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to: COREPER/Council
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Subject: Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA

The Commission tabled a proposal for a Directive on the protection of the euro and other currencies against counterfeiting by criminal law on 5 February 2013¹.

Since the introduction of the euro, counterfeiting has led to a financial damage of at least 500 million according to data published by the European Central Bank. The euro continues to be a target of organised crime groups active in the forgery of money. Counterfeiting is also a problem for other currencies circulating in the European Union. In its January 2013 biannual information on euro banknote counterfeiting, the ECB noted that a total of 280 000 counterfeit euro banknotes, representing 0.002% of the average 14.9 billion in circulation during the second half of 2012, were withdrawn from circulation in that period.

¹ 6152/13 DROIPEN 11 JAI 81 ECOFIN 92 UEM 18 GAF 3 CODEC 268 + ADD 1-3.

The Commission's proposal aims at strengthening cross-border investigations and by providing Member States with a set of penalties for the most serious counterfeiting offences. The proposal also intends to enable the analysis of seized forgeries during judicial proceedings in order to detect further counterfeit euros in circulation.

The proposal is based on Article 83(1) of the Treaty on the Functioning of the European Union (TFEU), "*counterfeiting of means of payment*" explicitly mentioned among the ten so-called "Euro-crimes" - particularly serious crimes with a cross-border dimension resulting from the nature or impact or from a special need to combat them on a common basis. A number of other legal instruments and measures to combat counterfeiting are in force as well, mainly in the form of Council Decisions.

As the title indicates, the proposal aims at protecting the euro and other currencies against counterfeiting by means of criminal law. A substantive part of the proposal has been overtaken directly from the current legislation in force, Framework Decision 2000/383/JHA of 29 May 2000 (amended by Council Framework Decision 2001/888/JHA of 6 December 2001)¹. This includes among other things the *definitions* (Article 2) and *offences* (Article 3).

In order to reinforce deterrence and to address divergences in relation to the existing level of penalties, the proposed Directive provides for a **set of penalties** including imprisonment for the most serious cases, as defined in Article 5. This article introduces specific monetary thresholds for deciding the seriousness of a case and the corresponding criminal sanctions. For all offences as described in the Directive involving notes and coins of a total nominal value of less than EUR 5 000 not involving particularly serious circumstances member States are required to introduce criminal penalties. The main counterfeiting offences - production and distribution - of notes and coins of at least EUR 5 000 shall be subject to a minimum-maximum penalty of eight years imprisonment. For the most serious offences of production and distribution including a total nominal value of at least EUR 10 000 also a minimum penalty of sixth months should be applicable.

¹ OJ L 329, 14.12.2001, p. 3.

The foreseen sanctions should, according to the Commission's proposal, help to prevent counterfeiting, improve the uneven protection across the EU and mitigate the risk of forum-shopping.

In addition it is suggested to allow the use of **special investigative tools** (Article 9) in the investigation and prosecution of counterfeiting offences, which most Member States already allow for other serious offences. A more technical rule making it **mandatory to transmit samples** of counterfeit euro notes and coins for analysis, etc., during ongoing judicial proceedings is contained in Article 10.

Furthermore, the proposal suggests "**universal jurisdiction**" (Article 8(2)). It is stated that the importance of the euro for the economy and society on a world-wide basis calls for an additional measure to protect it (recital 23). Therefore it is suggested that each Member State whose currency is the euro, should exercise jurisdiction for offences related to the euro committed outside the EU, if either the offender is in its territory (paragraph 2 (a)), or counterfeit notes related to the offence are detected in that Member State (paragraph 2(b)).

In the light of the above, the Presidency invites Ministers to have an initial orientation debate on the proposed Directive, before discussions start in the Working Party, on the following questions:

1. *Do Ministers consider that the scale of counterfeiting since the introduction of the Euro requires a strengthening of the existing EU criminal law framework?*
2. *The Commission's proposal introduces new measures which concern the use of certain investigative techniques; the level of penalties and the possibility to examine euro counterfeits during on-going judicial proceedings to enable the detection of further counterfeit euros in circulation. It also foresees the introduction of a universal jurisdiction, for those Member States which currency is the euro. Do Ministers consider that these measures are necessary to provide for an increased level of protection and prevention in relation to counterfeiting?*