



COMMISSION OF THE EUROPEAN COMMUNITIES

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2007/0192 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting

(presented by the Commission)

EXPLANATORY MEMORANDUM

General context

Council Regulation (EC) No 1338/2001 of 28 June 2001¹ lays down measures necessary for the protection of euro against counterfeiting. The detection and identification of counterfeits is an essential part of this, and the regulation therefore requires in Article 6 that credit institutions and any other related institutions 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 notes² and the Commission adopted a Recommendation for authentication of euro coins³. Consequently, state of the art proceedings are now available for the credit and other related institutions to detect counterfeits by processing the notes and coins received by them before they put them back into circulation. 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.

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.

Articles 4 and 5 of Regulation 1338/2001 oblige national centres for analysis of counterfeit notes and coins to send examples of counterfeits to the ECB and the Commission respectively.

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

¹ J L 181, 4.7.2001, p. 6

² Available on www.ecb.int

³ OJ L 184, 15.7.2005, p.60

equipment should therefore be specifically permitted. Other EU institutions and bodies also acknowledge the necessity for permitting transport for such reasons and, the ECB, in particular, has issued a Recommendation for that purpose⁴.

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/CE⁵ and Commission Decision 2005/37/EC⁶. As a result it is no longer necessary to provide that the ETSC communicates data to the Commission.

Council Regulation (EC) No 1339/2001 of 28 June 2001⁷ 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.

Proposed amendments

In the light of the above considerations it is proposed to amend:

1. Articles 4(2) and 5(2) to permit the transport of counterfeit notes and coins amongst the competent national authorities, as defined in Article 2 (b) of Regulation 1338/2001, as well as EU institutions and bodies.
2. Article 5(4) to delete the reference to the Commission contained in the third sentence.
3. Article 6 to insert an explicit obligation for credit and other relevant institutions to check the authenticity of euro notes and coins which they have received and put back into circulation, in line with the procedures defined by the ECB and the Commission for euro notes and coins respectively. Time is provided to allow these institutions to adapt their internal proceedings and upgrade their equipments.

⁴ OJ C 257, 25.20.2006, p.16

⁵ OJ L 325, 12.12.2003, p.44

⁶ OJ L 19, 21.1.2005, p.73

⁷ OJ L 181, 4.7.2001, p. 11

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third sentence of Article 123(4) thereof,

Having regard to the proposal from the Commission⁸,

Having regard to the opinion of the European Parliament⁹,

Having regard to the opinion of the European Central Bank¹⁰,

Whereas:

- (1) Council Regulation (EC) No 1338/2001¹¹ 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.
- (2) It is important to ensure that circulating euro notes and coins are authentic. Procedures are now available which enable credit institutions and other related institutions to check the authenticity of the euro notes and coins they receive before they put them back into circulation. In order to comply with the obligation to check for authenticity and to implement those procedures, these institutions need time to adapt their internal functioning.
- (3) Appropriate adjustment of equipment is a prerequisite for checking the authenticity of euro notes and coins. In order to adjust the equipment used for the checks for authenticity it is essential that the necessary quantities of counterfeit notes and coins are available at the places where testing is conducted. It is, therefore, important to permit the transport of counterfeits amongst competent national authorities as well as institutions and bodies of the European Union.

⁸ OJ C , , p. .

⁹ OJ C , , p. .

¹⁰ OJ C , , p. .

¹¹ OJ L 181, 4.7.2001, p. 6

- (4) The European Technical and Scientific Centre (ETSC) is now formally established within the Commission by Council Decision 2003/861/CE¹² and Commission Decision 2005/37/EC¹³. Therefore, the provision stating that the ETSC communicates data to the Commission is no longer necessary.
- (5) This Regulation applies to non participating Member States by virtue of Article 1 of Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 to those Member States which have not adopted the euro as their single currency.
- (6) Regulation (EC) No 1338/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments

Regulation (EC) No 1338/2001 is amended as follows:

1. Article 4 is amended as follows:

- (a) the title is replaced by the following:

- "Obligation to transmit counterfeit notes";

- (b) at the end of paragraph 2 the following sentence is added :

- 'For the purpose of facilitating the control for authenticity of circulating euro notes, the transport of counterfeit notes amongst the competent national authorities as well as the institutions and bodies of the European Union shall be permitted.'

2. Article 5 is amended as follows:

- (a) the title is replaced by the following:

- "Obligation to transmit counterfeit coins";

- (b) at the end of paragraph 2 the following sentence is added :

- 'For the purpose of facilitating the control for authenticity of circulating coins, the transport of counterfeit coins amongst the competent national authorities as well as the institutions and bodies of the European Union shall be permitted.'

- (c) paragraph 4 is replaced by the following:

- The European Technical and Scientific Centre (ETSC) shall analyse and classify every new type of counterfeit euro coin. To that end, the ETSC shall have access to

¹² OJ L 325, 12.12.2003, p. 44

¹³ OJ L 19, 21.1.2005, p. 73

the technical and statistical data stored at the European Central Bank on counterfeit euro coins. The ETSC shall communicate the relevant final results of its analysis to the competent national authorities and, according to its areas of responsibility to the European Central Bank. The European Central Bank shall communicate those results to Europol, in accordance with the agreement referred to in Article 3(3).

3. Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Credit institutions, and any other institutions engaged in the sorting and distribution to the public of notes and coins as a professional activity, including establishments whose activity consists in exchanging notes and coins of different currencies, such as bureaux de change, shall be obliged to ensure that euro notes and coins which they have received and which they intend to put back into circulation are checked for authenticity and counterfeits are detected. This verification shall be carried out in line with procedures to be defined by the European Central Bank and the Commission for euro notes and coins respectively.

The institutions referred to in the first subparagraph shall be obliged to withdraw from circulation all euro notes and coins received by them which they know or have sufficient reason to believe to be counterfeit. They shall immediately hand them over to the competent national authorities.’

(b) at the end of paragraph 3 the following subparagraph is added:

‘By way of derogation from the first subparagraph of paragraph 3, the laws, regulations and administrative provisions for applying the first subparagraph of paragraph 1 of this Article shall be adopted by 31 December 2009 at the latest. They shall forthwith inform the Commission and the European Central Bank thereof.’

Article 2

Applicability

This Regulation shall have effect in the participating Member States as defined in the first indent of Article 1 of Council Regulation (EC) No 974/98¹⁴.

Article 3

Entry into force

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

¹⁴ OJ L 139, 11.5.1998, p. 1

Done at Brussels,

*For the Council
The President*