

Proposal for a Council Regulation on the protection of the euro against counterfeiting

(2000/C 337 E/42)

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(Submitted by the Commission on 28 July 2000)

THE COUNCIL OF THE EUROPEAN UNION,

centralises the classification and analysis of technical data relating to counterfeit notes.

Having regard to the Treaty establishing the European Community, and in particular the third sentence of Articles 123(4) and Article 308 thereof,

- (6) The technical rules for processing euro coins, approved by the Council on 28 February 2000, provide for the systematic gathering of technical information on euro counterfeiting by the European Central Bank, the establishment at European level of a European Technical and Scientific Centre (ETSC) for the technical analysis and the classification of false euro coins and at national level for national coin analysis centres (CNAC).

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the European Central Bank,

- (7) Provision is made for the European Technical and Scientific Centre to be established on a temporary basis as a distinct administrative entity within the Paris Mint (exchange of letters between the President of the Council and the French Minister of Finance); its tasks must be defined by this Regulation.

Whereas:

- (1) Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro ⁽¹⁾ provides for euro notes and coins to be put into circulation by the European System of Central Banks (ESCB) and the Member States by 1 January 2002 at the latest; a protection system must be adopted rapidly so that it can be operational before euro notes and coins are put into circulation.

- (8) The European Central Bank is to gather and process all technical data relating both to counterfeit euro notes and to counterfeit euro coins.

- (2) Certain concepts, such as euro counterfeiting, technical data and operational and strategic data must be defined for the purposes of this Regulation.

- (9) Counterfeit euro notes held and seized must be handed over for identification to the national central banks or the national analysis centres — NAC); counterfeit coins must be handed over to the national coin analysis centres.

- (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 ⁽²⁾, the Council took measures to ensure that the euro is protected in an appropriate way by the criminal law.

- (10) Credit institutions and bureaux de change must be under an obligation to withdraw counterfeit euros from circulation and hand them over to the relevant authorities.

- (4) The Council Decision of 29 April 1999 extended Europol's mandate to deal with forgery of money and means of payment ⁽³⁾.

- (11) A Unit to combat euro counterfeiting should be established; given Europol's mandate, the Unit should be set up and managed by Europol, which has declared its willingness to act, and its functions should be specified; the Member States should take all necessary measures in the context of the rules applicable to Europol to ensure that the Unit can exercise its functions as defined by this Regulation and enjoy the requisite resources.

- (5) The counterfeiting analysis centre (CAC) established and managed under the auspices of the European Central Bank (ECB) in accordance with the ECB Guideline ⁽⁴⁾

- (12) There should be a euro counterfeiting information system within the Unit to combat euro counterfeiting; it should consist of an operational and strategic database meeting the objectives of Article 13 of the Geneva Convention of 20 April 1929 in order to boost the effectiveness of activities to prevent and detect euro counterfeiting and facilitate operational cooperation.

⁽¹⁾ OJ L 139, 5.11.1998, p.1.

⁽²⁾ OJ L 140, 14.6.2000, p 1.

⁽³⁾ Convention on the establishment of a European Police Office (Europol Convention), OJ C 316, 27.11.1995, p. 2, and Council Decision of 29.4.1999 extending Europol's mandate to deal with forgery of money and means of payment, OJ C 149, 28.5.1999, p. 17.

⁽⁴⁾ European Central Bank Guideline of 26 August 1998 on certain provisions regarding euro banknotes, as amended on 26 August 1999 (ECB/1999/3), OJ L 258, 5.10.1999, p. 32 (Article 3).

- (13) The tasks of the European Unit in relation to information for relevant authorities on the analysis of euro counterfeiting should be specified, as should its obligations regarding technical and operational cooperation with the relevant national and European authorities so as to supply them with the information they need as quickly as possible.
- (14) To ensure the exchange of full, up-to-date and consistent data, provision should be made for national centralisation of operational and strategic information and for reporting obligations.
- (15) Provision must be made for mutual assistance between the relevant authorities and for a mechanism for immediate assistance and rapid information flows (early warning system); this system should be managed by the Unit to combat euro counterfeiting; the Member States should take the requisite measures to that end.
- (16) Given that the euro will be used by non-member countries as a currency for international transactions, rules governing cooperation in the event of counterfeiting in non-member countries should be laid down.
- (17) Confidentiality and protection of personal data must be ensured by applying the principles of Directive 95/46/EC processing of personal data for the purposes of this Regulation. These principles must also be applied if the processing of personal data falls outside the scope of application of this Directive as laid down in Article 3 thereof; data concerned with technical security shall be covered by professional secrecy.
- (18) To ensure continuity in the work by the euro counterfeiting experts group that inspired the Commission's preparatory work, regular meetings should continue to be held for exchanges of views and discussion between those most actively involved in preventing and combating counterfeiting; training measures for national authorities and non-member countries will also be taken in this context to ensure that initiatives taken at national and European levels complement each other; to this end the Commission has set up, within the Advisory Committee, a special group for protection of euro notes and coins against counterfeiting, consisting of counterfeiting experts from the Member States and representatives of the European Central Bank, the European Technical and Scientific Centre, the Unit provided for by Article 7, Europol and Interpol.
- (19) The centralised exchange of information on cases of euro counterfeiting detected by the relevant national authorities is an additional vital component which will allow the protection scheme, given its dimensions and the effects of the planned action at European level, the operational scope that will optimise all the measures taken to secure the credibility of the euro in Community terms; this is intimately bound up with the measures needed for the rapid introduction of the euro as the single currency of the participating Member States.
- (20) The measures to be taken to combat euro counterfeiting concern the Community by virtue of its responsibilities for the single currency; the legal protection of the euro cannot be satisfactorily ensured by the Member States acting alone, since notes and coins will be valid legal tender beyond their borders.
- (21) The measures provided for by this Regulation are without prejudice to the power of the Member States to apply national criminal law for the purposes of protecting the euro against counterfeiting and do not affect the independence of the national judicial authorities.
- (22) The Member States which have not adopted the euro, as potential participants in the single currency, also have an interest in its legal protection, and their cooperation is necessary for the purposes of effective protection; to ensure that this Regulation applies to them, Article 308 is added as a legal basis in conjunction with the third sentence of Article 123(4),

HAS ADOPTED THIS REGULATION:

CHAPTER 1

DEFINITIONS AND RELEVANT AUTHORITIES

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'counterfeit euro notes' and 'counterfeit euro coins': notes and coins denominated in euros which have been:
 - produced or altered without authorisation from the relevant issuing authorities;
 - produced with the use of lawful facilities or equipment in violation of the rights or conditions in accordance with which the relevant authorities may issue currency;
 - put into circulation in violation of the rights or conditions in accordance with which the relevant authorities may issue currency;

2. 'counterfeiting' of the euro: the conduct described in Articles 3 to 5 of the Council framework Decision on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro of 29 May 2000 ⁽¹⁾;
3. 'technical data': data relating to descriptions of the characteristics distinguishing authentic notes and coins from notes and coins of dubious authenticity (technical description of type of counterfeit);
4. 'operational data': data linked to counterfeiting offences, including personal data required for assistance to on-the-spot inquiries and investigations to enhance their effectiveness;
5. 'strategic data': data linked to risk-evaluation objectives the value of which goes beyond the handling of a specific case already being investigated or likely to be investigated;
6. 'Geneva Convention': the International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929 ⁽²⁾.

Article 2

Relevant national authorities

1. For the purposes of this Regulation, 'relevant national authorities' means the authorities designated to that end by the Member States:
 - for the purposes of gathering and analysing technical data relating to false euro notes, in particular the national central banks or other empowered bodies;
 - for the purposes of gathering and analysing technical data relating to false euro coins, in particular the national mints, the national central banks or other empowered bodies;
 - for the purposes of gathering and analysing operational and strategic data relating to euro counterfeiting, in particular the national central offices referred to in Article 12 of the Geneva Convention;
 - for the purposes of detecting and recording offences, prosecuting and punishing offenders.
2. Each Member State shall send the European Central Bank, the Commission and Europol a list of designated authorities.

⁽¹⁾ OJ L 140, 14.6.2000, p 1.

⁽²⁾ League of Nations, Treaty Series 2623 (1931), p. 372.

CHAPTER 2

TECHNICAL DATA

Article 3

Gathering and access

1. Technical data relating to counterfeit euro notes and coins shall be gathered and indexed by the relevant national authorities and notified to the European Central Bank for storage and processing. The European Central Bank shall also be responsible for gathering technical information relating to counterfeit euro notes and coins from non-member countries.
2. The relevant national authorities and the Commission and Europol, in their respective areas of responsibility, shall have direct access to the technical data held by the European Central Bank.

Article 4

Obligation to transmit counterfeit euro notes for identification

1. The relevant national authorities for the detection or compilation of counterfeit euro notes shall without delay provide the nationally empowered body with examples of each type of counterfeit euro note for analysis and identification and such technical information and statistical data as are in their possession. The nationally empowered body shall transmit to the European Central Bank every new type of counterfeit note corresponding to the criteria adopted by the European Central Bank.
2. This procedure shall also apply in the course of judicial inquiries, unless there is an overriding need to retain all the counterfeit notes for use as evidence.
3. The European Central Bank shall without delay notify the authorities concerned of the final result of its analysis.

Article 5

Obligation to transmit counterfeit euro coins for identification

1. Each Member State shall establish or designate a national coin analysis centre (CNAC) in accordance with national legislation and practice.
2. The relevant national authorities for the detection or compilation of counterfeit euro coins shall without delay provide the national coin analysis centre with examples of each type of counterfeit euro coin for analysis and identification and such technical information and statistical data as are in their possession. The national coin analysis centre shall transmit to the European Technical and Scientific Centre (ETSC) every new type of counterfeit coin corresponding to the criteria adopted by the European Technical and Scientific Centre; to this end, the European Central Bank shall provide the national coin analysis centres with such technical data relating to counterfeit euro coins as are in their possession.

3. This procedure shall also apply in the course of judicial inquiries, unless there is an overriding need to retain all the counterfeit coins for use as evidence.

4. The European Technical and Scientific Centre shall without delay analyse and classify the counterfeit euro coins and notify the European Central Bank and the authorities concerned of the final result of its analysis.

Article 6

Obligations of credit institutions

1. Credit institutions within the meaning of Directive 2000/12/EC ⁽¹⁾ and establishments engaged in the activity of exchanging notes and coins of different currencies, such as bureaux de change, shall withdraw all counterfeit euro notes and coins from circulation and hand them over to the relevant national authorities. To that end, they shall make appropriate checks on the authenticity of euro notes and coins which they receive.

2. Institutions to which paragraph 1 applies which negligently or intentionally fail to discharge their obligations under paragraph 1 shall be subject to effective, proportionate and dissuasive penalties. The Member States shall notify the Council, the Commission and the European Central Bank of the text of the provisions adopted for this purpose within one year following the adoption of this Regulation.

CHAPTER 3

OPERATIONAL AND STRATEGIC DATA

Article 7

Unit to combat euro counterfeiting

1. The Member States shall ensure that a Unit to combat euro counterfeiting (the 'Unit') is set up by Europol and managed as a Europol administrative entity.

2. The Unit shall manage a system for the exchange, gathering and analysis of operational and strategic information within the Europol information system.

Article 8

Tasks of the Unit

The Member States shall ensure that the Unit:

- lends its support in order to enhance the effectiveness of information exchanges between the relevant authorities of the Member States in the exercise of their tasks of preventing and combating euro counterfeiting;

- regularly provides information to the relevant authorities, the European Central Bank and the Commission on the monitoring of euro counterfeiting activities for the purposes of strategic analysis. The information shall relate in particular to the types of counterfeit, the geographical location of counterfeiting activities and the practices used to commit them;

- on request or of its own motion, provides the relevant authorities of the Member States and of non-member countries with the assistance they need in the exercise of their tasks of preventing and combating euro counterfeiting. Such assistance shall include scientific support;

- cooperates with the European Central Bank and the Commission, acting within the limits of their respective powers, for the purposes of operational and strategic analysis and of protection of the euro against counterfeiting. This cooperation shall include the possibility for the European Central Bank and the Commission, in their respective areas of responsibility, to consult the Unit's system for the exchange, gathering and analysis of operational and strategic information on a permanent basis.

Article 9

National centralisation of information

Each Member State shall ensure by appropriate means that all information at national level relating to euro counterfeiting cases, beginning with the first administrative or judicial record, is transmitted to the national central office provided for by Article 12 of the Geneva Convention.

Article 10

Reporting obligations

1. Each Member State shall ensure that the national central offices referred to in Article 12 of the Geneva Convention transmit all detected euro counterfeiting cases, beginning with the first administrative or judicial record, to the information system provided for by Article 7. The national central offices shall have direct access to the information system.

2. Such information shall concern the identification of the case, the identification of the counterfeit, the circumstances in which the counterfeit was detected, the context of the seizure, the persons involved and the links with other cases (see Annex 1).

3. Each Member State shall ensure that the national central offices regularly update the information and in any event transmit information relating to stages of the procedure and to the monitoring of prosecutions. Where this is required by national law, they shall seek authorisation from the relevant judicial authority.

⁽¹⁾ OJ L 126, 26.5.2000, p. 1.

CHAPTER 4

COOPERATION AND MUTUAL ASSISTANCE*Article 11***Mutual assistance**

The Member States shall ensure that, at the request of the requesting national authority, the requested national authority transmits to the requesting authority, with copy in appropriate cases to the Unit provided for by Article 7, all such information as may be of assistance to it in preventing, detecting and combating euro counterfeiting.

*Article 12***Immediate assistance and rapid circulation of information**

1. The Member States shall ensure that a communication system is established by the Unit provided for by Article 7 to allow proper action to be taken immediately.

2. The communication system (early warning system) shall be available 24 hours a day every day of the week. It shall be interactive with the operational and strategic information system and shall allow easy transmission of images and photographs and reply messages. Provision shall be made for identification of the message, the type of counterfeit, the persons involved and the action requested (see Annex 2).

*Article 13***External aspects**

1. The Member States shall ensure that the Unit provided for by Article 7 gathers operational and strategic information relating to cases of euro counterfeiting in non-member countries.

2. Cooperation shall be established with non-member countries. It shall include technical and administrative

assistance to prevent and combat euro combating, in accordance with the provisions of the cooperation, association and pre-accession agreements relating to the prevention of unlawful activities.

3. Where they receive information on euro counterfeiting occurring in non-member countries, the relevant national authorities, with support from Europol and the Commission, shall make their staff, including the liaison officers, available for prevention and detection purposes. This obligation shall apply irrespective of whether the counterfeits are linked to the territory of the Member State providing the assistance.

CHAPTER 5

FINAL PROVISIONS*Article 14***Data protection and confidentiality**

The Member States, institutions and other bodies shall ensure that, where personal data are processed for the purposes of this Regulation, there is a level of data protection corresponding at least to that which results from application of the Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data.

Data relating to technical security shall be covered by professional secrecy.

*Article 15***Entry into force**

This Regulation shall enter into force on 1 January 2001.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX 1

OPERATIONAL AND STRATEGIC INFORMATION SYSTEM

(Standardised information)

1. File identification

Notification identification number

Date of notification

Body responsible for notification

Internal reference number

Stage in procedure: administrative investigations
 police investigations
 legal proceedings
 trial

Contact department name:
 telephone number:
 fax number:
 e-mail address:

2. Identification of forgeries

	Notes	Coins	
Denomination	EUR 500	EUR 2	
	EUR 200	EUR 1	
	EUR 100	50 cents	
	EUR 50	20 cents	
	EUR 20	10 cents	
	EUR 10	5 cents	
	EUR 5	2 cents	
		1 cent	
Series			
Counterfeit Class Identifier (ECB)			
Machine number			
Serial number			
Plate number			
National head of coin	BE	FR	LUX
	DE	IR	NL
	ES	IT	AU
	PT	FIN	EL
Quantity			
Instruments or objects seized or identified			

3. How the forgeries were detected

Date of detection

Place of seizure or recovery

seized in individual's possession
 seized at place of production
 seized elsewhere
 detected in course of routine commercial banks checks
 detected in circulation
 automatic telling machines, vending machines, etc.
 national bank

Stage at which detected

production
 import (EC)
 export (outside EC)
 transport
 sale/purchase/exchange
 introduction into circulation

Place of introduction into circulation

distribution exchange bureau
 other bank branch

Place of detection:

country:
 post code:
 town:

4. Circumstances of seizure

Information that led to detection:

Suspected origin or source (other than introduction into circulation):

Modus operandi, particular elements:

Statements by person last in possession:

5. Individuals concerned

PHOTO

Surname:

First name:

Alias:

Date of birth:

Place of birth:

Address:

street

postcode

town

country

Role:

producer

importer

exporter

carrier

in possession

in *bona fide* possession

member of criminal network/organisation

Status of person:

under arrest

suspected offender

questioned as witness

unidentified

Vehicle used:

Number plate:

Specific identity data, or special characteristics (dangerousness ..., name of criminal networks):

6. Connection with other cases:

.....
.....
.....
.....

Notification No:

Criminal record:

ANNEX 2

EARLY WARNING SYSTEM

1. Message identities

Sender ID:

Particulars of contact person:

name:

first name:

office address:

telephone number:

fax number:

e-mail address:

Message date:

Recipient ID:

Copies to:

Identification number of report to operational database:

Attachments: image of counterfeit (option)
photo of suspect
others

2. Identification of forgeries

	Notes	Coins
Denomination	EUR 500	EUR 2
	EUR 200	EUR 1
	EUR 100	50 cents
	EUR 50	20 cents
	EUR 20	10 cents
	EUR 10	5 cents
	EUR 5	2 cents
		1 cent
Counterfeit Class Identifier (ECB):		
Stage:	production	
	first appearance on market	
	broader distribution	
Provisional assessment of risk:	very dangerous	
	dangerous	
	to be monitored	

3. Individuals concerned

Surname:

First name:

Alias:

Date of birth:

Place of birth:

Address:

street

postcode

town

country

Role

producer

importer

exporter

carrier

in possession

member of criminal network/organisation

determining factor

unknown

Specific identity data or special characteristics (dangerousness, ... name of criminal networks):

4. Action required

Regarding individuals involved:

discreet surveillance, close monitoring

investigation, interception

questioning as witness

arrest, warrant number

mutual assistance request

prepared launched

Regarding the counterfeit:

alert banks

alert general public

active search order