



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

concerning medals and tokens similar to euro coins

Proposal for a

COUNCIL REGULATION

**extending the application of Regulation (EC) No..... concerning medals and tokens
similar to the euro coins to the non-participating Member States**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

The proposed legislation intends to regulate the use of the terms “euro” and “euro cent” and of the euro symbol (€) on metallic objects having the appearance and/or technical properties of coins (medals and tokens) and to define the levels of similarity to the euro coins that should be banned for medals and tokens. The purpose is to protect the public against fraud and confusion related to the euro coins, while at the same time establishing a level playing field for the production of such medals and tokens.

In particular, the relevant risk to the public is twofold. Firstly, citizens could believe that metallic objects (medals and tokens) have legal tender status if they show the text appearing on the euro coins or use the euro symbol. Secondly, medals or tokens could fraudulently be used in coin operated machines, if their size and metal properties are close to the ones of the euro coins.

The circulation of the euro coins in a large number of Member States makes it necessary to have a set of rules respected by all participants. A number of measures which have already been taken at Community level, have not proven to be sufficient to effectively prevent the appearance of euro coin-like objects, which entered into circulation.

In particular, prior to the introduction of the euro coins, the Community assigned to the competent authorities of the Member States the rights it held entitling it to claim copyright as regards the designs of the common face of the euro coins¹. As a result, national law is now applicable to the copyright protection, on the basis of a common set of rules. These rules are mandatory and i.a. forbid the reproduction of the designs on medals and tokens made in metal. As these rules only refer to the designs themselves, Member States have not been able to use them to ban medals and tokens with a design similar to the one of the euro coins.

Commission Recommendation of 19 August 2002 on medals and tokens similar to the euro coins² aims at protecting against the use on medals and tokens of the terms “euro” and “euro cent”, as well as of the euro symbol³. Apart from the fact that the Recommendation only covered visual aspects, it was not generally transposed into national law, as Member States expressed preference for binding Community legislation. In itself, while the Recommendation constituted a useful guide, it proved to be less than fully effective. On the whole, national rules concerning medals and tokens are rare and mostly of a general nature. Finally, practice since the euro coins were introduced showed that, in addition to visual characteristics, it was necessary to establish the mandatory rules concerning technical properties as included in the proposed legislation.

¹ Communication from the Commission on copyright protection of the common face design of the euro coins. OJ C 318, 13.11.2001, p. 3, COM(2001) 600 final.

² OJ L 225, 22.8.2002, p.34.

³ This Recommendation renewed a similar Commission Recommendation of 13 January 1999, concerning collector coins, medals and tokens, OJ L 20, 27.1.1999, p. 61.

A rising number of incidents involving medals closely similar to the euro coins has demonstrated the need for stricter and binding measures, aimed at creating a level playing field throughout the Community with regard to medals and tokens. Such incidents concern, for example, cases of euro coin-like medals, one of which came into circulation instead of euro coins, as well as cases of coin like objects fraudulently used in coin operated machines.

The Economic and Financial Committee's Euro Coin Sub-committee and the EU Mint Directors have considered these incidents and concluded that a mandatory legal instrument regarding medals and tokens is necessary to cope with such cases. The present proposal takes into consideration the comments offered during these discussions.

In addition, the issue has been discussed extensively with representatives of the coin operated industry, in the framework of its regular meetings with the Commission and the EU Mint Directors. The coin operated industry is strongly in favour of a regulatory framework such as the one proposed, since this could reduce the cost that is caused by fraud in vending machines. Finally, account was taken, in the proposed Regulation, of the comments offered by token manufacturers.

2. THE PROPOSED COUNCIL REGULATION

Article 1 provides definitions in line with formal Community texts, where such definitions are available. The definition of medals and tokens is in line with the one included in the Commission Recommendation of 19 August 2002. With regard to medals and tokens made of gold, silver and platinum, in the absence of European legislation on the content in precious metal and hallmarking of articles, the levels proposed for the exclusive purpose of this Regulation are based on minimum standards among Member States. The organisational structure of the European Technical and Scientific Centre (ETSC), which is already operating, will be consolidated through a Council decision for which the Commission has submitted a proposal (COM(2003) 426 of 17.7.2003). The national designated authorities mentioned are the ones who are responsible for issuing coins in Member States (Annex II). Since a number of requests concerning euro-like medals come from countries outside the EU, it is proposed that the Commission should be the designated authority in such cases. Finally, the reference band for the size of medals and tokens is fundamental for the proposed Regulation. The reference band defines a set of combinations between values for diameter and values for edge height, within which the size of a medal or token is considered to be similar to the one of the euro coins.

Article 2 sets out the restrictions on medals and tokens. In particular, paragraph (a) prohibits the use of the terms "euro" or "euro cent" or the euro symbol (defined in Annex I) on the surface of medals and tokens, since these may lead to the wrong impression that these have legal tender status⁴. Paragraph (b) prohibits medals and tokens which are of a size similar to the euro coins, i.e. inside the reference band. The prohibition is for designs that are "similar" since the designs in themselves are protected by national provisions. Finally, paragraph (c) protects the edge design of the 2-euro coins. The designs of the common and the national sides of the euro coins, as well as the edge designs, are described in the Commission's publication in December 2001⁵.

⁴ This provision is similar to the one in Commission Recommendation of 19 August 2002.

⁵ OJ C 373, 28.12.2001.

Article 3 describes automatic exemptions to the rules. In particular, paragraph 1 allows the terms “euro” and “euro cent” or the euro symbol, without an associated nominal value, to be used on medals tokens which are very different in size compared to the euro coins (i.e. are outside the reference band). Paragraph 2 of Article 3 introduces an exemption from the size restriction (under Article 2(1)b) for medals and tokens with a large hole in the centre and have different metal properties; or which are made of gold or silver or platinum.

Article 4(1) provides for the possibility that the designated authorities may authorise specific derogations with respect to the visual characteristics (Article 2(a)) under specific conditions. Such conditions refer mainly to cases where the use of the terms euro, euro cent or the euro symbol is practical. Typical for this case are the casinos, where tokens bearing a face value in euro are sold the equivalent in euro, at face value. In some cases such tokens are convenient for the functioning of these companies. In order to limit the possibility of abuse, the origin of the authorised medal or token must be clearly identifiable and the indication “Not legal tender” must be stamped on the medal or token.

Article 4(2) provides for the possibility to authorise derogations from the size restrictions (Article 2(b)) under two cumulative conditions: (i) the size of the medals and tokens, although inside the reference band, should not be in the immediate vicinity of the euro coins; and (ii) the metal properties should be sufficiently different from the ones of the euro coins. As a result, medals and tokens with such derogation could not normally be used instead of the euro coins in coin operated machines. An important element of Article 4(2) is that it provides flexibility as to the application in line with national rules and practices, as long as the strict minimal conditions are respected. In particular, countries with a tradition of not authorising medals and tokens inside the reference band may continue to do so, although some cross border effects may occur. Others may continue to provide authorisations, under the above-mentioned conditions.

Article 4(3) establishes the competence of the designated authorities to declare whether the degree of similarity, referred to in Article 2(c), is acceptable.

In order to visually illustrate the technical concepts, Annex III includes a section showing an indicative graphical representation of the reference band and the related definitions.

With a view to achieving some degree of harmonisation in the interpretation of the Regulation for Member States to grant derogations, a mechanism is proposed in Article 5(1) whereby all derogations are communicated to the ETSC. The ETSC compiles a list that Member States can consult and, where appropriate, prepares reports. In addition, it was considered necessary to avoid upsetting the functioning of companies which use such tokens as part of their activity (for example casinos). For that purpose it is proposed in Article 5(2) that medals and tokens not observing the rules but existing at the time of entry into force of this Regulation should only be replaced when they reach the end of their life-time, at the latest by the end of 2012. These tokens should be recorded according to the applicable national procedures and communicated to the ETSC. In some cases, such recording will not be necessary, as medals and tokens similar to euro coins do not exist, as a result of national legislation or practice.

Article 6 requires that Member States shall take the necessary measures to ensure the proper implementation of the proposed Regulation, through appropriate sanctions to be adopted by January 2005 and communicated to the Commission.

Article 7 limits the applicability of the Regulation to the participating Member States, reflecting the legal basis used, i.e. Article 123(4) TEC. As was the case, i.a. with Regulation 1338/2001, a second Regulation, based on Treaty Article 308 should extend the effects of the proposed Regulation to the non participating Member States.

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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 Commission⁶,

Having regard to the opinion of the European Parliament⁷,

Having regard to the opinion of the European Central Bank⁸,

Whereas:

- (1) On 1 January 1999, the euro became the legal currency of the participating Member States in accordance with the requirements of Council Regulation (EC) No 974/1998 of 3 May 1998 on the introduction of the euro⁹ and of third countries which have concluded an agreement with the European Community on the introduction of the euro, namely Monaco, San Marino, and the Vatican City.
- (2) Council Regulation (EC) No 975/1998 of 3 May 1998 on denominations and technical specifications of euro coins intended for circulation¹⁰ has defined the basic features of euro coins. Euro coins, following their introduction in January 2002, circulate throughout the euro area as sole legal tender in metallic form.
- (3) Commission Recommendation 2002/664/EC of 19 August 2002 concerning medals and tokens similar to the euro coins¹¹ has recommended that certain visual characteristics should be avoided in the sale and production, stocking, importation and distribution, for sale or for other commercial purposes, of medals and tokens whose size is close to that of euro coins.

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ OJ L 139, 11.5.1998, p. 1.

¹⁰ OJ L 139, 11.5.1998, p. 6. Regulation as last amended by Regulation (EC) No 423/1999 (OJ L 52, 27.2.1999, p. 2).

¹¹ OJ L 225, 22.8.2002, p. 34.

- (4) The Communication from the Commission of 23 July 1997 on the use of the euro symbol¹² has established the symbol (€) and called upon all currency users to use the symbol for the description of monetary amounts denominated in euro.
- (5) The Communication from the Commission of 13 November 2001 on copyright protection of the common face design of the euro coins¹³ has defined the arrangements to be applied for the reproduction of the common face design of euro coins.
- (6) The visual characteristics of euro coins were published by the Commission on 28 December 2001¹⁴.
- (7) Citizens may be led to believe that medals and tokens bearing the terms “euro” or “euro cent”, the euro symbol, or a design similar to that which appears on the common face or on any of the national sides of the euro coins, have legal-tender status in any of the Member States that have adopted the euro, or in a participating third country.
- (8) There is an increasing risk that medals and tokens having a size and metal properties similar to euro coins may be unlawfully used in the place of euro coins.
- (9) It is therefore appropriate that medals and tokens having visual characteristics, size or metal properties which are similar to euro coins should not be sold, produced, imported or distributed for the purpose of sale or for commercial purposes.
- (10) With a view to facilitating a harmonisation of the decisions of the designated national authorities, the European Technical and Scientific Centre, based on communication by the Member States, should compile a register of medals and tokens similar to euro coins and prepare appropriate reports.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

- (a) “euro” means the legal currency of participating Member States as defined in Article 1 of Regulation (EC) No 974/98 and of those participating third countries which have concluded an agreement with the European Community on the introduction of the euro, hereinafter referred to as ‘participating third countries’;
- (b) “euro symbol” means the symbol representing the euro (€) as shown and described in Annex I;

¹² COM(1997) 418 of 23 July 1997.

¹³ OJ C 318, 13.11.2001, p. 3, COM(2001) 600 final.

¹⁴ OJ C 373, 28.12.2001.

- (c) “medals and tokens” means those metallic objects, other than blanks intended for striking coins, which have the appearance and/or technical properties of a coin but are not issued under national or participating third country legislative provisions or other foreign legislative provisions, and which therefore are neither a legal means of payment nor legal tender;
- (d) “gold”, “silver” and “platinum” mean alloys containing gold, silver and platinum with a millesimal fineness in weight of at least 375, 500 and 850 respectively. This definition shall not concern hallmarking conventions applicable in Member States;
- (e) “European Technical and Scientific Centre” (hereinafter referred to as “ETSC”) means the entity established by Commission Decision [...];
- (f) “designated authorities” responsible at national level for medals and tokens means those authorities listed in Annex II, or, in cases outside the European Union, the Commission itself;
- (g) “reference band” shall have the meaning given to it in Section 1 of Annex III.

Article 2

Protective provisions

Subject to Articles 3 and 4, the production and sale of medals and tokens, and their importation and distribution for sale or for other commercial purposes, shall be prohibited in the following circumstances:

- (a) when the terms “euro” or “euro cent” or the euro symbol appear on their surface; or
- (b) when their size is inside the reference band; or
- (c) when any design appearing on the surface of medals and tokens is similar to any of the national obverse designs or to the common reverse face of euro coins, or being identical or similar to the edge design of the 2-euro coin.

Article 3

Exemptions

1. Medals and tokens bearing the terms “euro” or “euro cent” or the euro symbol without an associated nominal value are not prohibited when their size is outside the reference band.

2. Medals and tokens whose size is inside the reference band shall not be prohibited when:
 - (a) they are pierced with a hole of over 6 millimetres in the centre, or when their shape is polygonal but not exceeding six edges, provided the condition under Article 4(2)(b) is respected; or
 - (b) they are made of gold or silver or platinum.

Article 4

Derogations by authorisation

1. The designated authority in the Member State where a medal or token is produced or first imported, or the Commission in the case of requests from third countries, may grant specific authorisations to use the terms “euro” or “euro cent” under controlled conditions of utilisation in cases where no risk of confusion exists. In such cases, the economic operator concerned within a Member State shall be clearly identifiable on the surface of the medal or token and the indication “Not legal tender” must be stamped on the obverse or the reverse of the medal or token.
2. The designated authority in the Member State where the medal or token is produced or first imported, or the Commission in the case of requests from third countries, may grant specific authorisations for medals and tokens whose size is inside the reference band, in cases where no risk of confusion exists, provided that the following conditions are met:
 - (a) the combinations of diameter and edge height of medals and tokens must be consistently outside the ranges defined in each of the cases specified in Section 2 of Annex III ; and
 - (b) the combinations of diameter and metal properties of medals and tokens must be consistently outside the ranges defined in each of the cases specified in Section 3 of Annex III.
3. The designated authority in the Member State where a medal or token is produced or first imported, or the Commission in the case of requests from third countries, is competent to declare whether a design is “similar” within the meaning of Article 2 paragraph (c).

Article 5

Communication and recording

1. The competent authorities in the Member States shall communicate to the ETSC each of the authorisations provided for under Article 4; the ETSC shall record them in a register for medals and tokens. The register shall be available for consultation by the designated authorities of the Member States.

2. Medals and tokens issued prior to the entry into force of this Regulation which do not satisfy the conditions set out in Articles 2, 3 and 4 may continue to be used until the end of the year 2012, at the latest. Those medals and tokens shall be recorded, if appropriate, according to the procedures applicable in the Member States and communicated to the ETSC.

Article 6

Sanctions

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall adopt by 1 January 2005 the laws, regulations and administrative provisions for applying this Article. They shall forthwith inform the Commission thereof.

Article 7

Applicability

This Regulation shall have effect in the participating Member States as defined in Regulation (EC) No 974/98.

Article 8

Entry into force

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

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 Brussels, [...]

For the Council
The President

ANNEX I

APPEARANCE OF THE EURO SYMBOL AS MENTIONED IN ARTICLE 1



ANNEX II

LIST OF DESIGNATED AUTHORITIES AS MENTIONED IN ARTICLE 1

BELGIUM: Ministère des Finances - Administration de la Trésorerie (Ministry of Finance-Treasury Administration)

DENMARK: Danmarks Nationalbank

GERMANY: Bundesministerium der Finanzen (Federal Ministry of Finance)

GREECE: Υπουργείο Εθνικής Οικονομίας και Οικονομικών – Γενικό Λογιστήριο του Κράτους (Ministry of National Economy and Finance – State Accounts Department)

SPAIN: Dirección General del Tesoro y Política Financiera (Directorate-General of the Treasury and Financial Policy)

FRANCE: Direction des Monnaies et médailles – Ministère de l'Economie des Finances et de l'Industrie de la République Française (Mint and Medals Directorate – Ministry of Economic and Financial Affairs and Industry)

IRELAND: Central Bank and Financial Services Authority of Ireland

ITALY: Ministero dell'Economia e delle Finanze (Ministry of Economic and Financial Affairs)

LUXEMBOURG: Ministère de Finances – Service de la Trésorerie (Ministry of Finance – Treasury Department)

NETHERLANDS: Ministerie van Financiën – Directie Binnenlands Geldwezen (Ministry of Finance – Domestic Monetary and Financial Affairs Directorate)

AUSTRIA: Münze Österreich AG (Austrian Mint)

PORTUGAL: Imprensa Nacional – Casa da Moeda (National Printing Office – Mint)

FINLAND: Valtiovarainministeriö (Ministry of Finance)

SWEDEN: Sveriges Riksbank – Avdelningen för Marknadsoperationer (MOP)

UNITED KINGDOM: HM Treasury

ANNEX III

1. DEFINITION OF THE REFERENCE BAND REFERRED TO IN ARTICLE 1

- (a) The reference band for the size of medals and tokens is the set of combinations between the values for diameter and values for edge height included in the reference range for diameter and the reference range for edge height respectively.
- (b) Reference range for diameter is the one between 19.00 millimetres and 28.00 millimetres.
- (c) Reference range for edge height is the one included between 7.00 % and 12.00 % of each value within the reference range for diameter.

2. RANGES REFERRED TO IN ARTICLE 4(2)(a)

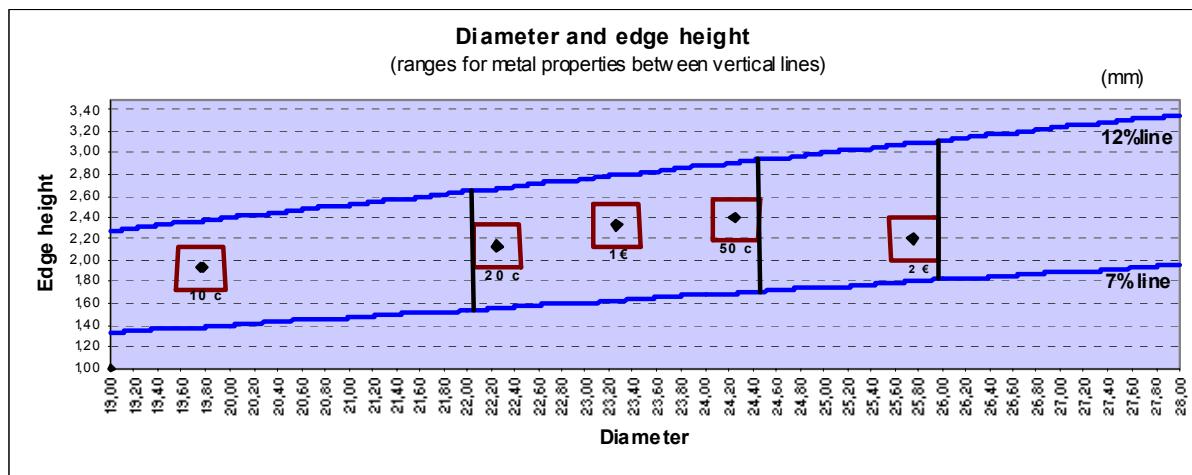
Defined ranges		
	Diameter (mm)	Edge height (mm)
1.	19.55 - 19.95	1.73 - 2.13
2.	22.05 - 22.45	1.94 - 2.34
3.	23.05 - 23.45	2.13 - 2.53
4.	24.05 - 24.45	2.18 - 2.58
5.	25.55 - 25.95	2.00 - 2.40

3. RANGES REFERRED TO IN ARTICLE 4(2)(b)

	Diameter (mm)	Metal properties
1.	19.00 – 22.04	Electrical conductivity between 14.00 and 18.00 % IACS
2.	22.05 – 24.45	Electrical conductivity between: - 14.00 and 18.00 % IACS; or - 4,54.50 and 6.50 % IACS, unless the medal or token is mono-metallic and its magnetic moment is outside the range from 1.0 to 7.0 μ Vs.cm
3.	24.46 – 25.95	Electrical conductivity between: - 15.00 and 18.00 % IACS; or - 13.00 and 15.00 % IACS, unless the medal or token is mono-metallic and its magnetic moment is outside the range from 1.0 to 7.0 μ Vs.cm
4.	25.96 – 28.00	Electrical conductivity between 13.00 and 15.00 % IACS, unless the medal or token is mono-metallic and its magnetic moment is outside the range from 1.0 to 7.0 μ Vs.cm

4. GRAPHICAL REPRESENTATION

The following graph provides an indicative illustration of definitions in this annex:



FINANCIAL IMPACT

No financial impact on the Community budget.

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extending the application of Regulation (EC) No..... concerning medals and tokens similar to the euro coins to the non-participating Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission¹⁵,

Having regard to the opinion of the European Parliament¹⁶,

Whereas:

- (1) When adopting Regulation (EC) No¹⁷ the Council indicated that it should apply in the participating Member States as defined in Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro¹⁸,
- (2) However, it is important that the rules concerning medals and tokens similar to the euro coins should be uniform throughout the Community, and the requisite provisions should be taken to that end,

HAS ADOPTED THIS REGULATION:

Article 1

The application of Regulation (EC) No [...] shall be extended to Member States other than the participating Member States as defined in Regulation (EC) No 974/98.

¹⁵ OJ C , , p. .

¹⁶ OJ C , , p. .

¹⁷ See page [x] of this Official Journal.

¹⁸ OJ L 139, 11.5.1998, p. 1.

Article 2

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

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

Done at Brussels, [...]

*For the Council
The President*