

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1338/2001****of 28 June 2001****laying down measures necessary for the protection of the euro against counterfeiting**

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 Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the European Central Bank <sup>(3)</sup>,

Whereas:

- (1) Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro <sup>(4)</sup>, provides for euro notes to be put into circulation by the European Central Bank (ECB) and by the national central banks (NCB) of the participating Member States and for euro coins to be put into circulation by the participating Member States from 1 January 2002; a system for protecting the euro against counterfeiting must therefore be adopted rapidly so that it can be operational before euro notes and coins are put into circulation.
- (2) The arrangements put in place by the Council Act of 26 July 1995 drawing up the Convention on the establishment of a European Police Office (Europol Convention) <sup>(5)</sup> and by the Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment <sup>(6)</sup> are designed to combat counterfeiting in general.
- (3) In its framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro <sup>(7)</sup>, the Council adopted provisions to ensure that the euro is protected in an appropriate way by effective measures under criminal law.

- (4) Measures to protect the euro against counterfeiting concern the Community as part of its responsibility in respect of the single currency; the legal protection of the euro cannot be satisfactorily ensured by the individual Member States alone, since euro notes and coins will circulate beyond the territories of the participating Member States. It is therefore necessary to adopt Community legislation defining the measures necessary for euro notes and coins to circulate in the proper conditions to ensure the overall effective and consistent protection of the euro against activities likely to jeopardise its credibility, and thus to adopt appropriate measures so that everything is ready in good time before 1 January 2002.

- (5) For the purposes of applying this Regulation it is necessary to define or to take over the existing definitions of certain concepts such as euro counterfeiting, technical and statistical data and the national authorities competent for research *inter alia* with a view to the gathering and analysis of data concerning counterfeiting, including the central offices provided for in Article 12 of the Geneva Convention.

- (6) It should be ensured that the technical and statistical data collected by the competent national authorities regarding counterfeit euro notes and coins and as far as possible unauthorised notes are communicated to the ECB while allowing the competent national authorities and, in accordance with its responsibilities, the Commission, to have access to such data. It is also envisaged that Europol will have access to such data on the basis of an agreement between it and the ECB.

- (7) The counterfeiting analysis centre (CAC) established and managed under the auspices of the ECB, in accordance with its Guideline <sup>(8)</sup>, centralises the classification and analysis of technical data relating to counterfeit notes.

<sup>(1)</sup> OJ C 337 E, 28.11.2000, p. 264.

<sup>(2)</sup> Opinion delivered on 3 May 2001 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 19, 20.1.2001, p. 18.

<sup>(4)</sup> OJ L 139, 11.5.1998, p. 1. Regulation as last amended by Regulation (EC) No 2596/2000 (OJ L 300, 29.11.2000, p. 2.)

<sup>(5)</sup> OJ C 316, 27.11.1995, p. 1.

<sup>(6)</sup> OJ C 149, 28.5.1999 p. 16 and corrigendum in OJ C 229, 12.8.1999, p. 14.

<sup>(7)</sup> OJ L 140, 14.6.2000, p. 1.

<sup>(8)</sup> European Central Bank Guideline of 26 August 1998 on certain provisions regarding euro banknotes, as amended on 26 August 1999 (OJ L 258, 5.10.1999, p. 32).

- (8) The technical scheme for handling counterfeit euro coins which the Council accepted on 28 February 2000 makes reference to the systematic gathering of technical information on euro counterfeiting by the ECB, the establishment at European level of a European Technical and Scientific Centre (ETSC) for the technical analysis and the classification of counterfeit euro coins and at national level of coin national analysis centres (CNAC).
- (9) Provision has been made for the ETSC to be established on a temporary basis as a distinct and independent administrative entity within the Paris Mint on the basis of an Exchange of Letters between the President of the Council and the French Minister for Finance of 28 February and 9 June 2000; its tasks must be defined in this Regulation; the future status and the permanent headquarters of the ETSC will be decided by the Council in due course.
- (10) It is necessary to provide for counterfeit euro notes to be handed over for identification to the national analysis centres — NAC; counterfeit coins should be handed over to the CNAC.
- (11) It is necessary to provide that credit institutions and any other establishments involved in the sorting and distribution to the public of notes and coins as a professional activity, including those whose activity consists in exchanging notes or coins, such as bureaux de change, shall be under an obligation to withdraw from circulation euro notes and coins which they know or have sufficient reason to believe to be counterfeit and hand them over to the competent national authorities. In addition, it is necessary to provide for the Member States to take steps so that sanctions they consider appropriate are imposed in the event of non-compliance by the said establishments with their obligations.
- (12) Close and regular cooperation between the competent national authorities, the Commission and the ECB must be organised to ensure effective and consistent protection of the euro, in particular as regards exchanges of information with the exception of personal data, mutual cooperation and assistance between Community and national authorities, scientific support and vocational training. To this end, the Commission will continue, without prejudice to the role attributed to the ECB in protecting the euro against counterfeiting, on a regular basis, in an appropriate advisory committee, with the leading players in the fight against counterfeiting of the euro (including the ECB, the ETSC, Europol and Interpol), the consultations on improving the conditions for the overall protection of the euro on the basis of legislative initiatives to reinforce the prevention and combating of counterfeiting.
- (13) To ensure the exchange of full, up-to-date and comparable data, provision should be made for national centralisation of strategic and operational information and for the obligation to report data. To this end, provision should be made for Member States to take the necessary steps to enable central offices to fulfil their missions in accordance with the Geneva Convention in order to ensure the exchange of information between themselves and national Europol units.
- (14) The complementary nature of the tasks of the various Community partners, with the assistance Europol is able to provide in accordance with the Council Decision of 29 April 1999, must bring together all the tools required to protect the euro from the damaging consequences arising from illegal counterfeiting activities. Europol fulfils its functions without prejudice to the competence of the European Community; with strict regard to their respective competences, Europol and the European Community should establish forms of cooperation enabling them to perform their respective functions as effectively as possible; to this end, priority should be given to the organisation of close and regular cooperation on the basis of appropriate agreements to be concluded between Europol and the ECB, on the one hand, and between Europol and the Commission on the other hand in accordance with the relevant provisions of the Europol Convention.
- (15) Given that the euro will be used by non-member countries as a currency for international transactions, provision should be made for structured cooperation involving all the relevant players in the event of counterfeiting in non-member countries.
- (16) The measures provided for by this Regulation do not affect the power of the Member States to apply national criminal law for the purposes of protecting the euro against counterfeiting.

HAS ADOPTED THIS REGULATION:

#### CHAPTER 1

#### PURPOSE AND DEFINITIONS

##### Article 1

##### Purpose

1. The purpose of this Regulation is to lay down measures necessary with a view to uttering euro notes and coins in such a manner as to protect them against counterfeiting.
2. For the purpose of applying this Regulation, 'counterfeiting' shall mean the following activities:
  - (a) any fraudulent making or altering of euro notes or euro coins, whatever means are employed;
  - (b) the fraudulent uttering of counterfeit euro notes or counterfeit euro coins;
  - (c) the import, export, transport, receiving or obtaining of counterfeit euro notes or counterfeit euro coins with a view to uttering the same and with knowledge that they are counterfeit;

(d) the fraudulent making, receiving, obtaining or possession of:

— instruments, articles, computer programs and any other means peculiarly adapted for the fraudulent making or altering of euro notes or coins,

or

— holograms or other components which serve to protect euro notes and coins against fraudulent making or alteration.

3. This Regulation shall apply, without prejudice to the application of national criminal law, to the protection of the euro against counterfeiting.

#### Article 2

#### Definitions

Within the meaning of this Regulation:

(a) 'counterfeit notes' and 'counterfeit coins' shall mean notes and coins denominated in euro or which have the appearance of euro notes or coins and which have been fraudulently made or altered;

(b) 'competent national authorities' shall mean the authorities designated by the Member States for:

- identifying counterfeit notes and coins;
- gathering and analysing technical and statistical data relating to counterfeit notes, in particular national central banks or other empowered bodies;
- gathering and analysing technical and statistical data relating to counterfeit coins, in particular national mints, national central banks or other empowered bodies;
- gathering data relating to counterfeiting of the euro and submitting them to analysis, in particular the national central offices referred to in Article 12 of the Geneva Convention;

(c) 'credit institutions' shall mean the credit institutions referred to in the first subparagraph of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>(1)</sup>;

(d) 'technical and statistical data' shall mean data by means of which counterfeit notes or counterfeit coins may be identified (technical description of type of counterfeit) and data on the number of counterfeit notes and counterfeit coins by their origin, in particular geographical;

(e) 'Geneva Convention' shall mean the International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929<sup>(2)</sup>;

(f) 'Europol Convention' shall mean the Convention of 26 July 1995 on the establishment of Europol<sup>(3)</sup>.

#### CHAPTER 2

#### TECHNICAL AND STATISTICAL DATA

#### Article 3

#### Gathering and access

1. Technical and statistical data relating to counterfeit notes and counterfeit coins discovered in the Member States shall be gathered and indexed by the competent national authorities. These data shall be communicated to the European Central Bank for storage and processing.

2. The European Central Bank shall gather and store technical and statistical data relating to counterfeit notes and counterfeit coins discovered in non-member countries.

3. The competent national authorities and, within its areas of responsibility, the Commission, shall have access to the technical and statistical data held by the European Central Bank. Europol shall have access to such data under an agreement between it and the European Central Bank in accordance with the relevant provisions of the Europol Convention and the provisions adopted on the basis of the latter.

#### Article 4

#### Obligation to transmit counterfeit notes for identification

1. In agreement with the European Central Bank, Member States shall designate or establish a National Analysis Centre (NAC) in accordance with their national law and practice.

2. The competent national authorities shall permit the examination by the NAC of suspected counterfeit notes and shall without delay provide it with the necessary examples requested by the NAC of each type of suspected counterfeit note for analysis and identification and such technical and statistical data as are in their possession. The NAC shall send the European Central Bank every new type of suspected counterfeit note corresponding to the criteria adopted by the European Central Bank.

3. Paragraph 2 shall be applied in such a way that it does not prevent suspected counterfeit notes from being used or retained as evidence in criminal proceedings.

4. The European Central Bank shall communicate the relevant final results of its analysis and classification of every new type of counterfeit note to the competent national authorities and, according to its areas of responsibility, to the Commission. The European Central Bank shall communicate the results to Europol, in accordance with the agreement referred to in Article 3(3).

<sup>(1)</sup> OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37.)

<sup>(2)</sup> League of Nations Treaty Series No 2623 (1931), p. 372.

<sup>(3)</sup> OJ C 316, 27.11.1995, p. 2.

## Article 5

**Obligation to transmit counterfeit coins for identification**

1. Member States shall designate or establish a Coin National Analysis Centre (CNAC) in accordance with their national law and practice.

2. The competent national authorities shall permit the examination by the CNAC of suspected counterfeit coins and shall without delay provide the necessary examples requested by the CNAC of each type of suspected counterfeit coin for analysis and identification and such technical and statistical data as are in their possession. The CNAC shall send the European Technical and Scientific Centre (ETSC) every new type of suspected counterfeit coin corresponding to the criteria adopted by the European Technical and Scientific Centre; to that end the European Central Bank shall provide the CNAC with such technical and statistical data relating to counterfeit euro coins as are in its possession.

3. Paragraph 2 shall be applied in such a way that it does not prevent suspected counterfeit coins from being used or retained as evidence in criminal proceedings.

4. The ETSC shall analyse and classify every new type of counterfeit euro coin. To that end, the ETSC shall have access to the technical and statistical data stored at the ECB on counterfeit euro coins. The ETSC shall communicate the relevant final results of its analysis to the competent national authorities and, according to their respective areas of responsibility, to the Commission and 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).

## CHAPTER 3

**OBLIGATIONS AND SANCTIONS**

## Article 6

**Obligations of credit institutions**

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 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.

2. Member States shall take the necessary measures to ensure that the establishments referred to in paragraph 1 which fail to discharge their obligations under the said paragraph are subject to effective, proportionate and deterrent sanctions.

3. Member States shall adopt by 1 January 2002 the laws, regulations and administrative provisions for applying this Article. They shall forthwith inform the Commission and the European Central Bank thereof.

## CHAPTER 4

**COOPERATION AND MUTUAL ASSISTANCE**

## Article 7

**Cooperation to protect the euro against counterfeiting**

1. With a view to effective protection of the euro against counterfeiting, the Member States, the Commission and the European Central Bank shall cooperate, on the one hand, with each other, and, on the other hand, with Europol in accordance with the Europol Convention and with the provisions adopted on the basis of the latter. To that end the Commission and the European Central Bank shall negotiate with a view to the conclusion in due course of an agreement with Europol.

2. In particular, the competent national authorities, the Commission and the European Central Bank, in the performance of their respective tasks, shall cooperate in:

- exchanging information on preventing counterfeiting and combating the uttering of counterfeit notes and counterfeit coins;
- providing regular information on the impact of counterfeiting for the purposes of strategic analysis;
- ensuring mutual assistance in preventing counterfeiting and combating the uttering of counterfeit notes and counterfeit coins, which shall include, *inter alia*, scientific support and training with the logistical support of the Member States.

3. Within the framework of mutual assistance, the national central offices referred to in Article 12 of the Geneva Convention and the European Central Bank and, where necessary, the Commission shall, within the framework of their respective powers and without prejudice to the role of Europol, make provision for a system for the communication of technical data (early warning).

## Article 8

**Centralisation of information at national level**

1. Member States shall ensure that, as soon as any case of counterfeiting is detected, information at national level is communicated to the national central office with a view to its being forwarded to Europol through the Europol national unit.

2. Member States shall take all measures necessary to ensure the exchange of information between the national central office and the Europol national unit.

*Article 9***External relations**

1. The Commission and the Member States shall cooperate with non-member countries and international organisations in close association with the European Central Bank. Such cooperation shall include the assistance necessary to prevent and combat counterfeiting of the euro, in accordance with the provisions relating to the prevention of unlawful activities contained in cooperation, association and pre-accession agreements.

2. The Council shall ensure that cooperation, association and pre-accession agreements between the European Community and non-member countries include provisions enabling Article 3(2) to be applied.

## CHAPTER 5

**FINAL PROVISIONS***Article 10***Competent national authorities**

1. Member States shall send the European Central Bank and the Commission a list of the competent national authorities referred to in Article 2(b).

2. Those lists shall be published in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 28 June 2001.

*Article 11***Unauthorised notes**

As far as possible the provisions laid down in Articles 3, 4, 7, 8 and 9 shall apply to notes denominated in euro which have been produced with the use of lawful facilities or equipment in violation of the provisions in accordance with which the competent authorities may issue currency, or uttered in violation of the conditions in accordance with which the competent authorities may utter currency and without the consent of those authorities.

*Article 12***Applicability**

Articles 1 to 11 shall have effect in those Member States which have adopted the euro as their single currency.

*Article 13***Entry into force**

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 2002. However, it shall apply from the date of its publication to notes and coins which have not yet been issued but which it is intended to issue.

*For the Council*

*The President*

B. ROSENGREN

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