

EUROPEAN CENTRAL BANK

RECOMMENDATION OF THE EUROPEAN CENTRAL BANK

of 6 October 2006

on the adoption of certain measures to protect euro banknotes more effectively against counterfeiting

(ECB/2006/13)

(2006/C 257/07)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community, and in particular Article 106(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 16 and Article 34.1 thereof,

Whereas:

- (1) The Treaty and the Statute have entrusted the European Central Bank (ECB) and, subject to the ECB's authorisation, the national central banks (NCBs) of Member States without a derogation, with issuing euro banknotes.
- (2) Ensuring the integrity and preservation of euro banknotes in circulation and, by implication, the public's trust in euro banknotes forms part of this task.
- (3) The Eurosystem Framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers ⁽¹⁾ (hereinafter the 'Framework') establishes harmonised standards and procedures for banknote recycling within the euro area. In particular, when authenticity and fitness checks are to be performed by banknote handling machines, only those machines successfully tested by an NCB may be used to perform checks of the banknotes to be recirculated. In this context, NCBs offer manufacturers common tests for banknote handling machines, valid throughout the euro area and conducted by using common test decks, containing, inter alia, selected classes of euro counterfeits. Such tests thus necessitate the availability of counterfeit notes of the same class both for the initial constitution and for the replenishment of the common test decks and, therefore, regular exchange and transport of such notes within the European Union between NCBs.
- (4) Article 4(2) of Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting ⁽²⁾ obliges competent national authorities to provide national analysis centres (NACs) without delay with the necessary requested examples of each type of suspected counterfeit note, for analysis and identification. NACs are moreover obliged to send the ECB every new type of suspected counterfeit note corresponding to ECB criteria for analysis and classification purposes.

⁽¹⁾ Available on www.ecb.int.

⁽²⁾ OJ L 181, 4.7.2001, p. 6.

- (5) The obligations addressed to both competent national authorities and NACs in Article 4(2) of Regulation (EC) No 1338/2001 apply without prejudice to national criminal law. In particular, they may not prevent suspected counterfeit notes from being used or retained as evidence in criminal proceedings. In several Member States, this severely hampers the availability of counterfeit notes for NACs and NCBs that are not NACs.
- (6) The use of cash handling machines, their testing and constant improvement are a means of facilitating the detection of counterfeit notes and thus contributing to uttering euro notes in such a manner as to protect them against counterfeiting.
- (7) It is therefore crucial for the transport of counterfeit notes by NACs and NCBs that are not NACs to also be permitted for Framework purposes, whereby due regard is given to pending criminal proceedings.
- (8) Article 10 of the Treaty requires the Member States, including police and judicial authorities, to take all measures necessary to ensure the effectiveness of Community law.
- (9) The effective protection of the euro against counterfeiting is an important element of Community law. The efforts to prevent counterfeiting concern both the Community, by virtue of its competence in respect of the single currency, and the Member States, by virtue of their competence in the sphere of criminal law and policies to combat organised crime.
- (10) Generally, criminal law and the rules of criminal procedure do not fall within the competence of the Community, unless necessary to ensure the effectiveness of Community law. In all other cases, the adoption of measures pursuant to Title VI of the Treaty on European Union on police and judicial cooperation in criminal matters may be required.
- (11) Article 29 of the Treaty on European Union provides that the EU's objective of providing citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States is achieved, inter alia, through approximation of rules on criminal matters in the Member States.
- (12) The Eurosystem's responsibility to ensure the integrity and preservation of euro banknotes in circulation requires formulating recommendations on certain policy objectives, whilst leaving the EU and national authorities to consider such objectives and to adopt the appropriate measures for their implementation,

HAS ADOPTED THIS RECOMMENDATION:

1. The European Commission should consider proposing an extension of the powers of NACs and of NCBs that are not NACs, so that they may retain identified and analysed examples of counterfeit notes and also request and legitimately transport such notes intra-EU for the purposes of the Framework. In particular, Article 4(2) of Regulation (EC) No 1338/2001 should be amended, and Article 4(3) accordingly deleted. As a minimum, this latter paragraph should be amended so that the full application of Article 4(2) is not prevented by the use or retention of counterfeit notes as evidence in criminal proceedings, except when such an application is impossible, taking into account the quantity and type of seized counterfeits.
2. While the amendment of Regulation (EC) No 1338/2001 is indispensable in order to allow the transport of counterfeits for the purposes of the Framework, as well as the release of counterfeits by national authorities, the extent to which common action under Title VI of the EU Treaty may be helpful in that respect could be examined. Concretely, the applicability of Article 31(1)(e) of the EU Treaty could be considered, as the seized counterfeits are used as evidence in pending penal procedures before national judicial authorities. In particular, Member States should ensure that, to the extent the rights of suspects and defendants are not prejudiced, the staff of NACs and NCBs that are not NACs may legitimately transport and retain a quantity of seized counterfeit notes for the purposes of the Framework, on condition of immediately returning them to the prosecutorial or judicial authorities on demand.

3. Irrespective of the adoption of the above measures, Member States may need to amend their national legislation to facilitate retention and transportation of seized counterfeit notes for the purposes of the Framework. Member States should consider in particular abolishing national rules providing that seized counterfeit notes must at all times remain in a court's archives, be destroyed, be handed exclusively to the police or remain on national territory.
4. Irrespective of the adoption of the above measures, Member States should consider fostering and promoting practical arrangements with their NCBs, whereby counterfeit notes are provided to the latter for the purposes of the Framework, and exchanged between NCBs, potentially through the exercise of prosecutorial or judicial discretion.

This recommendation is addressed to the Council of the European Union, the European Parliament, the Commission of the European Communities and the Member States.

Done at Frankfurt am Main, 6 October 2006.

The President of the ECB

Jean-Claude TRICHET
