

**OPINION OF THE EUROPEAN CENTRAL BANK****of 16 November 2009****on a proposal for a Council Regulation concerning authentication of euro coins and handling of euro coins unfit for circulation****(CON/2009/95)**

(2009/C 284/02)

**Introduction and legal basis**

On 30 September 2009, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council Regulation concerning authentication of euro coins and handling of euro coins unfit for circulation <sup>(1)</sup> (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on the third sentence of Article 123(4) of the Treaty establishing the European Community, and on the first indent of Article 105(4) of the Treaty, in combination with Article 106(2) of the Treaty, as the proposed Regulation relates to the technical specifications of euro coins. In accordance with the first sentence of Article 17,5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

**General observations**

The proposed regulation implements the obligation placed on credit institutions and other institutions addressed in Article 6 of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting <sup>(2)</sup>, to ensure that euro coins they receive and intend to put back into circulation are checked for authenticity and that counterfeits are detected. The ECB has adopted very similar measures as regards the obligation of the same institutions to check the authenticity of euro banknotes pursuant to Council Regulation (EC) No 1338/2001. Having similar legislation in place that applies to institutions involved in the distribution to the public of euro banknotes and coins will help to reduce the threat that counterfeiting of euro banknotes and coins poses to the single currency.

For the purposes of the proposed regulation, the Commission's decision to build on existing coin sorting procedures and equipment, which have been developed on the basis of the Commission Recommendation 2005/504/EC of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation <sup>(3)</sup>, is certainly the best way to ensure continuity of the good practices existing so far and thus guarantee the efficiency of the planned measures.

**Handling fees**

Notwithstanding Article 8(2) and (4) of the proposed regulation, which allow Member States, to a certain extent, to provide an exemption from handling fees, the ECB questions whether withholding a handling fee of 5 % of the face value of euro coins unfit for circulation serves the purpose of the proposed regulation, which is to oblige Member States to withdraw unfit euro coins from circulation. As stated in Recital 4 of the proposed regulation, the circulation of unfit euro coins 'makes them more difficult to use' and 'may create confusion to the users as to the authenticity of the coins'. Euro coins unfit for circulation need to be withdrawn from circulation to ensure that euro coins can be reliably checked for genuineness and that their exposure to counterfeiting is reduced. In this respect, the ECB considers that the reimbursement of the value or replacement of euro coins unfit for circulation should be, as a general rule, free from any handling fees. As emphasised in past opinions of the ECB, the application of a fee also contradicts the notion of legal tender, whereby it is a public task to exchange legal tender money at full value <sup>(4)</sup>.

<sup>(1)</sup> COM(2009) 459 final.

<sup>(2)</sup> OJ L 181, 4.7.2001, p. 6.

<sup>(3)</sup> OJ L 184, 15.7.2005, p. 60.

<sup>(4)</sup> See Opinion CON/2009/52. All ECB opinions are published on the ECB's website at <http://www.ecb.europa.eu>

However, the ECB considers that the application of a fee of 15 % would be justified in cases where the volume of unfit coins to be checked is comparatively high, due to anomalies or deviations from the specifications referred to in Article 9 of the proposed regulation.

Where the ECB recommends that the proposed regulation is amended, a specific drafting proposal is set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 16 November 2009.

*The President of the ECB*

Jean-Claude TRICHET

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## ANNEX

## Drafting proposals

Text proposed by the Commission	Amendment proposed by the ECB <sup>(1)</sup>
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**Amendment 1**

## Article 3(1) of the proposed regulation

Text proposed by the Commission	Amendment proposed by the ECB <sup>(1)</sup>
<p>Article 3</p> <p>'1. The institutions shall ensure that euro coins, which they have received and which they intend to put back into circulation, are submitted to authentication. They shall implement this obligation:</p> <p>(a) mainly by means of coin processing machines included in the list of coin processing machines, referred to in Article 5(3); or</p> <p>(b) by trained personnel.'</p>	<p>Article 3</p> <p>'1. The institutions shall ensure that euro coins <b>having a face value of 2 euro, 1 euro and 50 cent</b>, which they have received and which they intend to put back into circulation, are submitted to authentication. They shall implement this obligation:</p> <p>(a) mainly by means of coin processing machines included in the list of coin processing machines, referred to in Article 5(3); or</p> <p>(b) by trained personnel.'</p>

## Explanation:

The ECB suggests limiting the authentication procedure to coins with a face value of at least 50 cent (i.e. 2 euro, 1 euro and 50 cent coins). Indeed, coins with a face value of 20 cent and below bear a very low risk of being counterfeited, due to their low value compared to (i) the value of the metal, and (ii) the cost of counterfeiting. To submit all coins to authentication would represent a real burden on the institutions, which may not be justified by the value of the coins at stake.

**Amendment 2**

## Article 4(1) of the proposed regulation

Text proposed by the Commission	Amendment proposed by the ECB <sup>(1)</sup>
<p>Article 4</p> <p>'1. The institutions shall have their coin processing machines tested by the designated national authorities or by the European Technical and Scientific Centre (ETSC) by conducting a detection test. Such test shall be designed to ensure that a coin processing machine is capable of rejecting the known types of counterfeit coins and all other coin-like objects that do not comply with the specifications of genuine euro coins.'</p>	<p>Article 4</p> <p>'1. The institutions shall <b>only use</b> <del>have their types of</del> coin processing machines <b>that have passed a detection test conducted</b> <del>tested</del> by the designated national authorities or by the European Technical and Scientific Centre (ETSC) <del>by conducting a detection test</del>. Such test shall be designed to ensure that a <b>type of</b> coin processing machine is capable of rejecting the known types of counterfeit coins, <del>and</del> all other coin-like objects that do not comply with the specifications of genuine euro coins <b>and euro coins unfit for circulation.</b>'</p>

## Explanation:

The ECB considers that making it an obligation for institutions to use coin processing machines that have passed a detection test is a more logical approach. It would allow the coin processing machines that have been successfully tested once to be used by several institutions, i.e. it would not be necessary to re-run a test for each institution. In addition, it would be more in line with Article 5 of the proposed regulation, which lays down that detection tests may be carried out on the premises of the manufacturers' facilities and that a consolidated list of all successfully tested coin processing machines will be published on the Commission's website. Moreover, the ECB suggests restricting the detection test to types of coin processing machines (i.e. machines sharing the same hardware, software and core functionalities), as this should be enough to ensure that all coin processing machines of the same type fulfil the requirements of the proposed regulation.

In addition, according to Article 2(b) of the proposed regulation, euro coins unfit for circulation are defined as those that are rejected during the authentication process. Therefore, the wording of Article 4(1) of the proposed regulation should make it clear that the coin processing machines submitted for a detection test must also detect euro coins unfit for circulation.

Text proposed by the Commission

Amendment proposed by the ECB (1)

**Amendment 3**

## Article 6(3) of the proposed regulation

<p>Article 6</p> <p>'3. The number of machines to be verified each year in each Member State shall be such that the volume of euro coins processed by these machines during that year represents at least one-third of the total cumulated net volume of coins issued by that Member State from the introduction of the euro coins until the end of the previous year. The number of machines to be verified shall be calculated on the basis of the volume of the three highest denominations of euro coins intended for circulation.'</p>	<p>Article 6</p> <p>'3. The number of machines to be verified each year in each Member State shall <b>represent 10 % of the total number of machines installed in that Member State</b> or be such that the volume of euro coins processed by these machines during that year represents at least one-third of the total cumulated net volume of coins issued by that Member State from the introduction of the euro coins until the end of the previous year. <b>In the latter case,</b> <del>The</del> number of machines to be verified shall be calculated on the basis of the volume of the three highest denominations of euro coins intended for circulation.'</p>
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*Explanation:*

*The ECB is of the opinion that Member States should have the choice to check coin processing machines installed on their territory either by applying the calculation method laid down in the proposed regulation, or alternatively by carrying out checks of a certain percentage of these coin processing machines. Indeed, as coins circulate throughout the euro area, the migration of coins from one Member State to another may significantly affect the volume of coins circulating in a Member State. Some Member States may therefore find it more appropriate to check coin processing machines independently of the cumulated net volume of coins they issue. In both cases, the number of coin processing machines verified by Member States would be high enough to ensure proper control of the capacity of the institutions to carry out euro coin authentication.*

**Amendment 4**

## Article 8 of the proposed regulation

<p>Article 8</p> <p>'1. A handling fee of 5 % of the face value of the submitted euro coins unfit for circulation shall be withheld from the reimbursement or the replacement of these euro coins. The handling fee shall be supplemented by an additional 15 % fee of the face value of the submitted euro coins in case the entire bag or box is checked as provided in Article 10.</p> <p>2. Member States may provide for general exemptions from handling fees in cases where the submitting legal or natural persons cooperate closely and regularly with the designated national authorities in withdrawing from circulation counterfeit euro coins and coins unfit for circulation.</p> <p>3. Transport and related costs shall be borne by the submitting legal or natural person.</p> <p>4. Without prejudice to the exemption provided for in paragraph 2, a maximum quantity of one kilogramme euro coins unfit for circulation per denomination is exempted from the handling fee each year for one submitting legal or natural person.'</p>	<p>Article 8</p> <p><del>'1. A handling fee of 5 % of the face value of the submitted euro coins unfit for circulation shall be withheld from the reimbursement or the replacement of these euro coins. The A handling fee of shall be supplemented by an additional 15 % fee of the face value of the submitted euro coins unfit for circulation shall be withheld from the reimbursement or the replacement of these euro coins in case the entire bag or box is checked as provided in Article 10(2).</del></p> <p><del>2. Member States may provide for general exemptions from handling fees in cases where the submitting legal or natural persons cooperate closely and regularly with the designated national authorities in withdrawing from circulation counterfeit euro coins and coins unfit for circulation.</del></p> <p><del>3. Transport and related costs shall be borne by the submitting legal or natural person.</del></p> <p><del>4. Without prejudice to the exemption provided for in paragraph 2, a maximum quantity of one kilogramme euro coins unfit for circulation per denomination is exempted from the handling fee each year for one submitting legal or natural person.'</del></p>
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Text proposed by the Commission

Amendment proposed by the ECB <sup>(1)</sup>

Explanation:

See the paragraph on handling fees above.

#### Amendment 5

Article 14 of the proposed regulation

Article 14

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

It shall apply from 1 January 2012.

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

Article 14

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

It shall apply from 1 January 2012.

**Member States having, at the date of entry into force of this Regulation, arrangements in place implementing Commission Recommendation 2005/504/EC may however continue to apply these arrangements for a transitional period of three years from 1 January 2012.**

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

Explanation:

The proposed regulation should allow for a temporary grand-fathering of well-proven national practices based on Commission Recommendation 2005/504/EC, taking particular account of the investments made in connection with the installation of coin processing machines in Member States having implemented the Commission Recommendation.

<sup>(1)</sup> Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.