



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING PAPER**

***Annex II to***

**The Report from the Commission based on Article 14 of the Council Framework  
Decision of 28 May 2001 combating fraud and counterfeiting of non cash means  
of payment**

**{COM(2004) 346 final}**

## COMMISSION STAFF WORKING PAPER

### Annex II to

The Report from the Commission based on Article 14 of the Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non cash means of payment<sup>1</sup>

### TABLES 2-6

Table 2 Offences related to payment instruments (Article 2)

Article of the Framework Decision	Article 2 (a) (theft or other unlawful appropriation of a payment instrument)	Article 2 (b) (counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)	Article 2 (c) (receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)	Article 2 (d) (fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)
Austria	Replied: legislative process of transposition expected to be completed by end 2003.			
Belgium	Considers covered by existing national legislation (but no details provided)			-
Denmark	No reply			-

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<sup>1</sup> OJ L149, 2.06.2001, p. 1

Article of the Framework Decision	Article 2 (a) <b>(theft or other unlawful appropriation of a payment instrument)</b>	Article 2 (b) <b>(counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)</b>	Article 2 (c) <b>(receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)</b>	Article 2 (d) <b>(fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)</b>
Germany <sup>2</sup>	Section 242 (theft), 246 (other unlawful appropriation) criminal code.	Section 151(5), 146(1)(1) and 152 (traveller's cheques) criminal code.  Section 267(1) (other cheques and bills of exchange) criminal code.  Section 152a(1)(1) (eurocheques, credit cards, eurocheque cards) criminal code.  Section 269(1) and 270 (other cards issued by financial institutions) criminal code.	Obtaining, sale or transfer:  *of counterfeit or falsified eurocheques, credit cards and eurocheque cards: section 152(a) criminal code;  *of counterfeit or falsified traveller's cheques: section 151(5), 146 <i>et seq.</i> criminal code;  *of stolen or otherwise unlawfully appropriated payment instruments: sections 246, 257, 259 and 261 criminal code.	Is generally punishable under legal provisions covering fraud in general and the related additional provisions:  *use of counterfeit or falsified traveller's cheques: sections 151(5), 146(1)(3), 147 and 152 of criminal code;  *use of counterfeit or falsified other cheques or bill of exchange: section 267(3) of criminal code;

<sup>2</sup> Germany has prepared the Act Implementing the European Council Framework decision of 28 May 2001 combating fraud and counterfeiting of non cash means of payment. On 29 April 2003 the bill was forwarded to the Lander judicial authorities and associations for comments, and the legislative process should be concluded by the end of the year. The draft bill proposes amending the provisions regarding the counterfeiting of money and stamps (sections 146 *et seq.* of criminal code) to bring all the payment instruments listed in Article 1 of the Framework Decision under its comprehensive protection. The most important amendment in this connection is the insertion of section 152b of the criminal code (the counterfeiting of payment cards, cheques and bills of exchange). At present the comprehensive protection of section 146 *et seq.* of the criminal code only applies to traveller's cheques (section 151(5)) and guarantee cards (section 152(a)). The new section 152b will cover non-guaranteed payment cards (such as bankcards) and individually issued cheques and bills of exchange. As these payment instruments require a different form of protection, the draft bill provides for a different criminal law framework from that applying to section 152a and 146 of criminal code (in conjunction with section 151(5) of criminal code). The offence will not be fleshed out, but will be governed by the same conditions covering the falsification of documents (section 267 of criminal code). To implement the second indent of the second subparagraph of Article 4 of the Framework Decision, the draft bill proposes adding a paragraph to section 263a of the criminal code. Section 263(1) and (2) cover computer fraud. The new section 263a(3) will make the preparation of computer fraud a specific criminal offence: the aim is to render criminally liable anyone who, in preparation of computer fraud, develops, obtain for personal use or the use of third parties, offers for sale, stores or gives to others computer programmes that, by their nature, can be used to commit the offence.

Article of the Framework Decision	Article 2 (a) (theft or other unlawful appropriation of a payment instrument)	Article 2 (b) (counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)	Article 2 (c) (receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)	Article 2 (d) (fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)
Germany (continued)			<p>*of counterfeit or falsified other cards issued by financial institutions, cheques or bills of exchange are covered by general provisions: sections 261 (money laundering), 263 (fraud), 267 (falsification of documents) and 269 (falsification of legally relevant data) in relation with section 27 (aiding and abetting) of the criminal code.</p> <p>Transport and possession.</p> <p>The instrument may have been obtained as the result of a criminal offence, in which case the perpetrator can be prosecuted for procurement (sections 151(5), 146(1)(2), 154a(1)(2) of criminal code), counterfeiting (sections 151(5), 146(1)(1), 152a(1)(1), 267(1), 269(1) and 270 of criminal code), theft or misappropriation (sections 242 and 246 of criminal code), receiving of stolen property (section 259 of criminal code) or money laundering (section 261 of criminal code).</p>	<p>*use of counterfeit eurocheques, credit cards, eurocheque cards: section 152a(1)(2) of criminal code;</p> <p>*use of other cards issued by financial institutions: sections 269(1) and 270 of criminal code.</p> <p>The use of stolen or otherwise unlawfully obtained instruments of payment : section 263(1) of criminal code.</p>
Germany (continued)				
Greece	Replied: informed COM that a special legal preparatory committee was expected to hand over its work in the middle of July.	-	-	-

Article of the Framework Decision	Article 2 (a) (theft or other unlawful appropriation of a payment instrument)	Article 2 (b) (counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)	Article 2 (c) (receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)	Article 2 (d) (fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)
Spain	<p>Article 234 and 237 (theft) of the penal code;</p> <p>Article 623(1) (theft if is a petty crime) of the penal code;</p> <p>Article 252 (other unlawful appropriation);</p> <p>Article 623(4) (other unlawful appropriation if is a petty crime);</p> <p>no specific reference to payment instruments.</p>	<p>Article 386 in conjunction with Article 387 (counterfeiting of credit cards, traveller's cheque and eurocheques) of the penal code.</p> <p>No specific reference to eurocheque cards, other cards issued by financial institutions, cheques and bills of exchange.</p> <p>The falsification (altering) of payment instruments is not covered by the provisions of the Spanish penal code, with exception for the bills of exchange: Article 392 of the penal code.</p>	<p>Article 298 (receiving) of penal code.</p> <p>The transport, possession, sale or transfer to another person, are not expressly covered.</p> <p>No specific reference to payment instruments.</p>	<p>Article 248 (fraud)(in general), Article 250 (3)(aggravating circumstances)(use of cheque and bill of exchange) of the penal code. No specific reference to credit cards, eurocheque cards, other issued by financial institutions, traveller's cheque and eurocheque.</p> <p>Article 238 (robbery) in conjunction with Article 239 (4)(aggravated robbery using false keys) and Article 239 final paragraph (credit cards) of the penal code.</p>
France	<p>Articles 311-1, 311-3 Penal Code;</p> <p>no specific reference to other unlawful appropriation</p>	<p>Articles L 163-3 (cheques), L163-4 (credit cards) code monétaire et financier: no specific reference to eurocheque cards, travellers cheque, bills of exchange, other cards issued by financial institution.</p>	<p>Article L163-3 code monétaire &amp; financier (receiving of counterfeited and falsified cheques), L163-4 code monétaire &amp; financier (receiving of counterfeited and falsified credit cards), 321-1 penal code (in general receiving, sale, transfer, obtaining, transport and possession of all payment instruments)</p>	<p>Article L 163-3 code monétaire &amp; financier (fraudulent use of counterfeited and falsified cheques), 313-1 penal code (in general all payment instrument)</p>

Article of the Framework Decision	Article 2 (a) <b>(theft or other unlawful appropriation of a payment instrument)</b>	Article 2 (b) <b>(counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)</b>	Article 2 (c) <b>(receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)</b>	Article 2 (d) <b>(fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)</b>
Ireland      Ireland (continued)	Section 4 (theft and related offences) of the Criminal Justice (Theft and Fraud Offences) Act 2001;  section 6 (making gain or causing loss by deception) of the Criminal Justice (Theft and Fraud Offences) Act 2001.  No specific reference to payment instruments.	Section 23 (forgery) of the Criminal Justice (Theft and Fraud Offences) Act 2001, of charge card, cheque card, credit card debit card or any card combining two or more of the functions performed by such cards; no specific reference to the other payment instruments.	Section 16 (handling, etc. stolen property and other proceeds of crime) of the Criminal Justice (Theft and Fraud Offences) Act 2001;  Section 18 (possession of stolen property) of the Criminal Justice (Theft and Fraud Offences) Act 2001;	Section 25 (using false instrument) of the Criminal Justice (Theft and Fraud Offences) Act 2001.  No reference to using payment instrument proceeds of other crime.
Italy	Article 624-625 (theft) of the penal code;  Article 646 (unlawful appropriation) of the penal code.	Article 12 D.L. 3.5.1991 n.143, first part (falsification and counterfeiting) of credit cards, eurocheque cards and other cards issued by financial institution;  Article 485-491 (falsification and counterfeiting) of the penal code, of cheques, travellers cheques, eurocheques and other bills of exchange;  Article 491 <i>bis</i> (computerized	Article 12 D.L. 3.5.1991 n.143, second part (receiving, possession, obtaining, sale or transfer to another person of stolen, otherwise unlawfully appropriated, falsified and counterfeited credit cards, eurocheque cards, other cards issued by financial institution and <b>payment orders</b> );  Article 648 of the penal code (receiving, obtaining, hiding, sale or transfer to an other person of	Article 12 D.L. 3.5.1991 n.143, first part (fraudulent use of credit cards, eurocheque cards and other cards issued by financial institution without lawful right).  Article 640 (fraud) of the penal code (fraudulent use of cheques, travellers cheques, eurocheques and other bills of exchange derived from any crime).

Article of the Framework Decision	Article 2 (a) (theft or other unlawful appropriation of a payment instrument)	Article 2 (b) (counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)	Article 2 (c) (receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)	Article 2 (d) (fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)
		documents) of the penal code.	cheques, travellers cheques, eurocheques and other bills of exchange derived from any crime).	
Luxembourg	Declared that the draft bill should be ready by October 2003. No reply sent.			
Netherlands <sup>3</sup>	Article 310 and 321 of the penal code contain the general prohibition of theft and obscuration, this includes payment instruments without specifically mentioning it.	Article 232 §1 and 226 § 1, 5° of the penal code (falsification).	Article 232 §2 and 226 § 2 (use of falsified documents) + proposition Art. 232 §2 and 226 § 2 of the penal code widening the present prohibited behaviour.	Article 326, 226 §2, 232 §2 penal code. The fraudulent use of Art. 2 (d) FD is in Dutch legislation depending on the circumstances qualified as theft, fraud or a form of qualified falsification. Except for 232 §2, no specific reference to payment instruments.
Portugal	No contact point appointed, no reply sent.	-	-	-
Finland <sup>4</sup>	Chapter 28 (theft), section 1-3 of the penal code.  No specific reference to other	Chapter 33 (forgery offences), section 1-3 of the penal code.  The counterfeiting of payment	Chapter 32 (receiving offences), section 1-5 of the penal code.  Chapter 37 (means of payment fraud),	Chapter 37, section 8 (1)(1)(means of payment fraud) of the penal code. In general “a person who uses a means of payment without the permission of the lawful holder, in excess of his/her right

<sup>3</sup> The Netherlands have adopted the legislation completing the Penal Code (Wet van 17 mei 2001 tot wijziging van het Wetboek van Strafrecht met betrekking tot valsheid in muntspeciën en munt- en bankbiljetten (eurovalsemunterij)) and have adopted a specific Bill (Wet van 11 november 1999 etc.) to transpose Article 5 (a).

<sup>4</sup> Finland has adopted specific amendments of the Finnish Penal Code, which entered into force on 1.7.2003.

<b>Article of the Framework Decision</b>	<b>Article 2 (a) (theft or other unlawful appropriation of a payment instrument)</b>	<b>Article 2 (b) (counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)</b>	<b>Article 2 (c) (receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)</b>	<b>Article 2 (d) (fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)</b>
	unlawful appropriation.  No specific reference to payment instrument.	instruments is not covered by the provisions of the Finnish penal code.  No specific reference to payment instrument.	section 8 (1)(2) of the penal code, with specific reference to transfer of means of payment.  Chapter 33, section 4 (1) (possession of forgery materials) of the penal code, with specific reference to receiving , procuring, delivering, transferring and holding a false or a falsified item.	based on such permission, or otherwise without lawful right”.
Sweden <sup>5</sup>	Chapter 8, section 1 (theft), section 8 (other unlawful appropriation) penal code.  No specific reference to payment instrument.	Chapter 14, section 1 (falsification of a document).  No specific reference to payment instrument.	Chapter 9, section 6 (receiving).  No specific reference to payment instrument.	Not covered by provisions of the Swedish penal code.
United Kingdom	Covered in England and Wales by Theft Act 1968 sections 1, 15/16 (obtaining property/pecuniary advantage by deception)obtaining a money transfer by deception and Theft Act 1978, section 1	Covered throughout England and Wales and NI by Forgery and Counterfeiting Act 1981 sections 1, 2,4 and 5.  Clause 87 of the Crime	Covered in England and Wales by Theft Acts 1968, section 22 (handling) and in Northern Ireland by Theft (NI) Act 1969, section 21.  No specific reference to payment	Covered throughout England and Wales and NI by Forgery and Counterfeiting Act 1981 section 3 (the offence of using a false instrument) in conjunction with section 5.

<sup>5</sup> Sweden has not adopted specific amendments to the Swedish penal code to comply with this Framework Decision.

<sup>6</sup> The Scots common law offences could appropriately be defined as follows: theft is the felonious taking or appropriation of the property of another without the consent of the owner and with the intent to deprive the owner of that property reset is the taking possession of or being privy to the retention of property dishonestly appropriated by another knowing it to have been so appropriated and intending that the owner be deprived of its recovery fraud is by false pretence the achievement of a definite practical result uttering is the intentional presentation or uttering as genuine of a document or instrument in the knowledge that it is false.



Article of the Framework Decision	Article 2 (a) <b>(theft or other unlawful appropriation of a payment instrument)</b>	Article 2 (b) <b>(counterfeiting or falsification of a payment instrument in order for it to be used fraudulently)</b>	Article 2 (c) <b>(receiving, obtaining, transporting sale or transfer to another person or possession of stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument.)</b>	Article 2 (d) <b>(fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument)</b>
United Kingdom (continued)	<p>obtaining services by deception, in Northern Ireland by Theft (NI) Act 1969 and the Theft (NI) Order 1978 (section numbers identical to England and Wales legislation) and obtaining services by deception which is article 3 of the Theft (NI) Order 1978. Conspiracy to defraud (common law) is also relevant.</p> <p>No specific reference to payment instruments.</p> <p>In Scotland mainly covered by common law of theft, reset, fraud and uttering.<sup>6</sup></p>	<p>(International Co-operation) Bill (currently in Parliament) expands the list of “payment instruments” listed in section 5 of the 1981 Act to include bankers’ drafts, bills of exchange, promissory notes and debit cards. Necessary changes are made to Scottish legislation in clause 88 of the same Bill.</p>	<p>instrument.</p> <p>No specific reference to receiving, obtaining, transporting, etc of otherwise unlawfully appropriated or of a counterfeited or falsified payment instrument.</p>	<p>Clause 87 of the Crime (International Co-operation) Bill (currently in Parliament) expands the list of “payment instruments” listed in section 5 of the 1981 Act to include bankers’ drafts, bills of exchange, promissory notes and debit cards. Necessary changes are made to Scottish legislation in clause 88 of the same Bill.</p>

**Table 3 Offences related to computers (Article 3) & offences related to specifically adapted devices (Article 4)**

Articles of the Framework Decision	Article 3 (introducing, altering, deleting or suppressing computer data without right)	Article 3 (interfering with the functioning of a computer programme or system without right)	Article 4
Austria	-	-	-

Articles of the Framework Decision	Article 3 (introducing, altering, deleting or suppressing computer data without right)	Article 3 (interfering with the functioning of a computer programme or system without right)	Article 4
Belgium	-	-	-
Denmark	-	-	-
Germany	Sections 263a (computer fraud), 269 (falsification of legally relevant data), 270 (deception in legal relations through data processing), 274 (suppression of documents) and 303a (alteration of data) of criminal code.	Section 270 (deception in legal relations through data processing) of criminal code.	Section 151(1) and 152a(5) in conjunction with section 149 of the criminal code.
Greece	-	-	-
Spain	Article 248 of penal code.  Performing or causing a transfer of money with the intention of procuring an unauthorised economic benefit for the person committing the offence in the way described in the second part, first indent, of Article 3, can be considered covered by the general terms of Article 248.	Article 248 of penal code.  Performing or causing a transfer of money with the intention of procuring an unauthorised economic benefit for the person committing the offence in the way described in the second part, second indent, of Article 3, can be considered covered by the general terms of Article 248.	Article 400 of the penal code.  The fraudulent making and the possession of the means listed in Article 4, can be considered covered by the general provision of Article 400.  No specific reference to receiving, obtaining sale or transfer to another person of the possession of the means.
France	Article 311-1 and 311-4(8) (theft);  Article 323-1 and 323-3 penal code;	Article 311-1 and 311-4(8) (theft);  Article 323-2 penal code;	Article 121-6, 121-7 of the penal code sur la complicité, combiné avec les articles précédemment énumérés.
Ireland	Section 9 (unlawful use of computer) of the Criminal Justice (Theft and Fraud Offences) Act 2001.	Section 9 (unlawful use of computer) of the Criminal Justice (Theft and Fraud Offences) Act 2001.	Not covered.
Italy	Article 640 <i>ter</i> (computer fraud) of the penal code.  Article 615 <i>ter</i> (illicit introducing in computer	Article 640 <i>ter</i> of the penal code;  Article 615 <i>ter</i> of the penal code.	Article 615 <i>quater</i> and 615 <i>quinquies</i> of the penal code.

Articles of the Framework Decision	Article 3 (introducing, altering, deleting or suppressing computer data without right)	Article 3 (interfering with the functioning of a computer programme or system without right)	Article 4
	system) of the penal code.		
Luxembourg	Declared that the draft bill should be ready by October 2003. No reply sent.		
Netherlands	Articles 138(a) and 350 (a) of the penal code and proposition change penal code.	Proposition penal code.	Article 234 of the penal code, will be adapted to the Framework Decision by Article 234 proposition of law.
Portugal	No contact point appointed, no reply sent.		
Finland	Chapter 36, section 1, second paragraph, first part, of the penal code.	Chapter 36, section 1, second paragraph, second part, of the penal code.	Chapter 33, section 4 (1)(2) of the penal code.
Sweden	Chapter 9, section 1 (fraud). No specific reference to offences related to computers.	Chapter 9, section 1 (fraud). No specific reference to offences related to computers.	Not covered by provisions of the Spanish penal code.
United Kingdom	Covered firstly by the Computer Misuse Act 1990 sections 1 (unauthorised access to computer material), 2 (unauthorised access with intent to commit or facilitate commission of further offences), 3 (unauthorised modification of computer material), which extends throughout the UK. Also, in England and Wales, and NI, by theft legislation referred to above and in Scotland by the common law offence of fraud.	Covered firstly by the Computer Misuse Act 1990 sections 3 (unauthorised modification of computer material), which extends throughout the UK. Also, in England and Wales, and NI, by theft legislation referred to above and in Scotland by the common law offence of fraud.	Covered firstly by the Computer Misuse Act 1990 sections 1-3 which extends throughout the UK. In England and Wales and NI, section 5 (3) (offences relating to money orders, share certificate, passports etc) of the Forgery and Counterfeiting Act 1981, as amended by Crime (IC) Bill (clauses 87 and 88), is also relevant; as is the common law of conspiracy to defraud. Also in England and Wales section 25 of the Theft Act 1968, and in NI section 24 of the Theft (NI) Act 1969 cover going equipped with articles to commit frauds.  In Scotland these matters are dealt with in common law.

**Table 4 Penalties (Article 6)**

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Austria				
Belgium				
Denmark				
Germany	<p>Section 242 (theft) of criminal code:</p> <p>-up to 5 years imprisonment or a fine;</p> <p>section 246 (other unlawful appropriation) of criminal code:</p> <p>-up to 3 years imprisonment or a fine;</p> <p>section 151(5), 146(1)(1) and 152 (traveller's cheques) of criminal code:</p> <p>-if the perpetrator acts professionally or as a member of a gang which has combined for the continued commission of the offence, then the punishment shall be imprisonment for not less than 2 years;</p>	<p>Section 263a (computer fraud) of criminal code:</p> <p>-up to 5 years imprisonment or a fine;</p> <p>section 269 (falsification of legally relevant data) of criminal code:</p> <p>-up to 5 years imprisonment or a fine;</p> <p>section 270 (deception in legal relations through data processing) of criminal code:</p> <p>-up to 5 years imprisonment or a fine;</p> <p>section 274 (suppression of documents) of criminal code:</p> <p>-up to 5 years imprisonment or a fine;</p> <p>section 303a (alteration of data) of</p>	<p>Section 151(1) and 152a(5) in conjunction with section 149 of the criminal code:</p> <p>-up to 5 years imprisonment or a fine</p> <p>-up to 2 years imprisonment or a fine in less serious cases.</p>	<p>Sections 22 and 23 (attempt) of criminal code: an attempt may be punished more leniently than the completed act;</p> <p>Section 26 (perpetration) of criminal code: whoever commits the crime himself or through another shall be punished as a perpetrator; if more than one person commit the crime jointly, each shall be punished as a perpetrator (co-perpetrator);</p> <p>Section 27 (aiding and abetting) of criminal code: the punishment for the accessory corresponds to the punishment threatened for the perpetrator.</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
	<p>-in less serious cases under subsection(1), imprisonment from 3 months to 5 years should be imposed;</p> <p>section 267(1) (other cheques and bills of exchange) of criminal code:</p> <p>-up to 5 years imprisonment or a fine;</p> <p>section 152a(1)(1) (eurocheques, credit cards, eurocheque cards) of criminal code:</p> <p>-if the perpetrator acts within the context of a commercial enterprise or as a member of a gang which has conspired to commit crimes under subsection (1), then the punishment shall be the imprisonment for not less than 2 years;</p> <p>-in less serious cases under subsection (1), imprisonment from 3 months to 5 years shall be imposed;</p> <p>section 269(1) and 270 (other cards issued by financial institutions) criminal code:</p>	<p>criminal code:</p> <p>-up to 2 years imprisonment or a fine;</p> <p>section 270 (deception in legal relations through data processing) of criminal code:</p> <p>-up to 5 years imprisonment or a fine.</p>		



Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5: participation, instigation and attempt
Germany (continued)	<p>property) up to 5 years imprisonment or a fine;</p> <p>-section 261 (money laundering)</p> <p>from 3 months to 5 years imprisonment;</p> <p>*of counterfeit or falsified other cards issued by financial institutions, cheques or bills of exchange are covered by general provisions: sections 261 (money laundering), 263 (fraud), 267 (falsification of documents) and 269 (falsification of legally relevant data) in relation with section 27 (aiding and abetting) of the criminal code</p> <p>-the punishment for the accessories corresponds to the punishment threatened for the perpetrator.</p> <p>Transport and possession.</p> <p>The instrument may have been obtained as the result of a criminal offence, in which case the perpetrator can be prosecuted for procurement (sections 151(5), 146(1)(2), 154a(1)(2) of criminal code), counterfeiting (sections 151(5), 146(1)(1), 152a(1)(1),</p>			

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Germany (continued)	<p>267(1), 269(1) and 270 of criminal code), theft or misappropriation (sections 242 and 246 of criminal code), receiving of stolen property (section 259 of criminal code) or money laundering (section 261 of criminal code).</p> <p>Is generally punishable under legal provisions covering fraud in general and the related additional provisions:</p> <p>*use of counterfeit or falsified traveller's cheques: sections 151(5), 146(1)(3), 147 and 152 of criminal code:</p> <p>-up to 1 year imprisonment (section 146(1)(3))</p> <p>-up to 5 years or a fine (section 147);</p> <p>*use of counterfeit or falsified other cheques or bill of exchange: section 267(3) of criminal code:</p> <p>-up to 5 years or a fine (in general)</p> <p>Germany (continued)</p> <p>-from 6 months to 10 years in</p>			



Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
	<p>especially serious cases;</p> <p>*use of counterfeit eurocheques, credit cards, eurocheque cards: section 152a(1)(2) of criminal code:</p> <p>-from 1 to 10 years;</p> <p>*use of other cards issued by financial institutions: sections 269(1) and 270 of criminal code:</p> <p>-up to 5 years or a fine;</p> <p>The use of stolen or otherwise unlawfully obtained instruments of payment : section 263(1) of criminal code</p> <p>-up to 5 years imprisonment or a fine.</p>			
Greece	-	-	-	
Spain	<p>Art. 234 (theft) of the penal code: -from 6 to 18 months imprisonment;</p> <p>Art. 623(1) (theft if is a petty crime) of the penal code: -a fine or from 2 to 6 week-end prison;</p> <p>Art. 252 (other unlawful appropriation) of the penal code:</p>	<p>Art. 248 of the penal code:</p> <p>-from 6 months to 4 years imprisonment.</p>	<p>Article 400 of the penal code:</p> <p>-for the making or the possession of the means to commit the offences described under Article 2(b) and 3 of the Framework Decision the penalty is the same provided for the perpetrator of the offences.</p>	<p>Article 28 (<i>autores</i>)(in general) of the penal code:</p> <p>-instigator and the person who cooperate in the crime are punishable as perpetrators;</p> <p>Article 29 (<i>complices</i>)(in general) and 63 of the penal code:</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Spain (continued)	<p>-from 6 months to 4 years (Article 249 of the penal code);</p> <p>-from 1 to 6 years if the crime is serious (Article 250 of the penal code);</p> <p>Art. 623(4) (other unlawful appropriation if is a petty crime) of the penal code:</p> <p>-a fine or from 2 to 6 week-and prison;</p> <p>Art. 386 in conjunction with Article 387 (counterfeiting of credit cards, traveller's cheque and eurocheques) of the penal code:</p> <p>-from 8 to 12 years imprisonment;</p> <p>Art. 392 (falsification of documents) of the penal code:</p> <p>-from 6 months to 3 years imprisonment and a fine;</p> <p>Art. 298 (receiving) of penal code:</p> <p>-from 6 months to 2 years imprisonment;</p>			<p>-the accessory is punished more leniently than the perpetrator;</p> <p>Article 64 of the penal code:</p> <p>-an attempt may be punished more leniently than the completed act.</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Spain (continued)	<p>Art. 248 (fraud)(in general) of the penal code:</p> <p>-from 6 months to 4 years of imprisonment;</p> <p>Art. 250 (3)(aggravating circumstances) (use of cheque and bill of exchange) of the penal code:</p> <p>-from 6 months to 4 years and a fine;</p> <p>Art. 238 (robbery) in conjunction with Article 239 (4)(aggravated robbery using false keys) and Article 239 final paragraph (credit cards) of penal code:</p> <p>-from 1 to 3 years of imprisonment.</p>			
France  France (continued)	<p>With regard to Article 2 (a) of the Framework Decision:</p> <p>* (theft) Article 311-1, 311-3 penal code: up to 3 years imprisonment and a fine up to 45000 euro;</p> <p>no specific reference to other unlawful appropriation</p> <p>With regard to Article 2 (b) of the Framework Decision:</p>	<p>Article 323-3 penal code (without right introducing, altering, deleting or suppressing computer data): up to 3 years imprisonment and a fine up to 45000 euro;</p> <p>Article 323-2 penal code (without right interfering with the functioning of a computer programme or system): up to 3 years imprisonment and a fine up to 45000 euro.</p>	<p>Article 121-6, 121-7 (complicité par fourniture de moyens) penal code. aiding and abetting the commission of any of the offences sub Articles 2 and 3 of the Framework Decision by supplying the means to commit them, the penalty is the same provided for the perpetrator of the offence.</p>	<p>Participation: Article 121-6, 121-7 penal code; “complice” is punishable as a perpetrator.</p> <p>Instigation: Article 121-6, 121-7 penal code; instigator is a “complice” and punishable as a perpetrator.</p> <p>Attempt: Article 121-4, 121-5 penal code (in general), L 163-3 (attempt of fraudulent use of a counterfeited</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
	<p>* Article L 163-3 (cheque), 163-4 (credit card) code monétaire et financier: up to 7 years imprisonment and a fine up to 750000 euro;</p> <p>no specific reference to eurocheque cards, travellers cheque, bills of exchange, other cards issued by financial institution.</p> <p>Whit regard to Article 2(c) of the Framework Decision:</p> <p>* Article L 163-3 (cheque), 163-4 (credit card) code monétaire et financier: up to 7 years imprisonment and a fine up to 750000 euro;</p> <p>*Article 321-1 penal code (in general receiving, sale, transfer, obtaining, transport and possession of all payment instruments): up to 5 years imprisonment and a fine up to 375000 euro.</p> <p>With regard to Article 2(d) of the Framework Decision:</p> <p>* (fraudulent use of counterfeit and falsified cheques and credit cards) Article L 163-3 (cheque), 163-4 (credit card) code monétaire et financier: up to 7 years imprisonment and a fine up to 750000 euro;</p> <p>*(escroquerie) Article 313-1 penal code (in general all payment</p>	<p>In some cases Art 311-4(8) could apply: up to 5 years imprisonment and a fine up to 75000 euro.</p>		<p>or falsified cheque), L 163-4 (attempt of fraudulent use of a counterfeited or falsified credit card); attempt is punishable by the same penalties of the complete offence.</p>



Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Ireland (continued)	<p>(Theft and Fraud Offences) Act 2001:</p> <ul style="list-style-type: none"> <li>- conviction on indictment: to a fine or imprisonment for a term not exceeding 10 years or both;</li> </ul> <p>section 18 (possession of stolen property) of the Criminal Justice (Theft and Fraud Offences) Act 2001:</p> <ul style="list-style-type: none"> <li>- conviction on indictment: to a fine or imprisonment for a term not exceeding 5 years or both;</li> </ul> <p>section 25 (using false instrument) of the Criminal Justice (Theft and Fraud Offences) Act 2001:</p> <ul style="list-style-type: none"> <li>- conviction on indictment: to a fine or imprisonment for a term not exceeding 10 years or both;</li> </ul>			<p>(i.e. a maximum of 5 to 10 years respectively on conviction on indictment, as the principal offence)</p> <ul style="list-style-type: none"> <li>- aiding, abetting, counselling or procuring to these offences, is punished as the principal offence (Section 7 (1)) of the Criminal Law Act 1997.</li> </ul>
Italy	<p>Article 624-625 (theft) of the penal code:</p> <ul style="list-style-type: none"> <li>-imprisonment from 1 to 6 years and fine from 103 to 1032 euro;</li> </ul> <p>Article 646 (unlawful appropriation) of the penal code:</p> <ul style="list-style-type: none"> <li>-imprisonment up to 3 years and</li> </ul>	<p>Article 640 <i>ter</i> (computer fraud) of the penal code:</p> <ul style="list-style-type: none"> <li>- imprisonment from 6 months to 3 years and fine from 51 to 1032 euro;</li> </ul> <p>Article 615 <i>ter</i> (illicit introducing in computer system) of the penal code:</p>	<p>Article 615 <i>quarter</i> of the penal code:</p> <ul style="list-style-type: none"> <li>- imprisonment up to 1 year and fine up to 5164 euro;</li> <li>- imprisonment from 1 to 2 years if aggravated.</li> </ul> <p>Article 615 <i>quinquies</i> of the penal</p>	<p>Article 110 (participation) of the penal code:</p> <ul style="list-style-type: none"> <li>-when more of one person participates in the same offence, each of them shall be subject to the punishment prescribed therefore;</li> </ul> <p>Article 112 (instigation) of the penal code:</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Italy (continued)	<p>fine up to 1032 euro;</p> <p>Article 12 D.L. 3.5.1991 n.143, first part (falsification and counterfeiting) of credit cards, eurocheque cards and other cards issued by financial institution:</p> <p>-imprisonment from 1 to 5 years and fine from 309 to 1549 euro;</p> <p>Article 485-491 (falsification and counterfeiting) of the penal code, of cheques, travellers cheques, eurocheques and other bills of exchange:</p> <p>-imprisonment from 6months to 3 years;</p> <p>Article 491<i>bis</i> (falsification of computerized documents) of the penal code:</p> <p>-imprisonment from 6 months to 3 years;</p> <p>Article 12 D.L. 3.5.1991 n.143, second part (receiving, possession, obtaining, sale or transfer to another person of stolen, otherwise unlawfully appropriated, falsified and counterfeited credit cards, eurocheque cards, other cards</p>	<p>- imprisonment up to 3 years;</p> <p>- imprisonment from 1 to 5 years if aggravated.</p>	<p>code:</p> <p>-imprisonment up to 2 years and fine up to 10329.</p> <p>-</p>	<p>-the punishment to be imposed for the offence committed shall be increased for anyone has promoted or organised collaboration in an offence or has directed the activity of persons participating in the same offence;</p> <p>Article 56 (attempt) of the penal code:</p> <p>-a person guilty of an attempted crime shall be punished with the punishment prescribed for the crime, reduced by from one-third to one-half.</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3 : offences related to computers	Article 4 : offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Italy (continued)	<p>issued by financial institution and <b>payment orders</b>):</p> <ul style="list-style-type: none"> <li>- imprisonment from 1 to 5 years and fine from 309 to 1549 euro;</li> </ul> <p>Article 648 of the penal code (receiving, obtaining, hiding, sale or transfer to an other person of cheques, travellers cheques, eurocheques and other bills of exchange derived from any crime):</p> <ul style="list-style-type: none"> <li>- imprisonment from 2 to 8 years and fine from 516 to 10329 euro;</li> <li>- imprisonment up to 6 years and fine up to 516 euro, if a petty crime;</li> </ul> <p>Article 12 D.L. 3.5.1991 n.143, first part (fraudulent use of credit cards, eurocheque cards and other cards issued by financial institution without lawful right).</p> <p>Article 640 (fraud) of the penal code (fraudulent use of cheques, travellers cheques, eurocheques and other bills of exchange derived from any crime):</p> <ul style="list-style-type: none"> <li>-imprisonment from 6 months to 3 years and fine from 51 to 1032</li> </ul>			



Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
	euro;			
Luxembourg	-	-	-	-
Netherlands <sup>7</sup>  Netherlands (continued)	<p>a) *Article 310 and 321 of the penal code contain the general prohibition of theft and obstruction, this includes payment instruments. Article 310 is punishable with deprivation of liberty, with a maximum of 4 years or a fine of the fourth category (Article 23 of the penal code),<sup>8</sup></p> <p>Article 321 is punishable with deprivation of liberty, with a maximum of 3 years or a fine of the fifth category (Art. 23 of the penal code)<sup>9</sup>;</p> <p>b) *Article 232 § 1 (specifically counterfeiting of instrument of payment) and 226 § 1, 5° of the penal code (falsification in general);</p> <p>Article 232 § 1 is punishable</p>	<p>*Article 350 (a) of the penal code, punishable with deprivation of liberty, with a maximum of 2 or 4 years or a fine of the fourth or fifth category, depending on the situation.</p> <p>*Article 326 (d) of the penal code, punishable with deprivation of liberty, with a maximum of 4 years or a fine of the fifth category.</p>	<p>* Article 234 of the penal code is punishable with deprivation of liberty, with a maximum of 6 months or a fine of the third category<sup>10</sup> (Article 23 of the penal code);</p> <p>* Draft law will not change the sanctions.</p>	<p>Art. 45 and 47 Penal code (general provisions regarding to participation and attempt, the Dutch report doesn't mention instigation);</p>

<sup>7</sup> In case of participation in a crime or attempts, punishable on the basis of the Articles 45, 46 & 48 Penal Code penalties are -as a general rule- decreased.  
<sup>8</sup> 11.250 Euro  
<sup>9</sup> 45.000 Euro  
<sup>10</sup> 4500 Euro

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Netherlands (continued)	<p>with deprivation of liberty, with a maximum of 6 years or a fine of the fifth category;</p> <p>Article 226 § 1 is punishable with deprivation of liberty, with a maximum of 7 years or a fine of the fifth category;</p> <p>c) * Article 232 § 2 and 226 § 2 (use of falsified documents)</p> <p>Article 232 § 2 is punishable with deprivation of liberty, with a maximum of 6 years or a fine of the fifth category.</p> <p>Article 226 § 2 is punishable with deprivation of liberty, with a maximum of 7 years or a fine of the fifth category;</p> <p>*proposition of law will not change the sanctions</p> <p>d) Article 310, 326, 226 § 2, 232 § 2 penal code:</p> <p>* Article 310 is punishable with deprivation of liberty, with a maximum of 4 years or a fine of the fourth category;</p> <p>*Article 321 is punishable with deprivation of liberty, with a</p>			

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
	<p>maximum of 3 years or a fine of the fifth category;</p> <p>*Article 232 § 1 is punishable with deprivation of liberty, with a maximum of 6 years or a fine of the fifth category;</p> <p>*Article 226 § 1 is punishable with deprivation of liberty, with a maximum of 7 years or a fine of the fifth category.</p>			
Portugal	-	-	-	-
Finland	<p>Chapter 28 (theft), section 1-3 of the penal code:</p> <p>-imprisonment for at most one year and six months.</p> <p>Chapter 33 (forgery offences), section 1-3 of the penal code:</p> <p>- imprisonment for at most two years;</p> <p>- imprisonment for at least four months and at most four years (aggravated forgery);</p> <p>- a fine (petty forgery).</p> <p>Chapter 32 (receiving offences),</p>	<p>Chapter 36, section 1, second paragraph, first part, of the penal code:</p> <p>- a fine or imprisonment for at most two years.</p>	<p>Chapter 33, section 4 (1)(2) of the penal code:</p> <p>- a fine or imprisonment of at most six months.</p>	<p>Chapter 5, section 1-3 of the penal code (participation and instigation):</p> <p>- each shall be punished as an offender.</p> <p>Attempt: chapter 28, section 2; chapter 33, section 1; chapter 36, section 1(2), of the penal code.</p> <p>Attempted means of payment fraud has not been ruled as punishable.</p> <p>According to chapter 4, section 1(1) of the penal code, an act which remains an attempt shall be punished on a scale representing three quarters of the penalty prescribed for the completed act.</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3 : offences related to computers	Article 4 : offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
Finland (continued)	<p>section 1-5 of the penal code:</p> <ul style="list-style-type: none"> <li>- imprisonment of no more than one year and six months;</li> <li>- imprisonment for at least four months and at most four years (aggravated receiving offence);</li> <li>- imprisonment for at least four months and at most six years (professional receiving offence);</li> <li>- imprisonment of no more than six months or a fine (negligent receiving offence);</li> <li>- a fine (receiving violation).</li> </ul> <p>Chapter 37 (means of payment fraud), section 8 (1)(2) of the penal code:</p> <ul style="list-style-type: none"> <li>- a fine or imprisonment for at most two years.</li> </ul> <p>Chapter 33, section 4 (1) (possession of forgery materials) of the penal code:</p> <ul style="list-style-type: none"> <li>- a fine or imprisonment of at most six months.</li> </ul> <p>Chapter 37, section 8 (1)(1)(means of payment fraud)</p>			



Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5: participation, instigation and attempt
	<p>crime is gross;</p> <p>chapter 14 section 1 (falsification of a document) of the penal code:</p> <p>-up to 2 years imprisonment</p> <p>- a fine or imprisonment up to 6 months if a petty crime</p> <p>-from 6 months to 6 years imprisonment if the crime is gross;</p> <p>chapter 9, section 6 (receiving) and 6a (money-related receiving) of the penal code:</p> <p>-up to 2 years imprisonment</p> <p>-a fine or imprisonment up to 6 months if a petty crime</p> <p>-from 6 months to 6 years imprisonment if the crime is gross.</p>			<p>Chapter 23, section 4 (aiding) of the penal code:</p> <p>-punishment as provided for an act provided in the penal code shall be imposed not only to the person who committed the act but also on anyone who furthered it by advice or deed.</p>
<p>United Kingdom</p> <p>United Kingdom (continued)</p>	<p>In England &amp; Wales</p> <p>Section 1 (theft) of the Theft Act 1968:</p> <p>- conviction on indictment: imprisonment for a term not exceeding 7 years;</p> <p>section 15 (obtaining property by deception) of the Theft Act 1968:</p>	<p>In England &amp; Wales, NI and Scotland</p> <p>Section 1 (unauthorised access to computer material) of the Computer Misuse Act 1990</p> <p>- summary conviction: imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 of the standard scale or to both;</p>	<p>In England &amp; Wales, NI and Scotland</p> <p>Section 3 (unauthorised modification of computer material) of the Computer Misuse Act 1990:</p> <p>- conviction on indictment: imprisonment to a term not exceeding 5 years or to a fine or</p>	<p>Participating in or instigating covered under the Accessories and Abettors Act 1861 section 8 (England &amp; Wales and NI):</p> <p>Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or in virtue of any Act passed shall be liable and punished as a</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
	<p>- conviction on indictment: imprisonment for a term not exceeding 10 years;</p> <p>section 16 (obtaining pecuniary advantage by deception) of the Theft Act 1968:</p> <p>- conviction on indictment: imprisonment for a term not exceeding 5 years</p> <p>section 1 (obtaining services by deception) of the Theft Act 1978:</p> <p>- conviction on indictment: imprisonment for a term not exceeding 5 years;</p> <p>in Northern Ireland by Theft (NI) Act 1969 and the Theft (NI) Order 1978 (section numbers and penalties identical to England &amp; Wales legislation); obtaining services by deception: article 3 of the Theft (NI) Order 1978);</p> <p>sections 1 – 5 of the Forgery and Counterfeiting Act 1981:</p> <p>- conviction on indictment:</p>	<p>section 2 (unauthorised access with intent to commit or facilitate commission of further offences) of the Computer Misuse Act 1990:</p> <p>- conviction on indictment: imprisonment to a term not exceeding 5 years or to a fine or both;</p> <p>section 3 (unauthorised modification of computer material) of the Computer Misuse Act 1990:</p> <p>- conviction on indictment: imprisonment to a term not exceeding 5 years or to a fine or both;</p> <p>Also, in England &amp; Wales, and NI, by theft legislation referred to above and in Scotland by the common law offence of fraud.</p>	<p>both;</p> <p>In England &amp; Wales and NI Section 5 (3) (offences relating to money orders, share certificate, passports etc) of the Forgery and Counterfeiting Act 1981, as amended by Crime (IC) Bill (clauses 87 and 88):</p> <p>- conviction on indictment imprisonment to a term not exceeding 10 years.</p> <p>In England &amp; Wales section 25 of the Theft Act 1968, and in NI section 24 of the Theft (NI) Act 1969 cover going equipped with articles to commit frauds:</p> <p>- conviction on indictment imprisonment to a term not exceeding 3 years.</p> <p>In Scotland these matters are dealt with in common law.</p>	<p>principal offender.</p> <p>In Scotland covered under the Criminal Procedure (Scotland) Act 1995 section 293:</p> <p>any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.</p> <p>Incitement to commit crimes is a common law offence in Scotland.</p> <p>Attempting is covered under the Criminal Attempts Act 1981 England &amp; Wales section 1:</p> <p>a person guilty of attempting to commit an offence shall, if the offence is indictable, be liable on conviction on indictment to any penalty to which he would have been liable on conviction on indictment of that offence.</p> <p>Criminal Attempts and</p>

Penalties: Articles of the Framework Decision	Article 2: offences related to payment instruments	Article 3: offences related to computers	Article 4: offences related to specifically adapted devices	Article 5 : participation, instigation and attempt
United Kingdom (continued)	<p>imprisonment for a term not exceeding 10 years;</p> <p>in England and Wales Theft Act 1968, section 22 (handling) and in Northern Ireland by Theft (NI) Act 1969, section 21:</p> <p>- conviction on indictment:</p> <p>imprisonment for a term not exceeding 14 years;</p> <p>section3 in conjunction with section 5 of the Forgery and Counterfeiting Act 1981:</p> <p>- conviction on indictment:</p> <p>imprisonment for a term not exceeding 10 years.</p>			<p>Conspiracy (NI) Order 1983 article 3:</p> <p>a person guilty of attempting to commit an offence shall, if the offence is indictable, be liable on conviction on indictment to any penalty to which he would have been liable on conviction on indictment of that offence.</p> <p>Criminal Procedure (Scotland) Act 1995 section 294.</p>



**Table 5 Jurisdiction (Article 9)**

Article of the Framework Decision	Article 9(a)	Article 9(b)	Article 9(c)
Austria	-	-	-
Belgium	-	-	-
Denmark	-	-	-
Germany	Article 3 (applicability to domestic acts) of criminal code.	Article 6 (acts abroad against internationally protected legal interests) of criminal code.	Where offences are not covered by section 6(7) of the criminal code (acts abroad against internationally protected legal interests), the jurisdiction provisions contained in Article 9(1)(c) of the Framework Decision are not to be applied (decision in accordance with paragraphs 2 and 3).
Greece	-	-	-
Spain	Article 23 (1) Constitutional Law of the Judiciary	Article 23 Constitutional Law of the Judiciary	Is not covered by the Spanish legislation.
France	Article 113-1, 113-2 penal code	Article 113-6 penal code	Article 113-1, 113-2 in relation with Article 321-1, 321-12 penal code
Ireland	No information.	No information.	No information.
Italy	Article 6 (offences committed in the territory of the State) of the penal code.	Article 9 (common crimes committed abroad) of the penal code:  -a citizen who commits in foreign territory a crime for which Italian law prescribes imprisonment for a minimum of not less than 3 years, shall be punished according to the law, provided he is within the territory of the State. With respect to crimes for which a punishment restrictive of personal liberty for a lesser period is prescribed, the offender shall be punished on demand of the Ministry of Justice, or on	No provisions.

Article of the Framework Decision	Article 9(a)	Article 9(b)	Article 9(c)
		petition or complaint of the victim.	
Luxembourg	-	-	-
Netherlands	Article 2 of the penal code (principle of territoriality).	Article 5, § 2 of the penal code (jurisdiction for Dutch people outside The Netherlands under the condition of double criminality).	Article 5, § 1, part 2 of the penal code (a Dutch legal person is considered to be a Dutch person in the sense of Article 5 of the penal code).
Portugal	-	-	-
Finland	Chapter 1, section 10 of the penal code.	Chapter 1, section 6 of the penal code. Finland, according with Article 9, paragraph 3 of the Framework Decision, declares to restrict the application of paragraph 1(b) of the said Article: when a Finnish citizen has committed a crime abroad, the investigation of the criminal case in Finland requires an order for prosecution by the Prosecutor General.	Finland has also decided on the basis of Article 9, paragraph 2 that it will not apply paragraph 1(c) of the said Article as sole basis for jurisdiction.
Sweden	Chapter 2, section 1 of the penal code.	Chapter 2, section 2 of the penal code <sup>11</sup>	Sweden has declared that will not apply with Article 9 (1)(C).
United Kingdom	In accordance with the general principles of the law in the UK jurisdictions, the courts have jurisdiction over offences committed in whole or in part on UK territory.  As regard England and Wales, special statutory provision is made in respect of the fraud and forgery offences listed in section 1 of the Criminal Justice	The UK has no bar on the extradition of its nationals and does not normally operate nationality jurisdiction. There is no nationality jurisdiction for these offences.	Nor does it operate the kind of jurisdiction mentioned in Article 9(1).

<sup>11</sup> The first paragraph of section 2 shall not apply if the act is not subject to criminal responsibility under the law of the place where it was committed or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine. In cases mentioned in this section, a sanction may not be imposed which is more severe than the severest punishment provided for the crime under the law in the place where it was committed.

Article of the Framework Decision	Article 9(a)	Article 9(b)	Article 9(c)
United Kingdom (continued)	Act 1993. Courts in England and Wales have jurisdiction over such offences if a “relevant event” (as defined in section 2 of the 1993 Act) takes place in England and Wales. Similar provision is made in respect of Northern Ireland by Articles 38-41 of the Criminal Justice (Northern Ireland) Order 1996. There is no statutory equivalent in Scotland. However under Scots common law the Scottish courts have jurisdiction if the major actings constituting the crime or the parts of the actings which complete the crime take place in Scotland.		

**Table 6 Liability of legal persons (Article 7) & sanctions for legal persons (Article 8)**

Article of the Framework Decision	Article 7 (1) liability legal person	Article 7 (2) liability legal person in case of lack of supervision	Article 8 (1) sanctions legal persons	Article 8 (2) Sanctions legal persons in case of lack of supervision
Austria	-	-	-	-
Belgium	-	-	-	-
Denmark	-	-	-	-
Germany	Article 30 «Gesetz über Ordnungswidrigkeiten» (code of the administrative offence)	Article 130 «Gesetz über Ordnungswidrigkeiten» in relation with Article 30 «Gesetz über Ordnungswidrigkeiten» (code of the administrative offences)	administrative/ ‘non criminal’ fines of up to € 1 million (and higher if necessary to neutralise the financial advantage of the offence): Article 30 in relation with Article 17 «Gesetz über Ordnungswidrigkeiten», in combination with other measures, such as a civil law action for	Fines of up to € 1 million Article 130 «Gesetz über Ordnungswidrigkeiten»

Article of the Framework Decision	Article 7 (1) liability legal person	Article 7 (2) liability legal person in case of lack of supervision	Article 8 (1) sanctions legal persons	Article 8 (2) Sanctions legal persons in case of lack of supervision
			damages or commercial law sanctions, such -in serious cases- as a winding up of a company	
Greece	-	-	-	-
Spain	Only possible civil liability under circumstances set at Article 120, 3° and 4° Penal Code.	No specific reference to the liability of legal person in case of lack of supervision.	Article 129 of the penal code.	No specific provisions.
France	<p>With regard to Article 2(b) of the Framework Decision: Article L 163-10-1 code monétaire et financier in relation with Article 121-2 penal code.</p> <p>With regard to Article 2(c) of the Framework Decision: Article L 163-10-1 code monétaire et financier, 321-12 penal code in relation with Article 121-2 penal code.</p> <p>With regard to Article 2(d) of the Framework Decision: Article 313-9 penal code in relation with Article 121-2 penal code.</p> <p>With regard with Article 3 and 4 of the Framework Decision: Article 323-6 penal code in relation with Article 121-2 penal code.</p>	Included in the general provisions mentioned sub Article 8(1)	<p>*fine (Article 131-38)</p> <p>*sanctions provided for in Article 131-39</p>	<p>*fine (Article 131-38)</p> <p>* sanctions provided for in Article 131-39</p>
Ireland	Section 56 of the Criminal Justice (Theft and Fraud Offences) Act 2001.	Section 56 of the Criminal Justice (Theft and Fraud Offences) Act 2001.	unlimited fine: Section 56 (1) of the Criminal Justice (Theft and Fraud Offences) Act 2001.	unlimited fine: Section 56 (1) of the Criminal Justice (Theft and Fraud Offences) Act 2001.

<b>Article of the Framework Decision</b>	<b>Article 7 (1) liability legal person</b>	<b>Article 7 (2) liability legal person in case of lack of supervision</b>	<b>Article 8 (1) sanctions legal persons</b>	<b>Article 8 (2) Sanctions legal persons in case of lack of supervision</b>
Italy	The conduct referred to in Article 2(b), (c) and (d) and Articles 3 and 4 of the Framework Decision are not included in the provisions of D. L.vo 8 June 2001 n.231(liability of legal persons).	idem	idem	Idem
Luxembourg	-	-	-	-
Netherlands	Article 51 of the penal code.	Article 51 of the penal code.	-fine of the fifth or -if appropriate-sixth category Article 23 (7) of the penal code  -penalties other than imprisonment, such as ‘deprivation of illegally obtained benefits’ (Article 36 (e) of the penal code).	-fine of the fifth or -if appropriate-sixth category Article 23 (7) of the penal code.  -penalties other than imprisonment, such as ‘deprivation of illegally obtained benefits’ (Article 36 (e) of the penal code).
Portugal	-	-	-	-
Finland	Chapter 9, section 1-5 of the penal code;  chapter 33, section 7 of the penal code;  chapter 37, section 14 of the penal code.	Chapter 9, section 1-5 of the penal code;  chapter 33, section 7 of the penal code;  chapter 37, section 14 of the penal code.	Chapter 9, section 5-10 of the penal code:  - a corporate fine of at least 850 and at most 850000 euro (Chapter 9, Section 5 of the penal code).	Chapter 9, section 5-10 of the penal code:  - a corporate fine of at least 850 and at most 850000 euro (Chapter 9, Section 5 of the penal code).
Sweden	Chapter 36 Section 7 Penal Code	Chapter 36 Section 7 Penal Code	- at least 10.000, at most 3 Mio Swedish crowns (€ 1.066,09 - € 319.829,42); Chapter 36 Section 8 juncto Sections 9 & 10	- at least 10.000, at most 3 Mio Swedish crowns (€ 1.066,09 - € 319.829,42); Chapter 36 Section 8 juncto Sections 9 & 10

<b>Article of the Framework Decision</b>	<b>Article 7 (1) liability legal person</b>	<b>Article 7 (2) liability legal person in case of lack of supervision</b>	<b>Article 8 (1) sanctions legal persons</b>	<b>Article 8 (2) Sanctions legal persons in case of lack of supervision</b>
United Kingdom	Section 5 Interpretation Act 1978 ("person" may be interpreted as a natural person or a legal person)	no information	no information	no information