



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.9.2003
SEC(2003) 936

ADDENDUM TO COVER NOTE

Annex to

the Second Commission Report based on Article 11 of the Council

Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro – country by country analysis

{COM(2003) 532 final}

COMMISSION STAFF WORKING PAPER

Annex to

the Second Report of the Commission based on Article 11 of the Council's framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro

Country by Country Analysis

I. BELGIUM

Belgium provided information on the implementation of the framework Decision on 28 September 2001, that is, after the deadline of 29 May. To implement the framework Decision, Belgium adopted a specific law for the protection of the euro against counterfeiting, amending the Penal Code. It entered into force on 3 July 2001.

Article 2 of the framework Decision

Article 2 had already been complied with when the first report was produced, Belgium having already ratified the 1929 Geneva Convention.

Article 3 of the framework Decision (general offences)

- Fraudulent making of counterfeit currency is punishable under Articles 162, 163 and 173 of the Penal Code. Belgium distinguishes between "counterfeiting" and "alteration" only in respect of coins;
- fraudulent uttering is covered by Articles 168, 169 and 170 of the Penal Code for coins and 176, 177 and 178 for banknotes;
- import, export, transport, etc. are not specifically covered, but are defined by legislation which makes them punishable in more general terms;
- As for means for counterfeiting or for protecting against counterfeiting, Articles 180, 185a, 186, 187 and 187a of the Penal Code make punishable the acts of making, receiving and obtaining such instruments, but not the mere fact of possessing them;
- participation, instigation and attempted commission are covered by the general provisions of the Penal Code on these matters (Articles 1, 7, 52, 80 and 81 applied to Articles 168, 169, 170, 176 and 178 for attempted commission; Articles 66 to 69 for instigation and participation).

Article 4 of the framework Decision, (additional offences)

Unlawful manufacturing using lawful means is covered by Article 162 for coins and 173 for banknotes.

Article Article 5 of the framework Decision (currency not yet issued)

The provision on currency not yet issued was transposed by Articles 162, 173, 180 and 185 of Belgium's Penal Code. These Articles entered into force on 3 July 2001, i.e. after the deadline laid down in Article 11 of the framework Decision of 31 December 2000 for offences committed before 1 January 2002.

Articles 162, 173, 180, 185a), 186(3) and 187 punish offences relating to notes and coins which have not yet been issued but which are of a currency that is legal tender.

Article 6 of the framework Decision (penalties).

Belgium has laid down penalties for the general offence of making counterfeit currency, for the additional offence of counterfeiting using lawful means and for offences relating to currency which is not yet issued. Belgium applies a system of penalties ranging from a fine and/or imprisonment for petty offences (such as fraudulently uttering counterfeit currency which the offender has received in good faith) to imprisonment with loss of civic rights.

Penalties involving deprivation of liberty are laid down in Articles 162 (five to ten years) and 173 (fifteen to twenty years) of the Belgian Penal Code. Belgium has therefore met the requirements of the framework Decision, since making counterfeit currency is punishable by a prison term of up to 20 years.

Article 7 of the framework Decision (jurisdiction).

Belgium's general jurisdiction over offences committed in whole or in part within its territory is laid down in Article 3 of the Criminal Procedure Code. Specific jurisdiction irrespective of the nationality of the offender or the place where the offence was committed is laid down in Articles 6(2) and 10 of the preliminary title of the Criminal Procedure Code.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

Belgium adopted legislation on the liability of legal persons on 4 May 1999. It entered into force on 2 July 1999; it is Articles 5 *et seq.* of the Belgian Penal Code. Legal persons are liable for counterfeiting offences committed on their behalf by persons with a leading position within them. A legal person may also be held liable where the lack of supervision or control by one of its managers has made commission of such offences possible.

As regards penalties, Belgium has a system of criminal fines and special confiscation measures, including judicial dissolution of the legal person.

The framework Decision has thus been properly transposed.

Conclusion

The framework Decision had already been properly implemented when the first report was produced.

II. DENMARK

Denmark provided information on the implementation of the framework Decision on 3 April 2001, thus complying with the deadline laid down in Article 11 of the framework Decision.

Article 2 of the framework Decision

Denmark had already ratified the International Convention.

Article 3 of the framework Decision (general offences)

- The offence of fraudulent manufacture is punishable under Article 166 of the Danish Penal Code; alteration is included in the concept of counterfeiting;
- fraudulent uttering is punishable under Article 167 of the Danish Penal Code;
- import, export, transport, etc. are not expressly covered by the Danish Penal Code, but are included in the concepts of attempt and assistance; Articles 166 and 167 must therefore be read in the light of Articles 21 and 23 of the Penal Code;- the fraudulent making, obtaining or possession of instruments for counterfeiting currency or protecting against counterfeiting is also punishable under Articles 166 and 167 in conjunction with Articles 21 and 23 of the Danish Penal Code;
- participation, instigation and attempted commission are covered under Articles 21 and 23 of the Penal Code.

Article 4 of the framework Decision (additional offences)

This type of counterfeiting is also punishable, not under a specific provision, but again under the same reading of Articles 166 and 167 in the light of Articles 21 and 23 of the Penal Code.

Article 5 of the framework Decision (currency not yet issued)

Denmark was able to meet the deadline (of 31 December 2000) laid down in Article 11 of the framework Decision for complying with Article 5(a) on protecting the future euro notes and coins in respect of offences committed before 1 January 2002.

Denmark already had legislation allowing the protection of currency not yet issued under Articles 166-67 and 21-23 of the Penal Code.

Article 6 of the framework Decision (penalties)

Denmark provides for prison terms of up to 12 years for general counterfeiting offences and for additional offences (Articles 166 and 167 of the Penal Code).

Prison terms of up to eight or 12 years apply to offences relating to currency not yet issued.

As for the application of terms of imprisonment which can give rise to extradition, Denmark has adopted specific legislation covering Articles 3(1)(b), (c) and (d), 3(2), 4 and 5. It had previously issued a reservation on the European convention on extradition, but this has been withdrawn and the obligation to grant extradition is no longer restricted to offences which are punishable by a penalty greater than one year's imprisonment.

It has met the requirement of the framework Decision to provide for terms of imprisonment (for making or altering currency, Article 3(1)(a)), the maximum being not less than eight years.

The first report found that the fact that certain offences were not specifically defined but were included in the concepts of attempt or assistance could have implications for the level of penalty that could be imposed. Since then, the Danish Ministry of Justice has specified that Danish law lays down the same maximum penalty for a specific offence, irrespective of whether it has been actually committed or only attempted, and of whether the person concerned is the offender or an accessory.

Article 7 of the framework Decision (jurisdiction)

Denmark's general jurisdiction over offences committed in whole or in part within its territory is established by Articles 6, 7 and 8 of the Penal Code.

Specific jurisdiction, irrespective of the nationality of the offender and the place where the offence was committed, is established by Article 8 of the Penal Code.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

Denmark adopted a specific law on the criminal liability of legal persons, which entered into force on 31 May 2001.

Article 306 of the Danish Penal Code thus makes it possible to hold legal persons liable for the offences covered in Articles 3 to 5 of the framework Decision, when they are committed for their benefit by persons in leading positions within them. The same applies to the lack of supervision. Fines are applicable.

Conclusion

Denmark had already transposed the provisions of the framework Decision when the first report was drawn up. Since then, the system of penalties has been amended to give effect more fully to the framework Decision.

III. GERMANY

Germany provided information on the implementation of the framework Decision on 13 August 2001, i.e. outside the prescribed deadline.

The first report indicated certain gaps; Germany had prepared legislation transposing Articles 3(1)(d) and 8(1), but it had not yet entered into force. It did so on 22nd August 2002.

Article 2 of the framework Decision

Germany had already ratified the International Convention.

Article 3 of the framework Decision (general offences)

- The offence of fraudulent making is laid down in Article 146 of the Penal Code; alteration is a criminal offence only if it increases the value of the currency;
- fraudulent uttering is covered by Articles 146 and 147 of the Penal Code;
- import, export, transport, etc. are not expressly covered, but are caught by the more general scope of Article 146. Transporting counterfeit currency is defined as acting as an accessory to the criminal offence, which could have implications for the level of penalties that can be imposed;
- the fraudulent possession, making or obtaining of instruments for making counterfeit currency are expressly defined in German criminal law. The amended Article 149 specifically covers computer programs as means intended for the counterfeiting of currency, and components such as holograms which serve to protect against counterfeiting;
- participation and instigation are covered by Articles 25 to 27 of the Penal Code; attempt is covered by Article 147 in conjunction with Articles 23 and 12 of the Penal Code.

Article 4 of the framework Decision (additional offences)

Germany has indicated that this offence is punishable under the general definition of counterfeiting in Article 146 of the Penal Code.

Article 5 of the framework Decision (currency not yet issued)

Germany already had Article 146 of the Penal Code; its legislation already complied with the framework Decision, both for offences committed before 1 January 2002, and for currency not yet issued.

Article 6 (penalties)

Articles 146 and 38 of the German Penal Code lay down prison terms of between one and 15 years. They apply to general counterfeiting offences, (except as regards instruments for making counterfeit currency, such as computer programs, and instruments for protecting currency against counterfeiting, such as holograms, since Article 149 is still at the draft stage), additional offences and offences relating to currency that is not yet issued. Germany has therefore complied with the framework Decision, as regards both the first paragraph (penalties that can give rise to extradition) and the second (penalties for which the maximum term is not less than eight years).

Article 7 of the framework Decision (jurisdiction)

Germany's general jurisdiction over offences committed in whole or in part within its territory is laid down in Article 3 of its Penal Code. Article 6 of that Code stipulates that the nationality of the offender is irrelevant; Germany's specific jurisdiction is thus ensured.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

The amended Article 30 of the German law on administrative penalties provides for the liability of legal persons and for penalties (administrative fines which may be accompanied by civil-law or commercial-law measures, including the winding-up of the company). This provision covers situations in which a crime is committed either by a leading person (with the authority to exercise control) within the legal person, or where a crime is committed as a result of a lack of supervision.

Conclusion

The majority of Germany's obligations under the framework Decision had already been met at the time of the first report. Since then, amendments to the penal code fully implementing Articles 3, 8 and 9 have been made. Germany now seems to be in full compliance with the framework Decision.

IV. GREECE

Greece's contribution was received on 22 August 2001. The amendments to the Greek Penal Code designed to protect the euro from counterfeiting by means of criminal penalties entered into force on 19 October 2001, i.e. after the deadline of 29 May 2001.

Account was taken of this new legislation adopted by Greece in the first report.

Article 2 of the framework Decision

Greece has ratified the International Convention.

Article 3 of the framework Decision (general offences)

- Fraudulent making of counterfeit money is covered by Article 207 of the Penal Code, which distinguishes between making and altering currency;
- fraudulent uttering is punishable under Article 208 of the Greek Penal Code;
- the fraudulent import, export and transport of counterfeit currency are expressly covered by Article 207;
- possessing, making or obtaining means for making counterfeit currency and processes for protecting currency are expressly covered by Article 211 of the Penal Code;
- participation is punishable under Articles 45 and 47 of the Penal Code; instigation, under Article 46 and attempted commission, under Article 42.

Article 4 of the framework Decision (additional offences)

The unlawful manufacture of currency using lawful facilities is punishable under Article 208a.

Article 5 of the framework Decision (currency not yet issued)

The amendment to the Penal Code entered into force on 19 October 2001, too late to comply with the deadline laid down in Article 11 of the framework Decision (31 December 2000); however, Greece has adopted legislation allowing it to protect currency not yet issued under Articles 207, 208 and 208a of the Penal Code.

Article 6 of the framework Decision (penalties)

The penalty laid down in Article 207 for the general offence of counterfeiting is a term of imprisonment of at least ten years, accompanied by a fine.

Article 208, on the fraudulent uttering of counterfeit currency, also provides for a term of imprisonment of at least ten years, accompanied by a fine.

The Greek Penal Code distinguishes between serious and petty offences. Petty offences are punishable by a prison term of at least three months and a fine (Articles 207 and 208).

Article 208a lays down a term of imprisonment of at least one year and a fine, in particular for unlawful manufacture using lawful facilities.

Article 211 penalises the making, etc. of instruments for making counterfeit currency or for protecting against counterfeiting by a term of imprisonment of at least one year, accompanied by a fine.

Instigation and participation are punishable, under Articles 45 and 46, in the same way as the actual offence.

Articles 42 and 47, in conjunction with Article 83, provide for a lighter penalty for minor offences; various penalties are thus applicable. As regards extradition, a "petty offender" convicted of a minor offence within the meaning of Articles 207 and 208 cannot be extradited.

Greece has complied with the requirement of Article 6(2) since the prison term laid down for the fraudulent making of counterfeit currency is at least ten years.

Article 7 of the framework Decision (jurisdiction)

Articles 3 to 13, and more particularly Article 5 of the Code of Criminal Procedure establishes Greece's general jurisdiction over offences committed in whole or in part within its territory.

Articles 3 to 13, and more particularly Article 8 of the Code of Criminal Procedure, allow Greece to prosecute anyone who has committed a counterfeiting offence, irrespective of the offender's nationality or the place where the offence was committed.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

Greek law makes it possible to hold legal persons liable for counterfeiting offences committed on their behalf by persons with a leading position within them. They can also be held criminally liable for a lack of supervision or control by one of their managers. These provisions can be found in the amended Article 211 of the Penal Code.

The penalties, laid down in Article 211 and imposed on the legal person by a decision of the Finance Minister, are an administrative fine, a ban on carrying on business, and exclusion from public services or funding.

Conclusion

Greece has adopted legislation in line with the framework Decision, as noted in the first report.

V. SPAIN

Spain communicated the state of its legislation in relation to the framework Decision on 11 October 2001, i.e. after the deadline. At that time, it had not yet introduced specific legislation designed to enhance protection of the euro; only Institutional Law 10/98 of 17 December 1998, which entered into force on 1 January 1999, stipulated that the rules applicable to the national currency shall apply to the new European currency. Since then, a major legislative project to modify the penal code has been commenced but has yet to be implemented.

Article 2 of the framework Decision

Spain had already ratified the International Convention.

Article 3 of the framework Decision (general offences)

- Currently, the fraudulent making of counterfeit currency is covered in Article 386 of the Spanish Penal Code, but alteration of currency is not a criminal offence. Under the new legislation, alteration will also be punishable.
- fraudulent uttering is punishable under Articles 386 and 629 of the Penal Code;
- The notions of "possession" and "acquisition" are currently prohibited by Article 386 of the Penal Code. The new legislation will also specifically cover the export and transport of false currency.
- the possession, obtaining or making of instruments for making counterfeit currency are covered by the Spanish Penal Code (Article 400), which expressly mentions computer programs; however, instruments for protecting currency from counterfeiting are covered only implicitly;
- participation, instigation or attempted commission are covered by general provisions which automatically apply to counterfeiting offences (Articles 27, 28, 29, 15 and 16 of the Penal Code).

Article 4 of the framework Decision (additional offences)

This situation was not previously covered by Spanish criminal law, but the Commission (OLAF) has been informed that the new legislation will prohibit the manufacture or modification of false currency irrespective of the means used. Further clarification of the operation of the new legislation is awaited.

Article 5 of the framework Decision (currency not yet issued)

Legislative measures were taken by Spain before the adoption of the framework Decision as regards currency not yet issued.

The Commission still awaits clarification of the question of how article 5c) will be implemented by the amendments to the penal code. Article 6 of the framework Decision (penalties)

Article 386(1) of the Penal Code provides for a prison term of between eight and 12 years and a fine of up to ten times the amount counterfeited for the offence of making counterfeit currency.

Article 6(2) of the framework Decision has therefore been met. The same penalties apply to the fraudulent uttering of counterfeit currency.

However, if the counterfeit currency uttered was acquired in good faith, the penalties will be much lighter and will depend on the amount concerned; if the amount is less than €300.51: imprisonment of between one and four weeks or a fine; for higher amounts: nine to 15 weeks and a fine.

Article 7 of the framework Decision (jurisdiction)

Article 23 of the Judicial Code establishes Spain's jurisdiction over offences committed in whole or in part within its territory, and its jurisdiction irrespective of the nationality of the offender or the place where the offence has been committed. This provision will become fully effective for the purposes of the framework Decision once the new legislation has come into force.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

When the first report was produced, Spain had failed to implement Articles 8 and 9 of the framework Decision. The legislative project currently in progress also aims to transpose these articles completely. The legal person will be regarded as an accessory to the crime. All of those punishments suggested in the framework Decision will be available in Spanish law.

Conclusion

Once Spain has implemented its draft legislation, it appears that it will be in compliance with the framework Decision. However, clarification on the operation of the provisions transposing articles 4 and 5(b) would be welcomed.

VI. FRANCE

France sent information relating to the transposition of the framework Decision into its national law on 13 July 2001. It mainly concerned a proposal for a law "on various economic and financial provisions" supplementing the provisions of the Penal Code, which already penalised some of the conduct covered by the framework Decision. These were implemented on 12th December 2001.

Article 2 of the framework Decision

France had already acceded to the International Convention.

Article 3 of the framework Decision (general offences)

- The offence of fraudulent making of counterfeit currency is covered by Article 442(1) of the French Penal Code; alteration is included in the concept of counterfeiting;
- fraudulent uttering is punishable under Article 442(2) of the Penal Code;
- transporting counterfeit currency is included in the same Article 442(2), which makes no specific provision relating to import or export, but which explicitly prohibits the 'circulation' of false currency;
- fraudulent possession, making and obtaining of instruments for the counterfeiting of currency or for protecting against counterfeiting are covered by the new Article 442-5. The proposal covers "materials, instruments, computer programs or any other component";
- participation, instigation and attempted commission are punishable under Articles 442(8) and 121(7) of the Penal Code, except as regards import and export, since they are not specifically defined as offences.

Article 4 of the framework Decision (additional offences)

The draft amendment relating to Article 442(1) designed to insert a provision making the manufacture of counterfeit currency using lawful means a criminal offence has been prepared but not yet implemented, owing to legislative elections which disrupted its progress.

Article 5 of the framework Decision (currency not yet issued)

The new Article 442(15) provides that "the provisions ... are applicable where banknotes and coins are concerned which are designated for circulation but have not yet been issued by the institutions authorised to do so and which are not yet legal tender". Under French law, all currency not yet issued is not yet legal tender; thus the provision covers all currency that has not yet been issued but is designated for circulation.

Article 6 of the framework Decision (penalties)

The general offence of fraudulent making of counterfeit currency is punishable by 30 years' imprisonment under Article 442(1) in addition to a fine of FRF 3 million. The framework Decision's requirement of a maximum of at least eight years is thus met.

Fraudulent uttering and the transport of counterfeit currency are subject to the same penalties (30 years' imprisonment and a fine of FRF 3 million) if the offences are committed by a criminal organisation ("bande organisée"); otherwise, the penalty is ten years' imprisonment and a fine of FRF 1 million.

The offence relating to instruments for manufacturing counterfeit currency or protecting against counterfeiting has not yet been made criminal under French criminal law; the proposed Article 442(5) provides for imprisonment of two years and a fine of €30 000.

Articles 121(6) and (7) of the French Penal Code punish the accessory in the same way as the offender.

French law prescribes certain minimum penalties before extradition is possible. Where a non-Schengen country requests extradition, it is possible only where the penalty for the offence is at least two years' imprisonment in both France and the country requesting extradition. Where extradition is requested by a country party to the Schengen agreement, a penalty of two years' imprisonment in France and 1 year's imprisonment in the requesting country is required. Post conviction, a period of imprisonment of only two months in each country is necessary to permit extradition.

Article 7 of the framework Decision (jurisdiction)

Article 113(2) of the Penal Code gives France general jurisdiction over the offences of making or falsifying coins and notes.

The new Article 113(10) should extend its jurisdiction to the offences of transporting, uttering or possessing counterfeit currency (Article 442(2)) and those relating to instruments for making counterfeit currency or protecting against counterfeiting (Article 442(5)) and to currency not yet issued (Article 442(15)).

Articles 8 and 9 of the framework Decision (liability of legal persons)

Article 121(2) of the French Penal Code applied to Article 442(14) means that legal persons can be held liable and penalised, including for a lack of supervision or control. The penalties are criminal fines and special measures such as placing under judicial supervision or special confiscation.

Conclusion

France adopted a law amending its Penal Code on 11 December 2001, transposing articles 3(1) d), 5 and 7 of the Framework Decision. As regards the additional offence of manufacturing counterfeit currency using lawful means, as foreseen by article 4 of the Framework decision, the relevant draft French law has not yet been presented.

VII. IRELAND

Ireland's contribution was sent on 15 June 2001. At that time, Ireland had drawn up a bill, which had not yet entered into force. On 19 February 2002, Ireland informed the Commission that its legislation on protecting the euro from counterfeiting had entered into force on 19 December 2001.

Article 2 of the framework Decision

Ireland had already acceded to the International Convention.

Article 3 of the framework Decision (general offences)

- The fraudulent manufacture of counterfeit currency is covered by section 33 of the Criminal Justice (Theft and Fraud Offences) Act;
- fraudulent uttering is covered by section 34;
- export, import and transport: by sections 34, 35 and 37;
- offences relating to instruments enabling counterfeiting are covered in section 36. No explicit reference is made to holograms or other instruments for protecting against counterfeiting, but the terms of the provision are broad enough to encompass them.
- participation, instigation and attempted commission are punishable under the system of common law applicable to counterfeiting offences and also by statute where the penalty is imprisonment of five years or more.

Article 4 of the framework Decision (additional offences)

Section 32 of the Criminal Justice (Theft and Fraud Offences) Act 2001 provides a definition of “currency note” and “coin” which extends the offences created by sections 33-39 of the Act to currency notes and coins whether lawfully or unlawfully issued.

Article 5 of the framework Decision (currency not yet issued)

The obligation on Member States to take measures applicable to the future notes and coins denominated in euros before 29 May 2001 was not met by Ireland, since the legislation entered into force only on 19 December 2001.

However, offences relating to currency that is not yet issued are covered by section 32 of the Criminal Justice (Theft and Fraud Offences) Act 2001, in force since 19 December 2001, which provides a definition of “currency note” and “coin” which includes any note or coin which has not been lawfully issued but which would, on being so issued, be a currency note or coin. Therefore the offences created by sections 33-39 of the Act apply equally to a currency note or coin whether it has or has not yet been issued.

Article 6 of the framework Decision (penalties)

Section 33 lays down an unlimited fine and/or a term of imprisonment of up to ten years for manufacturing counterfeit currency and unlawful manufacture using lawful facilities.

Sections 34, 35, 36 and 37 cover offences relating to uttering, importing and exporting counterfeit currency, and offences relating to instruments for making counterfeit currency.

Unlawful manufacture using lawful facilities is also punishable.

Article 7 of the framework Decision (jurisdiction)

The common law system gives Ireland jurisdiction over offences committed in whole or in part within its territory.

The new section 38 extends Ireland's jurisdiction to persons who have committed counterfeit offences "outside the State".

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

Ireland has drawn up specific legislation (section 58) on the criminal liability of legal persons for counterfeiting offences committed by persons in a leading position within them, as well as for offences committed as a result of a lack of supervision or control.

Section 56 lays down penalties of unlimited fines.

Conclusion

Ireland has apparently been in line with the framework Decision since adopting the legislation which entered into force on 19 December 2001.

Ireland submitted information further clarifying its position to the Commission (OLAF) on 19th November 2002.

VIII. ITALY

Italy sent its contribution on 23 October 2001. It adopted a Decree-Law on 25 September 2001, which entered into force in October 2001 and was converted into the Law of 23 November 2001, in order to comply with the framework Decision.

Article 2 of the framework Decision

Italy had already ratified the International Convention.

Article 3 of the framework Decision (general offences)

- Fraudulent making of counterfeit currency is punishable under Article 453 of the Italian Penal Code;
- uttering is covered by Articles 453, 454 and 455;
- import is covered with uttering; export and transport are not explicitly covered, but to the extent that Article 453 covers "agreement among individuals with different roles" and Article 455 uttering, import, obtaining or possession without the agreement of other individuals, these concepts are caught by the broad definition contained in these Articles;
- offences relating to instruments for making counterfeit currency or for protection against counterfeiting are covered by Article 461. Computer programs are covered by a broad definition, and specific amendments have been adopted so as to include instruments serving to protect currency such as holograms;
- participation, instigation, and attempts to commit offences are punishable under Italian law.

Article 4 of the framework Decision (additional offences)

Unlawful manufacturing of counterfeit currency using lawful means is not explicitly covered by Italian criminal law. However, judicial interpretation has confirmed that 'counterfeiting' as envisaged by article 453 encompasses all production of counterfeit money by persons not authorised.

Article 5 of the framework Decision (currency not yet issued)

Article 52c of the Decree-Law of 8 June 2001 (adopted after the deadline of 31 December 2000 laid down in Article 11 of the framework Decision) makes offences committed before 1 January 2002 relating to the future euro notes and coins punishable.

There is no specific provision in Italian law penalising the offence of counterfeiting currency that has not yet been issued. However, article 453 of the Penal Code will be applicable to all money of legal tender, whether issued or not.

Article 6 of the framework Decision (penalties)

Article 453 of the Penal Code lays down a term of imprisonment of between 3 and 12 years and a fine for cases of manufacturing counterfeit currency. The framework Decision in this respect has thus been met.

Articles 454, 455, 456 and 461 lay down various penalties for the various counterfeiting offences, in proportion to the seriousness of the offence. Terms of imprisonment can give rise to extradition since the maximum duration is at least equivalent to one year (European Convention on Extradition of 1957).

Offences committed before 1 January 2002 relating to the future euro notes and coins are punishable by penalties reduced by a third compared with those laid down in Articles 453 *et seq.* of the Penal Code.

Article 7 of the framework Decision (jurisdiction)

Italy's general jurisdiction over offences committed in whole or in part within its territory is laid down in Article 6 of the Penal Code.

Article 7(3) of the Penal Code extends its jurisdiction to counterfeiting offences, irrespective of the nationality of the offender or the place where the offence was committed.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

Italian legislation holds legal persons liable for offences committed for their benefit by persons who have a leading position within them. Legal persons can also be subject to a penalty when the offences committed result from a lack of supervision or control. Fines and other special measures such as exclusion from public services are applicable.

Conclusion

Italy had adopted specific legislation to implement the framework Decision when the Commission's first report was produced. Articles 4 (unlawful manufacture of counterfeit currency by means of lawful instruments) and 5(b) (currency not yet issued) were not explicitly provided for.

However, Italy supplied the Commission (OLAF) with further information on 15th November 2002, explaining that article 463 of the Italian Penal Code has been interpreted in a broad sense and therefore prohibits in general terms unauthorised manufacture of currency, irrespective of the means, and protects all legal tender, whether or not the currency itself has been issued. Articles 4 and 5b are therefore transposed effectively into Italian National Law.

Italy's legislation is apparently in line with the Framework Decision.

IX. LUXEMBOURG

Luxembourg sent its contribution on the implementation of the framework Decision on 04 July 2001. It referred to new legislation covering almost all the provisions of the framework Decision, but which had not yet entered into force.

Since then, the Law of 13 January 2002 (Luxembourg Official Gazette of 25 January 2002), sent to the Commission at its request on 25 September 2002, entered into force on 29 January 2002.

Article 2 of the framework Decision

The Law of 13 January 2002 approves the International Convention.

Article 3 of the framework Decision (general offences)

- Fraudulent making or altering of coins is covered by Article 162 of the Luxembourg Penal Code; Article 173 covers banknotes;
- fraudulent uttering is covered by Articles 169 for coins and 177 for banknotes;
- offences relating to instruments for manufacturing counterfeit currency or protecting against counterfeiting, with express reference to computer programs and holograms, are covered by Articles 180, 185, 186 and 187(1) of the Penal Code;
- participation and instigation are punishable under Articles 66 to 69 of the Penal Code; attempts to commit a serious offence, under Articles 51 and 52, and a less serious offence, under Article 53 of the Penal Code, in conjunction with the specific provisions on counterfeiting (Articles 169, 177, 184, 185 and 187).

Article 4 of the framework Decision (additional offences)

The unlawful manufacture of counterfeit currency using lawful facilities is punishable under Article 192(1) of the Penal Code.

Article 5 of the framework Decision (currency not yet issued)

Article 192(2) penalises the counterfeiting of notes and coins that have not yet been issued.

Article 6 of the framework Decision (penalties)

The fraudulent manufacture of coins is punishable under Article 162 by a term of imprisonment of between five and ten years; that of notes between 10 and 15 years pursuant to Article 173. The framework Decision has thus been complied with by Luxembourg law.

Other counterfeiting offences (uttering, import/export, instruments for counterfeiting or protection) are punishable by prison terms that can give rise to extradition in accordance with the European Convention on Extradition.

These penalties are proportional to the seriousness of the offence.

The same applies to additional offences and to those relating to currency that has not yet been issued.

Article 7 of the framework Decision (jurisdiction)

Luxembourg's general jurisdiction over offences committed in whole or in part within its territory is laid down in Articles 5 and 7b of its Criminal Procedure Code.

Jurisdiction extended to counterfeiting offences irrespective of the nationality of the offender or the place where the offence was committed is conferred on it by Article 7 of the Criminal Procedure Code.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

A draft law transposing articles 8 and 9 into national law is currently being prepared. Sanctions provided for by the 1915 Law on Commercial companies are already available against companies, which include their dissolution or the closure of a branch.

Conclusion

Luxembourg has adopted fairly comprehensive legislation, in force since 13th January 2002 as regards the accession to the International Convention, the definition of the counterfeiting offences and the penalties applicable.

Luxembourg has taken steps to implement the Framework Decision and will be fully in line with it when the draft law transposing articles 8 and 9 takes effect.

X. NETHERLANDS

The Netherlands sent information on the transposition of the framework Decision on 14 June 2001.

Article 2 of the framework Decision

It had already completed the ratification of the International Convention.

Article 3 of the framework Decision (general offences)

- Fraudulent making or altering of currency is covered by Article 208 of the Penal Code;
- fraudulent uttering is covered by Article 209 of the Penal Code;
- import, export and transport are covered by Article 209, as amended by the Law of 17 May 2001;
- offences relating to the means of making counterfeit currency are covered by Article 214, as amended by the legislation of 17 May 2001; this Article does not expressly refer to holograms or other means of protection against counterfeiting, but its broad definition includes them;
- participation and instigation are punishable under Article 47, attempt under Article 45 of the Penal Code.

Article 4 of the framework Decision (additional offences)

Unlawful manufacturing using lawful instruments is punishable under Articles 208, 209 and 214 in conjunction with Articles 45, 46 and 48 of the Penal Code.

Article 5 of the framework Decision (currency not yet issued)

The Netherlands had taken the measures relating to offences committed before 1 January 2002 involving the future euro notes and coins by the deadline of 31 December 2000.

Legislation has been adapted so that offences relating to currency not yet issued can also be penalised; the relevant Articles are 210, 208, 209 and 214 of the Penal Code.

Article 6 of the framework Decision (penalties)

Article 208 of the Penal Code lays down a term of imprisonment of up to nine years, or a "fifth category" fine for the fraudulent making or altering of currency. The framework Decision has thus been met.

The Netherlands has also adopted legislation allowing extradition for the offences laid down in Articles 3(1)(b)(c) and (d) and 4 of the framework Decision.

Penalties for offences committed before 1 January 2002 relating to the future euro, and offences relating to currency not yet issued are laid down in Articles 208, 209, 210 and 214 of the Penal Code.

Article 7 of the framework Decision (jurisdiction)

The Netherlands's general jurisdiction over counterfeiting offences committed in whole or in part within its territory is laid down in Article 3 of the Penal Code.

This jurisdiction has been extended by Articles 4(1)(3) and 5 of the Penal Code, which means that persons committing these offences can be prosecuted irrespective of their nationality or of the place where the offence was committed.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

Article 51 of the Penal Code makes it possible to hold legal persons liable for the offences covered in Articles 3 to 5 of the framework Decision, when they are committed for their benefit by persons in leading positions within them. Legal persons can also be held liable if a lack of supervision or control on the part of one of its managers has made such an offence possible.

The penalties laid down are fines or other measures besides imprisonment, such as the loss of benefits unlawfully received.

Conclusion

The Netherlands had already adopted legislation correctly implementing the framework Decision. The information relating to their contribution was communicated within the deadline set.

XI. AUSTRIA

Austria has provided information on the implementation of the framework Decision (30 April 2001).

Austria has introduced new legislation, which entered into force on 7 March 2001, to supplement or amend existing criminal legislation in order to apply the framework Decision.

Austria was able to meet the deadline set in Article 11(1) of the framework Decision, under which Member States had to take the necessary measures by 29 May 2001 at the latest.

Article 2 of the framework Decision

Austria had already acceded to the International Convention when the first report was produced.

Article 3 of the framework Decision (general offences)

- The offence of fraudulent making (Article 3(1)(a)) is covered by Article 232(1) of the Austrian Penal Code; alteration is included in the general concept of counterfeiting;
- fraudulent uttering (Article 3(1)(b)) is punishable under Articles 232(2) and 233(1) and (2) of the Penal Code;
- import, export, transport, etc. (Article 3(1)(c)) are also covered by Article 233(1), although the transport of counterfeit currency is regarded as assistance to the criminal offences;
- fraudulent possession, making and obtaining of instruments for the counterfeiting of currency or for protection against counterfeiting (Article 3(1)(d)) are covered by Article 239;
- participation, instigation and attempt (Article 3(2)) are covered by Articles 232, 233 and 239, in conjunction with Articles 12 and 15 of the Penal Code.

Article 4 of the framework Decision (additional offences)

Unlawful manufacturing using lawful means is covered by Article 232(3).

Article 5 of the framework Decision (currency not yet issued)

This provision has been transposed by Austria (Article 241 in conjunction with Articles 232, 233 and 239, and 237 of the Penal Code). However, Austria was not able to meet the deadline of 31 December 2000 laid down in Article 11(1) of the framework Decision for offences relating to the future euro notes and coins committed before 1 January 2002.

Article 6 of the framework Decision (penalties.)

The same Articles 232, 233 and 239 of the Austrian Penal Code lay down criminal penalties for the offences defined in Articles 3, 4 and 5 of the framework Decision. Terms of imprisonment are included, the maximum being ten years, in accordance with Article 6(2) (terms of imprisonment, the maximum being not less than eight years). Austria has also adopted legislation allowing extradition for all counterfeiting offences.

Article 7 of the framework Decision (jurisdiction)

Austria has general jurisdiction over offences committed in whole or in part within its territory (Articles 62 and 65(1) of the Penal Code) and specific jurisdiction independently of the nationality of the offender and the place where the offence has been committed (Article 64(1) and (4) of the Penal Code).

Articles 8 and 9 of the framework Decision (liability of legal persons and the penalties)

Austria has not yet transposed the provisions on legal persons into national law. The second protocol of 19 June 1997 to the Convention on the protection of the European Communities' financial interests allows Austria not to be bound by Articles 3 and 4 of the protocol, drafted in the same terms as Articles 8 and 9 of the framework Decision, for five years. Austria initially declared that it would fulfil its obligation to transpose Articles 8 and 9 of the framework Decision within this same five-year period, i.e. not later than 19 June 2002 (OJ L 140, 14.6.2000, p.1). This has not yet been done, although a draft law has been prepared.

Conclusion

The legislation drawn up by Austria to cover the provisions of the framework Decision is satisfactory, and Austria will be in compliance once national measures for the transposition of Articles 8 and 9 of the framework Decision have been taken as announced. Austria has informed the Commission (OLAF) that the draft law has been prepared and will be submitted for examination. Further information is awaited.

XII. PORTUGAL

Portugal's contribution was sent to the Commission the day before the report was presented to the Council. It was therefore not possible to take account of it in the first report. Portugal has adopted a number of amendments to the Penal Code, which entered into force on 30 August 2001.

Article 2 of the framework Decision

Portugal has acceded to the International Convention.

Article 3 of the framework Decision (general offences)

- Making counterfeit currency is punishable under Articles 262 and 263 of the Penal Code; altering currency is punishable only if it increases the nominal value of the currency; Article 263, on metallic money alone, penalises the debasing of coins;
- fraudulent uttering is covered by Articles 264 and 265 of the Penal Code;
- the import, export and transport of counterfeit currency are expressly covered by Article 266 of the Penal Code;
- offences relating to instruments for making counterfeit currency are covered in Article 271 of the Penal Code as acts preparatory to counterfeiting, which has implications for the level of penalties that can be imposed; the legislation does not refer to holograms;
- Articles 26 and 27 of the Penal Code make participation and instigation punishable; attempted commission is punishable, except in cases of fraudulent uttering of counterfeit currency where the offender discovered it was counterfeit only after receiving it and in cases pursuant to Article 263 on the debasing of metallic money and Article 271 on offences relating to instruments for counterfeiting (which are defined as preparatory acts).

Article 4 of the framework Decision (additional offences)

Unlawful manufacture using lawful facilities is not explicitly stated to be an offence under the Portuguese Penal Code; however, article 262 punishes the counterfeiting of money irrespective of the means used. The fraudulent use of legal means of producing currency would be regarded by Portuguese law to be an aggravating feature of an offence.

Article 5 of the framework Decision (currency not yet issued)

Article 255(d) of the Penal Code protects currency that has not yet been issued by including within the definition of 'money' currency that will be legal tender in the future.

Article 6 of the framework Decision (penalties)

The fraudulent manufacture of counterfeit currency is punishable under Article 262 of the Penal Code by a penalty involving the deprivation of liberty for between three and 12 years; the framework Decision has thus been complied with in this respect. However, account must be taken of Article 263, which applies to the intrinsic modification of the value of a coin and lays down lighter penalties (maximum two years) than those required by the framework Decision.

As regards terms of imprisonment that can give rise to extradition, Portugal has entered reservations in relation to the European Convention on Extradition according to which extradition is authorised only when the term of imprisonment is more than one year.

Article 7 of the framework Decision (jurisdiction)

Portugal's general jurisdiction over counterfeiting offences committed in whole or in part within its territory is laid down in Article 4 of the Penal Code.

Extended jurisdiction derives from Article 5 of the Penal Code.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

Portugal still has not transposed Articles 8 and 9 of the framework Decision, but a draft law to do so is currently being prepared.

Conclusion

Some provisions of the framework Decision, especially articles 8 and 9, still need to be transposed by Portugal. Otherwise, it appears to be in compliance.

XIII. FINLAND

Finland sent its contribution on 1 October 2001. The amendments to the Penal Code entered into force on 29 May 2001, that is by the deadline set in Article 11 of the framework Decision.

Article 2 of the framework Decision

Finland has ratified the International Convention.

Article 3 of the framework Decision (general offences)

- The fraudulent making of counterfeit currency, which implies alteration of currency;
- the fraudulent uttering of counterfeit currency;
- and the export, import and transport of counterfeit currency are all punishable under Chapter 37, Section 1(1) of the Penal Code;
- offences relating to instruments for counterfeiting currency or instruments serving to protect against counterfeiting are defined by Chapter 37(4) of the Penal Code as preparatory to counterfeiting itself;
- attempt, participation and instigation are punishable under Chapters 37 and 5, Sections 1 and 2.

Article 4 of the framework Decision (additional offences)

Finland has used a broad definition of counterfeiting so as to be able to penalise the unlawful use of lawful facilities to manufacture counterfeit currency.

Article 5 of the framework Decision (currency not yet issued)

The Finnish provision on offences relating to the future euro notes and coins committed before 1 January 2002 entered into force on 1 April 2000, i.e. within the deadline set in Article 11 of the framework Decision.

For the rest of the relevant provision of the framework Decision on currency not yet issued, the same provision of the Finnish Penal Code applies.

Article 6 of the framework Decision (penalties)

The Finnish Penal Code distinguishes between different levels of seriousness of the offences.

As a general rule, counterfeiting is punishable by imprisonment of at least four months and at most four years. However, the offence of aggravated counterfeiting is punishable by imprisonment of two to ten years, which meets the provisions of the framework Decision, while the minor offence of counterfeiting is punishable by a fine or a term of imprisonment of up to two years.

Acts preparatory to counterfeiting are punishable by the same penalties as the minor offences.

The instigator or co-offender (participation) are punishable in the same way as the offender.

Involvement as an accessory and attempts are subject to lighter penalties, in proportion to the penalty applied to the offender: at most, the penalty will be reduced to $\frac{3}{4}$ of the maximum laid down, and at the least, the minimum penalty will be applied.

As regards extradition, Finland has entered reservations in relation to the European Convention on Extradition according to which extradition must be authorised when the term of imprisonment is more than one year.

Article 7 of the framework Decision (jurisdiction)

Finland has enacted legislation bringing it into line with this provision of the framework Decision.

Articles 8 and 9 of the framework Decision (liability of legal persons)

Legal persons may be held liable for the offences covered in Articles 3 to 5 of the framework Decision, when they are committed for their benefit by persons in leading positions within them. They may also be held liable for a lack of supervision or control by one of their managers.

Fines and various other administrative measures are laid down in Finnish law. The requirement of the framework Decision to ensure effective, proportionate or dissuasive penalties or measures thus seems to have been met.

Conclusion

Finland had adopted legislation before the deadline laid down in the framework Decision, as pointed out in the first report. Most of the provisions of the framework Decision have been transposed.

However, Finland has met the requirement relating to the term of imprisonment for which the maximum is not less than eight years for fraudulent making of counterfeit currency only in cases of "aggravated offence".

XIV. SWEDEN

Sweden sent its contribution to the Commission on 14 September 2001.

The amendments to the Penal Code transposing the framework Decision were promulgated in a law of 15 February 2001, which entered into force on 1 April 2001, i.e. before the deadline laid down in Article 11.

Article 2 of the framework Decision

Sweden, by way of this new legislation, has ratified the International Convention.

Article 3 of the framework Decision (general offences)

- Fraudulent making of counterfeit currency is covered by Chapter 14, Section 6 of the Swedish Penal Code; alteration is covered in the broad definition of counterfeiting;
- fraudulent uttering of counterfeit currency is made punishable by Section 9 of the same Chapter;
- transporting counterfeit currency is punishable under Section 6(a); there is no express reference to import and export in Swedish criminal law;
- offences relating to instruments for making counterfeit currency or protecting from counterfeiting are defined in Chapter 23, Section 2 as acts preparatory to the offence of counterfeiting itself, which has implications for the penalties that can be imposed;
- participation and instigation are, under the general principles of Swedish criminal law, punishable if the offence itself is punishable by imprisonment; attempted commission is governed by Chapter 14, Section 12, in conjunction with Chapter 23, Section 2 of the Penal Code.

Article 4 of the framework Decision (additional offences)

The very broad definition of counterfeiting includes unlawful manufacture using lawful instruments; this interpretation is corroborated by the preparatory work on the amending Law of 15 February 2001.

Article 5 of the framework Decision (currency not yet issued)

Sweden has amended its Penal Code in accordance with Article 5 of the framework Decision: currency not yet issued is protected by Section 6 of Chapter 14 of the Penal Code. This provision entered into force on 1 January 2001, which means that the deadline of 31 December 2000 was not met, although the criminal-law protection of the euro against offences committed before its entry into circulation is ensured.

Article 6 of the framework Decision (penalties)

Penalties are laid down in Chapter 14, Section 6 of the Penal Code.

As regards the counterfeiting offences referred to in Article 3(1)(a) and (b) of the framework Decision, the principle is that counterfeiting currency is punishable by a prison term of at most four years, subject to certain correctives:

- for a minor offence, the penalty will be a fine or imprisonment of at least six months;
- for a serious offence, the penalty will be at least two years and at most eight. In the case of a second conviction for counterfeiting, a penalty of up to twelve years is possible.

Article 6(2) of the framework Decision has thus been complied with only in respect of serious offences.

The same distinction between minor and serious offences is made as regards the penalty for transporting counterfeit currency.

Attempted commission is punishable up to the maximum of the penalty for the offence and at least by imprisonment if the offence would have "merited" imprisonment of two years or more. Attempts to commit minor offences are not punishable.

Participation and instigation are punished in the same way as the offender.

As regards extradition, Sweden has lifted its reservations in relation to the European Convention on Extradition according to which extradition is authorised only when the term of imprisonment is more than one year. With regard to extradition to in general, extradition is permissible where the term of imprisonment is one year or more. However, where the state requesting extradition is another Member State, it is possible where the term of imprisonment is six months or more.

Article 7 of the framework Decision (jurisdiction)

General jurisdiction is covered in Chapter 2, Section 1 of the Swedish Penal Code.

Specific jurisdiction is established in Section 3, which establishes "universal jurisdiction".

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

The liability of legal persons is covered in Chapter 36, Section 7 of the Swedish Penal Code. It also covers a lack of supervision or control that has allowed counterfeiting offences to be perpetrated.

Penalties are criminal fines up to the equivalent of €319 829.42.

Conclusion

Sweden adopted legislation transposing most of the provisions of the framework Decision before the first report was drawn up.

As regards the level of penalties that can be imposed, it must be noted that only "aggravated" counterfeiting offences are subject to a penalty in accordance with the requirement of Article 6(2) of the framework Decision. However, there is no formal scheme by which a crime is considered to be 'aggravated'; and therefore the type of penalty depended entirely on the facts of the case.

XV. UNITED KINGDOM

The United Kingdom sent its contribution to the Commission on 18 October 2001.

The UK has adopted amendments to its national legislation which comply with requirements of the framework Decision.

Article 2 of the framework Decision

The UK has ratified the International Convention and this Convention was extended to Gibraltar on 13th October 1960.

Article 3 of the framework Decision (general offences)

- Fraudulent making of counterfeit currency is penalised under section 14(1) of the Forgery and Counterfeit Act 1981, which also covers the concept of alteration;
- fraudulent uttering is made punishable by section 15;
- export, import and transport of counterfeit money are punishable under the general terms of sections 15 and 16
- offences relating to instruments for making counterfeit currency are punishable under a very broad definition in section 17;
- instigation, participation and attempts to commit an offence are covered in more general terms in the Accessories and Abettors Act 1861.

Article 4 of the framework Decision (additional offences)

Unlawful manufacture using lawful facilities is a punishable offence under section 14, which defines counterfeiting in very broad terms.

Article 5 of the framework Decision (currency not yet issued)

UK legislation met the deadline laid down in Article 11 of the framework Decision, since it penalises offences relating to the future notes and coins committed before 1 January 2002: notes are covered (before 1 January 2002) by the provisions on forgery, and coins by the provisions on counterfeiting.

UK legislation also meets the requirements relating to currency not yet issued.

Article 6 of the framework Decision (penalties)

The penalty for making counterfeit currency is a prison term of up to ten years; Article 6(2) of the framework Decision has thus been met.

For most counterfeiting offences, the UK has a system of penalties allowing for imprisonment or a fine, or both.

As regards extradition, the UK has adopted legislation allowing extradition for the offences covered in Articles 3(1), 3(2), 4 and 5.

Article 7 of the framework Decision (jurisdiction)

The UK's general jurisdiction over offences committed within its territory is established by the Criminal Justice Act 1993. An amendment introduced in 2000 incorporates the counterfeiting offences of the Forgery and Counterfeiting Act 1981.

As regards extending its jurisdiction as laid down in Article 7(2) of the framework Decision, the UK has taken no measures to date. It must be noted that the UK has not adopted the euro, and is thus not required to take measures implementing the framework Decision in this respect.

Articles 8 and 9 of the framework Decision (liability of legal persons and penalties)

As regards the liability of legal persons, according to the Interpretation Act 1978, the term "person" covers "natural" persons and "legal" persons.

However, there seems to be a need to clarify whether all the elements of articles 8 and 9 of the framework Decision are covered by UK legislation, in particular as regards the way in which a legal person may be found liable for offences committed as a result of a lack of supervision, and the types of penalty available for such liability.

Conclusion

The UK responded to the Commission (OLAF) on 15th November 2002, stating that UK law already provided for the liability of legal persons who carried out offences under the relevant criminal law. This issue may still need some clarification.