

Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

2007/0192B(CNS) - 17/09/2007 - Legislative proposal

PURPOSE: to amend Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting.

PROPOSED ACT: Council Regulation.

BACKGROUND: Council Regulation (EC) No 1338/2001 requires credit institutions and any other related institutions to withdraw from circulation all euro notes and coins received by them which they know or have sufficient reason to believe to be counterfeit and hand them over to the competent national authorities.

Such an obligation relates to the due diligence of credit and other relevant institutions to ensure the authenticity of euro notes and coins that they put back into circulation or the actual detection of counterfeits. While the initial Commission proposal for Regulation 1338/2001 included the obligation for these institutions to check for counterfeits this was not finally adopted mainly due to the lack of agreed uniform and effective methods for large scale authentication of euro notes and coins or for the detection of counterfeits.

Following research in the methods for authenticating euro notes and coins, the ECB issued an advisory framework for the detection of counterfeit notes and the Commission adopted a Recommendation for authentication of euro coins. Discussions amongst national experts, as well as the European institutions and bodies have underlined the importance of introducing legislation requiring the verification of authenticity of circulating euro notes and coins.

Regulation (EC) No 1338/2001 should therefore be amended accordingly.

CONTENT: the Commission believes it is important that financial institutions ensure the authenticity of euro banknotes and coins they have received before re-circulating them. Therefore it proposes to add the obligation for these institutions to check for counterfeits. There are already agreed uniform and effective methods of detection of counterfeits in place which make this verification easy and perfectly feasible. The ECB and the Commission, respectively, have formally recommended such methods for euro notes and coins.

Time is provided to allow these institutions to adapt their internal proceedings and upgrade their equipments (December 2009).

These checks are carried out by means of appropriately adjusted sorting machines. The adjustment of the machines is conducted using samples containing both genuine and counterfeit notes or coins. It is therefore necessary to ensure that the appropriate quantities of counterfeit notes and coins are available at the places where testing is conducted, to enable the adjustment of these machines. For this purpose it is necessary to authorise the transport of counterfeit notes and coins amongst competent national authorities as well as EU institutions and bodies. However, the transport of counterfeits for the purpose of adjustment of equipment is not at present authorised at EU level. The transport of counterfeit notes and coins even if not in due course punishable in the absence of an intention to defraud, constitutes the objective element of

the offence and would thus still invite the initiation of criminal investigations. To facilitate national legal proceedings, the transport of counterfeits for the purpose of adjustment of equipment should therefore be specifically permitted.

At the time of adoption of Regulation 1338/2001, the European Technical and Scientific Centre (ETSC) was carrying out its tasks on a temporary basis at the French Mint with administrative support and management provided by the Commission but operating independently from the Commission. The ETSC was subsequently permanently established within the Commission, by Council Decision 2003/861/CE and Commission Decision 2005/37/EC. As a result it is no longer necessary to provide that the ETSC communicates data to the Commission.

Lastly, Council Regulation (EC) No 1339/2001 extends the effects of Regulation 1338/2001 to those Member States which have not adopted the euro as their single currency. Article 1 of Regulation 1339/2001 refers to the dynamic relation created between the two Regulations. As a legal consequence, the amendments proposed below, affecting Regulation 1338/2001, shall also automatically apply to non euro Member States.