

Procedure file

Basic information	
CNS - Consultation procedure Decision	1999/0190(CNS) Procedure completed
Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision	
Repealed by 2017/0226(COD)	
Subject 7.30.30.06 Action to combat economic fraud and corruption 7.30.30.10 Action against counterfeiting	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	PSE SCHMID Gerhard	25/10/1999
	Former committee responsible		
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	PSE SCHMID Gerhard	25/10/1999
	Former committee for opinion		
	ECON Economic and Monetary Affairs	ELDR GASÒLIBA I BÖHM Carles-Alfred	25/10/1999
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2350	28/05/2001
	Justice and Home Affairs (JHA)	2266	29/05/2000

Key events			
14/02/2000	Committee referral announced in Parliament		
11/04/2000	Vote in committee		Summary
11/04/2000	Committee report tabled for plenary, 1st reading/single reading	A5-0107/2000	
17/05/2000	Decision by Parliament	COM(1999)0438	Summary
17/05/2000	Report referred back to committee		
29/05/2000	Debate in Council	2266	
30/05/2000	Legislative proposal published	03040/2000	Summary

21/06/2000	Vote in committee		Summary
21/06/2000	Committee report tabled for plenary, 1st reading/single reading	A5-0176/2000	
05/07/2000	Decision by Parliament	T5-0293/2000	Summary
28/05/2001	Act adopted by Council after consultation of Parliament		
28/05/2001	End of procedure in Parliament		
02/06/2001	Final act published in Official Journal		

Technical information

Procedure reference	1999/0190(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
	Repealed by 2017/0226(COD)
Legal basis	Treaty on the European Union (after Amsterdam) M 034-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/12779; LIBE/5/12508

Documentation gateway

Initial legislative proposal	COM(1999)0438 , OJ C 376 28.12.1999, p. 0020 E	14/09/1999	EC	Summary
Committee report tabled for plenary, 1st reading/single reading	A5-0107/2000 OJ C 041 07.02.2001, p. 0004	11/04/2000	EP	
Legislative proposal	03040/2000	30/05/2000	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading	A5-0176/2000 OJ C 121 24.04.2001, p. 0008	21/06/2000	EP	
Text adopted by Parliament, 1st reading/single reading	T5-0293/2000 OJ C 121 24.04.2001, p. 0033-0104	05/07/2000	EP	Summary
Follow-up document	COM(2004)0346	30/04/2004	EC	Summary
Follow-up document	SEC(2004)0532	30/04/2004	EC	
Follow-up document	COM(2006)0065	20/02/2006	EC	Summary

Additional information

European Commission	EUR-Lex
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Final act

Justice and Home Affairs act 2001/413 OJ L 149 02.06.2001, p. 0001 Summary

PURPOSE : to combat fraud and counterfeiting of non-cash means of payment. **CONTENT** : the entry into force of the Treaty of Amsterdam has meant that Joint Actions are no longer available as legal instruments; Framework Decisions are introduced as the new relevant legal instruments at the Council's disposal. The main purpose of this Communication is to replace the Draft Joint Action on Combating Fraud and Counterfeiting of Non-cash Means of Payment, with a reformatted Framework Decision, using the format provided for in Article 34 in the Treaty on European Union. The aim of the proposed instrument remains to ensure that fraud involving all forms of non-cash means of payment is recognised as a criminal offence and is punishable by effective, proportionate and dissuasive sanctions in all EU Member States, and that appropriate mechanisms of cooperation are put in place in order to prosecute these offences efficiently. The Framework Decision deliberately avoids the use of strictly defined qualifications under existing criminal law because they do not cover the same elements everywhere. The approach taken instead is to describe the various types of behaviour which should be criminal offences throughout the Union, that is: - misappropriation of a payment instrument; - counterfeiting or falsification of a payment instrument; - knowingly handling a payment instrument, without the holder's authorisation; - knowingly possessing a misappropriated, counterfeited or falsified payment instrument; - knowingly using a misappropriated, counterfeited or falsified payment instrument; or knowingly accepting a payment made in such circumstances; - knowingly using unauthorised identification data for initiating or processing a payment transaction; - knowingly using fictitious identification data for initiating or processing a payment transaction; - manipulation of relevant data including account information, or other identical data, for initiating or processing a payment transaction; - unauthorised transmission of identification data for initiating or processing a payment transaction; - unauthorised making, handling, possession or use of specifically adapted equipments or elements of payment instruments for the purpose of: manufacturing or altering any payment instrument or part thereof; committing the fraudulent acts described in the points above. For the purposes of the application of this Framework Decision, the term "payment instrument" or 'non-cash payment instrument' means an instrument other than legal tender (bank notes and coins), enabling, alone or in conjunction with another (payment) instrument, the legitimate holder or payer, to make or receive payments in respect of goods, services or any other thing of value, or to issue an order or message requesting or otherwise authorising the transfer of funds to the order of a payee.?

Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

The committee adopted the report (consultation procedure) by Gerhard SCHMID (PES, D) amending the proposal on combating fraud and counterfeiting of non-cash means of payment. The committee felt that the formulations set out in the proposal were fundamentally sound and constructive. However, it proposed a number of amendments designed to amplify and clarify certain provisions. It felt, for example, that the definition of 'non-cash payment instrument' should focus not on whether such an instrument enabled only its legitimate holder, or also unauthorised holders, to effect transactions, but on the fact that the basic idea behind the creation of such an instrument was to enable legitimate holders to obtain money or valuable consideration. It also adopted an amendment deleting the provision identifying types of conduct as actions preparatory to money laundering as it felt that the whole issue of the prosecution of money laundering should be covered in a separate legal instrument. Another amendment aimed to make criminal proceedings against a family member dependent on the decision taken by the injured party, on the grounds that most criminal law codes in the Member States take a different approach to property offences if these have been committed by family members. The committee felt that the territoriality provision in the proposal needed to be amplified so that it also focused on where the proceeds of an offence are realised, so that, for example, an unauthorised third-country national who uses a French citizen's credit card to pay for goods outside the EU can be prosecuted in France in respect of that offence. Lastly, the committee rejected the article on cooperation between Member States on the grounds that arrangements concerning cooperation in criminal law matters should continue always to be governed by the Convention on Mutual Legal Assistance in Criminal Matters between Member States of the EU.?

Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

Given that the European Parliament has not yet tabled its opinion, the Council has transmitted to the Parliament a new version of the text that is currently under examination within the Council and which replaces that which is already being examined by the Parliament, so as to enable the Parliament to supplement the information that it currently has in its possession.?

Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

The committee adopted the second report (consultation procedure) by Gerhard SCHMID (PES, D) approving without amendments the proposal for a framework decision on combating fraud and counterfeiting of non-cash means of payment. The matter had been referred back to committee during the May part-session and the Council had forwarded a revised text to Parliament on 30 May 2000.?

Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

In approving the report drafted by Mr Gerhard SCHMID (PES, D), the European Parliament adopted, under consultation procedure, the Draft Council framework decision on combating fraud and counterfeiting of non-cash means of payment. (Procedure without debate).?

Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

PURPOSE: to combat fraud and counterfeiting of non-cash means of payment. **COMMUNITY MEASURE**: Council Framework Decision 2001/413/EC combating fraud and counterfeiting of non-cash means of payment. **CONTENT**: the Framework Decision defines 'payment instrument' as a corporeal instrument, other than legal tender enabling, by its specific nature, alone or in conjunction with another (payment) instrument, the holder or user to transfer money or monetary value (using credit cards for instance). The Framework Decision lists the cases which are considered an offence and calls upon each Member State to take the necessary measures to counter such punishable behaviour. The Framework Directive also contains provisions in relation to offences related to computers and to specifically adapted devices. It also

defines which persons are legally liable and the types of sanctions that can be invoked. As regards extradition and prosecution, any Member State which does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences provided for in the Framework Decision when committed by its own nationals outside its territory. Member States shall designate operational contact points or may use existing operational structures for the exchange of information and for other contacts between Member States for the purposes of applying this Framework Directive. In conclusion, the Framework Decision shall apply to Gibraltar. ENTRY INTO FORCE: 02.06.2001. DEADLINE FOR IMPLEMENTATION: 02.06.2003. ?

Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

The Commission makes this report due to its obligation under Article 14 of the Council Framework Decision of 28 May 2001 on counterfeiting fraud. The general purpose of the Framework Decision is to ensure an equivalent level of criminal law protection in the EU of non-cash means of payment against fraud and counterfeiting by measures to be taken by the Member States; these measures include defining specific punishable conduct and providing effective, proportionate and dissuasive criminal penalties. Each Member State must take the necessary measures to establish its jurisdiction with regard to the offences referred to in the Framework Decision. The latter covers different subjects concerning national substantive criminal law and matters such as national jurisdiction. It should be noted that, under the present Treaties, the Commission has no power to bring a legal action before the Court of Justice to enforce transposition legislation for the Framework Decision. The report details the action taken by Member States with respect to the timely and accurate transposition of the Framework decision. Like directives, Framework Decisions must be implemented within the period prescribed. National legislation necessary to comply with the Framework Decision should therefore have been adopted and entered into force. The report states that some Member States have not transmitted on time to the Commission all relevant texts of the provisions transposing into their national law the obligations imposed on them under the Framework Decision. The factual assessment and conclusions subsequently drawn are therefore sometimes based on incomplete information. Five Member States (France, Germany, Italy, Ireland and the United Kingdom) have been able to meet the deadline by taking all measures to comply with the provisions of the Framework Decision by 2 June 2003. Finland adopted measures transposing the Framework Decision after the deadline. Belgium has stated that its national legislation already complies with the provisions of the Framework Decision and that no transposition is required, without giving further explanation on the relevant legislation. Austria and Greece have informed the Commission that they are in the process of drafting their national legislation. Austria pledged that it would be ready by end 2003. Greece informed the Commission that a special legal preparatory committee was expected to hand over its work in the middle of July 2003. Luxembourg sent an informal message to the Commission in July 2003, mentioning that its national legislation would be finalised in October 2003. None of these three Member States has transmitted anything formally so far. The Netherlands has taken measures which have not yet entered into force. Denmark and Portugal have not answered the Commission. With regard to specific provisions, the following points should be noted: - The implementation of Article 6, which applies to criminal penalties, is quite heterogeneous. Almost all Member States who have replied to the Commission have, or will have when their legislation enters into force, succeeded in meeting the obligation imposed by Article 6 that the fraudulent making or altering of currency provided for in Article from 2 to 4 shall be punishable by criminal penalties. Since Swedish criminal legislation does not provide for punishment of the fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified, payment instrument and since Spanish legislation does not provide for punishment of altering of currency, no sanction can be imposed nor would extradition be possible for those offences. - The evaluation of whether or not the criminal penalties which can be imposed in Member States are sufficiently dissuasive, could on the face of it be affirmative, given the fact that all Member States who have sent information to the Commission have in respect to the conduct referred to in Article 2, provided for a (maximum) imprisonment penalty. The probability of detecting the criminal conduct, the type of prosecution (mandatory or facultative prosecution) and the practice of sentencing by the judiciary of each Member State, beyond doubt, have an impact on the perception of sanctions especially as to whether they can really be considered dissuasive and effective. The Commission states that several Member States considered that for the most part, their current legislation already corresponds to the obligations of the Framework Decision. Consequently, only certain clarifications and additions to national legislation were required. At the time of completion of this report, it is to be regretted that those Member States which had not sent legislation or which were in the process of transposing the Framework Decision, have not done so.?

Combating fraud and counterfeiting: security of non-cash means of payment. Framework Decision

This report from the Commission is the second report based on Article 14 of the Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.

To recall, the Council adopted the Framework Decision of 28 May 2001 with a view to achieving equivalent and increased protection by criminal law against fraud and the counterfeiting of non-cash means of payment throughout the Union. Under Article 14 of the Framework Decision, the Commission, on the basis of the initial information received, presented a report to the European Parliament and the Council on the measures taken by the Member States to comply with the Framework

Decision. In response to the Council conclusions of 25-26 October 2004, the Commission is now to produce a new report on the basis of the additional information it has received.

It should be noted that this second report is not a consolidated version of the Commission's earlier report but relates primarily to those Member States not covered at the time (AT, DK, GR, LU, NL and PT) and, secondarily, to those whose treatment in the first reports needs amplifying or amending (BE and SE). In the latter case, the report is consolidated as regards those two Member States. It was also agreed that the new Member States that acceded on 1 May 2004 should now be covered as they were not, of course, covered by the first report.

To allow the two reports to be read in parallel and compared, this second report follows the same structure and presentation as the first wherever possible. The comparative tables on transposal and the annexes also follow the same structure. To avoid repetition, this report has been pared down, particularly by removing the general considerations (nature of a Framework Decision) and points of methodology (evaluation criteria) in the first report.

More specifically, the report concludes that most of the Member States that replied to the Commission in this second exercise comply explicitly or, in some cases, implicitly with the Framework Decision. This is the case for Articles 2 (offences related to payment instruments), 3 (offences related to computers) and 5. Two Member States (GR and LU) have not yet taken all the measures required to fully transpose the Framework Decision as the legislation is still before Parliament. CY has not given the Commission adequate information for a full evaluation of the conformity of its legislation with the Framework Decision.

Article 4 (offences related to specifically adapted devices) has been transposed by most of the Member States, although in some of them only via very general provisions. PT in particular states that the offences under the first indent of Article 4 are covered by provisions applicable to counterfeiting and falsification of securities, and the law will need to be amended in relation to the second indent of Article 4.

The transposal of Article 6 (criminal penalties) is compliant, though far from uniform.