

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

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OPINION OF THE EUROPEAN CENTRAL BANK at the request of the Council of the European Union on a proposal for a Council Regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting.

On 23 October 2007, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council Regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting.

General observations: the ECB recently issued Recommendation ECB/2006/13 on the adoption of certain measures to protect euro banknotes more effectively against counterfeiting. In that Recommendation, it takes the stance that while, generally, criminal law and the rules of criminal procedure do not fall within the competence of the Community, they may do so when necessary to ensure the effectiveness of Community law. The ECB specifically recommended that the Commission should ‘consider proposing an **extension of the powers of national analysis centres for counterfeits (NACs) and of national central banks (NCBs)** that are not NACs, so that they may retain identified and analysed examples of counterfeit notes and also request and legitimately transport such notes intra-EU for the purposes of testing.

In principle, the ECB welcomes any use of a **first pillar act** adopted under the Treaty to protect the euro against counterfeiting, rather than a third pillar act based on police and judicial cooperation in criminal matters, as first pillar acts provide the only appropriate legal means for protecting the euro against counterfeiting within the framework of the Community's economic and monetary union.

Specific observations: the proposed broadening of the scope of the title of Article 4 of the Regulation, so as to impose an obligation to transmit new and old classes of counterfeit notes for purposes other than identification, partially follows the ECB Recommendation. However, the proposed amendment to Article 4 (2) does not prevent suspected counterfeit notes from being used or retained in criminal proceedings, thus contradicting the broadening of the scope of the title thereof and jeopardising the effectiveness of the amended provision. To ensure the protection of the euro against counterfeiting, the **ECB and the NCBs should, as a rule, be entitled to receive samples of banknotes used or retained as evidence in criminal proceedings**, the sole exception being when this is impossible, taking into account the quantity and type of seized counterfeits.

The proposed amendment to Article 6(1) of the Regulation imposes upon ‘credit institutions, and any other institutions engaged in the sorting and distribution to the public of notes and coins as a professional activity’ the obligation to ensure that the notes and coins they receive are checked for authenticity and counterfeits are detected. While the object of the obligation is clear and desirable, the wording leaves out of its scope other organisations which operate self-service devices supplying euro banknotes to the public, even if not as a professional activity. A **broader definition** would thus be the most adequate solution.

Moreover, the proposed Regulation adds to Article 6(3) of the Regulation a provision requiring the Member States to make the laws, regulations and administrative provisions for applying the aforementioned obligation of credit and other institutions, and to adopt them by 31 December 2009 at the

latest. The ECB is of the opinion that, as the ECB and the Commission are responsible for laying down the procedures underpinning this obligation, it is **the ECB and the Commission that should stipulate the deadlines** for their implementation, both for practical and legal reasons. It is therefore suggested that this deadline should be deleted from the proposed Regulation.

As regards the **inclusion of coins under the scope** of the Regulation on the same level as banknotes, the ECB would observe that this approach could have the drawback of endangering retail payment in Member States, as the technical feasibility of the proposed checking requirement for coins is yet uncertain.

Lastly, as it is not completely clear whether the reference of Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those **Member States which have not adopted the euro as their single currency** to Regulation (EC) No 1338/2001 is a dynamic one, there is a need for another proposal for a Regulation, extending to non euro area Member States the effects of the proposed Regulation, in particular as regards the amendments to Articles 4 and 5.

However, in the context of the ‘procedures to be defined by the European Central Bank’ to which the proposed Regulation will include a reference in Article 6(1) of amended Regulation (EC) No 1338/2001, the ECB is best placed to decide upon the implementation of its procedures in relation to euro banknotes. In this respect and in the light of the limits of the geographic area in which the euro is legal tender, the ECB decided in July 2006 that these procedures will become effective in newly participating Member States once they adopt the euro.