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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2183/2004 extending to the non-participating Member States the application of Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins

(presented by the Commission)

EXPLANATORY MEMORANDUM

General context

Council Regulation 2182/2004¹ aims to protect euro coins against medals and tokens which are similar to euro coins. Since its adoption, the Regulation has significantly contributed to avoiding similarity between euro coins and medals/tokens, as private companies now generally comply with the definitions and the prohibitions established in the Regulation.

Experience gained during the implementation period has highlighted the need to clarify the protective provisions and to increase transparency in the decision making process; it is therefore necessary to modify the Regulation.

In particular, the public may be led to believe that some medals or tokens have legal tender status not only when they bear a design similar to the ones on legal tender euro coins but also when they bear distinctive parts of these designs². Such parts are notably the twelve stars of the European Union, the geographical representations and the numerals, the shapes of the edge and the edge design in the way they appear on legal tender euro coins.

In addition, it is desirable to formally define, in particular for the attention of private operators producing medals and tokens, the specific signs which should not be reproduced on medals and tokens in the way they are depicted on legal tender euro coins. These are symbols representative of the issuing Member State's sovereignty, such as the effigies of the Head of State, the coat of arms, the Mint marks, the Mint master marks, the name and the image of the geographical representation of the country, in the specific way they appear on euro coins.

Since the above protected elements are part of either the common or the national faces of euro coins, it is no longer meaningful to maintain the distinction between the two (Article 2c). Furthermore, in a number of cases, more extensive common elements have been included on the national sides of euro coins, such as the Treaty of Rome design or the ten years of EMU. The protective measures should therefore refer to any design appearing on the surface of medals or tokens similar to any design on legal tender euro coins.

The Regulation currently states that the Commission is competent to declare whether a design is similar to the one appearing on euro coins. To the extent that similarity may also exist in the parts of the design and since it may be necessary to also assess the degree to which the other protective conditions are observed, it is appropriate that the Commission opinion be based on the entire range of the protective provisions included in Article 2, also including the interpretation of whether a metallic object should be considered as a medal/token within the meaning of the definition in Article 1(c).

The criteria on the basis of which the Commission delivers an opinion on similarity or compliance to the other provisions of the Regulation need also to be further clarified. Concretely the Commission's decision should additionally take into account the quantities of medals or tokens produced, the selling price, packaging, the specific inscriptions on the medals and tokens (such as the company name, the indication 'no legal tender'...), as well as

¹ OJ L 373, 21.12.2004, p. 1.

² Reference is also made to Commission Communication of 22 October 2001 on copyright protection of the common face design of the euro coins which relates to the prohibition of the reproduction of all or part of the common face design on medals and tokens (OJ C 318, 13.11.2001, p. 3).

the relevant advertisement. Although not explicitly mentioned in the Regulation it has been necessary to take into consideration such criteria in practice. For reasons of transparency, these criteria should be explicitly stated in the Regulation.

In declaring similarity and in considering compliance with the provision of the Regulation, the Commission has been working closely with experts from Member States, namely the counterfeit coin experts referred to under Article 4 paragraph 1 of Commission Decision of 29 October 2004 establishing the European Technical and Scientific Centre³ considering their expertise in visual and material analysis of coins. This consultation should continue.

The Regulation, under Article 4, refers to derogations by authorisation, also including the Commission's responsibility to declare similarity. Considering that the latter responsibility relates to the respect of the protective provisions (Article 2), it is appropriate, for the sake of clarity, to transfer this under the same Article.

Economic operators may use the terms 'euro' or 'euro cent' or the euro symbol on medals and tokens under restricted conditions, *inter alia*, if the indication 'Not legal tender' is stamped on the obverse or the reverse of the medal or token. Considering that the risk of confusion with euro coins is greater where the medal or token bears a nominal value, the requirement related to the indication 'Not legal tender' should be limited to this circumstance.

The proposal includes a parallel Regulation modifying Regulation 2183/2004, intended to extend the effects of the modification to Member States not participating in the euro.

Proposed amendments

In the light of the above considerations it is proposed to amend:

1. Article 2 of Regulation 2182/2004, to clarify the protective provisions,
2. Article 4 of Regulation 2182/2004, to include assessment criteria and modify the decision making procedure to be moved to Article 2,
3. Regulation 2183/2004, so as to extend to the non participating Member States the effects of the modification of Regulation 2182/2004.

³ OJ L 19, 21.1.2005, p. 73.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins

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 Commission⁴,

Having regard to the opinion of the European Parliament⁵,

Having regard to the opinion of the European Central Bank⁶,

Whereas:

- (1) Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins⁷ prohibits those medals and tokens similar to euro coins. Experience gained implementing the prohibition of medals and tokens similar to euro coins has highlighted the need to clarify the protective provisions and to increase transparency in the decision making process.
- (2) The public may be led to believe that some medals and tokens have legal tender status, not only when they bear a design similar to euro coins but also when they bear certain elements of these designs. Therefore specific elements of the designs on legal tender euro coins should not be reproduced in the way they are depicted on euro coins. In addition, symbols representative of the issuing Member State's sovereignty should not be reproduced on medals and tokens in the way they are depicted on euro coins.
- (3) The Commission should be competent to deliver, following consultation with the Member States, an opinion as to whether the protective provisions specified in Article 2 have been respected and whether a metallic object is a medal/token.
- (4) The specific criteria employed by the Commission in declaring conformity with the protective provisions should be clarified and laid down.

⁴ OJ C [...], p. [...].

⁵ OJ C [...], p. [...].

⁶ OJ C [...], p. [...].

⁷ OJ L 373, 21.12.2004, p. 1.

- (5) The risk of mistaking a medal or a token bearing the terms 'euro', 'euro cent' or the euro symbol for a legal tender coin is greater where the medal or token also bears an associated nominal value. Therefore, in such cases, the indication 'Not legal tender' must be stamped on the obverse or the reverse of the medal or token.
- (6) Regulation (EC) No 2182/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments

Regulation (EC) No 2182/2004 is amended as follows:

1. Article 2 is replaced by the following:

'Article 2

Protective provisions

1. 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:

i) any design, or parts thereof, appearing on the surface of euro coins, including in particular the twelve stars of the European Union, the image of the geographical representation and the numerals, in the way depicted on euro coins, or

ii) those symbols representative of national sovereignty of Member States, in the way depicted on euro coins, including in particular the effigies of the Head of State, the coat of arms, the Mint marks, the Mint master marks, the name of the Member State, or

iii) the edge shape or the edge design of euro coins.

2. The Commission shall be competent to deliver an opinion as to:

(a) whether a metallic object has the appearance and/or technical properties of a coin within the meaning of Article 1;

(b) whether a medal or a token falls within the prohibition of paragraph 1 of this Article.

Notwithstanding the provisions of paragraph 1 of this Article, the Commission shall take into consideration, *inter alia*, the quantities of medals and tokens produced, the selling price, the packaging, the inscriptions on the medals and tokens and their advertisement.'

2. Article 4 is replaced by the following:

'Article 4

Derogations by authorisation

The Commission may grant specific authorisations to use the terms 'euro' or 'euro cent' or the euro symbol 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, when the medal or token bears an associated nominal value, the indication 'Not legal tender' must be stamped on the obverse or the reverse of the medal or token.'

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that 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.

Done at Brussels,

For the Council
The President

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EXPLANATORY MEMORANDUM

General context

Council Regulation 2182/2004¹ aims to protect euro coins against medals and tokens which are similar to euro coins. Since its adoption, the Regulation has significantly contributed to avoiding similarity between euro coins and medals/tokens, as private companies now generally comply with the definitions and the prohibitions established in the Regulation.

Experience gained during the implementation period has highlighted the need to clarify the protective provisions and to increase transparency in the decision making process; it is therefore necessary to modify the Regulation.

In particular, the public may be led to believe that some medals or tokens have legal tender status not only when they bear a design similar to the ones on legal tender euro coins but also when they bear distinctive parts of these designs². Such parts are notably the twelve stars of the European Union, the geographical representations and the numerals, the shapes of the edge and the edge design in the way they appear on legal tender euro coins.

In addition, it is desirable to formally define, in particular for the attention of private operators producing medals and tokens, the specific signs which should not be reproduced on medals and tokens in the way they are depicted on legal tender euro coins. These are symbols representative of the issuing Member State's sovereignty, such as the effigies of the Head of State, the coat of arms, the Mint marks, the Mint master marks, the name and the image of the geographical representation of the country, in the specific way they appear on euro coins.

Since the above protected elements are part of either the common or the national faces of euro coins, it is no longer meaningful to maintain the distinction between the two (Article 2c). Furthermore, in a number of cases, more extensive common elements have been included on the national sides of euro coins, such as the Treaty of Rome design or the ten years of EMU. The protective measures should therefore refer to any design appearing on the surface of medals or tokens similar to any design on legal tender euro coins.

The Regulation currently states that the Commission is competent to declare whether a design is similar to the one appearing on euro coins. To the extent that similarity may also exist in the parts of the design and since it may be necessary to also assess the degree to which the other protective conditions are observed, it is appropriate that the Commission opinion be based on the entire range of the protective provisions included in Article 2, also including the interpretation of whether a metallic object should be considered as a medal/token within the meaning of the definition in Article 1(c).

The criteria on the basis of which the Commission delivers an opinion on similarity or compliance to the other provisions of the Regulation need also to be further clarified. Concretely the Commission's decision should additionally take into account the quantities of medals or tokens produced, the selling price, packaging, the specific inscriptions on the medals and tokens (such as the company name, the indication 'no legal tender'...), as well as

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² Reference is also made to Commission Communication of 22 October 2001 on copyright protection of the common face design of the euro coins which relates to the prohibition of the reproduction of all or part of the common face design on medals and tokens (OJ C 318, 13.11.2001, p. 3).

the relevant advertisement. Although not explicitly mentioned in the Regulation it has been necessary to take into consideration such criteria in practice. For reasons of transparency, these criteria should be explicitly stated in the Regulation.

In declaring similarity and in considering compliance with the provision of the Regulation, the Commission has been working closely with experts from Member States, namely the counterfeit coin experts referred to under Article 4 paragraph 1 of Commission Decision of 29 October 2004 establishing the European Technical and Scientific Centre³ considering their expertise in visual and material analysis of coins. This consultation should continue.

The Regulation, under Article 4, refers to derogations by authorisation, also including the Commission's responsibility to declare similarity. Considering that the latter responsibility relates to the respect of the protective provisions (Article 2), it is appropriate, for the sake of clarity, to transfer this under the same Article.

Economic operators may use the terms 'euro' or 'euro cent' or the euro symbol on medals and tokens under restricted conditions, *inter alia*, if the indication 'Not legal tender' is stamped on the obverse or the reverse of the medal or token. Considering that the risk of confusion with euro coins is greater where the medal or token bears a nominal value, the requirement related to the indication 'Not legal tender' should be limited to this circumstance.

The proposal includes a parallel Regulation modifying Regulation 2183/2004, intended to extend the effects of the modification to Member States not participating in the euro.

Proposed amendments

In the light of the above considerations it is proposed to amend:

1. Article 2 of Regulation 2182/2004, to clarify the protective provisions,
2. Article 4 of Regulation 2182/2004, to include assessment criteria and modify the decision making procedure to be moved to Article 2,
3. Regulation 2183/2004, so as to extend to the non participating Member States the effects of the modification of Regulation 2182/2004.

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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 Commission⁴,

Having regard to the opinion of the European Parliament⁵,

Whereas:

- (1) By Regulation (EC) No 2183/2004⁶ the application of Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins⁷ was extended to Member States other than the participating Member States as defined in Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁸.
- (2) Regulation (EC) No 2182/2004 has been amended by Regulation (EC) No .../2008. It is important that the rules concerning medals and tokens similar to euro coins should be uniform throughout the Community, and the requisite provisions should be adopted to that end.
- (3) Regulation (EC) No 2183/2004 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 2183/2004 is replaced by the following:

‘Article 1

⁴ OJ C [...], p. [...].

⁵ OJ C [...], p. [...].

⁶ OJ L 373, 21.12.2004, p. 7.

⁷ OJ L 373, 21.12.2004, p. 1.

⁸ OJ L 138, 11.5.1998, p. 1. Regulation as last amended by Regulation (EC) No 835/2007 (OJ L 186, 18.7.2007, p.1).

The application of Regulation (EC) No 2182/2004 as amended by Regulation (EC) No.../2008 shall be extended to Member States other than the participating Member States as defined in Article 1(a) of Regulation (EC) No 974/98.'

Article 2

This Regulation shall enter into force on the twentieth day following that 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.

Done at Brussels,

*For the Council
The President*