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of:	Council ("Justice and Home affairs") of 7 October 2013
No. Cion prop.:	6152/13 DROIPEN 11 JAI 81 ECOFIN 92 UEM 18 GAF 3 CODEC 268 (COM(2013) 42 final)
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA [First reading] - General approach

The Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, was submitted by the Commission on 6 February 2013.

At its meeting on 7 October 2013, the Council (Justice and Home Affairs) reached a general approach on the text, as laid out in the Annex. This text will form the basis for the future discussions with the European Parliament pursuant to Article 294, TFEU.

By letter of 8 May 2013, Ireland notified the Council that it wished to take part in the adoption and application of the Directive, as required under Article 3(1) of Protocol (No 21) on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice to the Treaties.

United Kingdom and Denmark do not participate in the adoption of this instrument.

The European Central Bank (ECB) issued an opinion¹ (obligatory) on the proposal on 28 May 2013, following a request from the Council of 22 February 2013.

The European Economic and Social Committee issued an opinion² (facultative) on 23 May 2013, following a request from the Council of 22 February 2013.

Finally, the Economic and Financial Committee (EFC) issued an opinion³ on 24 May 2013.

¹ 10518/13 DROIPEN 71 JAI 462 ECOFIN 468 UEM 164 GAF 26 CODEC 1330.

² 10719/13 DROIPEN 74 JAI 477 ECOFIN 531 UEM 215 GAF 29 CODEC 1390.

³ 10614/13 DROIPEN 72 JAI 468 ECOFIN 494 UEM 187 GAF 28 CODEC 1353.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the protection of the euro and other currencies against counterfeiting by criminal law, and
replacing Council Framework Decision 2000/383/JHA**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After having consulted the European Central Bank,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the ordinary legislative procedure,

⁴ OJ C [] p. [].

Whereas:

- (1) As the single currency shared by the Member States of the euro area, the euro has become an important factor in the Union's economy and the every-day-life of its citizens. It is in the interest of the Union as a whole to oppose and pursue any activity that is likely to jeopardise the authenticity of the euro by counterfeiting.
- (2) Counterfeit money has a considerable ill-effect on society. It harms citizens and businesses that are not reimbursed for counterfeits even if received in good faith. It is of fundamental importance to ensure trust and confidence in the authenticity of notes and coins for citizens, companies and financial institutions.
- (3) It is essential to ensure that effective and efficient criminal law measures protect the euro and any other currency whose circulation is legally authorised in an appropriate way in all Member States.
- (4) Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁵ obliges the Member States whose currency is the euro to ensure adequate sanctions against counterfeiting and falsification of euro notes and coins.
- (5) Council Regulations (EC) No 1338/2001⁶ and No 1339/2001 of 28 June 2001⁷ lay down measures necessary for the protection of the euro against counterfeiting, in particular measures to withdraw counterfeit euros from circulation.

⁵ OJ L 139, 11.5.1998, p.1.

⁶ OJ L 181, 4.7.2001, p.6.

⁷ OJ L 181, 4.7.2001, p. 11.

(6) The International Convention for the Suppression of Counterfeiting Currency signed at Geneva on 20 April 1929 and its Protocol ('Geneva Convention')⁸ lays down rules to effectively prevent, prosecute and punish the offence of counterfeiting currency. In particular, it aims at ensuring that severe criminal penalties and other sanctions can be imposed for offences of counterfeiting currency. All contracting parties of the Geneva Convention have to apply the principle of non-discrimination to currencies other than their domestic currency.

(...)

(8) This Directive builds on and updates Council Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro⁹. This Directive complements the Framework Decision with further provisions on the level of (...) **sanctions**, on investigative tools and on the analysis, identification and detection of counterfeits during judicial proceedings. The Framework Decision should be replaced by this Directive in relation to those Member States participating in the adoption of this Directive.

(9) The Directive should protect any banknote and coin whose circulation is legally authorised, irrespective of whether it is made of paper, metal or any other material.

(10) The protection of the euro and other currencies calls for a common definition of the offences related to the currency counterfeiting as well as for common sanction types both for natural and legal persons. In order to ensure coherence with the Geneva Convention, this Directive should provide for the same offences to be punishable as in the Convention. Therefore, the production of counterfeit notes and coins and their distribution should be a criminal offence. Important preparatory work to those offences, for example the production of counterfeiting instruments and components, should be punished independently. The common aim of those definitions of offences should be to act as a deterrent from any handling with counterfeit notes and coins, instruments and tools for counterfeiting.

⁸ No 2623, p. 372 League of Nations – Treaty Series 1931.

⁹ OJ L 140, 14.6.2000, p. 1.

- (11) The misuse of legal facilities or material of authorised printers or mints for the production of unauthorised notes and coins for fraudulent use should also be (...) **a criminal offence**. This covers situations where a national central bank or mint or other authorised industry produces notes or coins exceeding the quota authorised by the European Central Bank. It also covers situations where an employee of a legal printer or mint abuses the facilities for his or her own purposes. That conduct should be punishable as a (...) **criminal offence** even if the authorised quantities have not been exceeded, because the produced (...) **notes and coins** would, once circulated, not be distinguishable from authorised (...) **currency**.
- (12) Notes and coins which the European Central Bank or the national central banks and mints have not yet formally issued should also fall under the protection of this Directive. Thus, for instance, euro coins with new national sides or new series of euro notes should be protected before they have officially been put into circulation.
- (13) Incitement, aiding and abetting and attempt to commit the main counterfeiting offences, including misuse of legal facilities or material and including counterfeiting of notes and coins not yet issued but designated for circulation, should also be penalised where appropriate. This Directive does not require Member States to render attempt to commit an offence related to an instrument or component for counterfeiting punishable.
- (...)
- (15) Currency counterfeiting is traditionally a crime subject to a high level of sanctions in the Member States. This is due to the serious nature and the impact of the crime on citizens and businesses and due to the need to ensure the trust of Union citizens in the genuine character of the euro and other currencies. This holds particularly true for the euro, which is the single currency of 330 million people in the euro area and which is the second most important international currency.

- (16) (...) Member States should provide for (...) **criminal sanctions (...) in their national legislation in respect of the provisions of Union law on combating currency counterfeiting. Those sanctions should be effective, proportionate and dissuasive and should include imprisonment. The maximum term of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.**
- (17) The levels of the sanctions should be effective and dissuasive but should not go beyond what is proportionate to the offences. (...) **Though intentionally passing of counterfeit currency which has been received in good faith can be sanctioned with a lower sanction in the national law of Member States, the law should provide for imprisonment as a maximum sanction. Imprisonment sanctions for natural persons will serve as a strong deterrent for potential criminals, with effect all over Europe.**
- (18) (...) **As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent rules for currency counterfeiting offences.**
- (...)
- (20) This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.
- (21) Since confidence in the genuine character of notes and coins can also be harmed or threatened by the conduct of legal persons, legal persons should be liable for the criminal offences committed on their behalf.

(22) To ensure the success of investigations and prosecution of currency counterfeiting offences, those responsible for investigating and prosecuting such offences should have (...) **the possibility to make use of effective** investigative tools **such as those which are** used in combating organised crime or other serious crime. Such tools, **where appropriate, could** include, for example, the interception of communications, covert surveillance including electronic surveillance, the monitoring of bank accounts and other financial investigations. Taking into account, inter alia, principle of proportionality (...), **the use of such tools in accordance with national law should be commensurate with** the nature and (...) **gravity** of the offences under investigation.

(23) Member States should establish their jurisdiction in coherence with the Geneva Convention and the provisions on jurisdiction in other Union criminal law legislation, that is to say, for offences committed on their territory and for offences committed by their nationals. The pre-eminent role of the euro for the economy and society of the European Union as well as the specific threat to the euro as a currency of world-wide importance **manifested in a considerable number of print-shops located in third countries** calls for an additional measure to protect it. Therefore (...) universal jurisdiction **should be established** for offences related to the euro committed outside (...) **its territory** if either the offender is in (...) **the territory of the Member State and has not been extradited**, or counterfeit euros related to the offence are detected in that Member State. **Given the objectively different situation of Member States whose currency is the euro, it is appropriate that the obligation to establish this kind of universal jurisdiction only applies to those Member States. For the purpose of prosecution of the offence laid down in Article 3(1)(a), Article 3(2) and (3), where they relate to Article 3(1)(a), as well as incitement, aiding, abetting and attempt of these offences, the establishment of jurisdiction should not be subordinated to the condition that the acts are a criminal offence at the place where they were committed.** When exercising **this kind of** universal jurisdiction, Member States should respect the principle of proportionality, in particular with regard to convictions by a third country for the same conduct.

(...)

- (25) For the euro, the identification of counterfeit notes and coins is centralised at the National Analysis Centres and, respectively, the Coin National Analysis Centres which are designated or established in accordance with Regulation (EC) No 1338/2001. The analysis, identification and detection of counterfeit euro notes and coins should also be possible during on-going judicial proceedings in order to **accelerate the detection of the source of production of counterfeits in a given criminal investigation/prosecution and to** avoid and stop such types of counterfeits from further circulating, with due respect for the principle of a fair and effective trial. **This would contribute to the efficiency of combating counterfeiting offences and would at the same time increase the transmission of seized counterfeits during pending criminal proceedings, subject to limited exceptions where only access should be provided.** In general, the (...) **competent** authorities should authorise the physical transmission of the counterfeits to the National Analysis Centres and Coin National Analysis Centres. In certain circumstances, for example where only a few counterfeit notes or coins constitute the evidence for the criminal proceedings or where physical transmission would result in the risk of destruction of evidence such as fingerprints, the (...) **competent** authorities should instead be able to decide to give access to the notes and coins.
- (26) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to liberty and security, the respect for private and family life, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right to defence, the principles of the legality and proportionality of criminal offences and (...) **penalties**, as well as the prohibition of being tried or punished twice in criminal proceedings for the same criminal offence. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

- (27) Since the objective of this Directive cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, better achieved at Union level, the Union may adopt the measures laid down in this Directive, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve the objective.
- (28) In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, (...) Ireland has notified its wish to take part in the adoption and application of this Directive.
- (29) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom (...) is not taking part in the adoption (...) of this Directive and is not bound by it or subject to its application.
- (30) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of counterfeiting of the euro and other currencies. It also introduces common provisions to strengthen the fight against those offences and to improve their investigation.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) 'currency' means notes and coins, the circulation of which is legally authorised, including euro notes and euro coins, the circulation of which is legally authorised pursuant to Regulation (EC) No 974/98;
- (b) 'legal person' means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations;
- (...)

Article 3

Offences¹⁰

1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:
 - (a) any fraudulent making or altering of currency, whatever means are employed;
 - (b) the fraudulent uttering of counterfeit currency;
 - (c) the import, export, transport, receiving or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;
 - (d) the fraudulent making, receiving, obtaining or possession of
 - (i) instruments, articles, computer programs and **data, and** any other means peculiarly adapted for the counterfeiting or altering of currency; or
 - (ii) **security features, such as** holograms, or other components of currency which serve to protect against counterfeiting.

2. **Member States shall take the necessary measures to ensure that the** conduct referred to in **points (a), (b) and (c) of** paragraph 1 (...) **is punishable also** with respect to notes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which competent authorities may issue notes or coins.

3. **Member States shall take the necessary measures to ensure that the** conduct referred to in **points (a), (b) and (c) of** paragraph 1 (...) **is punishable also** in relation to notes and coins which are not yet issued, but are designated for circulation (...) **as** legal tender.

¹⁰ IT maintains a reservation on this Article.

Article 4

Incitement, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an offence referred to in Article 3 is punishable as a criminal offence.
2. Member States shall take the necessary measures to ensure that an attempt to commit an offence referred to in points (a), (b) or (c) of Article 3(1), **Article 3(2) or Article 3(3)** is punishable as a criminal offence.

Article 5¹¹

(...) Sanctions for natural persons

1. Member States shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is punishable by effective, proportionate and dissuasive criminal (...)sanctions.
2. (...)Member States shall take the necessary measures to ensure that the offence referred to in point (d) of Article 3(1) and the offences referred to in Article 3(2) and 3(3) shall be punishable by a maximum sanction which provides for imprisonment.
3. Member States shall take the necessary measures to ensure that the offences referred to in point (a) of Article 3(1) shall be punishable by a maximum term of imprisonment of at least eight years.

Member States shall take the necessary measures to ensure that the offences referred to in points (b) and (c) of Article 3(1) shall be punishable by a maximum term of imprisonment of at least five years.

4. In relation to offences referred to in point (b) of Article 3(1), Member States may provide for effective, proportionate and dissuasive criminal sanctions other than referred to in paragraph 3, including fines and imprisonment, if the counterfeit currency was received without knowledge that it is counterfeit.

¹¹ IT maintains a reservation on this Article.

Article 6

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 3 and 4 committed for their benefit by any person acting either individually or as part of an organ of the legal person who has a leading position within the legal person based on
 - (a) a power of representation of the legal person; (...)
 - (b) an authority to take decisions on behalf of the legal person; or
 - (c) an authority to exercise control within the legal person.
2. Member States shall ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offences referred to in Articles 3 and 4.

Article 7

Sanction types for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up (...);
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 8

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4, where
 - (a) the offence is committed in whole or in part within its territory; or
 - (b) the offender is one of its nationals.

2. Each Member State whose currency is the euro shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 committed outside (...) **its territory**, at least where they relate to the euro and where:

- (a) the offender is in the territory of the Member State **and is not extradited**; or
- (b) counterfeit euro notes or coins related to the offence have been detected in the Member State.

For the purpose of prosecution of (...)the **offences, referred to in Article 3(1)(a), Article 3(2) and (3), where they relate to 3(1)(a), as well as incitement, aiding, abetting and attempt for these offences**, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were committed.

(...)

Article 9

Investigative tools

Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 4.

Article 10

Obligation to transmit counterfeit euro notes and coins for analysis and detection of counterfeits

(...) Member States shall ensure that (...) **during criminal proceedings** the examination **by the National Analysis Centre and Coin National Analysis Centre** of suspected counterfeit euro notes and coins for analysis, identification and detection of further counterfeits (...) **is permitted without delay. The competent** authorities shall transmit the necessary samples (...) **at the latest once a final decision concerning the (...) criminal proceedings has been reached.**

(...)

(...)

Article 12

Replacement of Council Framework Decision 2000/383/JHA

Council Framework Decision 2000/383/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive without prejudice to the obligations of those Member States relating to the time limit for transposition of the Framework Decision into national law. In relation to Member States participating in the adoption of this Directive, references to Council Framework Decision 2000/383/JHA shall be construed also as references to this Directive.

Article 13

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [(...) **24** months after the entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 14

Reporting by the Commission and review

The Commission shall, by [5 years after its entry into force], submit a report on the application of this Directive to the European Parliament and the Council. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Directive. The report shall be accompanied, if necessary, by a legislative proposal.

Article 15

Entry into force

This Directive shall enter into force on the (...) day following its publication in the *Official Journal of the European Union*.

Article 16

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President