- "counterfeit notes" and "counterfeit coins" shall mean notes and coins defined as such by Article 2 of the Council Regulation (EC) No /2001 of laying down measures necessary for the protection of the euro against forgery ¹;
- "counterfeiting and offences related to counterfeiting of the euro" shall mean the conduct, in relation to the euro, described in Articles 3 to 5 of the Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro²;
- "competent authorities" shall mean the authorities designated by the Member States to centralise information, in particular the national central offices, and to detect, investigate or punish counterfeiting and offences related to counterfeiting of the euro;

¹ OJ L

² OJ L 140, 14.6.2000, p. 1.

- (...) ¹
- "Geneva Convention" shall mean the International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929 and its Protocol;
- "Europol convention" shall mean the Convention of 26 July 1995 on the establishment of a European police office. ²

Article 2

Expert analysis of notes and coins

Member States shall ensure that in the context of investigations into counterfeiting and offences related to counterfeiting of the euro:

- (a) the necessary expert analyses of suspected counterfeit notes are carried out by a National Analysis Centre (NAC) designated or established pursuant to Article 4(1) of Regulation (EC) No /2001;

and

- (b) the necessary expert analyses of suspected counterfeit coins are carried out by a National Coin Analysis Centre (NCAC) designated or established pursuant to Article 5(1) of Regulation (EC) No /2001.

¹ The definition of "technical and statistical data" has been deleted at the expression defined is used nowhere else in the text.

² OJ C 316, 27.11.1995, p. 2.

Article 3

Forwarding of the results of expert analyses

Member States shall ensure that the results of the analyses carried out by the NAC and the NCAC in accordance with Article 2 are communicated to Europol in accordance with the Europol Convention.

Article 4

Obligation to communicate information

1. Member States shall ensure that the national central offices referred to in Article 12 of the Geneva Convention communicate to Europol, in accordance with the Europol Convention, centralised information on investigations into counterfeiting and offences related to counterfeiting of the euro, including information obtained from third countries. The Member States and Europol shall cooperate with a view to determining which information shall be communicated. The information shall, at least, include the particulars of the persons involved, the particulars of the offences, the circumstances in which the offences were discovered, the context of the seizure and the links with other cases.

2. The competent authorities of the Member states shall, where appropriate, in investigations into counterfeiting and offences related to the counterfeiting of the euro make use of the facilities offered by the Provisional Judicial Cooperation Unit and, subsequently, the facilities offered by Eurojust once it has been established, in accordance with the provisions laid down in the instruments establishing the Provisional Judicial Cooperation Unit and Eurojust.

Article 5

Previous convictions

Every Member State shall recognise the principle of the recognition of previous convictions under the conditions prevailing under¹ its domestic law and, under those same conditions, shall recognise for the purpose of establishing habitual criminality final sentences handed down in another Member State for the offences referred to in Articles 3 to 5 of the Council Framework Decision 2000/383/JHA, or the offences referred to in Article 3 of the Geneva Convention, irrespective of the currency counterfeited.

Article 6

Entry into force

This Decision shall enter into force on the day of its publication in the Official Journal. Article 5 shall, however, only take effect 2 years after the said publication.

Done at

For the Council
The President

¹ The expression “prescribed by its domestic law” has been replaced by “prevailing under its domestic law “ in order not to exclude conditions which are part of the law but have not been established by legislation.

DRAFT COUNCIL CONCLUSIONS

In order to enhance the legal protection of banknotes and coins denominated in euro, the Council agrees that the exchange of technical information as well as strategic and operational data on counterfeiting of the euro should be encouraged.

To this end, and in accordance with the mandate of 29 April 1999 on combating the forgery of money and means of payment, Europol should in line with the provisions of the Europol Convention:

- make its resources available in order, on the one hand, to ensure the effective and permanent flow of information between the Member States' competent authorities, in particular the national central offices, in carrying out their tasks of preventing and combating counterfeiting of the euro and, on the other hand, to give those authorities early warning;
- forward the information gathered from monitoring euro counterfeiting activities to the Member States and provide strategic reports and information to the European Central Bank and the Commission (OLAF) as specified in the agreement to establish between Europol and the European Central Bank and between Europol and the Commission. The information supplied will indicate, in particular, for each type of counterfeiting, its geographical location and the modus operandi used;
- on request or on its own initiative, provide Member States with the necessary assistance in carrying out their tasks of preventing and combating counterfeiting of the euro;
- cooperate with the Central European Bank and the Commission (OLAF), within the framework of their respective powers, in protecting the euro against counterfeiting.

The Council welcomes the initiation of negotiations on agreements between Europol and the Commission (OLAF) and between Europol and the Central European Bank, as well as on a cooperation agreement with Interpol, in order to establish information exchanges and cooperation and coordination.

The Council therefore calls upon Europol to take the necessary steps to carry out the above tasks and conclude, in good time, the above-mentioned agreements.

The Council asks Europol to keep it regularly informed of its activities in combating counterfeiting of the euro.
