

Screening meeting – Serbia

Chapter 24 – Justice, freedom and security

Counterfeiting of euro

Brussels, 4 October, 2013





Structure of the protection of the euro against counterfeiting

Actors

- Member States : main actors
- European institutions and bodies - complementary roles : ECB, European Commission (ETSC in OLAF), Europol, Eurojust

Means

1. Legislation

- *Technical measures (definitions, cooperation, dedicated bodies)*

CHAPTER 32

- *Criminal legislation* (*punishable conduct, penalties, jurisdiction*)

CHAPTER 24

1. Law enforcement and justice

2. Dedicated bodies (NCOs, NACs, CNACs)



EU legislation for the protection of the euro against counterfeiting– penal aspects

Approach to Chapter 24

Protection by criminal law – instruments based on the **legal base** of **Art. 83 TFEU** (old 3rd pillar – art. 31 – 34TEU)

Main acts

- Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro
- Framework Decision 2001/888/JHA of 6 December 2001 amending the aforementioned FD
- Decision 2001/887/JHA of 6 December 2001 on the protection of the euro against counterfeiting



Framework Decision 2000/383/JHA

Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro :

- supplements the provisions of the Geneva Convention (1929) and increases protection – Art. 2(1)
- requires Member States to accede or remain parties to Geneva C. – Art.2(2)
- requires Member States to penalise counterfeiting of the euro and other currencies under national law by introducing:
 - "counterfeiting" offences – Art. 3 to 5
 - effective, proportionate and dissuasive penalties (for all offences) – Art. 6(1)
 - minimum level of maximum penalty for the main offence: not less than 8 years of imprisonment (fraudulent making or altering of currency) – Art. 6(2)
 - Jurisdiction – Art. 7
 - Liability of and sanctions for legal persons – Art. 8 and 9

Framework Decision 2000/383/JHA

Article 3 - General offences

1. Each Member State shall take the necessary measures to ensure that the following conduct is punishable:

- (a) any fraudulent making or altering of currency, whatever means are employed; "PRODUCTION"
- (b) the fraudulent uttering of counterfeit currency; "DISTRIBUTION"
- (c) the import, export, transport, receiving, or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit; "DISTRIBUTION"
- (d) the fraudulent making, receiving, obtaining or possession of
 - instruments, articles, computer programs and any other means peculiarly adapted for the counterfeiting or altering of currency, or
 - holograms or other components of currency which serve to protect against counterfeiting.

2. Each Member State shall take the necessary measures to ensure that **participating in and instigating the conduct referred to in paragraph 1, and attempting** the conduct referred to in points (a) to (c) of paragraph 1, are punishable.

Article 4 & 5 – additional punishable conduct - scope extending

Article 4

Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 3 is punishable also with respect to banknotes or coins being manufactured or having been manufactured by use **of legal facilities** or materials in violation of the rights or the conditions under which the competent authorities may issue currency, without these authorities' agreement.

Article 5

Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is punishable if:

- (b) it relates **to banknotes and coins which are not yet issued but are designated for circulation**, and are of a currency which is legal tender.

Framework Decision 2000/383/JHA

Sanctions

Penalties for natural persons – Art. 6

- **effective, proportionate and dissuasive** penalties (for all offences) – Art. 6(1)
- minimum level of **maximum penalty** for the main offence: **not less than 8 years of imprisonment** ("PRODUCTION" - fraudulent making or altering of currency) – Art. 6(2)

Sanctions for legal persons – Art. 9

- criminal or non-criminal **finances or other sanctions** (indicative list: exclusion from public aid, temporary or permanent disqualification from the practice of commercial activities, etc.) for offences committed for the benefit of the legal person by any "person in leading position" – Art. 9(1)
- **effective, proportionate and dissuasive** penalties for offences made possible by a lack of supervision or control of "person in leading position") – Art. 9(2)



Framework Decision 2000/383/JHA

Jurisdiction over offences in Art. 3 - 5

Territoriality and personality principle (for all currencies):

Art. 7(1)

" Without prejudice to paragraph 2 of this Article:

- each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 5, where the offence is committed in whole or in part **within its territory**,
- Articles 8 and 9, as well as Article 17 of the Convention are applicable to the offences referred to in Articles 3 to 5 of this framework Decision." – **for own nationals**

Universal jurisdiction (for the euro)

Art. 7 (2)

"At least the Member States in which the euro has been adopted shall take the appropriate measures to ensure that the prosecution of counterfeiting, at least in respect of the euro, is possible, **independently of the nationality of the offender and the place where the offence has been committed.**"



Framework Decision 2001/888/JHA

Council Framework Decision 2001/888/JHA of 6 December 2001 amending FD 2000/383/JHA introduces Art. 9a:

- Recognition of previous convictions – Art. 1

"Every Member State shall recognise the principle of the **recognition of previous convictions** under the conditions prevailing under its domestic law and, under those same conditions, shall recognise for the purpose of establishing habitual criminality **final sentences handed down in another Member State** for the offences referred to in Articles 3 to 5 of this Framework Decision, or the offences referred to in Article 3 of the Convention, irrespective of the currency counterfeited."



Council Decision 2001/887/JHA

Council Decision 2001/887/JHA of 6 December 2001 on the protection of the euro against counterfeiting:

- contains provisions ensuring close cooperation between competent authorities in the context of investigation of euro counterfeiting offences by providing:
 - obligation of Member States to ensure the necessary expert analysis of suspected counterfeit notes carried out by National analysis Centres (NACs) and suspected counterfeit coins carried by Coins National Analysis Centres (CNACs) – Art. 2
 - Obligation to forward the results of expert analysis to Europol – Art. 3
 - obligation to communicate to Europol centralised info on investigations as well as info obtained from 3rd countries as to particulars of the persons involved, particulars of the offences, circumstances of discovery, context of seizure and links with other cases – Art. 4(1)
 - Obligation to make use of Eurojust where appropriate during investigations – Art. 4(2)



(INFO) EC Proposal for a Directive of EP and Council to replace the Framework Decision 2000/383/JHA

- Level of sanctions
 - » Minimum penalty of 6 months for serious cases of "production" and "distribution"
 - » Maximum penalty of at least 8 years for "distribution" (exists only for production currently)
- Availability of effective investigative tools
 - » like those used in other serious crime cases (under-cover agents, telephonic interceptions, controlled delivery, etc.)
- Transmission of seized counterfeits during judicial proceedings to NACs and CNACs

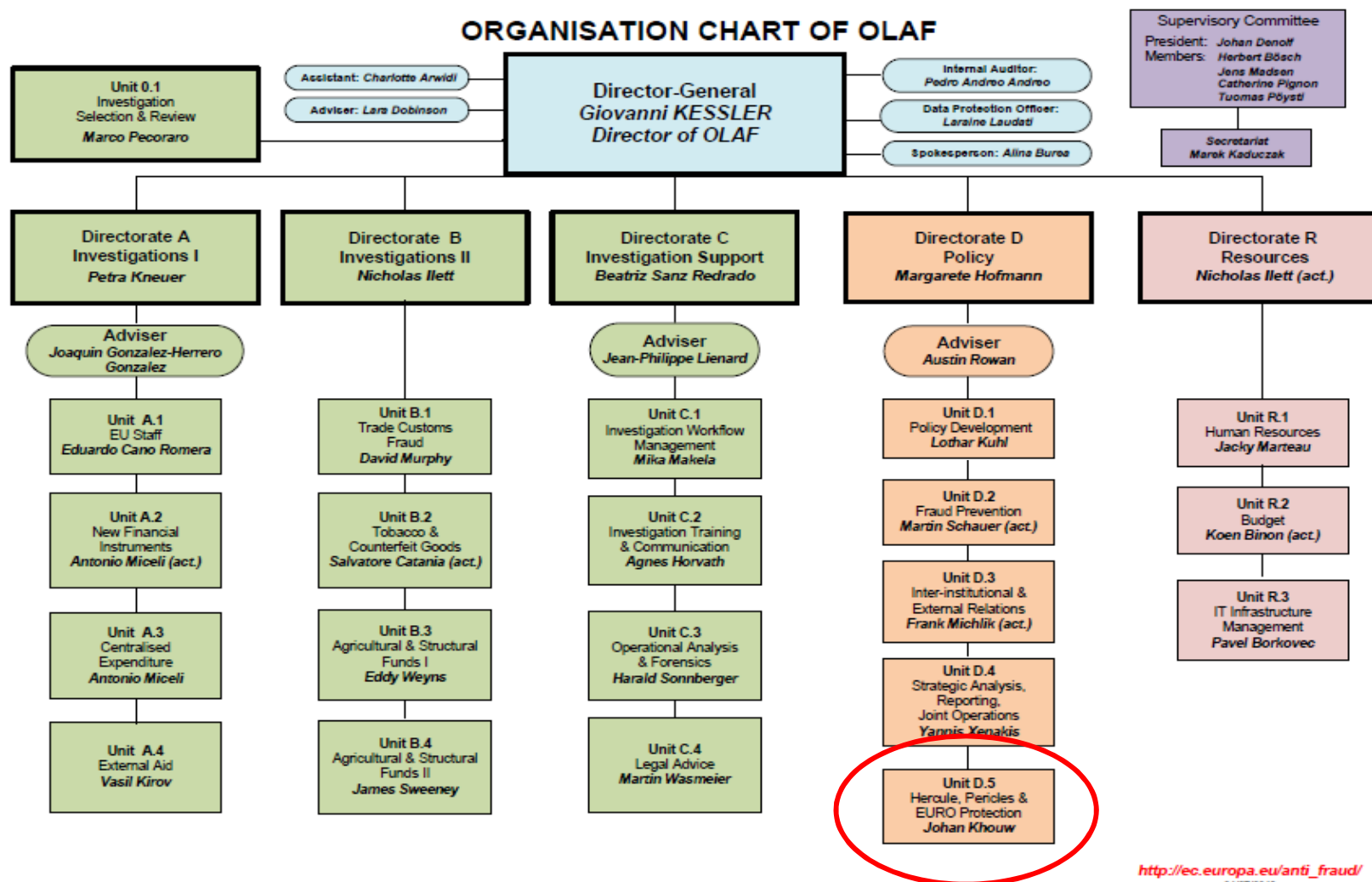
Unit D.5 responsibilities

Legislative initiatives, monitoring and advice:

- Preparation of Commission's proposals for new legislation for the protection of euro against counterfeiting
- Monitoring and advice on the implementation of the legislation by the MS
- Reports on the implementation

Other activities:

- coordinating technical measures, in particular the analysis and classification of the major categories of counterfeit euro coins (creation of common classes)
- providing Coin National Analysis Centres and police authorities with direct technical assistance
- contributing to the development of the ECB counterfeits database
- PERICLES programme– funding of exchange, assistance and training for the protection of the euro banknotes and coins





EUROPEAN COMMISSION