

# GUIDELINES

## GUIDELINE (EU) 2020/2091 OF THE EUROPEAN CENTRAL BANK

of 4 December 2020

### amending Guideline ECB/2003/5 on the enforcement of measures to counter non-compliant reproductions of euro banknotes and on the exchange and withdrawal of euro banknotes (ECB/2020/61)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 128(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 12.1 and 14.3 and Article 16 thereof,

Whereas:

- (1) There has been an increase in the number of reproductions of euro banknotes withdrawn from circulation which the general public might risk mistaking for genuine euro banknotes, despite the fact that some of these reproductions bear small or not easily detectable indications that they are 'copies', 'not legal tender' or should 'be used only for movies or props', as they have the optical appearance of euro banknotes and imitate certain banknote security features. These reproductions are mainly offered and purchased via online market places or websites. Reproductions which the general public might mistake for genuine banknotes are unlawful pursuant to Guideline ECB/2003/5 <sup>(1)</sup>. It is therefore important to enact measures to reduce and eventually stop their further dissemination complementing the existing measures the Eurosystem has at its disposal, including infringement proceedings which may result in sanctions pursuant to Council Regulation (EC) No 2532/98 <sup>(2)</sup>.
- (2) Since the introduction of euro banknotes, Eurosystem members have exchanged views on whether certain reproductions are lawful or unlawful to ensure harmonised interpretations throughout the euro area. However, to deal with possible future requests for exemptions for types of reproductions that cannot be assessed in the light of the established practice, a procedure to ensure harmonised interpretations in such situations needs to be put in place.
- (3) Therefore, Guideline ECB/2003/5 should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

#### Article 1

#### Amendments

Guideline ECB/2003/5 is amended as follows:

- (1) Article 1 is replaced by the following:

*'Article 1*

#### Definitions

For the purposes of this Guideline:

1. a "non-compliant reproduction" means any reproduction referred to in Article 2(1) of Decision ECB/2013/10 of the European Central Bank (\*) that:

<sup>(1)</sup> Guideline ECB/2003/5 of 20 March 2003 on the enforcement of measures to counter non-compliant reproductions of euro banknotes and on the exchange and withdrawal of euro banknotes (OJ L 78, 25.3.2003, p. 20).

<sup>(2)</sup> Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).

- (a) does not comply with the criteria set out in Article 2(3) of Decision ECB/2013/10 and is not exempted by the ECB or the relevant NCB under Article 2(5) of Decision ECB/2013/10; or
  - (b) infringes the ECB's copyright on euro banknotes for instance by adversely affecting the standing of euro banknotes;
2. a "non-compliant activity" means the production, possession, transportation, dissemination, selling, promotion, import into the Union and use or attempted use for transactions of non-compliant reproductions.

(\*) Decision ECB/2013/10 of 19 April 2013 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (OJ L 118, 30.4.2013, p. 37).;

(2) Article 2 is amended as follows:

- (a) the title of Article 2 is replaced by the following:

'Enforcement of measures to counter non-compliant activities';

- (b) paragraph 1 is replaced by the following:

'1. Where an NCB becomes aware of a non-compliant activity engaged in its national territory, it shall, by means of a standardised communication provided by the ECB, order the non-compliant party to stop engaging in one or more of the relevant non-compliant activities, and shall, where deemed appropriate, order the party in possession of the non-compliant reproduction to hand over the non-compliant reproduction.';

- (c) the following paragraphs 1a, 1b and 1c are inserted:

'1a. Where an NCB becomes aware of the engagement in a non-compliant activity, whether direct or indirect, including through electronic form on websites with the relevant national url domains, by wire or wireless means, or by any other means that allow members of the public to access the non-compliant reproduction from a place and at a time individually chosen by them, it shall notify the ECB without delay. The NCB shall also, using a standardised template provided by the ECB, order the non-compliant party to stop engaging in the non-compliant activity. The ECB shall then take all possible steps to remove the non-compliant reproduction from the electronic location.

1b. The ECB may also order the non-compliant party to stop engaging in one or more of the relevant non-compliant activities in the territory of more than one Member State and outside the Union. Where deemed appropriate, the ECB shall order the party in possession of the non-compliant reproduction to hand over the non-compliant reproduction.

1c. Prior to taking any of the measures referred to in this Article, an NCB shall inform the ECB and the ECB shall coordinate the measures to be taken so that the NCB or the ECB, as applicable, is acting within its required competence when taking any measures.';

- (d) paragraph 3 is replaced by the following:

'3. A subsequent decision to initiate an infringement procedure on the basis of Article 3(1) of Council Regulation (EC) No 2532/98 (\*) which may result in sanctions being imposed in accordance with that Regulation shall be taken by either the Executive Board of the ECB or the relevant NCB. Prior to taking such decision, the ECB and the relevant NCB shall consult each other and the NCB shall inform the ECB whether a separate infringement procedure has been, or alternatively can be, initiated under national criminal law, and moreover, whether there is any other appropriate legal basis for action against the non-compliant activity, such as copyright law. Where an infringement procedure has already been initiated, or alternatively is to be initiated under national criminal law, or there is any other appropriate legal basis for action against the non-compliant activity, no infringement procedure under Regulation (EC) No 2532/98 shall be initiated.

(\*) Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).;

(e) paragraph 5 is replaced by the following:

‘5. The ECB shall take the steps described in this Article acting on its own if:

- (a) the origin of the non-compliant activity cannot reasonably be established; or
- (b) the non-compliant activity has been or will be engaged in within the territories of several participating Member States; or
- (c) the non-compliant activity has been or will be engaged in outside the territories of the participating Member States.’;

(3) Article 3 is replaced by the following:

*Article 3*

#### **Requests for an exemption for reproductions**

1. All requests for an exemption in accordance with Article 2(5) of Decision ECB/2013/10 shall be dealt with:

- (a) by the respective NCB, on the ECB's behalf, if the reproductions have only been or will only be produced in the territory of its Member State; or
- (b) by the ECB in all other cases described in Article 2(5) of Decision ECB/2013/10.

2. If an NCB receives a request for an exemption of a novel kind, the NCB shall inform the ECB of the request and its intention either to grant or to deny an exemption. Should the ECB's and the NCB's views in this respect differ from each other, the Executive Board shall decide. In reaching its decision, the Executive Board shall take into account the views of the Banknote Committee and the Legal Committee, in particular any views expressed concerning the individual situation of the Member State in question subject to views expressed on the implications of the decision for the entire euro area. The ECB shall collect the data on the requests received by it (whether or not addressed to it) and the responses to those requests and inform the NCBs thereof. The ECB may also publish the consolidated data from time to time.’.

*Article 2*

#### **Taking effect**

This Guideline shall take effect on the day of its notification to the national central banks of the Member States whose currency is the euro.

*Article 3*

#### **Addressees**

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 4 December 2020.

*For the Governing Council of the ECB*  
*The President of the ECB*  
Christine LAGARDE

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