



**MONTENEGRO
MINISTRY OF JUSTICE**

**ANALYSIS
OF REGULATORY FRAMEWORK FOR PROTECTION OF THE EURO AGAINST
COUNTERFEITING
- CRIMINAL ASPECT -**

September 2014

Contents

- 1. INTRODUCTION**
- 2. INTERNATIONAL INSTRUMENTS**
- 3. THE EUROPEAN UNION LEGISLATION**
- 4. NATIONAL LEGAL FRAMEWORK AND COMPLIANCE WITH INTERNATIONAL INSTRUMENTS AND THE EUROPEAN UNION LEGISLATION**
- 5. CONCLUSIONS AND RECOMMENDATIONS**

1. INTRODUCTION

Money counterfeiting exists almost as long as money itself. Large quantities of counterfeited money can cause serious problems if not detected on time and removed from circulation. Counterfeited money in circulation devaluates and downgrades the integrity of genuine money, and if present in large quantities can cause price inflation due to „artificial“ increase of the offer of the currency.

The Euro is today the single currency of the European Union. It has replaced national currencies of 18 Member States. The Euro was introduced as official currency in Montenegro on the basis of the Law on the Central Bank, as substitute to Deutsche Mark, which had replaced Dinar as currency in 2000. The Euro was introduced in order to facilitate movement of goods and services and international communication of Montenegro, since the country, as a small open country wishes to have a strong convertible currency that will serve as a basis for its economy and allow easier access to economic flows.

Counterfeiting of the Euro and other currencies remains a serious problem within the European Union. According to the European Commission data, since its introduction 2002, The Euro as a currency has been continuously targeted by organised crime groups active in money counterfeiting, which has caused financial damage of at least EUR 500 million.

The protection of the Euro is therefore of critical importance. The international dimension of counterfeiting threat necessitates cooperation at the level of the European Union. As a result of this, the European Union has created a legal framework aimed at ensuring the protection of the Euro. Montenegro, as a candidate country with the Euro as official currency, places particular emphasis on the protection of the Euro against counterfeiting within the Chapter 24 negotiations. Namely, the Action Plan for Chapter 24 – Justice, Freedom and Security includes a Subsection *the Euro Counterfeiting*. The goal set for this subsection stems from the recommendation of the Screening Report – *Harmonising legislation with the acquis communautaire and strengthening cooperation with OLAF (the European Anti-Fraud Office), the Europol and the European Central Bank in this field*. The first measure for the attainment of this goal is the carrying out of this analysis. The analysis includes an overview of the European and international instruments, national criminal law framework for protection of the Euro against counterfeiting and assessment of compliance of national framework with relevant *acquis communautaire* accompanied with conclusions and recommendations for improvement. An integral part of this analysis is an overview of compliance of the national legal framework with relevant EU legislation.

2. INTERNATIONAL INSTRUMENTS

At the international plane, the key document for protection against currency counterfeiting is the *International Convention for the Suppression of Counterfeiting Currency*. The Convention was signed in Geneva in 1929 and entered into force in 1931.

By signing this League of Nations treaty, the state parties undertook to punish currency counterfeiting¹. The primary „rule“ laid down by the Convention is that the state parties should not differentiate between counterfeiting of national and foreign currency when sanctions are concerned. The Convention provides that money counterfeiting is an extraditable criminal offence and that counterfeited money must be confiscated or seized. Furthermore, the state parties are under a duty to designate central authorities responsible for notifying other states of withdrawal of specimens of its currency from circulation and of all other changes concerning their currency.

The Kingdom of Serbs, Croats and Slovenians was one of the signatories to the International Convention for the Suppression of Counterfeiting Currency. However, the 1992 events resulted in the country losing the state party status. Following the readmission of the Federal Republic of Yugoslavia to the United Nations, the succession in relation to this Convention did not happen, and this situation continued in the State Union. Accordingly, in view of that the Decision on Declaration of Independence of Montenegro², which sets out that “the Republic of Montenegro shall apply and take over international treaties and agreements entered into or acceded to by the State Union of Serbia and Montenegro”, Montenegro today had no status of a state party to the Convention.

Considering the importance and scope of this Convention and the fact that EU legislation in the area of criminal law protection of the Euro against counterfeiting aims to facilitate its application (see under 3 - EU Legislation), as well as Montenegro’s efforts to join the European Union, there is a need for Montenegro to ratify this Convention. It should be noted that this need was emphasized by the *Report on Analytical Overview of Compliance of legislation of Montenegro for Chapter 32 – Financial Supervision*, and by expert missions and opinions of the European Anti-Fraud Office - OLAF given in the process of development of the Action Plan for Chapter 24.

3. THE EUROPEAN UNION LEGISLATION

In order to protect the Euro in the Euro zone and outside of it, the EU legislation is aimed at ensuring adequate coordination of anti-counterfeiting measures between national state authorities and adequate sanctions in national legislation.

¹ Article 3 of the International Convention for the Suppression of Counterfeiting Currency.

“The following should be punishable as ordinary crimes:

- (1) Any fraudulent making or altering of currency, whatever means are employed;
- (2) The fraudulent uttering of counterfeit currency;
- (3) The introduction into a country of or the receiving or obtaining counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;
- (4) Attempts to commit, and any intentional participation in, the foregoing acts;
- (5) The fraudulent making, receiving or obtaining of instruments or other articles peculiarly adapted for the counterfeiting or altering of currency. ”

² The Decision was published in the Official Gazette of the Republic of Montenegro 36/2006 of 5 June 2006.

The new Directive 2014/62/EU³ of the European Parliament and of the Council of 15 May 2014 on the protection of the Euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA⁴, entered into force on 22 May 2014. The Directive is aimed at strengthening the protection of the Euro against counterfeiting by criminal law measures; its provisions supplement and facilitate the implementation of the 1929 Geneva Convention. Despite the fact that the general provisions of the Directive do not impose the duty to sign or ratify the Geneva Convention, its Preamble states that the Directive supplements and helps the implementation of the Geneva Convention and that accordingly it is important for the Members States to ratify it. The reason for this is lies in the fact that the Geneva Convention primarily sets out the fundamental rules for suppression, prosecution and punishment of counterfeiting and provides for the principle of non-discrimination between the national and foreign currency.

The relevant provisions relating to counterfeiting criminal offences are essentially the same as those provided in the replaced Framework Decision. The novelty is *inter alia* the provision allowing the use of special investigative tools, used for organized crime and for serious counterfeiting cases, which improves the quality of cross-border investigations.

Article 2 of the Directive defines the notions of legal person and currency by respecting the fundamental principle of non-discrimination, as provided by the Geneva Convention.

Article 3 of the Directive sets out the conducts that constitute criminal offences:

“1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:

(a) any fraudulent making or altering of currency, whatever means are employed;

(b) the fraudulent uttering of counterfeit currency;

(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;

(d) the fraudulent making, receiving, obtaining or possession of

(i) instruments, articles, computer programs and data, and any other means peculiarly adapted for the counterfeiting or altering of currency; or

(ii) security features, such as holograms, watermarks or other components of currency which serve to protect against counterfeiting.

2. Member States shall take the necessary measures to ensure that the conduct referred to in points (a), (b) and (c) of paragraph 1 is punishable also with respect to notes 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 competent authorities may issue notes or coins.

³ The Directive was published in the Official Journal of the European Union L 151/1

⁴ The Decision was published in the Official Journal of the European Union L 140 , 14/06/2000 P. 0001 - 0003

3. Member States shall take the necessary measures to ensure that the conduct referred to in paragraphs 1 and 2 is punishable also in relation to notes and coins which are not yet issued, but are designated for circulation as legal tender."

Articles 4 and 5 of the Directive provide for punishment of incitement, aiding and abetting and attempt, and lay out the sanctions for natural persons. The sanctions must be effective, proportionate and dissuasive, and include imprisonment. Furthermore, some of the counterfeiting acts should be punishable by a maximum sanction which provides for imprisonment ranging from five to eight years.

Articles 6 and 7 of the Directive provide for liability of legal persons for criminal offences committed for their benefit by any person acting either individually or as part of an organ of the legal person who has a leading position within the legal person based on special powers. A legal person can also be held liable where the lack of supervision or control by a responsible person has made possible the commission of an offence for its benefit. Under Article 6, liability of a legal person does not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offences.

Article 8 provides for the application of the universal principle with regards to jurisdiction to prosecute counterfeiting offences, while excluding the application of the principle of double criminalisation as a condition for exercising jurisdiction in relation to counterfeiting criminal offences.

Article 9 is a novelty in relation to the replaced Framework Decision. It provides that the Member states should ensure the availability of effective investigative tools, or measures of secret surveillance, for counterfeiting criminal offences, such as those which are used in organized crime or other serious crime cases. Given the sensitivity of the application of secret surveillance measures and their implications on human rights, the Preamble of the Directive states that the use of the measures of secret surveillance should be adapted to the nature and seriousness of criminal offences under investigation.

This Directive is a part of a comprehensive legal framework which covers not only criminal law measures but also provisions relating to administrative measures and training:

- Regulation 974/98 of 3 May 1998 on the introduction of the Euro, which requires all Member States to ensure adequate sanctions against counterfeiting and falsification of the Euro banknotes and coins;
- Regulation 1338/2001 of 28 June 2001 which provides for necessary measures against counterfeiting;
- Decision of the European Central Bank ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of the Euro banknotes;
- Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of the Euro coins and handling of the Euro coins unfit for circulation;
- Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to the Euro coins;

- Council Decision 2005/511/JHA of 12 July 2005 on protecting the Euro against counterfeiting, by designating the Europol as the Central Office for combating the Euro counterfeiting.

4. NATIONAL LEGAL FRAMEWORK AND COMPLIANCE WITH INTERNATIONAL INSTRUMENTS AND THE EUROPEAN UNION LEGISLATION

Montenegrin legal framework for protection against money counterfeiting, which is almost fully harmonized with international instruments and the European Union legislation, includes the Criminal Code⁵, Law on Liability for Legal Persons for Criminal Offences⁶ and the Criminal Procedure Code⁷.

The notion of money is defined in Article 142 paragraph 26 of the Criminal Code:

“Money is metal or paper money or money made from another material that is in circulation in Montenegro or in another state on the basis of law.”

This definition is in line with the definition given in the 1929 Geneva Convention and Directive 2014/62/EU, regardless of the fact that these two instruments employ the term “currency”. The reasons why the term money is used is that legislation governing monetary policy of Montenegro employs the term money or the Euro, not the term currency. As noted above, the Euro is the official currency in Montenegro and thus there is no reason to fear for its protection against counterfeiting under criminal law. On the other hand, and this is more important than linguistic interpretation, the above noted definition means that Montenegro respects the fundamental principle of non-discrimination between local and foreign money, as described above.

Chapter XXIII sets out criminal offences against payment operations and business operations. Criminal offences criminalised by Articles 258 and 262⁸ are in line with the

⁵ Official Gazette of the Republic of Montenegro 70/2003,13/2004, 47/2006 and Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013

⁶ Official Gazette of the Republic of Montenegro 2/2007, 13/2007 and 30/2012

⁷ Official Gazette of Montenegro 57/2009 and 49/2010

⁸**Article 258 of the Criminal Code**

Counterfeiting money

1) Anyone who makes false money with the intention of releasing it into circulation as genuine one or who alters real money with the same intention, shall be punished by an imprisonment sentence of two to twelve years.

(2) Anyone who acquires, keeps, transports, imports or exports false money with the intention of releasing it into circulation as genuine or who releases false money into circulation shall be punished by an imprisonment sentence of two to ten years.

(3) If as a result of an act referred to in paragraphs 1 and 2 of this Article false money is made, changed, released into circulation or acquired and it exceeds the amount of € 15.000 or an equivalent amount in foreign currency, the perpetrator shall be punished by an imprisonment sentence of five to fifteen years.

(4) Anyone who accepted false money as genuine and after learning it is false releases it into circulation or anyone who knows that money is counterfeited or that false money is released into circulation and does not report it, shall be punished by a fine or imprisonment for a maximum term of one year.

(5) False money shall be confiscated.

Geneva Convention and thereby with the Directive 2014/62/EU. Full compliance of criminal offences was achieved through the 2010 and 2013 amendments to the Criminal Code. These amendments ensured *inter alia* harmonization with the Framework Decision 2000/383/JHA⁹ and broadened the acts of commission so as to include the possession, transfer, import or export of counterfeited money. A new provision was added criminalising the making of the Euro in contravention to legislation and decisions governing the making thereof (Article 258). Furthermore, making, procurement, sale, possession or giving of holograms or other component parts of money serving to ensure protection against counterfeiting were established as criminal offence (Article 262).

The above mentioned criminal offences are punishable by effective, dissuasive and proportionate penalties that are in line with those provided for by the Directive 2014/62/EU. Furthermore, the general provisions of the Criminal Code provide for punishment of enticement, aiding and abetting and attempt to commit these criminal offences.

The jurisdiction of criminal legislation of Montenegro is set out in Chapter XII of the Criminal Code. The provisions of this Chapter incorporate the universal principle of jurisdiction of criminal legislation of Montenegro as required by the Directive 2014/62/EU.

Liability of legal persons and their sanctioning for criminal offences of counterfeiting are governed by the Law on Liability of Legal Persons for Criminal Offences. This Law is fully in line with the Directive 2014/62/EU. It sets out the conditions for liability of legal persons for criminal offences, criminal sanctions that may be imposed against legal persons and criminal procedure in which such sanctions may be imposed. A part of the sanctions that the Member States may choose to adopt under the Directive are provided for by this *lex specialis*. Together with other available sanctions they form a pool of effective, dissuasive and proportionate sanctions.

The Criminal Procedure Code, as a part of the criminal law framework for protection of money against counterfeiting deserves a special mention here in view of the novelty introduced by the Directive 2014/62/EU. Namely, for the purpose of further strengthening of the anti-counterfeiting legislation and ensuring successful investigations (*as noted above in the part discussing EU legislation*), the Directive mandates the states to

(6) False money in terms of this criminal offence shall also be considered the money produced in manner and of the material as real money, contrary to regulations governing the production of money.

Article 262 of the Criminal Code

Making, acquiring and giving to another of means and materials for counterfeiting

(1) Anyone who makes, acquires, sells, keeps for use or gives to another for use means and materials for making false money, payment cards or false securities shall be punished by an imprisonment sentence of six months to five years.

(2) The sentence referred to in paragraph 1 of this Article shall also be imposed on the ones who, in view of making false money, make, sell, keep or give to another holograms or other integral parts of money serving for protection against counterfeiting.

(3) Anyone who makes, acquires, sells, keeps for use or gives to another for use means for making false value bearing marks shall be punished by a fine or imprisonment sentence not exceeding two years.

(4) Means referred to in paragraph 1 and 3 of this Article shall be seized.

⁹ See Part 3 THE EUROPEAN UNION LEGISLATION

provide the competent authorities with the possibility to use effective investigative tools for the fight against this type of criminal activities. The measures referred to here are measures of secret surveillance such as eavesdropping, secret video and audio surveillance, checks of bank accounts etc. The Criminal Procedure Code of Montenegro,¹⁰ only partially covers the application of such measures in regard to criminal offences established by the Directive in the part relating to measures of secret surveillance. Measures of secret surveillance may only be applied in relation to Article 258 paragraph 1, 2 and 3 of the Criminal Code on account of the sentence that may be imposed. However, in view of the sentences that may be imposed in relation to criminal offences established by Article 258 paragraph 1, 2 and 3, and the fact that the Directive proper provides that these are tools used in relation to criminal offences of organized crime or other serious criminal offences, as well as the fact that the use of these tools must always be adapted to the nature and seriousness of criminal offences, it seems that the national legislation is in line with the Directive in this part. On the other hand, secret surveillance measures provided for by the Criminal Procedure Code may not be applied in relation to the criminal offence of counterfeiting of tools and materials for making of fake money and protection against counterfeiting established by Article 262 of the Criminal Code.

Although the duty to carry out this analysis stems from the Action Plan for Chapter 24, which covers criminal law aspects of counterfeiting of the Euro, it should be noted that a series of other measures have been taken with a view to ensuring protection of the Euro against counterfeiting, with clear and efficient results. The most prominent among these measures include the strengthening of:

- non-criminal regulatory framework by enactment of legislation which defines suspicious the Euro banknotes and coins and governs treatment of suspicious and forged specimens of the Euro banknotes and coins and exchange of information and cooperation with national and international institutions;
- the institutional framework by establishment of tri national centres – the National Centre for the Fight Against Counterfeiting, National Centre for Banknote Analysis and National Centre for Coin Analysis.

5. CONCLUSIONS AND RECOMMENDATIONS

Pursuant to the above noted and the table of compliance, it seems justified to conclude that the protection of the Euro against counterfeiting provided by criminal legislation is at a high level. In this way Montenegro demonstrates its readiness to fight this criminal activity.

Furthermore, it is clear that since receiving the Report on analytical overview of legislation for Chapter 24 Montenegro has incorporated all recommendations stemming therefrom and from other relevant reports, as well as recommendations given by experts of relevant the European institutions. Namely, the 2013 amendments to the Criminal Code have resulted in full compliance with the relevant EU legislation (Framework Decision 2000/383/JHA). By broadening the act of commission of criminal

¹⁰Measures of secret surveillance are set out in Articles 157-162 of the Criminal Procedure Code.

offence of counterfeiting so as to include export and import of counterfeited money from and in Montenegro, the Criminal Code now covers the whole spectre of criminal offences established by international standards and EU legislation in this field. On the other hand, following the adoption of the Directive 2014/62/EU the European Parliament and the European Council adopted, the Member States have been imposed a duty to demonstrate full commitment to enhanced fight against counterfeiting. This duty is also relevant to Montenegro as it undergoes the process of implementing recommendations for accession into the European Union.

As noted above, the Directive 2014/62/EU requires the states to ensure the use of special investigative tools for all criminal offences set out in the Directive. Although the recommendations of the experts were aimed at increase of sentences for criminal offence referred to in Article 262 paragraph 1 and 2 of the Criminal Code, it seems that the Criminal Procedure Code offers more room, as it enumerates and limits the criminal offences in relation to which measures of secret surveillance may be applied.

The first and foremost instrument at the international plane for the fight against counterfeiting is the International Convention for the Suppression of Counterfeiting Currency of 20 April 1929. Some past circumstances have resulted in Montenegro not being a state party to this Convention; despite this, its legislation is fully in line with this Convention and the Convention needs to be ratified as soon as practicable. In this way, Montenegro will join the ranks of a large number of states in which this Convention is a part of the legal framework, including the Member States of the European Union that are amenable to the Directive 2014/62/EU. Furthermore, the ratification of this Convention will mean that a recommendation stemming from the Report on analytical overview legislation Montenegro for Chapter 32, concerning the issue of counterfeiting of the Euro outside of the criminal law framework, has been implemented. It should be noted that one of the conclusions of the Council of the European Union¹¹ was that the Member states and the European Commission should invest efforts to ensure that third countries sign this Convention.

In order to ensure full legislative protection of the Euro, i.e. money against counterfeiting, the following recommendations should be implemented:

- ***Ratify the International Convention for the Suppression of Counterfeiting Currency of 20 April 1929***
- ***Amend the part of the Criminal Procedure Code relating to the range of criminal offences in relation to which measures of secret surveillance may be applied.***

¹¹ Council conclusions on strengthening cooperation and information exchange in the sphere of fighting currency counterfeiting, especially the euro 3135th Justice and Home Affairs Council meeting Brussels, 13 and 14 December 2011

| DIRECTIVE 2014/62/EU | LEGAL FRAMEWORK OF MONTENEGRO | HARMONISATION |
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| <p>Article 2 Definitions</p> <p>(a) 'currency' means notes and coins, the circulation of which is legally authorised, including euro notes and coins, the circulation of which is legally authorised pursuant to Regulation (EC) No 974/98;</p> <p>(b) 'legal person' means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.</p> | <p>Article 142 para. 26 of the Criminal Code Money means metal coins or paper money or money made of some other material that is in circulation in Montenegro or a foreign country under law.</p> <p>Article 4 para. 1 item 1 of the Law on Criminal Liability of Legal entities</p> <p>The legal entity shall be a business organization, foreign company and part of a foreign company, public utility company, public institution, domestic and foreign non-government organization, investment fund, other fund (with exception of a fund exclusively performing public authorities), sports organization, political party, as well as other association or organization that within its operations regularly or occasionally gains or obtains funds and manage them.</p> <p>Article 2 of the Law on Criminal Liability of Legal entities</p> <p>(1) The Republic of Montenegro (hereinafter: Montenegro), state bodies and bodies of local self-government cannot be liable for a criminal offense.</p> | <p>Fully harmonised</p> |

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| | <p>(2)The legal entity vested with public authorities by law shall not be liable for a criminal offense committed while performing such authorities.</p> | |
| <p>Article 3 Offences</p> <p>1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence,</p> | <p>Article 258 para. 1, 2 and 4 of the Criminal Code</p> <p>Counterfeiting money</p> <p>1) Anyone who makes false money with the intention of releasing it into circulation as</p> | <p>Fully harmonised</p> |

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| <p>when committed intentionally: (a) any fraudulent making or altering of currency, whatever means are employed; (b) the fraudulent uttering of counterfeit currency; (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;</p> | <p>genuine one or who alters real money with the same intention, shall be punished by an imprisonment sentence of two to twelve years. (2) Anyone who acquires, keeps, transports, imports or exports false money with the intention of releasing it into circulation as genuine or who releases false money into circulation shall be punished by an imprisonment sentence of two to ten years. (4) Anyone who accepted false money as genuine and after learning it is false releases it into circulation or anyone who knows that money is counterfeited or that false money is released into circulation and does not report it, shall be punished by a fine or imprisonment for a maximum term of one year.</p> | |
| <p>(d) the fraudulent making, receiving, obtaining or possession of (i) instruments, articles, computer programs and data, and any other means peculiarly adapted for the counterfeiting or altering of currency; or (ii) Security features, such as holograms, watermarks or other components of currency which serve to protect against counterfeiting.</p> | <p>Article 262 of the Criminal Code Making, acquiring and giving to another of means and materials for counterfeiting (1) Anyone who makes, acquires, sells, keeps for use or gives to another for use means and materials for making false money, payment cards or false securities shall be punished by an imprisonment sentence of six months to five years. (2) The sentence referred to in paragraph 1 of this Article shall also be imposed on the ones who, in view of making false money, make, sell, keep or give to another holograms or other integral parts of money</p> | <p>Fully harmonised</p> |

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| | <p>serving for protection against counterfeiting.</p> <p>(3) Anyone who makes, acquires, sells, keeps for use or gives to another for use means for making false value bearing marks shall be punished by a fine or imprisonment sentence not exceeding two years.</p> <p>(4) Means referred to in para. 1 and 3 of this Article shall be seized.</p> | |
| <p>2. Member States shall take the necessary measures to ensure that the conduct referred to in points (a), (b) and (c) of paragraph 1 is punishable also with respect to notes 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 competent authorities may issue notes or coins.</p> | <p>Article 258 para. 6 of the Criminal Code</p> <p>6) False money in terms of this criminal offence shall also be considered the money produced in manner and of the material as real money, contrary to regulations governing the production of money.</p> | <p>Fully harmonised</p> |
| <p>3. Member States shall take the necessary measures to ensure that the conduct referred to in paragraphs 1 and 2 is punishable also in relation to notes and coins which are not yet issued, but are designated for circulation as legal tender.</p> | <p>Article 258 para. 6 of the Criminal Code</p> <p>6) False money in terms of this criminal offence shall also be considered the money produced in manner and of the material as real money, contrary to regulations governing the production of money.</p> | <p>Fully harmonised</p> |

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| <p>Article 4 Incitement, aiding and abetting, and attempt</p> <p>1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an offence referred to in Article 3 is punishable as a criminal offence.</p> <p>2. Member States shall take the necessary measures to ensure that an attempt to commit an offence referred to in points (a), (b) or (c) of Article 3(1), Article 3(2), or Article 3(3) in relation to conduct referred to in points (a), (b) and (c) of Article 3(1) is punishable as a criminal offence.</p> | <p>Art. 20, 24, 25 and 27 of the Criminal Code</p> <p>Attempt Article 20</p> <p>(1) Anyone who with guilty mind commences the commission of a criminal offence, but does not finish it, shall be punished for attempted criminal offence punishable under law by an imprisonment sentence of five years or more, whereas other attempted criminal offence shall be punishable solely when explicitly provided for by law than an attempt shall be punishable.</p> <p>(2) Use of certain tool or application of a certain manner of commission shall also be deemed a commenced criminal offence if the law lays them down as elements of criminal offence.</p> <p>(3) An offender shall be sanctioned for an attempted offence by sentence laid down for criminal offence thereof, but s/he may be punished more leniently.</p> <p>Incitement Article 24</p> <p>(1) Anyone who with guilty mind incites another to commit a criminal offence shall be punished as if s/he has committed it by himself/herself.</p> <p>(2) Anyone who with guilty mind incites another to commit a criminal offence which is punished by law with imprisonment</p> | <p>Fully harmonised</p> |
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sentence of five years or more shall be punished for an attempted criminal offence if the offence has not been attempted at all.”

**Aiding
Article 25**

(1) Anyone who with guilty mind aids another person in the commission of a criminal offence shall be punished as if s/he has committed it, but may be punished more leniently as well.

(2) The following, in particular, shall be deemed as aiding in the commission of a criminal offence: giving instructions or counselling about how to commit a criminal offence, supply of means for committing a criminal offence, creation of conditions or removal of obstacles for committing a criminal offence as well as the promise given prior to the commission of the offender to conceal the criminal offence, offender, means for committing the criminal offence, the traces of criminal offence and the proceeds gained through the commission of the criminal offence.

**Sentencing inciters and aides for an attempt and minor criminal offence
Article 27**

(1) If a criminal offence remained an attempt the inciter and aide shall be punished for an attempt..

(2) If an offender has committed a minor

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| | <p>criminal offence than the one for which s/he has been incited or aided, and which would have been comprised in it, the inciter and aider thereof shall be punished for the criminal offence which has been committed.</p> <p>(3) The provision of paragraph 2 of this Article shall not be applied if the inciter thereof would have been punished more severely by applying the provision of Article 24, Paragraph 2, of the this Code.</p> | |
| <p>Article 5 Sanctions for natural persons</p> <p>1. Member States shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is punishable by effective, proportionate and dissuasive criminal sanctions.</p> <p>2. Member States shall take the necessary measures to ensure that the offences referred to in point (d) of Article 3(1), the offences referred to in Article 3(2), and the offences referred to in Article 3(3) in relation to conduct referred to in point (d) of Article 3(1) shall be punishable by a maximum sanction which provides for imprisonment.</p> <p>3. Member States shall take the necessary measures to ensure that the offences referred to in point (a) of Article 3(1) and in Article 3(3) in relation to conduct referred to in point (a) of Article 3(1) shall be punishable by a maximum term of imprisonment of at least eight years.</p> | <p>Art. 258 and 262 of the Criminal Code</p> <p>Article 258 para. 1, 2 and 4 of the Criminal Code</p> <p>Counterfeiting money</p> <p>1) Anyone who makes false money with the intention of releasing it into circulation as genuine one or who alters real money with the same intention, shall be punished by an imprisonment sentence of two to twelve years.</p> <p>(2) Anyone who acquires, keeps, transports, imports or exports false money with the intention of releasing it into circulation as genuine or who releases false money into circulation shall be punished by an imprisonment sentence of two to ten years.</p> <p>(3) Where through an offence referred to in paras. 1 and 2 of this Article false money is made, altered, released into circulation or acquired and it exceeds the amount of fifteen thousand euro or an equivalent amount in</p> | <p>Fully harmonised</p> |

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| <p>4. Member States shall take the necessary measures to ensure that the offences referred to in points (b) and (c) of Article 3(1) and in Article 3(3) in relation to conduct referred to in points (b) and (c) of Article 3(1) shall be punishable by a maximum term of imprisonment of at least five years.</p> <p>5. In relation to the offence referred to in point (b) of Article 3(1), Member States may provide for effective, proportionate and dissuasive criminal sanctions other than that referred to in paragraph 4 of this Article, including fines and imprisonment, if the counterfeit currency was received without knowledge but passed on with the knowledge that it is counterfeit.</p> | <p>foreign currency, the offender shall be punished by an imprisonment sentence of five to fifteen years.</p> <p>(4) Anyone who accepted false money as genuine and after learning it is false releases it into circulation or anyone who knows that money is counterfeited or that false money is released into circulation and does not report it, shall be punished by a fine or imprisonment for a maximum term of one year.</p> <p>(5) False money shall be seized.</p> <p>(6) False money in terms of this criminal offence shall also be considered the money produced in the manner and of the material as real money, contrary to regulations governing the production of money.</p> <p>Article 262 of the Criminal Code</p> <p>Making, acquiring and giving to another of means and materials for counterfeiting</p> <p>(1) Anyone who makes, acquires, sells, keeps for use or gives to another for use means and materials for making false money, payment cards or false securities shall be punished by an imprisonment sentence of six months to five years.</p> <p>(2) The sentence referred to in paragraph 1 of this Article shall also be imposed on the ones who, in view of making false money, make, sell, keep or give to another holograms or other integral parts of money serving for protection against counterfeiting.</p> | |
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| | <p>(3) Anyone who makes, acquires, sells, keeps for use or gives to another for use means for making false value bearing marks shall be punished by a fine or imprisonment sentence not exceeding two years.</p> <p>(4) Means referred to in para. 1 and 3 of this Article shall be seized.</p> | |
| <p>Article 6 Liability of legal persons</p> <p>1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 3 and 4 committed for their benefit by any person acting either individually or as part of an organ of the legal person who has a leading position within the legal person based on</p> <p>(a) a power of representation of the legal person;</p> <p>(b) an authority to take decisions on behalf of the legal person; or</p> <p>(c) an authority to exercise control within the legal person.</p> <p>2. Member States shall ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of that legal person by a person under its authority.</p> | <p>Article 5 of the Law on Criminal Liability of Legal entities</p> <p>Ground for Liability of the Legal Entity The legal entity shall be liable for a criminal offense of a responsible person who, while acting within the scope of his/her authorities in the name of the legal entity, and with intention of obtaining some benefit for that legal entity, committed the criminal offense. The legal entity shall be liable even if that responsible person's action was contrary to the legal entity's business policy or orders.</p> <p>Article 6 of the Criminal Code</p> <p>Manner of commission of a criminal offence</p> <p>(1) Criminal offence can be committed by an act or an omission.</p> <p>(2) Criminal offence is committed by omission if an offender has failed to do what he was obliged to do.</p> <p>(3) Criminal offence can also be done by omission even if the law does not define it as</p> | <p>Fully harmonised</p> |

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| <p>3. Liability of a legal person under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offences referred to in Articles 3 and 4.</p> | <p>omission if a offender has satisfied elements of criminal offence by failing to do what he was obliged to do.</p> <p>Article 6 para. 2 of the Law on Criminal Liability of Legal entities</p> <p>(2)The liability of the legal entity shall not exclude criminal liability of the responsible person for the committed criminal offense.”</p> | |
| <p>Article 7 Sanctions for legal persons Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as</p> <ul style="list-style-type: none"> (a)exclusion from entitlement to public benefits or aid; (b)temporary or permanent disqualification from the practice of commercial activities; (c)placing under judicial supervision; (d)judicial winding-up; (e)temporary or permanent closure of establishments which have been used for committing the offence. | <p>Art. 12 para. 1, 13 and 28 para. 1 of the Law on Criminal Liability of Legal entities</p> <p>Types of Sanctions Article 12 Sanctions that may be imposed on a legal entity for a criminal offense shall be as follows:</p> <ul style="list-style-type: none"> 1)Penalty; 2)Suspended sentence; 3)Safety measures. <p>Types of Penalties Article 13 (1)The following penalties may be imposed on a legal entity:</p> <ul style="list-style-type: none"> 1)Fine; 2)Termination of a legal entity. <p>Types of Safety Measures Article 28 (1)The following safety measures may be imposed for criminal offenses that legal</p> | <p>Fully harmonised (type of sanctions laid down in Directive are set as possibility i.e. they are not mandatory)</p> |

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| | <p>entities are liable for:</p> <ol style="list-style-type: none"> 1) Design and implementation of the program of effective, necessary and reasonable measures; 2) Confiscation of objects; 3) Publication of the judgment; 4) Prohibition to conduct certain business or other activities. | |
| <p>Article 8 Jurisdiction</p> <p>1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4, where</p> <ol style="list-style-type: none"> (a) the offence is committed in whole or in part within its territory; or (b) the offender is one of its nationals. <p>2. Each Member State whose currency is the euro shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 committed outside its territory, at least where they relate to the euro and where</p> <ol style="list-style-type: none"> (a) the offender is in the territory of that Member State and is not extradited; or (b) counterfeit euro notes or coins related to the offence have been detected in the territory of that Member State. <p>For the prosecution of the offences referred to in point (a) of Article 3(1), Article 3(2) and (3), where they relate to point (a) of Article 3(1), as well as</p> | <p>Art. 133-137 of the Criminal Code</p> <p>Applicability of criminal legislation with respect to the time</p> <p>Article 133</p> <p>(1) The law in force at the time of commission of a criminal offence shall apply to an offender.</p> <p>(2) Should it happen that after commission of a criminal offence the law be modified once or more times, applied shall be the law that is the most favourable to the offender.</p> <p>(3) To an offender of a criminal offence laid down by the law of a limited applicability with respect to the time, applied shall be that law regardless of when the offender in question is to be tried, if not otherwise provided by that law.</p> <p>(4) Security measures and corrective measures prescribed by a new law may be applied to an offender if not less favourable to him/her than those that could have been applied under the law in force at the time of commission of a criminal offence.”</p> | <p>Fully harmonised</p> |

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| <p>incitement, aiding and abetting, and attempt to commit those offences, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were committed.</p> | <p>Applicability of Criminal Legislation in the Territory of Montenegro Article 134 (1) Criminal legislation of Montenegro shall be applicable to anyone who commits a criminal offence in its territory. (2) Criminal legislation of Montenegro shall be also applicable to anyone who commits a criminal offence on board of a national ship, regardless of where the ship was located at the time of commission of a criminal offence. (3) Criminal legislation of Montenegro shall also be applicable to anyone who commits a criminal offence in a domestic civil aircraft while at flight or in a domestic military aircraft regardless of where the aircraft was located at the time of commission of a criminal offence.”</p> <p>Applicability of criminal legislation of Montenegro to perpetrators of specific criminal offences committed abroad Article 135 Criminal legislation of Montenegro shall be applicable to anyone who commits abroad a criminal offence referred to in Articles 357 to 369, Articles 371 to 374 and Articles 447 to 449 the present Code or Article 258 of this Code if it refers to the counterfeiting of money that at the time of commission of the criminal offence was the legal means of payment in Montenegro.</p> | |
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Applicability of criminal legislation of Montenegro to a national of Montenegro who commits a criminal offence abroad
Article 136

(1) Criminal legislation of Montenegro shall also be applicable to a national of Montenegro if s/he commits abroad other criminal offence than those referred to in Article 135 of the present Code, should s/he be apprehended in the territory of Montenegro or extradited to it.

(2) Under conditions referred to in paragraph 1 above, the criminal legislation of Montenegro shall also be applicable to an offender who became a national of Montenegro after s/he had committed the criminal offence.

Applicability of criminal legislation of Montenegro to a foreigner who commits a criminal offence abroad
Article 137

(1) Criminal legislation of Montenegro shall also be applicable to a foreigner who, outside the territory of Montenegro, commits a criminal offence against it or its national for criminal offences other than those referred to in Article 135 of the present Code, or commits criminal offence referred to in Art. 276a, 276b, 422, 422a, 423 i 424 of present Code, in which

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| | <p>commission national of Montenegro was involved should s/he be apprehended in the territory of Montenegro or extradited to it.</p> <p>2) Criminal legislation of Montenegro shall also be applicable to a foreigner who commits abroad, against a foreign country or a foreigner, a criminal offence punishable under the law of the country it was committed in by an imprisonment of five years or more should s/he be apprehended in the territory of Montenegro but not extradited to a foreign country. If not otherwise provided by the present Code, a court may not in such a case impose a sentence more severe than one provided by the law of the country in which the criminal offence was committed.</p> | |
| <p>Article 9 Investigative tools Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4.</p> | <p>Article 158 of the Criminal Procedure Code</p> <p>Criminal Offences for Which Measures of Secret Surveillance May Be Ordered</p> <p>Article 158 The measures referred to in Article 157 of the present Code may be ordered for the following criminal offences:</p> | <p>Partially harmonised</p> |

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| | <p>1) for which a prison sentence of ten years or a more severe penalty may be imposed;</p> <p>2) having elements of organized crime;</p> <p>3) having elements of corruption, as follows: money laundering, causing false bankruptcy, abuse of assessment, passive bribery, active bribery, disclosure of an official secret, trading in influence, as well as abuse of authority in economy, abuse of an official position and fraud in the conduct of an official duty with prescribed imprisonment sentence of eight years or a more serious sentence.</p> <p>4) abduction, extortion, blackmail, mediation in prostitution, displaying pornographic material, usury, tax and contributions evasion, smuggling, unlawful processing, disposal and storing of dangerous substances, attack on a person acting in an official capacity during performance on an official duty, obstruction of evidences, criminal association, unlawful keeping of weapons and explosions, illegal crossing of the state border and smuggling in human beings.</p> <p>5) against the security of computer data.”</p> | |
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