



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 April 2014

8742/14

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

**CODEC 1051
DROIPEN 54
JAI 219
ECOFIN 368
UEM 85
GAF 22
PE 271**

INFORMATION NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council
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
- Outcome of the European Parliament's first reading
(Strasbourg, 14 to 17 April 2014)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Ms Anthea MCINTYRE (ECR-UK) presented one compromise amendment (amendment 36) to the proposal for a Directive, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 16 April 2014, the plenary adopted the compromise amendment (amendment 36) to the proposal for a Directive. The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first reading position¹, it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Protection of the euro and other currencies against counterfeiting by criminal law *I**

European Parliament legislative resolution of 16 April 2014 on 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, and replacing Council Framework Decision 2000/383/JHA (COM(2013)0042 – C7-0033/2013 – 2013/0023(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0042),
 - having regard to Article 294(2) and Article 83(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0033/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 23 May 2013¹,
 - having regard to the opinion of the European Central Bank of 28 May 2013²,
 - having regard to the undertaking given by the Council representative by letter of 19 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Economic and Monetary Affairs (A7-0018/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 271, 19.9.2013, p. 42.

² OJ C 179, 25.6.2013, p. 9.

Position of the European Parliament adopted at first reading on 16 April 2014 with a view to the adoption of Directive 2014/.../EU 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 transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

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 everyday life of its citizens. However, ***since its introduction in 2002, as a currency continuously targeted by organised crime groups active in money counterfeiting, counterfeiting of the euro has caused financial damage of at least EUR 500 million.*** It is in the interests of the Union as a whole to oppose and pursue any activity that is likely to jeopardise the authenticity of the euro by counterfeiting.

¹ OJ C 179, 25.6.2013, p. 9.

² OJ C 271, 19.9.2013, p. 42.

³ Position of the European Parliament of 16 April 2014.

- (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 could lead to consumer concerns regarding the sufficient protection of cash and to the fear of receiving counterfeit notes and coins.*** It is ***therefore*** of fundamental importance to ensure trust and confidence in the authenticity of notes and coins for citizens, businesses and financial institutions ***in all Member States as well as in third countries.***
- (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 974/98¹ obliges the Member States whose currency is the euro to ensure adequate sanctions against counterfeiting and falsification of euro notes and coins.

¹ Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

- (5) Council Regulations (EC) No 1338/2001¹ and (EC) No 1339/2001² lay down measures necessary for the protection of the euro against counterfeiting, in particular measures to withdraw counterfeit euro notes and coins from circulation.
- (6) The International Convention for the Suppression of Counterfeiting Currency signed at Geneva on 20 April 1929 and its Protocol (the 'Geneva Convention')³ 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 to the Geneva Convention have to apply the principle of non-discrimination to currencies other than their domestic currency.

¹ Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6).

² Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 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 (OJ L 181, 4.7.2001, p. 11).

³ No 2623, p. 372 League of Nations – Treaty Series 1931.

- (7) *This Directive supplements the provisions and facilitates the application of the Geneva Convention by the Member States. To that end, it is important that the Member States are parties to the Geneva Convention.*
- (8) This Directive builds on and updates Council Framework Decision 2000/383/JHA¹. It complements that Framework Decision with further provisions on the level of *sanctions*, on investigative tools and on the analysis, identification and detection of counterfeit euro notes and coins during judicial proceedings. ■
- (9) This Directive should protect any note and coin whose circulation is legally authorised, irrespective of whether it is made of paper, metal or any other material.

¹ 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 euro (OJ L 140, 14.6.2000, p. 1).

- (10) The protection of the euro and other currencies calls for a common definition of the criminal offences related to the currency counterfeiting as well as for common, *effective, proportionate and dissuasive sanctions* both for natural and legal persons. In order to ensure consistency with the Geneva Convention, this Directive should provide for the same offences to be punishable as in the Geneva 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 to any handling of counterfeit notes and coins, instruments and other means for counterfeiting.

- (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*. Such misuse covers the situation where a national central bank or mint or other authorised industry produces notes or coins exceeding the quota authorised by the European Central Bank (ECB). *It* also covers the situation where an employee of an authorised 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 *notes and coins* produced would, once circulated, not be distinguishable from authorised *currency*.
- (12) Notes and coins which the ECB 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 the misuse of legal facilities or material and including the 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 punishable an attempt to commit an offence relating to an instrument or component for counterfeiting.

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- (14) ***Intention should be a part of all the elements constituting the offences laid down in this Directive.***
- (15) Currency counterfeiting is traditionally a crime subject to a high level of sanctions in the Member States. That 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 citizens and businesses in the genuine character of the euro and other currencies. That holds particularly true for the euro, which is the single currency of over 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 law 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 minimum level of the ***maximum term of imprisonment*** provided for in ***this Directive for the offences laid down herein should apply at least to the most serious forms of those offences.*** █

- (17) The levels of the sanctions should be effective and dissuasive but should not go beyond what is proportionate to the offences. Although *intentionally passing on counterfeit currency which has been received in good faith could be sanctioned with a different type of criminal sanction, including fines, in the national law of the Member States, those national laws 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 the Union.*
- (18) *As this Directive establishes minimum rules, Member States can adopt or maintain more stringent rules for currency counterfeiting offences.*
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- (19) 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.

- (20) 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 offences committed on their behalf.
- (21) To ensure the success of investigations and the 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 crimes. Such tools could, *where appropriate*, 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, **■** the 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. *The right to the protection of personal data should be respected.*

- (22) Member States should establish their jurisdiction in a manner consistent with the Geneva Convention and the provisions on jurisdiction in other Union criminal law, that is to say, over offences committed on their territory and over offences committed by their nationals, ***noting that in general offences are best dealt with by the criminal justice system of the country in which they occur.***
- (23) The pre-eminent role of the euro for the economy and society of the Union, as well as the specific threat to the euro as a currency of world-wide importance as ***manifested by the existence of a considerable number of print-shops located in third countries***, calls for an additional measure to protect it. Therefore, ■ jurisdiction ***should be established*** over offences relating to the euro committed outside ***the territory of a given Member State*** if either the offender is in ***the territory of that Member State and is not extradited***, or counterfeit euro notes or coins relating to the offence are detected in that Member State.

Given the objectively different situation of the Member States whose currency is the euro, it is appropriate that the obligation to establish such jurisdiction only applies to those Member States. For the purpose of prosecution of the offences laid down in point (a) of Article 3(1), Article 3(2) and (3), where they relate to point (a) of Article 3(1), as well as incitement, aiding and abetting, and attempt to commit those offences, jurisdiction should not be subordinated to the condition that the acts constitute an offence at the place where they were committed. When exercising such jurisdiction, Member States should ***take into account whether the offences are being dealt with by the criminal justice system of the country where they were committed, and should*** respect the principle of proportionality, in particular with regard to convictions by a third country for the same conduct.

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- (24) For the euro, the identification of counterfeit euro notes and coins is centralised at the National Analysis Centres and the Coin National Analysis Centres respectively, 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 or prosecution and to avoid and stop such types of counterfeits from further circulation, with due respect for the principle of a fair and effective trial. That would contribute to the efficiency of combating counterfeiting offences and would at the same time increase the number of transmissions of seized counterfeits during on-going criminal proceedings, subject to limited exceptions where only access to counterfeits 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.

- (25) *There is a need to collect comparable data on the offences laid down in this Directive. In order to gain a more complete picture of the problem of counterfeiting at Union level and thereby contribute to formulating a more effective response, Member States should transmit to the Commission relevant statistical data relating to the number of offences concerning counterfeit notes and coins and the number of persons prosecuted and sentenced.*
- (26) *In order to pursue the objective of fighting the counterfeiting of euro notes and coins, the conclusion of agreements with third countries, in particular those countries that use the euro as a currency, should be pursued in accordance with the relevant Treaty procedures.*

- (27) 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 right of defence, the principles of the legality and proportionality of criminal offences and penalties, as well as the right not to be 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 should be implemented accordingly.
- (28) ***This Directive aims to amend and expand the provisions of Framework Decision 2000/383/JHA. Since the amendments to be made are of a substantial number and nature, that Framework Decision should in the interests of clarity be replaced in its entirety for the Member States bound by this Directive.***

- (29) Since the objective of this Directive, ***namely to protect the euro and other currencies against counterfeiting***, cannot be sufficiently achieved by the Member States ***but can rather***, by reasons of ***its*** scale and effects, ***be*** better achieved at Union level, the Union may adopt the measures, █ in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union ('TEU'). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (30) In accordance with Articles 1 and 2 of █ Protocol No 22 on the position of Denmark annexed to the TEU and to the Treaty on the Functioning of the European Union ('TFEU'), Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (31) █ 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 TEU and to the TFEU, █ Ireland ***has*** notified ***its*** wish to take part in the adoption and application of this Directive.

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- (32) In accordance with Articles 1, 2 *and 4a(1)* 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 TEU and to the TFEU, 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.

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 investigation *of them and to ensure better cooperation against counterfeiting*.

Article 2
Definitions

For the purposes of this Directive the following definitions apply:

- (a) 'currency' means notes and coins, the circulation of which is legally authorised, including euro notes and 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 Offences

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, **watermarks** 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 paragraphs 1 ***and 2 is punishable also*** in relation to notes and coins which are not yet issued, but are ***designated*** for circulation ***as*** legal tender.

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) in relation to conduct referred to in points (a), (b) and (c) of Article 3(1)*** is punishable as a criminal offence.

Article 5
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 offences referred to in point (d) of Article 3(1), the offences referred to in Article 3(2), and the offences referred to in Article 3(3) in relation to conduct referred to in point (d) of Article 3(1) 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) and in Article 3(3) in relation to conduct referred to in point (a) of Article 3(1) shall be punishable by a maximum term of imprisonment of at least eight years.***

4. *Member States shall take the necessary measures to ensure that the offences referred to in points (b) and (c) of Article 3(1) and in Article 3(3) in relation to conduct 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.*
5. *In relation to the offence referred to in point (b) of Article 3(1), Member States may provide for effective, proportionate and dissuasive criminal sanctions other than that referred to in paragraph 4 of this Article, including fines and imprisonment, if the counterfeit currency was received without knowledge but passed on with the knowledge that it is counterfeit.*

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

For the prosecution of the offences *referred to in point (a) of Article 3(1), Article 3(2) and (3), where they relate to point (a) of Article 3(1), as well as incitement, aiding and abetting, and attempt to commit those 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 the offences referred to in Articles 3 and 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 *without any delay, and at the latest once a final decision concerning the criminal proceedings has been reached*.

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Article 11 Statistics

Member States shall, at least every two years, transmit data to the Commission on the number of offences laid down in Articles 3 and 4 and the number of persons prosecuted for and convicted of the offences laid down in Articles 3 and 4.

Article 12
Reporting by the Commission and review

By ... the Commission shall submit a report on the application of this Directive to the European Parliament and to 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 13
Replacement of Framework Decision 2000/383/JHA

Framework Decision 2000/383/JHA is hereby replaced in respect of *the* Member States *bound by* this Directive, without prejudice to the obligations of those Member States relating to the time-limit for transposition into national law of Framework Decision 2000/383/JHA.

For the Member States *bound by* this Directive, references to Framework Decision 2000/383/JHA shall be construed as references to this Directive.

* OJ please insert date: *5 years after the entry into force of this Directive.*

Article 14
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...^{*}. They shall ***immediately inform*** the Commission ***thereof***.

When Member States adopt those ***measures***, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. ***The methods of making*** such ***a*** reference ***shall be laid down by the Member States***.

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



^{*} OJ please insert date: **24** months after the entry into force of this Directive.

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 ...,

For the European Parliament
The President

For the Council
The President
