EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2004/0817(CNS)

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DRAFT REPORT

on the initiative of the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland with a view to adopting a Council Decision on protecting the euro against counterfeiting, by designating Europol as the Central Office for combating euro counterfeiting
(14811/2004 – C6-0221/2004 – 2004/0817(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Agustín Díaz de Mera García Consuegra

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative of the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland with a view to adopting a Council Decision on protecting the euro against counterfeiting, by designating Europol as the Central Office for combating euro counterfeiting
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(Consultation procedure)

The European Parliament,

– having regard to the initiative of the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland (14811/2004)[1],

– having regard to Article 30(1)(c) and Article 34(2)(c) of the EU Treaty,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0221/2004),

– having regard to Rules 93 and 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0000/2005),

1. Approves the initiative of the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland as amended;

2. Calls on the Council to amend the text accordingly;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Calls on the Council to consult Parliament again if it intends to amend substantially the initiative of the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland;

5. Instructs its President to forward its position to the Council and Commission, and the governments of the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland.

[1] Not yet published in OJ.

Text proposed by of the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland	Amendments by Parliament
Amendment 1 Recital 1	
(1) As the legal currency of 12 Member States, the euro has ***increasingly become a*** global ***currency*** and ***has*** therefore ***become*** a high-priority target of international ***counterfeiting*** organisations.	(1) As the legal currency of 12 Member States, the euro has ***gradually taken on extraordinary*** global ***importance*** and ***euro counterfeiting is*** therefore a high-priority target of ***domestic and*** international ***criminal*** organisations ***operating both within and outside the European Union***.
Justification	
Clearer and more detailed wording.	
Amendment 2 Recital 2	
(2) The euro has also become the target of third-country counterfeiters.	***deleted***
Justification	
This recital needs to be deleted because its subject matter is already covered in both original and amended versions of recital 1.	
Amendment 3 Recital 3 a (new)	
	(3a) On their own, individual Member States cannot provide appropriate protection for the euro, since euro banknotes and coins circulate outside the territory of the Member States belonging to the monetary union.

Justification

The euro, which is legal tender in 12 of the EU Member States, clearly cannot be properly protected if each Member State tries to do so on its own.

Amendment 4
Recital 3 b (new)

	(3b) Cooperation among the Member States themselves and between the Member States and Europol needs to be stepped up in order to strengthen the system for the protection of the euro outside European Union territory.

Justification

Close cooperation between all the Member States and Europol is essential in order to protect the euro against counterfeiting outside EU territory.

Amendment 5
Recital 4

(4) The Convention for the ***Prevention*** of Counterfeiting Currency, agreed on 20 April 1929 in Geneva (hereinafter referred to as "Geneva Convention"), should be applied more effectively ***under the conditions of European integration***.	(4) The ***International*** Convention for the ***Suppression*** of Counterfeiting Currency, agreed on 20 April 1929 in Geneva (hereinafter referred to as "Geneva Convention"), ***and the additional Protocol thereto,*** should be applied more effectively ***with a view to ensuring comprehensive, effective and consistent protection of the euro.***

Justification

The Convention should be given its proper name and reference should be made to the Protocol, which is an integral part of the convention.

The measures required in order to protect the euro against potentially harmful illegal activities should apply at all times, irrespective of the state of European integration.

Amendment 6
Recital 5

(5) Third countries need a central contact for information on counterfeit euros and all information on counterfeit euros should be brought together at Europol for purposes of analysis.	(5) Third countries need a central contact for information on counterfeit euros and all information on counterfeit euros should be brought together at Europol for purposes of analysis ***alongside and in close cooperation with the national central offices of the EU Member States***.

Justification

Third countries need a central contact. However, the powers and mechanisms for the forwarding of information that were laid down in the Convention establishing Europol and in the subsequent amending protocols thereto cannot, in their current state of development, guarantee real and effective protection of the euro.

It must be remembered that pending the entry into force of the Protocol adopted in November 2003 which allows for direct contact to be made between designated authorities and Europol and pursuant to which Europol acts as the EU's contact in the relations which it maintains with third countries and organisations for the purpose of combating euro counterfeiting, Europol cannot establish direct contact with Member States; it may do so only through the liaison offices for each of the Member States. Using this kind of 'relay system' to forward information would slow down the operation of the mechanisms designed to intercept counterfeit euros and to prevent them from entering circulation. See also the justification for Amendment to Recital 7.

Amendment 7
Recital 6

(6) In view of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, the Council considers it appropriate for all Member States to become contracting parties to the Geneva Convention and set up central offices within the meaning of Article 12 of the Convention.	(6) ***In view of the Council framework decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro[1] and*** in view of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, the Council considers it appropriate for all Member States to become contracting parties to the Geneva Convention and set up central offices within the meaning of Article 12 of the Convention.
	[1] OJ L 140, 14.6.2000, p. 1.

Justification

The obligation for the Member States which have not yet done so to accede to the 1929 Geneva Convention is already laid down in Article 2 of the framework decision of 29 May 2000, which is in force for all the 25 Member States. Purely for information purposes it may be noted that Malta and Slovenia are currently the only Member States which have not yet ratified the Geneva Convention.

Amendment 8
Recital 7

(7) The Council considers it appropriate to designate Europol as the central office for combating euro counterfeiting within the meaning of Article 12 of the Geneva Convention,	(7) The Council considers it appropriate to designate Europol as the central office for combating euro counterfeiting ***(a task which it will perform in close cooperation with the national central offices of the Member States)*** within the meaning of Article 12 of the Geneva Convention,

Justification

Another major drawback is the fact that Europol may forward personal data only to third countries and bodies with which an agreement to that effect has previously been concluded (see the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies [OJ C 88, 30.3.1999, p. 1] and the Council Act of 28 February 2002 amending the Council Act of 12 March 1999). This restriction would seriously hinder the task of gathering and exchanging information which Europarl - as the EU central office - is supposed to perform.

As long as Europarl is required to operate within the restrictions to which it is currently subject, its task as the EU central office for combating euro counterfeiting must be performed in close cooperation with the Member States' central offices. This is the only way in which the ultimate objective of the proposal - effective protection of the single currency - can be achieved. See the justification for Amendment 6 to Recital 5.

Amendment 9
Article 1, paragraph 1

1. For the Member States ***which are Contracting Parties to the Geneva Convention, namely Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain,***	1. For ***all*** the Member States Europol shall, in accordance with the Declaration in the annex hereto (hereinafter referred to as the 'Declaration'), act as the ***European Union*** central office for ***protecting the*** euro ***against*** counterfeiting within the meaning of the first sentence of Article 12

Sweden and the United Kingdom, Europol shall, in accordance with the Declaration in the annex hereto (hereinafter referred to as the 'Declaration'), act as the central office for ***combating*** euro counterfeiting within the meaning of the first sentence of Article 12 of the Geneva Convention. For counterfeiting of all other currencies and for central office functions not delegated to Europol pursuant to the Declaration, the existing competencies of the national central offices shall remain in effect.

of the Geneva Convention***, alongside and in close cooperation with the national central offices of the Member States***. For counterfeiting of all other currencies and for central office functions ***delegated or*** not delegated to Europol pursuant to the Declaration, the existing competencies of the national central offices shall remain in effect.

Justification

The requirement to appoint a central authority for the purposes of the Geneva Convention is already binding on all the Member States with the exception of Malta and Slovenia, which are, nonetheless, bound by the Community acquis*, in which the requirement to accede to the abovementioned Convention is laid down (see Amendment 7 to Recital 6). Hence pending formal ratification by the countries in question, it can already be stated that Europol will act on behalf of the entire European Union as a central authority dealing with euro counterfeiting (with all the provisos mentioned in the justifications for Amendment 6 to Recital 5 and Amendment 8 to Recital 7).*

Amendment 10
Article 1, paragraph 2

2. Member States, which are not yet Contracting Parties to the Geneva Convention, namely Cyprus, Estonia, Latvia, Lithuania, Malta, Slovakia and Slovenia, shall accede to the Geneva Convention. Upon acceding to the Geneva Convention, they shall, in accordance with the Declaration, designate Europol as the central office for combating euro counterfeiting in accordance with the first sentence of Article 12 of the Geneva Convention.

deleted

Justification

See the justification for Amendment 9 to Article 1, paragraph 1.

Amendment 11
Article 2, paragraph 1

1. The governments of the Member States ***which are Contracting Parties to the Geneva Convention*** shall issue the Declaration and commission the representative of the Federal Republic of Germany to forward the Declarations to the Secretary-General of the United Nations.	1. The governments of the Member States shall issue the Declaration and commission the representative of the Federal Republic of Germany to forward the Declarations to the Secretary-General of the United Nations.

Justification

See the justification for Amendment 9 to Article 1, paragraph 1.

Amendment 12
Article 2, paragraph 2

2. The governments of the Member States which are not yet Contracting Parties to the Geneva Convention shall, in the event of accession, promptly issue the Declaration and commission the representative of the Federal Republic of Germany to forward the Declaration to the Secretary-General of the United Nations.	***deleted***

Justification

See the justification for Amendment 9 to Article 1, paragraph 1.

Amendment 13
Annex, first introductory sentence

……, a Member State of the European Union, has given the European Police Office (hereinafter referred to as 'Europol') a mandate to combat euro counterfeiting.	……, a Member State of the European Union, has given the European Police Office (hereinafter referred to as 'Europol') a mandate to ***act as the European Union's central office for action to*** combat euro counterfeiting ***for the purposes of the Geneva Convention - a task which it will perform alongside and in close cooperation with the national central offices of the Member States***.

Justification

See the justifications for Amendment 6 to Recital 5 and Amendment 8 to Recital 7.

Amendment 14
Annex, point 1.1.

1.1. Europol shall centralise and process, in accordance with the Europol Convention, all information of a nature to facilitate the investigation, prevention and combating of euro counterfeiting ***and shall forward this information without delay to the national central offices of the EU Member States***.	1.1. Europol shall centralise and process, in accordance with the Europol Convention ***and in close cooperation with the national central offices of the Member States***, all information of a nature to facilitate the investigation, prevention and combating of euro counterfeiting.

Justification

As it has been held throughout this report, the justification for the need for Europol to act as a central authority alongside the Member States' central offices stems mainly from the major restrictions imposed by Europol's current legal framework: Europol is unable to forward information directly to Member States (it may only do so through the national liaison office for each Member State - something which hampers and slows down the supply of information) and to forward personal data to a third State or body unless an agreement to that effect has been concluded beforehand, as provided for in the Council Act of 12 March 1999 (OJ C 88, 30.3.1999, p. 1).

These problems may well be resolved at some point in the future, but they are currently an insurmountable obstacle to ensuring appropriate protection of the euro against counterfeiting. It is thus essential for the information to be forwarded both to Europol and to the Member State which may be directly affected and which will need to take appropriate operational measures.

Amendment 15
Annex, point 1.5, introductory sentence.

1.5. Except in cases of purely local interest, Europol shall, insofar as it considers it expedient, notify the central office of third countries of:	1.5. Except in cases of purely local interest, Europol shall, insofar as it considers it expedient ***and taking into account the provisos contained in the Council Act of 12 March 1999 adopting the rules governing the transmission of personal data by Europol to third States and third bodies***[1], notify the central office of third

[1] ***OJ C 88, 30.3.1999, p. 1.***

countries of:

Justification

As has been explained throughout this report, the effect of the Council Act referred to in the amendment is to make Europol's sending of personal data to a third country or an international body subject to the terms of an Agreement concluded between the two parties. Hence this proviso must be taken into account when information is to be sent. Should no Agreement exist, the information must be sent through the Member States' national offices.

Amendment 16
Annex, point 1.7.

1.7. Where Europol is unable to carry out the tasks specified in points 1.1. to 1.6. in accordance with the Europol Convention, the national central offices of the Member States shall retain competence.	***deleted***

Justification

See the justifications for Amendment 6 to Recital 5, Amendment 8 to Recital 7 and Amendment 14 to the Annex, point 1.1.

In line with the amendments proposed it is assumed that in its current state of development, Europol is unable to perform the tasks with which it is to be entrusted.

Amendment 17
Annex, point 1 a (new)

	1a. The powers assigned to Europol for the purpose of protecting the euro against counterfeiting within the framework of the Geneva Convention shall be exercised alongside those of the national central offices of the EU Member States and in close cooperation with those offices.

Justification

See the justifications for Amendment 6 to Recital 5, Amendment 8 to Recital 7 and Amendment 14 to the Annex, point 1.1.

Amendment 18
Annex, point 2

2. With regard to the counterfeiting of all other currencies ***and for central office functions not delegated to Europol in accordance with point 1***, the existing competencies of the national central offices shall remain in effect.	2. With regard to ***measures to protect against*** the counterfeiting of all other currencies, the existing competencies of the national central offices shall remain in effect.

Justification

In keeping with previous amendments.

EXPLANATORY STATEMENT

Introduction

Even before the euro was placed in circulation on 1 January 2002 the European Union had taken significant action to protect it, with a view to preventing it from being affected by the widespread counterfeiting which had been detected in the case of the Member States' own individual currencies. One thing is beyond doubt: the Member States are unable to combat counterfeiting on their own. Nowadays, professional currency counterfeiters are highly sophisticated and they take advantage both of the fact that the European Union no longer has any internal borders and of the lack of technical and operational resources in some of the Member States. Counterfeiting is also widespread in EU countries which are not yet members of the euro area. In the light of these circumstances the EU has concentrated on action intended mainly to protect the euro by means of an appropriate legal framework within which counterfeiting of the euro can be criminalised, bodies enabling information to be centralised can be established and arrangements can be made to facilitate cooperation amongst all those involved in the fight against fraud.

Even so, the problem is still a major one. According to the data collected under the *Counterfeit Monitoring System* (a system for storing technical, statistical and geographical information concerning counterfeiting of the euro, to which central banks and relevant authorities have access) the European Central Bank in 2004 withdrew from circulation euro notes with a value of **€ 44.801.510**. However, not all the news is bad, since there is evidence that the action being taken in order to combat counterfeiting is bearing fruit: in 2003/2004 the number of operations in which false euros were seized increased by 20% and counterfeiting of 50- and 100-euro notes declined by 5% and 38% respectively. Nonetheless - and despite these welcome trends - the euro is still plagued by widespread counterfeiting.

Overview of the proposal

The proposal is an initiative launched by the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic and the United Kingdom of Great Britain and Northern Ireland with a view to enabling Europol to be designated as the EU's central office for the purposes of combating euro counterfeiting, pursuant to Articles 12 *et seq* of the 1929 Geneva International Convention for the Suppression of Counterfeiting Currency. Under the terms of that Convention, countries which are party thereto are required to designate an office which, in each country, will centralise all information which is likely to facilitate the investigation, prevention and repression of currency counterfeiting. With a view to streamlining and highlighting the EU's work in this area, the Member States have decided to designate Europol as the EU's central office dealing with euro counterfeiting. As regards the Member States' central offices, these will still have powers and responsibilities in respect of the counterfeiting of other currencies.

Comments on the amendments

The current legal framework within which Europol performs its tasks (the Europol Convention and the amending protocols thereto) has played a key role in providing a basis for the amendments tabled to the draft Council Decision. In your rapporteur's view the proposal is

an ambitious but at the same time an unrealistic one, since it fails to take into account the restrictions which would shackle Europol in its attempts to perform the tasks which are to be assigned to it.

Firstly, the relevant authorities in the Member States which hold information concerning euro counterfeiting (for example, information concerning printing works in which false euros are made or data concerning the circulation of false euros within the EU) will not be able to supply such information or data direct to Europol, since the exchange of information between Europol and the Member States takes place through the national liaison offices. This fact - combined with the specific nature of currency counterfeiting - means that an exchange of information which is not direct will be futile, since it would hinder the flow of information and might expose the euro to even greater risk. This is precisely what the draft report points out and tries to prevent.

Furthermore, Europol labours under significant restrictions when establishing direct contact with third countries or other international organisations: pursuant to Article 2 of the 1999 Council Act, Europol may not forward personal data to a third country or body other than within the framework of an Agreement between the two parties. Should no such agreement exist, no information may be forwarded.

These two factors constitute serious and decisive obstacles preventing Europol from acting effectively and satisfactorily as the EU's central office dealing with euro counterfeiting. For this reason your rapporteur considers that if the proposal's ultimate objective (i.e. proper protection of the euro against counterfeiting) is to be achieved, the central offices currently in existence in the Member States should retain their powers as regards protection of the euro. This - combined with the establishment of a mechanism for close cooperation and the exchange of information between those offices and Europol - would provide all the bodies and authorities involved in protecting the euro with more effective weapons with which to combat counterfeiting.

Conclusion

Europol is regulated by a Convention which dates from 1995 and which has been successively revised over the period since it came into force - the main purpose of the revisions being to extend Europol's powers. However, nothing has been done so far to amend Europol's legal framework, despite a series of requests from Parliament[1] which has pointed out that if Europol is genuinely to become an effective means of combating organised crime in the EU, the following restrictions must be lifted:

- Europol still acts within the framework of intergovernmental cooperation, despite the fact that its powers are being constantly increased.
- Decisions relating to Europol continue to be adopted by the Council acting unanimously.

[1] See its Recommendation of 30 May 2002 on the future development of Europol and its automatic incorporation into the institutional system of the European Union (OJ C 187 E, 7.8.2003, p. 144) and its Recommendation of 10 April 2003 on the future development of Europol (OJ C 64 E, 12.3.2004, p. 588).

- Parliament is unable to exercise proper democratic control over Europol.
- The current procedure for amending the Convention is excessively long-winded and laborious and it has to be ratified by all the Member States, whilst replacing it with a Council Decision would run up against the problem of securing the requisite political agreement. Hence neither option is really satisfactory.

For all of the above reasons, Parliament has repeatedly called for Europol to be converted into a proper **Community body**, equipped with its own budget and subject to democratic control carried out by Parliament and the Court of Justice.

The unsuitability of Europol's legal framework is once again reflected in the proposal with which this report is concerned: Europol has neither the legal nor the operational nor the budget resources with which to take effective action against euro counterfeiting.

1. Firstly (as your rapporteur has already pointed out), Europol's legal framework is the first of the impediments with which the European Police Office has to contend.
2. Secondly, Europol has no operational functions of any nature - functions which (particularly in the field of currency counterfeiting) could lead to effective, decisive results.
3. Thirdly, Europol has no budget of its own with which to provide operational support in Member States (either inside or outside the euro area) in which action or investigation designed to stamp out euro counterfeiting is being conducted.

In short, designating Europol as the Member States' central office dealing with action to combat euro counterfeiting should be accompanied by the provision of a legal and budgetary basis. This is the only way of equipping the EU with an adequate and effective means of combating fraud in respect of the single currency.