



EUROPEAN COMMISSION

Brussels, 20.8.2013
C(2013) 5495 final

Dear President,

The European Commission would like to thank the Senát for its Opinion on the proposal for a Directive on the protection of the euro and other currencies against counterfeiting by criminal law {COM(2013) 42 final}.

The Commission welcomes the Senát's support of the harmonisation of elements of criminal offences and the provision on universal jurisdiction for offences committed outside the European Union. These provisions will contribute to effective punishment of counterfeiting of the euro and other currencies.

The Commission notes the concern of the Senát about the introduction of minimum sanctions. The Commission considers it necessary to further approximate the criminal sanctions. The Commission sees an added value in the deterrent effect of sanctions as well as in the effect on law-enforcement and cross-border cooperation. If those that intend to counterfeit or distribute currencies beyond a certain value know that this will result in a minimum sanction of six months of imprisonment, it can be expected they will reconsider their plans. In addition, minimum sanctions help that priority is given to their investigation and prosecution by law-enforcement and judicial authorities. Thus they also facilitate cross-border cooperation.

Only the EU is in a position to develop binding legislation with effect throughout the Member States, and thus to create a legal framework which would contribute to overcoming the weaknesses of the current situation.

The Commission shares the opinion of the Senát that the Directive should not affect national legislation that allows in certain circumstances to impose a penalty of shorter duration than the minimum term.

Indeed, it is the intention of the Commission's proposal that the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances remain applicable. This includes general rules on the application of sentences to juveniles, in cases of attempt, of only supporting participation or where the perpetrator contributes to the discovery or to the prevention of serious offences (such as the case of the co-operating defendant mentioned by the Senát). Concerning the execution of sentences, general principles as e.g. on suspended imprisonment, on alternatives to imprisonment (electronic surveillance) or on early release would continue to apply. In the individual cases, the courts will exercise their discretion taking into account all aggravating

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and mitigating circumstances within the applicable legal framework. The Commission is willing to cooperate with the co-legislators to provide legal certainty in this regard.

On the other hand, the Commission can reassure the Senát that Member States will continue to be able to impose higher minimum and maximum sanctions in their national law than provided for in the Directive. The Directive will only set a minimum level of sanctions.

As regards the legal basis for Article 11 of the Commission's proposal, i.e. the obligation of Member States to accede or remain party of the Geneva Convention for the Suppression of Counterfeiting Currency, the Commission is of the opinion that this provision is an accessory rule to minimum rules on definitions and sanctions which are covered by Article 83 (1) of the Treaty on the Functioning of the European Union. However, the co-legislators and the Commission are examining this question further, as all institutions have an interest to provide a legally sound legislative text.

The Commission is grateful to the Senát for its support and suggestions to improve the proposal and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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Vice-President/Member of the Commission