



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion*

Title **DG OLAF/JUST – Impact assessment on an EU initiative on reinforcing the protection of the Euro against counterfeiting by means of criminal law**
(draft version of 27 July 2012)

(A) Context

The Euro continues to be the target of organised crime groups active in the forgery of money. Based on the findings of Interpol, organised crime groups are involved in currency counterfeiting in the majority of cases. This has led to a financial damage of at least 500 million euro since the introduction of the euro in 2002. Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro aims at supplementing, on the territory of European Union, the provisions of the Geneva Convention of 1929. It identifies practices which are to be regarded as punishable in addition to the actual act of counterfeiting, such as distribution. For these offences, the Framework Decision requires effective, proportionate and dissuasive penalties. The Framework Decision established a minimum level of maximum penalty of imprisonment of at least eight years for the main offence of counterfeiting. In addition, it contains provisions on jurisdiction and on the liability of legal persons.

(B) Overall assessment

The report should be improved in several respects. Firstly, the problem definition needs to be strengthened, by better explaining the state of implementation of the Framework Decision, by detailing underlying implementation and transposition problems, and by presenting in more detail the diverging stakeholder and Member States' views on the need for action. The baseline scenario should be improved by projecting how counterfeiting activities would evolve in the different Member States. Secondly, the report should better describe the content of the policy options, and explain the apparent lack of real alternative policy solutions as informed by the stakeholder consultation. Thirdly, it should provide a more thorough impact and proportionality analysis, particularly as regards the possible effects of the options on national legal systems, and should quantify implementation, compliance and administrative costs for all actors involved. Finally, the report should improve the comparison of the policy options, by comparing them against the baseline scenario using a clear set of comparison criteria.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Strengthen the problem definition and the baseline scenario. The report should reinforce the problem definition by giving an overview of the state of implementation of the current Framework Decision, and by further detailing any existing implementation and transposition problems. It should present diverging stakeholder/expert views in more detail, including Member States specific views, and should explain why only nine Member States seem to favour a review, including a more detailed presentation of the results from the expert meetings. The report should also better distinguish between the drivers, problems and their consequences, by giving a more general overview of the protection of the Euro against counterfeiting, and by providing stronger links to other protection programmes, such as PERICLES, or Member States' specific activities/initiatives. It should also present in the main text the relevant evaluation results currently found in the annex, corroborate the problems of cross-border investigations with more concrete data, and explain the enforcement differences between Euro and non-Euro countries, also with regard to "forum shopping". This should include an overview of the effectiveness of counterfeiting law enforcement in the Member States, for instance with regard to the dismantling of illegal print shops. Finally, the report should better present the baseline scenario, for instance by projecting how counterfeiting activities would evolve (number of counterfeited bills, development of illegal print shops, enforcement activities etc.) in the different Member States.

(2) Better describe the content of the policy options and clarify the lack of alternative policy options. The report should provide a convincing argumentation (supported by stakeholder views) for the lack of any alternative policy options, such as soft law, other sanctions, or a regulation as delivery instrument, and it should notably include a discussion of any options that might have been put forward previously but that have been discarded at an early stage. On that basis the report should describe in more detail the concrete content and differences of the feasible options 2 and 3.

(3) Strengthen the impact analysis and the comparison of the options. The report should improve the analysis of impacts by including a more thorough assessment and quantification of implementation and compliance costs, by providing a more detailed explanation of underlying methodologies and assumptions, by taking into account the existing situations in the different Member States, and by better utilising the diverging stakeholder views and consultation/evaluation results throughout the analysis on the key points. It should also analyse in more detail how the process for transmitting seized counterfeited notes will be organised between the enforcement agencies, the national analysis centres and the ECB. Furthermore, the report should better substantiate the proportionality of option 3, given that experts have raised concerns as regards the interference with national legal systems. It should also explain how the effective transposition and implementation will be ensured, particularly in the light of mixed overall support from Member States and subsisting transposition issues. The report should clearly distinguish between compliance costs and administrative costs, and specify which of the two apply where, and how they are analysed. Administrative costs should be further analysed, including an indication of their expected magnitudes across the Member States, given the different legal systems. The report should clarify further the impact of the introduction of the investigative tools on fundamental rights, by specifying the circumstances in which such investigative tools are to be used, and by providing more data for countries which already make use of these. Moreover, the report should assess more clearly the risk of an increase in "forum shopping" in third countries

resulting from the preferred option, and in the case that there has been such an increase, should explain how this issue is to be addressed. Finally, it should be more precise in comparing the different policy options against the baseline scenario and each other, by analysing the advantages of the preferred option along a set of predefined comparison criteria.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should split the presentation of the content of the options from the analysis of their impacts and not present both issues in the same chapter. The report should achieve a better balance in the distribution of relevant information between the different annexes and the main text. Technical language should be streamlined to make it more accessible for the non-expert reader.

(E) IAB scrutiny process	
Reference number	2012/JUST+/032
External expertise used	No
Date of IAB meeting	5 September 2012