



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 March 2013

**Interinstitutional File:
2013/0023 (COD)**

7609/13

LIMITE

**DROIPEN 30
JAI 213
ECOFIN 202
UEM 42
GAF 12
CODEC 614**

NOTE

from: Presidency
to: Working Party on Substantive Criminal Law (DROIPEN)
Subject: Protecting the euro and other currencies against counterfeiting by criminal law

Introduction

1. On 5 February 2013, the Commission proposed a Directive of the European Parliament and of the Council *on the protection of the euro and other currencies against counterfeiting by criminal law*¹. This proposal aims at providing the EU with an updated and improved legal instrument to achieve an appropriate and efficient level of protection across the European Union.

¹ 6152/13 DROIPEN 11 JAI 81 ECOFIN 92 UEM 18 GAF 3 CODEC 268 + ADD 1-3 (COM(2013) 42 final).

2. The Working Party on Substantive Criminal Law (DROIPEN) will discuss this proposal at a meeting on 12 April 2013. At this first meeting, the Commission will make a presentation of its proposal and a first article-by-article-examination is envisaged.
3. Most of the offences in the proposal have been taken directly from Framework Decision 2000/383/JHA.
4. With a view to strengthen the protection of the euro and other currencies and to overcome shortcomings of the legislation in place at national and at EU level, the proposed Directive suggests some additional or enhanced measures. Article 9 requires Member States to take the necessary measures to ensure the availability of effective investigative tools. Article 10 contains a new obligation to transmit or afford access to counterfeit euro notes and coins for analysis and detection without delay.
5. Articles 5 (penalties) and 8 (jurisdiction) of the proposal introduce new elements. Article 5 contains specific monetary thresholds serving to determine the level of seriousness and sanctions. Different thresholds apply depending on the total value of the counterfeits and seriousness of the case. The Article also foresees the introduction of a minimum penalty of six months imprisonment for serious offences. Article 8(2) extends the jurisdiction to cover offences referred to in Articles 3 and 4 committed outside the European Union under certain conditions.

Initial Council debate on 8 March 2013

6. The proposal was presented in the JHA Council of 8 March 2013, and ministers had an initial orientation debate on the basis of the two questions contained in document 6713/13. A great majority of ministers/Member States expressed support for the objectives of the draft Directive. In addition the suggestion to include the two new provisions (Articles 9 and 10) seemed to find support.

7. However, a majority of those delegations that spoke at the meeting expressed strong concern about the introduction of minimum penalties. Other delegations could support minimum sanctions as a necessary means to obtain an appropriate deterrent effect as well as forum-shopping. The Commission in its presentation argued that minimum sanctions are foreseen for the most serious offences in order to guarantee a deterrent effect. The Commission stressed that the introduction of minimum penalties would not interfere with the discretion of national judges to decide on lower or alternative sanctions on the basis of general principles of their national criminal law.
8. In addition, a number of delegations made reference to previous discussions on the introduction of minimum sanctions at Council level in relation to the proposal for a Directive on protection of the Union's financial interests (the "PIF Directive"). The proposed introduction of minimum sanctions for the most serious offences has been severely criticized by the vast majority of delegations. Views have been expressed that such minimum sanctions go against the principles of proportionality (Article 5 TFEU) and judicial discretion, provide no added value to the fight against PIF-related offences, and do not adequately take into account the seriousness of the offence, particularly when compared to the sanction levels in other EU instruments. Some have also noted that such provisions would be difficult to incorporate in their national legal systems or would lead to incoherence in the systems.
9. In view of these repeated Member State objections at various levels against the introduction of minimum sanctions - working party, CATS and the three most recent JHA Councils - the Presidency sees no need for further discussion on this issue for purposes of defining the Council position in the ordinary legislative procedure.

Other issues

10. As required by the Treaty [Art. 282(5)], the European Central Bank was consulted on the proposal by the Council by letter of 20 February 2013 and asked for an opinion "*at the earliest opportunity*". The European Economic and Social Committee has equally been consulted (optional consultation) on 22 February 2013 and asked for an opinion "*at the latest for its plenary session on 22-23 May 2013*".

11. The responsible committee within the European Parliament is LIBE (Civil Liberties, Justice and Home Affairs). The rapporteur is Ms. Andrea McIntyre (UK, ECR (European Conservatives and Reformists)).

12. The opt-in deadline started running on 12 February 2013 (where all language versions of the Directive were available).
