

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

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To (by email)

European Parliament
Civil Liberties, Justice and Home Affairs Committee
Rue Wiertz
B-1047 BRUSSELS

Reference

CM1309

Regarding

Note on the proposal for a Directive on the protection of the euro and other currencies against counterfeiting by criminal law (COM(2013) 42 final)

Date

31 May 2013

Dear members of the Civil Liberties, Justice and Home Affairs Committee,

The Meijers Committee has taken note of the legislative proposal for a Directive on the protection of the euro and other currencies against counterfeiting by criminal law. Although counterfeiting of the euro and other currencies remains an important problem, the Meijers Committee is concerned about the way the proposal aims to tackle this issue. The proposal requires Member States to adopt minimum sanctions in their domestic legislation, rather than minimum levels of maximum penalties, as is usually the case in EU criminal law.

The Meijers Committee takes a strong stance against the inclusion of minimum sanctions as set out in Article 5 of this Directive. In fact, the Meijers Committee is of the opinion that EU criminal law should not require Member States to adopt minimum sanctions at all.

Many Member States have deliberately chosen not to include minimum sanctions in their criminal law systems in light of the principles of judicial independence and proportionality in sentencing. The decision about which sanction to apply in a concrete case is the prerogative of the judiciary, which is the only organ in the position to take account of the specific circumstances of the case and the defendant. The existence of minimum sanctions greatly diminishes this discretion and can lead to disproportional sanctions.

The Meijers Committee thus urges the Union to refrain from requiring Member States to adopt such minimum sentences in their domestic laws, no matter how urgent the issue to be tackled, as such measures would run counter to the fundamental principles of many Member States' criminal law systems.

Moreover, such measures would infringe upon the principle of proportionality as laid down in Article 5(4) TEU. Requiring Member States to adopt minimum sentences is not necessary to achieve the objective of effectively protecting the euro and other currencies. The Commission has not convincingly explained why the method of proposing a minimum level of maximum sanctions is not sufficient to deter counterfeiting. The proposal points to the fact that the law of some Member States only provides for fines. However, this is related to the lack of implementation by those states of Framework Decision 2000/383/JBZ, which sets out a minimum level of maximum penalties. This problem will not be solved by imposing new minimum sanctions. Moreover, the proposal does not provide any evidence that the actual sanctions imposed in the Member States which have implemented those minimum levels of maximum penalties, are significantly lower than what could be expected considering the circumstances of the case.

• Commissie Meijers
Permanente commissie van deskundigen in internationaal vreemdelingen-, vluchtelingen- en strafrecht

• Comité Meijers
Comité permanent d'experts en droit international de l'immigration, des réfugiés et du droit pénal

• Meijers-Ausschuss
Ständiger Ausschuss von Experten im internationalen Ausländer-, Flüchtlings- und Strafrecht

In any case, the idea that minimum sanctions have a higher deterrent effect than minimum levels of maximum sanctions is not corroborated by any evidence; the same goes for the Commission's assertion that 'the minimum penalty of six months helps to ensure that equal priority is given by law-enforcement and judicial authorities to the offences of counterfeiting of the euro'. In its communication *Towards an EU Criminal Policy*, the Commission has indicated that criminal law must always remain a measure of last resort and that before embarking on legislative action at EU level, it is necessary to conduct a thorough assessment of 'whether Member States' sanction regimes achieve the desired result and difficulties faced by national authorities implementing EU law on the ground.'¹ Yet the current proposal lacks convincing evidence to this end.

The Meijers Committee thus advises the European Parliament to oppose the inclusion of minimum sanctions in this proposal.

We hope you will find these comments useful. Should any questions arise, the Meijers Committee is prepared to provide you with further information on this subject.

Yours sincerely,



Prof. dr. C.A. Groenendijk
Chairman

¹ European Commission, *Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law*, 2011, COM(2011) 573 final, p. 7.