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PROTECTION OF THE EURO

COMBATING COUNTERFEITING

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1. INTRODUCTION

1.1 Problems and objectives

The successful introduction of the single European currency, the euro, is part of an irreversible process which necessitates the creation of a framework for prevention, training, cooperation and law enforcement strategies to protect the euro from counterfeiting.

Under Council Regulation 974/98 of 3 May 1998¹ euro banknotes and coins will be put into circulation in the countries participating in the first wave of EMU on 1 January 2002. In accordance with the provisions of the E.C. treaty (article 105 A) the ECB alone is authorized to issue euro bank notes. The Member States retain the responsibility for the issue of coins with the ECB's approval. The European Monetary Institute has taken important initiatives to ensure a high level of technical protection of the notes by providing for security elements in line with the latest technical progress.

The Board of Governors of the European Central Bank adopted on 7 July a number of guidelines to protect euro notes. A recommendation refers more particularly to combating counterfeiting and asks the Council, Member States, Europol and the Commission to take the measures required².

For its part, the European Parliament by means of its committee on budgetary control, asked the Commission to develop targeted initiatives at Community level to strengthen the protection of the euro. The parliament referred in particular to experience gained in the area of protection of the Communities' financial interests

Now, following the work done by the EMI we need to set out the basic guidelines concerning ways of protecting the euro. Combating counterfeiting is a key aspect of this protection.³

The risks to be countered mainly derive from the euro's enormous circulation potential, both within the Community and elsewhere. The euro will become a transaction and reserve currency world-wide.⁴

The protection of the euro will need to be tailored to deal with this new dimension. The risks of counterfeiting are always greater when new banknotes or coins are issued and clearly they will be even greater when the new single currency is launched. As an international reserve currency, the euro will have an easily convertible value and will attract all forms of crime, including organised crime. The risks are increased by the potential for uttering forgeries in a larger territory which is beyond national jurisdiction; the scope for intervention by authorities of each Member State is confined within

¹ OJ L 139 of 11.5.1998, p. 2.

² This recommendation will be the subject of detailed examination by the Commission.

³ Other forms of crime, particularly the laundering of major assets in national currency, may occur in the transition phase, especially when national currencies and euros are both in circulation.

⁴ This means that it is essential to develop special cooperation between the partners in the Community.

national boundaries. The availability of such technological developments as colour photocopying and digital off-set printing both to international organised crime and to small-scale criminals operating in a single Member State and a small group of individuals only increase the dangers further.

The euro will also need protecting in an environment containing a series of specific factors, such as:

– the fact that European citizens are unfamiliar with the banknotes and coins. Notwithstanding awareness-raising campaigns it is clear that users of euro notes and coins will take time to become as used to the new coins and notes as they are to their national currencies;⁵

– different degrees of experience of the various national departments. It is clear that counterfeiters work on the basis of risks and the possibilities of selling the note or coin they have targeted. Some national currencies are rarely counterfeited;

the lack of experience among some staff and of detection methods. There is a need for trained staff and control and detection methods, particularly at certain financial establishments whose business activity consists largely of collecting, exchanging, transporting or circulating currencies;⁶

– the number of places where banknotes or coins are produced. In spite of the uniform technical security standards provided for by the ECB (notes) and national mints or treasuries (coins), Member States will still be able to use different production, printing and minting techniques;

– the variety of national sides of the coins. Euro coins have one standard side and one national side, which makes recognition more difficult for users in other Member States where the same coins may circulate;

– the considerable increase in the number of exchange operations (when the national currencies and euros are both in circulation).⁷ Holders of national notes and coins (including large-scale crime organisations) will need to adhere to strict time limits to be able to exchange their stocks of national currency for euros;

the circulation of euros other than in the participating Member States. The circulation and use of the new currency will not be confined to countries participating in the third

⁵ Experiments in some Member States revealed that, in some regions, the appearance of counterfeit new coins led to a systematic refusal on the part of users to exchange or effect payments using the coins.

⁶ The feasibility of a simple and effective forgery detection scheme will need to be examined together with the professional sectors concerned so as to put in place additional safeguards prior to police investigations. If necessary, incentives should be drawn up with this in mind.

⁷ Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro, OJ L 139, 11.5.1998, stipulates that this period may not be longer than six months. It should also be borne in mind that during the peak tourist season demand for exchange is greater, cash is more widely used and these activities tend to be concentrated at certain places (airports, stations, ports, tourist areas, etc.).

stage of EMU. All the Member States of the Union will be affected as will a large number of third countries, especially the applicant countries;⁸

the limitations of the principle of territoriality. Differences between the legal systems and the maintaining of criminal boundaries would appear to render the equivalent enforcement of the law and protection of the currency more difficult;

- technological progress will make reproduction techniques using lasers and digital technology more easily accessible for small-scale counterfeiters.

In order to counter these factors which will appear in particular when euro notes and coins are introduced, the Community must be given the means and facilities it needs to mount coordinated preventive and enforcement action against counterfeiting.

The prospect of replacing national currencies with the single currency, together with the differences between the approaches and structures for combating counterfeiting in the individual Member States, mean that the Community must take the necessary measures for effective coordination and cooperation. We need to arrive at a situation where equivalent protection of the European currency can be guaranteed throughout the Union.

The Madrid European Council and subsequently the treaty of Amsterdam considered equivalent protection to be an objective assigned to the institutions and Member States as far as the money of the European taxpayer which passes through the Community budget is concerned. The European citizen has the right to expect that the institutions and Member States use the same principle for the protection of the European currency.

The need to develop shared concepts and reciprocal obligations means that we must develop a common method of interpretation and for settling disputes in the case of disagreements. To attain this objective we must create the proper instruments to protect Community interests subject to judicial control. In so far as the instruments come under the EC treaty, the jurisdiction of the Court of Justice is established. Where Community interests have to be completed by instruments which come under Title VI of the TEU, the precedence of Convention type instruments is important to ensure that the Court of Justice has jurisdiction.

The prevention of counterfeiting of the euro is a top priority and requires thorough preparation before the single currency is introduced. Prevention strategies must be sufficiently dissuasive to deter potential counterfeiters and make their counterfeiting operations difficult, risky and expensive. Cooperation will need to be sufficiently effective and enforcement uniform.

This overall policy of preventing and combating counterfeiting requires all the Member States, the Union institutions and bodies and international organisations to work together. The legal framework will need to be in place during the year 2000 if we are to be able to establish appropriate structures well before the introduction of coins and notes.

⁸ This will most definitely have an impact on the sources of forgery and counterfeiting. Figures available on counterfeit denominations, based on notifications to Interpol, show that certain national currencies are counterfeited internationally, with some unlawful production taking place outside the country in question. As an international reserve currency, the dollar most probably offers the best example of the risks faced by the euro.

1.2 The responsibilities of the ECB, Europol and the Commission

Under the EC Treaty the protection of the euro as a tangible element of EMU is mainly a Community matter, although Title VI instruments may of course be employed to improve the protection of the currency.

The approach envisaged by the Commission is based on the approach used for the protection of the Communities' financial interests. It includes a prevention aspect based on the exchange of information and cooperation between the competent authorities. This requires a Community legal framework. It also includes a criminal law protection aspect which could be based on the title VI instruments of the TEU. This approach integrates all the types of threat either from organised crime or other forms of criminal counterfeiting which are equally formidable.

The ECB

The EMI has done important work to guarantee the technical security of the notes and coins and has taken the decision to set up a technical data base to support the counterfeiting analysis centre (CAC) for notes. The coins which are the responsibility of the Member States could also be included in the ECB's technical database.

The data base will contain information about counterfeit euro notes and will be run under the aegis of the ECB. The technical details will be fed into the data base by the CAC.

The ECB and the ESCB will be responsible for monetary policy and the issue and circulation of the currency. This is why, since July 1996, the EMI has wanted its work to be devolved to and completed by other Community bodies. Personal and operational information will need to be treated separately and not stored on the data base developed by the EMI.

Europol

The Europol Convention which has now been ratified by all the Member States, provides the possibility for enlarging the remit of Europol with regard to international organized crime as referred to in article 2 of the Convention⁹. Such a decision would be taken unanimously by the Council using procedures laid down in title VI of the TEU.

Part of Europol's remit will also be to manage an information system with a voluntary input from the Member States' national services and by liaison officers from national units. Direct access by national units to the data (data concerning offences, charges, dates and places, means used, services in charge and their file numbers, data concerning the suspicion of membership of a criminal organization etc.) is available on request, by means of the liaison officers as well as for the needs of a specific investigation (articles 7 and 8 of the Convention). Notification of this information is subject to the specific rules in each Member State. Europol will be able to transmit data to third countries and bodies including certain common bodies and Interpol (cf. articles 18 and 10.4) but only in

⁹ Extract from Article 2 of the Convention: "...where there are factual indications that an organised criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a manner as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned."

individual cases when this measure is necessary for the prevention or combating of offences. Subject to a change in the Convention these rules apply for cooperation with the ECB and the Commission.

The Commission

The role of the Commission is complementary to the role played by the ECB and adds value to Europol's activities. The Commission will propose the establishment of a Community data base and information system (see below) accessible in real time to the competent authorities and Europol so that the latter can carry out analysis as part of its remit.

The system for protecting the euro should be based on a wide-ranging, integrated approach which requires continuous and regular monitoring of events and risks. Information will have to be collected from the various sources. For the most part, this information comes from issuing institutes, central banks, commercial banks, finance and credit institutes as well as from the customs and the police. The use of all this information by the Commission will improve the prevention and detection of illegal acts.

For this reason, since July 1996, the Commission has been carrying out with experts from the Member States an assessment of the risks and the need to adopt common provisions to prevent and combat the counterfeiting of the euro. The resulting Commission document was sent to the Council and enabled the 19 May Ecofin Council to reach its conclusions. These conclusions highlight the urgency of putting in place effective protection for the euro, that is before it is in circulation.

2. AREAS FOR PRIORITY ACTION

Work carried out by the *ad hoc* group of the Advisory Committee set up by the Commission to establish priority guidelines has pooled the experience acquired by the Commission and by experts in the Member States, Europol, the EMI and Interpol.

The group's work focused on certain aspects concerning "paper supports" (banknotes) and "metal supports" (coins). They concentrated their attentions on the sorts of information which could be usefully exchanged, the collecting of data and cooperation between the relevant bodies for the purposes of prevention, investigating cases and effectively combating any form of unlawful activity which could harm the euro. The system will need to run for a trial period before euro notes and coins begin to circulate to enable any problems to be identified.

On 1 January 2002 when the coins and notes are simultaneously introduced in all the participating countries the necessary provisions and means will have to be operative and effective.

Therefore we need to continue our preparation of the regulatory framework needed to increase prevention, facilitate and render effective the cooperation between the national authorities to improve the rate of detection and make notifications of findings compulsory. With regard to protection of the euro, the provisions adopted will have to cover the obligations of the participating countries and the other Member States and will

need to provide for the necessary cooperation with international bodies and those of third countries.

Protective measures must also include a cooperation system which goes beyond the possible action provided by the traditional forms of international mutual aid, which has hitherto been seen as cooperation between the authorities of sovereign nation states for the protection of their national currencies.

This approach demonstrates the need for a structure within the Commission's services. A Community structure such as this must be the counterpart of the body which issues Europe's currency (the ECB) for notes and Member States for coins and the other partners at the EU (Europol) and international (Interpol) levels.

For these reasons action must be taken on

- training,¹⁰
- information and communications systems and data bases,¹¹
- cooperation, mutual assistance, technical and operational assistance in investigations¹²
- definition of counterfeiting activities and deterrent penalties.

3. TRAINING

The introduction of the euro necessitates an approach to training so as to better protect and combat counterfeiting. The Commission has therefore been called on to present a reflection document on the professional training policy at Community level. Such an approach will have to be based on a balanced and consistent division of labour between the various levels (Member States, Community, Union), taking account of cost-effectiveness and respecting the principles of subsidiarity and proportionality.

On the basis of the guidelines set out in the meeting paper produced by the Commission services at the request of the Council Police Cooperation Group,¹³ the Commission will examine the possibility of launching a pilot scheme which could begin in 1999 and serve as a basis for a multiannual action plan on professional training.

¹⁰ Everyone concerned must be involved, including financial institutes and bodies able to play a part in detection at as early a stage as possible. Suitable systems must be set up to make the necessary resources and techniques readily available (for example, an incentive scheme).

¹¹ Conditions for access to the data base, the establishment of an operational and strategic police grid, method of transmitting information (the creation of a computerised exchange mechanism based on standardised messages and ensuring that systems are technically compatible).

¹² Bearing in mind the increased need for coordination at European level for the protection of the euro and the need to extend this cooperation to partners outside the Community, given the international nature of counterfeiting.

¹³ As a preparatory item, a meeting paper, *Expert group on counterfeiting the euro: an approach to training* has been presented to the group "police cooperation".

In the customs field, an extension of the field of application of the Community MATTHIAEUS training programme which covers the training aspect referred to in the CUSTOMS 2000 decision, to action to combat counterfeiting of the euro may be envisaged.

The Commission will also take into account in this context imperatives linked to enlargement so as to integrate the specific training actions for protection of the euro into its pre-accession strategy.

Within the limits of resources available, the private sector experts liable to play a role in the detection of counterfeit money could be involved in certain targeted training activities.

4. THE INFORMATION SYSTEM

The experts have focused on the exchange of information and on the standardisation of exchange procedures so as to avoid communications containing sorts of information which vary from one Member State to another, are consequently difficult to use for the purposes of effective analysis and do not provide a clear understanding of the phenomenon in the Union as a whole.

Methods of protecting the single currency are largely based on information and therefore on the collection, compilation and evaluation of data on forged notes and coins and information concerning the production, holding, transport and circulation of forgeries.

The data can be broken down into two main categories:

technical information concerning the collection of data and the processes involved in the production and technical characteristics of forged notes. This kind of information will be processed by the counterfeiting analysis centre (CAC) which will report to the ECB. The same approach is being considered for coins,

- administrative, customs and police intelligence, concerning the collection of data - both strategic and operational- on counterfeiting

The systematic and methodical use of information provides an overall picture and helps in identifying counterfeiting circuits or networks. It is important to collect and organise all the details, from the investigation, the information or the reporting to the closure of the investigation, the submission of the case to the court and sentencing. This will make it possible to pursue an effective prevention policy on the basis of information updated on a continuous basis.

It is necessary to define common standards of exchange and fixed periods for communications via an e-mail network. The technology of the AFIS mail network which has been used successfully for more than a decade with regard to SCENT (Secure Enforcement Network) by the authorities in the Member States and the services in the Commission responsible for the fight against fraud in the customs and agricultural areas, constitutes in this regard an interesting method for the rapid exchange of information.

The database must be user-friendly offering direct access to updated material for operations.

The system must, as far as possible, be compatible with existing systems in the Member States and the Europol system. The Commission system must also be adapted to the techniques and working practices of national investigation services. Rules governing access need to be drawn up. The system will be continuously fed with information and updated for technical, operational and strategic purposes. It will make it easy to bring together information from various sources and provide an overview. It will also enable effective operations to be conducted in real time and coordinated throughout the Community, thereby eliminating in particular the risk of investigation services unwittingly duplicating their inquiries.

Organising the various components of a reporting system will, over and above the use of the national frameworks, require an appropriate legal framework to be established at the Community level. The requirements have been clearly identified through the work of the expert groups. There will have to be a set of Community rules creating the legal framework needed for the compiling and exchange of information between authorities responsible for protecting the single currency against counterfeiting.

The existing body of Community law and practice in relation to protecting financial interests, which lays down a series of rules for defining concepts and compiling and exchanging information, constitutes a useful framework of reference.¹⁴ There is already an information system covering all areas of the budget. It includes on the one hand the Community's Irene data base, which contains sensitive data about cases of fraud and irregularity notified by the Member States. The Member States do not have access to it at this stage. In the area of mutual assistance between the customs authorities in the member States and the Commission (EC reg. no. 515/97), on the other hand, there is the customs information system, CIS, a user-friendly data base which is constantly being updated and to which the Member States and the Commission have access. Run by the Commission, it also contains sensitive data covered by the rules on the protection of such data.

In the same context, it will be noted that title V of EC Council Regulation no. 515/97 of 13 March 1997 concerning mutual assistance between the administrative authorities of the member States and cooperation between the latter and the Commission to ensure the sound application of customs and agricultural regulations, offers the possibility of storing for the purposes of prevention, detection and prosecution of irregularities in the customs field including those linked to counterfeiting of the euro, useful information in the CIS (Customs Information System) central database. The CIS offers moreover the advantage of being able to integrate electronic imagery which is indispensable in combating counterfeiting.

¹⁴ Existing regulations for the various budgetary fields: Council Regulation (EEC, Euratom) No 1552/89 (OJ L 155, 7.6.1989), as amended by Council Regulation (EEC, Euratom) No 1355/96 (OJ L 175, 13.7.1996), for own resources; Council Regulation (EEC) No 729/70 (OJ L 94, 28.4.1970), Council Regulation (EEC) No 4045/89 (OJ L 388, 31.12.1989), Council Regulation (EEC) No 595/91 (OJ L 67, 14.3.1991), for EAGGF-Guarantee; Regulation (EEC) No 4253/88 (OJ L 374, 31.12.1988), Commission Regulations (EC) No 1681/94 (Structural Funds, OJ L 178, 12.7.1994) and No 1831/94 (Cohesion Fund, OJ L 191, 27.7.1994); Council Regulation (EC) No 515/97 (mutual assistance, OJ L 82, 22.3.1997, previously Council Regulation (EEC) No 1468/81 (OJ L 144, 2.6.1981)).

Provisions can also be invoked to oblige the central bank and financial institutions to block and then seize counterfeit money and notify the police and, where appropriate, the central bank.

These are models which have stood the test of time and should serve as the basis for the Community rules, which should cover all the following areas:

- they should define all the activities which go together to make up currency counterfeiting and falsification to allow for a homogenous exchange of information;¹⁵
- the Member States must be required to pass on all relevant information concerning counterfeiting and forgery of the euro;
 - a computerised system comprising an e-mail network and a central data base, with direct access for the national authorities, should be set up. The purpose of the system, which would be updated regularly, would be to prevent, detect and prosecute currency counterfeiting; it should therefore contain strategic, operational and appropriate legal data. It will have to be a user-friendly, interactive system with direct access for the authorities empowered to use it;
 - there must be rules governing the arrangements for exchanges of information (and access to data bases) with Community or Union bodies, international organisations (Interpol) and non-member countries. Different terms of access may be laid down depending on what the various authorities are there to do. It is useful to recall that by virtue of article 29, paragraph 3 of EC Council Regulation no. 515/97 of 13 March 1997, it may be decided, on a proposal from the Commission, to allow international or regional organizations (e.g. Europol) access to the CIS data bases as long as a protocol has been concluded in parallel with these organizations.
 - there must be rules governing protection for personal data, which may be based on the arrangements laid down in Council Regulation (Euratom, EC) No 2185/96 on protecting the Communities' financial interests against fraud and other irregularities.¹⁶ The Treaty of Amsterdam (particularly Article 286 EC) enshrines these principles and entrenches the application of the Community rules on data protection in the Commission;
 - commercial banks and financial institutions should be obliged to report any instances of fraud they detect to the competent authorities, on pain of administrative penalties where appropriate;¹⁷

¹⁵ How necessary and useful such an approach is has been proved in relation to the protection of financial interests, where the information, communication on administrative cooperation and mutual assistance system relies on the concept of irregularity as defined in Article 1 of Council Regulation (EEC) No 2988/95 (OJ L 312, 23.12.95). The Member States assign responsibility for implementing the information system, administrative cooperation and mutual assistance to the appropriate national authorities.

See also Council Regulation (EC) No 3295/94 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods (OJ L 341, 22.12.94), which gives a definition of counterfeit or pirated goods, *inter alia* to facilitate the exchange of information and co-operation between national customs authorities and the Commission.

¹⁶ OJ L 292, 15.11.1996. See also Council Regulation (EC) No 515/97 cited above.

¹⁷ Taking more effective measures at this level will make it easier to detect forgery at an early stage. Although preventative, such measures make enforcement more effective in that they can be very

5. COOPERATION

The change from protecting national interests to protecting a Community interest requires national bodies to cooperate and coordinate their activities with the help of Union institutions and bodies.

In all countries the production of counterfeit money has always been considered a criminal act that strikes at the very heart of a State. An International Convention for the Suppression of Counterfeiting Currency of 1929, advocates the setting up of specialised centralised structures to prevent and combat this form of unlawful activity.¹⁸ These specialised structures are supposed to contact each other directly and notify information concerning counterfeiting.

Given the introduction of the euro, it is important to develop the existing networks by strengthening them. An essential element would be to offer administrative and operational support at Commission level. Such a Community structure would ensure communication and cooperation with liaison offices in the Member States and the authorities responsible for issuing the notes and coins, as well as with Europol and ICPO Interpol.

This cooperation will improve the level of strategic and operational analysis and will strengthen the means of combating counterfeiting, particularly with common strategies.

The effectiveness of ground operations generally depends on the reliability of information, the speed with which those responsible can exchange information and the quality of cooperation between the authorities.

There is no denying the need to extend cooperation, building on the loyalty and trust of the services.

The Member States already have structures in place. All that remains is to draw up the legal framework to enable the necessary organisational adjustments to be made at Union level and to create the conditions for close, effective and regular cooperation between the various national forces themselves and the relevant Union institutions and bodies.

The regulatory provisions will have to include

- the relevant national authorities, the Commission, Europol and the ECB must be required to cooperate with and assist each other;¹⁹
- there must be rules governing cooperation and mutual administrative assistance between the Community and non-member countries (special clauses in association,

useful instruments for fast and effective enforcement by enabling information to be passed on rapidly to the competent authorities as far upstream as possible or closer to the original offence. Regular returns of information to the agencies concerned might encourage them to improve and develop their early warning systems.

¹⁸ Convention signed in Geneva on 20 April 1929. League of Nations, Compendium of treaties, Vol. CXII No 2623, p.371.

¹⁹ On the basis of the existing regulations; see footnote 14.

cooperation or partnership agreements between the Community and non-member countries);

a special forum should be set up for effective joint consultations involving the national authorities and the European institutions and bodies;

a clarification of the operational assistance role of the Commission based on article 7 of protocol no 2 on protection of financial interests as well as the role of Europol on the basis of the new provisions of title VI, article 30, et al, of the Treaty of Amsterdam.

6. PROTECTION UNDER CRIMINAL LAW/APPROXIMATION OF NATIONAL LAWS: CRIMINAL LIABILITY, PENALTIES, MUTUAL ASSISTANCE IN LEGAL MATTERS

In parallel with the drafting of the whole regulatory apparatus (defining terms, compiling information, exchange of information, cooperation, etc.), the question of a criminal law aspect relating to the definition of offences, penalties²⁰ and mutual assistance in legal matters will also be worked out with a view to achieving the target of equivalent protection throughout the Union.

The questions of the definition of the victim, victims' rights and the representation of victims in legal proceedings under criminal law, which at present are regulated by each body of national law separately, must be given consideration so that a solution appropriate to the monetary interests of the Communities can be found.

Definition of offences

As there are different legal systems, particularly as regards substantive criminal law, what must be done first is to bring the definitions of specific offences of money-counterfeiting more closely into line with each other.

This question has already arisen in the same terms in relation to defining money-laundering when the Community directive was being drafted,²¹ defining irregularity for the purposes of the regulation on protecting the Community's financial interests and, in particular, defining fraud for the convention on protection under criminal law for the Community's financial interests.

The reason for pursuing this objective is that the Member States on their own, when confronted with criminal activities which damage the Community's interests, are not able to provide a consistent level of protection throughout the Community. Establishing generally accepted definitions will make it easier to process information, establish international cooperation in matters under the criminal law and apply penalties.

It should be stressed that there needs to be a generally accepted definition of the criminal offences associated with all the activities contributing to currency counterfeiting

²⁰ Council Regulation (EC) No 974/98 on the introduction of the euro merely stipulates that the Member States will lay down appropriate penalties against money counterfeiting and forgery.

²¹ Council Directive 91/308/EEC of 10 June 1991; Council Regulation (EC) No 2988/95 of 18 December 1995, OJ L 312, 23.12.1995; Convention of 26 July 1995, OJ C 316, 27.11.1995.

involving banknotes and coins. Acts committed in the fabrication of counterfeit currency or those which lead up to it, take place in tandem with it or follow on from it must be described uniformly, with due regard for technical advances in photocopying and digital reproduction. The effectiveness and consistency of a system of protection which should be at the same level throughout the Community will depend on accurate identification of the elements which make up an offence. The definition in the Geneva Convention of 20 April 1929 makes a useful starting-point.

Deterrent penalties

A preliminary survey by the EMI found that maximum penalties varied considerably from one Member State to another, which does nothing to further the objective of ensuring equivalent protection throughout the EMU area. The situation needs to be given thought so that there can be a uniform level of deterrence.

Experience in the field of protecting the Community's financial interests, and the results obtained, could be a basis. A specific offence concerning currency counterfeiting activities based on the generally accepted definition of counterfeiting of the euro referred to above could be established as a first stage, followed at the Union level by the laying down of a minimum penalty threshold; this would obviously reduce the risks associated with there being areas where penalties are less strict.

Mutual assistance in judicial matters

There must be provision for mutual assistance in judicial matters, to ensure that offences are prosecuted effectively and uniformly throughout the European Union. Here again, the Geneva Convention guidelines on judicial cooperation in combating counterfeiting could be a useful frame of reference for further thinking and the launching of the requisite initiatives.²²

The terms on which judicial cooperation in protecting the euro is to take place must be defined, going beyond the draft convention on mutual assistance in judicial matters which is being negotiated at present, particularly in relation to recognition and the seizure of evidence, the role of the Commission and the ECB in assisting the national authorities and direct judicial assistance.

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7. SUPPORT FROM EXISTING INSTRUMENTS

Potential synergies and the degree to which the Community framework, the institutions, intergovernmental instruments and existing international organisations complement one another must be accurately assessed. Work by the experts has shown that the existing structures for international cooperation to combat counterfeiting can play an important part, especially as regards relations with third countries where the euro is likely to circulate or to act as an international transaction and reserve currency.

²² Extradition (Articles 8, 9, 10 and 16), direct transmission of letters rogatory between judicial authorities (Article 16).

There must, therefore, be further exchanges of information on euro counterfeiting and greater operational cooperation with every country in the world, particularly through the relevant international bodies. There will be special clauses in cooperation agreements between the Community and non-member countries supplementing such cooperation and going into greater detail (see above).

The Europol Convention is to come into force in October 1998.²³ The Council may unanimously decide to extend Europol's mandate to cover money counterfeiting. In that way it could make its contribution to the war on organised transnational crime, in cooperation with the Commission, the ECB and the Member States.

The protection of the euro will also have to be based on the other existing international instruments, such as the Geneva Convention,²⁴ in order to protect the Community's monetary interests outside the Union in all parts of the world.²⁵

Interpol receives reports of international counterfeiting cases via a system of notification from national Interpol units. It uses them to draw up annual statistics on the counterfeiting of currencies circulating in other countries. So, in the same way as the Member States in relation to their national currencies before the introduction of the euro, Interpol should be able to help in the protection of the euro. Interpol will take the existence of EMU into account and regard the Member States adopting the euro as a single currency area.

8. THE DEADLINES

The measures described must be introduced in phase with the stages of EMU.

The ECB has decided to set up a technical data base

The Commission, in line with its customary approach and with the Council conclusions of 19 May 1998, will prepare the establishment of the resources necessary for the protection of the euro, before euro banknotes and coins start circulating on 1 January 2002. For this purpose, the Commission will:

- press ahead together with the experts to complete its assessment of the situation and of the requirements in terms of information and cooperation between the relevant authorities;
- put forward initiatives in the legislative sphere in particular to supplement the ECB's work. The object of these initiatives will be:

²³ OJ C 316, 27.11.1995. The entry into force of the Europol convention is subject to the adoption of a number of instruments governing its operations. These are referred to in Article 45(4) of the Convention and relate to such matters as the rules of procedure, staff regulations, financial regulation and a Protocol on privileges and immunities. As there is such a wide range of them, it is not possible to predict when the European Police Office will start operating.

²⁴ Cf. note 19.

²⁵ Special clauses to step up cooperation can be incorporated into the agreements between the Community and its non-member partner countries.

to set up an arrangement to facilitate exchanges of information and the establishment of close and regular cooperation with a view to preventing and combating currency counterfeiting;

to bring about the requisite approximation of rules and tighten up mutual legal assistance in criminal matters, so as to ensure that action to suppress counterfeiting is equivalent;²⁶

- in the course of 1999, examine the possibility of launching a pilot training scheme to define multiannual policy guidelines for everyone involved in the system for preventing, detecting and suppressing currency counterfeiting, to run in tandem with national vocational training policies. This action will allow guidelines to be determined for a multiannual training policy.

The Commission believes there should be a sufficiently long trial period to test whether the technical resources and structures to be put in place are practicable. It therefore proposes that a time limit of not later than 2000 be set for the adoption of the legislative instruments. This will allow the establishment and the running of the systems of protection of the euro by 1 January 2001.

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²⁶ Legislative action by the Commission on judicial cooperation on the basis of the third pillar will first require the entry into force of the Treaty of Amsterdam, which gives the Commission the right of initiative.

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