

EUROPEAN CENTRAL BANK

RECOMMENDATION OF THE EUROPEAN CENTRAL BANK

of 7 July 1998

regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins

(ECB/1998/7)

(1999/C 11/08)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute') and in particular to Article 34(1) thereof,

Whereas Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁽¹⁾, provides for a three-year transitional period between the date of introduction of the euro and the issuance by the European System of Central Banks (hereinafter referred to as the 'ESCB') and the Member States of euro banknotes and coins;

Whereas some institutions and economic agents have issued monetary tokens and banknotes denominated in euro which are without legal tender status; whereas such phenomena are likely to increase as the date for putting euro banknotes and coins into circulation approaches, in some cases with the *bona fide* purpose of familiarising the public with the new single currency;

Whereas the issuance of non-legal tender euro banknotes or coins, even if effected for the purpose of educating the population in advance of the forthcoming changeover to the euro, may give rise to bad practice, fraud and errors, affecting in particular the elderly or the poorly informed;

Whereas most Member States have legislation in place which stipulates that the issuance of monetary tokens and banknotes denominated in the national currency unit is restricted to the national monetary authorities; whereas Article 105a(1) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') states that: "The ECB shall have the exclusive

right to authorise the issuance of banknotes within the Community. The ECB and the national central banks may issue such banknotes. The banknotes issued by the ECB and the national central banks shall be the only such banknotes to have the status of legal tender within the Community'; whereas the legal system of Member States should ensure that the unauthorised issuance of banknotes cannot take place;

Whereas, for the purposes of this recommendation, non-legal tender banknotes and coins are to be understood as those banknotes and tokens which are either loosely based on the designs for legal tender euro banknotes or coins, or imitate real banknotes or coins and could be mistaken for real banknotes or coins, and are issued with the purpose of being used as means of payment within a limited area, for a limited period of time or for a limited number of goods or services, or which could otherwise create confusion in the field of payments since they are widely distributed;

Whereas the changeover to the euro means, in the field of banknotes, that a complete new set of banknote designs and denominations will have to be put in circulation and shall have legal tender status within a geographical area which transcends the current territorial limits within which national banknotes are used; whereas the novelty of the designs means that the general public will not initially be familiar with the new denominations and designs of the euro banknotes and coins; whereas the legal regime applying to counterfeiting within this extended area of banknote circulation differs from one Member State to another; whereas euro banknotes will also be held as reserves outside the geographical boundaries of the Monetary Union, thus leading to a wider geographical scope of circulation; whereas this combination of factors might contribute to an increase in the risk of banknote counterfeiting in the periods prior to and following the date of issuance of the euro banknotes;

Whereas the risks of counterfeiting are likely to increase given the technological means currently available for banknote reproduction; whereas technical devices are

⁽¹⁾ OJ L 139, 11.5.1998, p. 1.

now available to detect banknotes in colour copying and scanning machinery and to impede their reproduction; whereas euro banknotes will be equipped with the technological features necessary to ensure the effectiveness of such technical devices; whereas legal means ought to be considered to impose such technical devices on colour copiers and scanning machinery within the European Community in order to protect economic agents from the increased risks of banknote counterfeiting; whereas the Council resolution of 18 December 1997 which lays down the priorities for cooperation in the field of justice and home affairs for the period from 1 January 1998 to the date of entry into force of the Treaty of Amsterdam ⁽¹⁾ gave priority to combating the use of new technology for criminal purposes and to using such technology to combat crime;

Whereas 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;

Whereas, however, the ESCB has a vested interest in taking all the steps necessary to ensure a smooth transition to the full introduction of the euro and the acceptance of euro banknotes by the public; whereas such an interest requires formulating a recommendation which lays down certain policy objectives, whilst leaving the competent authorities of the European Union and of the Member States to consider such objectives and to adopt the appropriate measures for their implementation;

Whereas the Council of the European Union and the Member States should consider the forthcoming issuance of single currency banknotes as an event that ought to lead to a review of the current policies adopted by Member States to combat counterfeiting;

Whereas Article K.1 of the Treaty on European Union provides for the cooperation of police forces to prevent and combat serious forms of international crime; whereas Article 2(2) of the Europol Convention of 26 July 1995 ⁽²⁾ requires a unanimous decision by the Council of the European Union to instruct the European Police Office to deal with the forgery of money and means of payment; whereas the European Commission could also be entrusted with such cooperation between national police forces in the field of the forgery of money and means of payment; whereas such cooperation

should ideally be fully established before euro banknotes and coins are introduced,

HAS ADOPTED THIS RECOMMENDATION:

1. Member States and Community institutions should not promote but rather discourage and strictly control the issuance, holding and use of non-legal tender euro banknotes and coins, in particular prior to 1 January 2002.
2. Member States should avail themselves of the legal means necessary to ensure due compliance with the prohibition on the issuance of unauthorised banknotes, as laid down in Article 105a(1) of the Treaty. Existing national legislation protecting the exclusive right of national central banks to issue national banknotes should, where necessary, be adapted before 2002 to cover the exclusive right conferred on the ECB by the Treaty with regard to banknotes.
3. Member States should ensure that banknote designs may legally benefit from copyright protection.
4. The Council of the European Union, the European Commission and the Member States should consider a review of current policies to combat counterfeiting, with the aim of establishing such a campaign as a matter of common interest, evaluating the need for harmonisation of penal laws in the field of counterfeiting, achieving increased institutional, judicial and police cooperation, drawing up new conventions to this end, seeking to strengthen coordination with non-European Union governments and organisations, analysing the new technological means available for counterfeiting banknotes and carrying out or considering any other possible measures.
5. Consideration should be given to organising cooperation between national police forces in the field of the forgery of money and means of payment, either through the European Police Office (Europol) or the European Commission, and to involving the ECB in such tasks.
6. The European Commission and the Member States should consider proposing any legal measures

⁽¹⁾ OJ C 11, 15.1.1998, p. 1.

⁽²⁾ OJ C 316, 27.11.1995, p. 2.

necessary to ensure that counterfeit euro banknotes are retained, when detected, by credit institutions and other entities receiving and handling cash, and subsequently handed over to the appropriate law enforcement authorities.

7. Community legislation should be considered which would make compulsory the installation of technical devices in colour copiers and machinery capable of graphic reproduction — whether manufactured in the Community or imported from outside — that would permit the identification of banknotes and impede their reproduction.

In order to ensure that a similar regime is followed in other countries, it is recommended that an international convention be prepared in parallel.

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

9. This recommendation will be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main, 7 July 1998.

The President of the ECB

Willem F. DUISENBERG
