

Protection of the euro and other currencies against counterfeiting by criminal law

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Opinion of the European Central Bank on a proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA.

The ECB welcomes the proposed directive, as well as the fact that the proposed directive takes into account the ECB's view that the criminal law framework should be reinforced by strengthening and harmonising the penalty regime, including by setting standards for minimum penalties.

From a general perspective, the ECB:

- suggests, in the interests of clarity, inserting the content of Article 9a of Council Framework Decision 2000/383/JHA into the proposed directive;
- considers it would be beneficial to invite the competent authorities of Denmark, the United Kingdom and Ireland (if the latter two do not participate in the adoption of the proposed directive), to commit to apply the minimum and maximum standards for penalties, ensure the availability of effective investigative tools and the transmission of counterfeit notes and coins to National Analysis Centres (NACs) and the National Coin Analysis Centres (CNACs) by judicial authorities in accordance with the proposed directive.

The **ECB's specific observations** relate to the following points:

- *Potential nominal value of counterfeit notes and coins*: the ECB considers that recital 19 of the proposal should be amended: (i) to allow for the possibility for Member States to apply a proportionate penalty in relation to unfinished counterfeited notes and coins, which may only have a potential nominal value; and (ii) to provide that the minimum and maximum standards for penalties would take into account the relevant nominal or potential nominal value of non-euro counterfeit notes and coins.

- *Counterfeit offences in relation to production tools and raw materials of banknotes and coins*: with a view to significantly increasing the efficiency and deterrent effect of the penalties, the ECB considers that the minimum and maximum standards for penalties should apply to all offences defined in Article 3(1) of the proposed directive.

In this respect, given that the most sophisticated counterfeit notes and coins are produced using components from multiple sources, for example fraudulent holograms from non-Union countries, the ECB would support the inclusion of offences under Article 3(1)(d) of the proposed directive, where they involve particularly serious circumstances, within the scope of the penalty regime envisaged in the proposed directive.

- *Obligation to transmit counterfeit notes and coins for analysis*: the ECB recommends that where samples of suspected counterfeit notes and coins cannot be transmitted because it is necessary to retain them as evidence, these samples of counterfeit notes and coins should be transmitted to the NAC or CNAC without delay after the relevant proceedings have concluded.