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COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0128 (CNS)

Proposal for a

COUNCIL REGULATION

concerning authentication of euro coins and handling of euro coins unfit for circulation

EXPLANATORY MEMORANDUM

1. Context of the proposal

• Grounds for and objectives of the proposal

The objective of this proposed Regulation is to lay down procedures regarding the authentication of euro coins and the handling of euro coins unfit for circulation.

Council Regulation (EC) No 1338/2001 provides for measures necessary for the protection of the euro against counterfeiting¹. Among other provisions, it establishes the obligation for credit institutions, and a number of other institutions, such as cash transporters, to ensure that euro notes and coins which they have received and which they intend to put back into circulation are checked for authenticity and that counterfeits are detected.

Euro coin authentication has been based until now on the practices put forward in Commission Recommendation of 27 May 2005, concerning authentication of euro coins and handling euro coins unfit for circulation². The proposed Regulation constitutes the legally binding instrument now necessary for the establishment of a common method for the euro coin authentication to be applied by the institutions concerned and of the necessary controls by Member States.

• General context

i) Euro coin authentication

Counterfeiting of euro coins is a significant threat, particularly for the highest coin denominations. In order to render euro coins safer for the users, coins in circulation need to be regularly checked for authenticity so that counterfeits are detected and removed from circulation. An obligation in that sense was explicitly introduced in Council Regulation 1338/2001, through the modification of 18 December 2008. The large number of Member States which have adopted authentication procedures in line with the provisions of Commission Recommendation of 27 May 2005 has led to a more general acceptance of the efficient methods to detect counterfeits.

There remain, however, substantial differences among Member States in the level of implementation of coin authentication methods. The lack of a mandatory common framework for coin authentication may, in some Member States, constitute an impediment for the institutions concerned to actively look for counterfeits; this creates differences, across the EU, in the degree of protection of the currency. In this context, the present proposal aims to ensure the effective implementation, throughout the euro area, of common procedures for authentication of the circulating euro coins and of control mechanisms of these procedures by the authorities.

¹ Council Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting, OJ L 181, 4.7.2001, p. 6. Regulation as last amended by Council Regulation (EC) No 44/2009, OJ L17, 22.1.2009, p. 1.

² OJ L184, 15.7.2005, p. 60.

ii) Euro coins unfit for circulation

In the course of the authentication process, only genuine euro coins should be cleared for re-circulation. Consequently, all other objects should be rejected, including, mainly, counterfeits and genuine euro coins which are no longer fit for circulation. It is therefore appropriate to also provide for the handling of those unfit euro coins. Euro coins may become unfit for circulation by long use, accident or damage. The circulation of such coins makes them more difficult to use, particularly in coin-operated machines, and may create confusion to the users as to the authenticity of the coins. These unfit coins must, therefore, be removed from circulation. The process related to the withdrawal of these coins from circulation is therefore considered as part of the procedures aiming to protect euro coins against fraud and counterfeiting.

The need for common rules for the handling of euro coins unfit for circulation also stems from the different treatment of such coins in Member States resulting in distorting effects. Indeed, despite the implementation of the relevant provisions in the above mentioned Commission Recommendation, rules and conditions remain different among Member States or, in some cases, there are none. Finally, it must also be ensured that these unfit coins removed from circulation are destroyed, so they could not become the object of fraud.

2. Consultation of interested parties and impact assessment

The need for such binding common rules concerning euro coin authentication and unfit euro coins was underlined in the context of the evaluation of the above mentioned Commission Recommendation, carried out in line with its Article 12. This was conducted in collaboration with the Member States, which expressed broad support for the provisions currently proposed. For the purpose of the evaluation, a number of workshops and meetings were organised, also involving representatives of the private sector.

The proposed measures are designed in such a way as to avoid causing disruption to the institutions concerned. In particular, euro coin authentication is proposed to be carried out either with appropriate coin-processing machines or by trained staff. It was seen that the main actors concerned, namely the cash-in-transit companies, are already equipped with high performing machines, which either are or can easily be adjusted to detect counterfeits. In cases where institutions use manual authentication methods, the relevant staff (cashiers) has normally received the relevant training.

As a result, by using existing coin sorting processes and equipment, euro coin authentication can be implemented without disrupting the cash cycle and without creating the need for significant investment.

3. Legal elements of the proposal

• **Summary of the proposed action**

The proposed procedures are based on the practices laid down in Commission Recommendation of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation³, taking into account the evaluation of its functioning.

³ OJ L 184, 15.7.2005, p. 60.

The proposed Regulation includes provisions regarding:

i) Authentication of euro coins

The institutions concerned must ensure that euro coin authentication is carried out by means of coin processing equipment capable of detecting counterfeits; or manually, by trained staff. The coin processing equipment is to be adjusted on the basis of a detection test, the modalities of which are defined by the European Technical and Scientific Centre (ETSC). Testing possibilities for these machines shall become available at the Coin National Analysis Centres and at the ETSC and a list of the machines having successfully undergone the test will be published by the Commission. Member States will be responsible for overseeing the functioning of the euro coin authentication system.

ii) Handling of unfit euro coins

Member States remove from circulation not only counterfeits but also those genuine euro coins which are no longer fit for circulation. They reimburse those which have been rendered unfit by long circulation or accident but would refuse reimbursement of coins become unfit as a result of manipulation. The designated services in Member States will charge a 5% levy on the value of unfit coins submitted but have the possibility to offer broad exemptions to companies that cooperate closely with the authorities in cleaning the market from counterfeits and unfit coins. Specific packaging will be required for submissions and Member States will destroy the unfit coins removed from circulation.

Provision is made for reporting and communication, with a view to presenting to Member States a global view of the relevant activity.

The proposed procedures on the euro coins are complementary to the ones proposed by the European Central Bank concerning the detection of counterfeit euro banknotes and their fitness sorting.

The proposed provisions are designed for Member States which use the euro as their single currency. This is because euro coin authentication methods, in a less complete form, are already established for non-euro area Member States in the modified Regulation 1338/2001.

- **Legal basis**

The legal basis is the article 123 (4) of the Treaty establishing the European Community, and in particular its third sentence.

- **Subsidiarity principle**

While EC Treaty Article 106 (2) attributes the responsibility for issuing coins to Member States, measures of common application in the Member States having the euro as their single currency have been taken at Community level, generally by the Council. Such measures concern either the harmonisation of denominations and technical specifications, based on Article 106 (2) or, most frequently, the protection of the euro, based on Article 123(4), third sentence. Particularly regarding counterfeit euro coins, the need for action at Community

level led to the adoption of Council Decision 2003/861/EC⁴ by which Member States entrust the Commission with the coordination of the activities of the competent technical authorities to protect euro coins against counterfeiting.

On the specific issue of euro coin authentication, action at EU level was initiated with Commission Recommendation of 27 May 2005. Based on the Recommendation, some Member States adopted specific legislation, while the majority are implementing its provisions based on generic national rules. With the adoption of the explicit requirement for coin authentication in Regulation (EC) 1338/2001, it is clear that a uniform authentication procedure of euro coins is necessary. This requires procedures established at EU level⁵.

- **Proportionality principle**

The proposal complies with the proportionality principle. The provisions included in this proposal do not go beyond what is necessary to achieve the objectives of the protection of euro coins against counterfeiting and the handling of unfit euro coins. In addition, the proposed measures are designed in such a way as to avoid causing disruption to the institutions concerned.

- **Choice of instruments**

The instrument chosen, the Regulation is the most adequate instrument to ensure that euro coins benefit from the same level of protection against counterfeiting throughout the Union. This is because the methodology proposed is very specific and needs to be directly applicable, since it does not entail national differences.

4. Budgetary implication

The proposal has no implication for the Community budget.

⁴ Council Decision of 8 December 2003 concerning analysis and cooperation with regard to counterfeit euro coins; OJ L 325, 12.12.2003, p.44.

⁵ The national provisions relating to euro coin authentication are in line with the proposed common rules, since both are based on the Commission Recommendation of 27 May 2005.

Proposal for a

COUNCIL REGULATION

concerning authentication of euro coins and handling of euro coins unfit for circulation

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 Commission⁶,

Having regard to the opinion of the European Central Bank⁷,

Having regard to the opinion of the European Parliament⁸,

Whereas:

- (1) Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting⁹ requires credit institutions, and, within the limits of their payment activity, other payment service providers, and any other institutions engaged in the processing and distribution to the public of notes and coins to ensure that euro notes and coins which they have received and which they intend to put back into circulation are checked for authenticity and that counterfeits are detected.
- (2) Commission Recommendation 2005/504/EC of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation¹⁰ provides for practices regarding authentication of euro coins and handling of euro coins unfit for circulation. However, the lack of a mandatory common framework for coin authentication results in different practices among Member States and cannot, therefore, ensure a uniform protection of the currency across the Community.
- (3) In order to achieve an effective and uniform authentication of euro coins throughout the euro area, it is therefore necessary to introduce binding rules for the implementation of common procedures for authentication of the circulating euro coins and of control mechanisms of these procedures by the national authorities.

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ Council Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting, OJ L 181, 4.7.2001, p. 6. Regulation as last amended by Council Regulation (EC) No 44/2009, OJ L17, 22.1.2009, p. 1.

¹⁰ OJ L 184, 15.7.2005, p.60.

- (4) During the authentication process, genuine euro coins are also identified that are no longer fit for circulation. The circulation of such coins makes them more difficult to use, particularly in coin-operated machines, and may create confusion to the users as to the authenticity of the coins. These unfit coins should be removed from circulation. Common binding rules are therefore necessary for Member States to handle and reimburse these genuine unfit euro coins.
- (5) In order to achieve the necessary coordination in the implementation of the authentication procedures, the details of testing requirements for coin authentication, as well as the specifications for checking unfit euro coins, should be further determined by the European Technical and Scientific Centre (ETSC) established by Commission Decision 2005/37/EC of 29 October 2004¹¹.
- (6) Since the objective of the effective and uniform authentication of euro coins throughout the euro area, cannot be sufficiently achieved by the Member States, due to the differences in national practices and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS REGULATION:

¹¹ OJ L 19, 21.1.2005, p.73.

Chapter I: Subject matter and definitions

Article 1

Subject matter

This Regulation lays down procedures necessary for the authentication of euro coins and for the handling of euro coins unfit for circulation.

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

- (a) “authentication of euro coins” means the process of verifying that euro coins are authentic and fit for circulation;
- (b) “euro coins unfit for circulation” mean genuine euro coins rejected during the authentication process or the appearance of which has been significantly altered;
- (c) “designated national authority” mean the Coin National Analysis Centre (CNAC) or the authority defined by the Member State concerned;
- (d) “institutions” mean the institutions referred to in Article 6(1) of Regulation (EC) No 1338/2001.

Chapter II: Authentication of euro coins

Article 3

Authentication of euro coins

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
 - (a) mainly by means of coin processing machines included in the list of coin-processing machines, referred to in Article 5(3); or
 - (b) by trained personnel.

2. Following the authentication procedure all counterfeit euro coins and euro coins unfit for circulation shall be sent to the designated national authorities. As regards euro coins unfit for circulation, the provisions of Chapter III shall apply.
3. Counterfeit euro coins delivered to the competent national authorities in accordance with Article 6 of Regulation (EC) No 1338/2001 shall not be subject to handling or other fees.

Article 4

Required testing

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.
2. The ETSC shall define the technical specifications for the detection test, as well as the relevant thresholds for acceptance of genuine coins.

Article 5

Adjustment of coin processing machines

1. With a view to enabling manufacturers of coin processing machines to obtain the indications necessary for the adjustment of their machines to detect counterfeit euro coins, testing in accordance with Article 4 may be carried out at the CNACs, the ETSC or, following bilateral agreement, on the premises of the manufacturer's facilities.
2. Following the successful testing of a coin processing machine, a summary test report shall be issued for the attention of the manufacturer of the machine and copied to the ETSC.
3. The Commission shall publish on its website a consolidated list of all coin processing machines, for which a positive and valid summary test report has been received or prepared by the ETSC.

Article 6

Control and auditing by Member States

1. Member States shall put in place the controls necessary to ensure that the authentication obligations are carried out by the institutions.

2. Member States shall perform annually on-the-spot controls in the institutions with a view to verifying the proper functioning of a representative number of coin-processing machines through detection tests. Where appropriate, Member States shall obtain assurance that the staff expected to check the authenticity of euro coins is duly trained in manual authentication.
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.
4. As part of these annual controls, Member States shall also monitor the capacity of the institutions to authenticate euro coins on the basis, of
 - (a) the existence of a written policy and organization for detecting counterfeits;
 - (b) the allocation of appropriate human resources;
 - (c) the existence of a written maintenance plan intended to keep machines at their appropriate performance level; and
 - (d) the existence of written procedures for handing over counterfeits and other euro coin-like objects as well as coins unfit for circulation to the designated national authorities.

Chapter III: Handling of euro coins unfit for circulation

Article 7

Withdrawal and reimbursement of euro coins unfit for circulation

1. Member States shall withdraw from circulation euro coins unfit for circulation.
2. Member States shall reimburse or replace euro coins that have become unfit as a result of long circulation or accident. Member States may refuse reimbursement of euro coins unfit for circulation which have been altered either deliberately or by a process that could be reasonably expected to have the effect of altering them, notwithstanding reimbursement of coins collected for charitable purposes, such as 'fountain coins'.
3. Member States shall ensure that after withdrawal, euro coins unfit for circulation are destroyed by physical and permanent deformation, so that these cannot re-enter into circulation or be submitted for reimbursement.

Article 8

Handling fees

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.
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 euro coins unfit for circulation.
3. Transport and related costs shall be borne by the submitting legal or natural person.
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.

Article 9

Packaging of euro coins unfit for circulation

1. The submitting legal or natural person shall sort the euro coins submitted for reimbursement or replacement per denomination in standardised bags or boxes, as follows:
 - (a) the bags or boxes shall comprise:
 - 500 coins for each of the denominations of 2-euro and 1-euro,
 - 1 000 coins for each of the denominations of 0,50-euro, 0,20-euro and 0,10-euro,
 - 2 000 coins for each of the denominations of 0,05-euro, 0,02-euro and 0,01-euro.
 - for smaller quantities, 100 coins of each denomination;
 - (b) each bag or box shall bear the indications of the submitting entity, the value and the denomination contained, the weight, date of packaging and bag/box number; the submitting entity shall provide a packaging list with an overview of the bags or boxes submitted;
 - (c) where the total quantity of euro coins unfit for circulation is smaller than the requirements mentioned in point (a), these euro coins shall be sorted by denomination and may be submitted in non-standard packaging.
2. By derogation to paragraph 1, Member States may maintain different packaging requirements provided for under their national rules when this Regulation comes into force.

Article 10

Checks of euro coins unfit for circulation

1. Member States shall check submitted euro coins unfit for circulation as follows:
 - (a) the quantity declared shall be verified by weighing each bag or box;
 - (b) authenticity and visual appearance shall be checked on the basis of a sample of at least 10% of the submission.
2. In case anomalies are identified following these checks or deviations from the provisions of Article 9, the entire bag or box shall be checked.

Article 11

Flow of information and communication

Member States shall ensure that information concerning the authorities designated for reimbursement or replacement and specific modalities, such as packaging requirements and fees, is made available on the appropriate web sites and through the appropriate publications.

Chapter IV: Final provisions

Article 12

Reporting and communication

1. Member States shall submit reports to the Commission on their euro coin authentication activities on an annual basis. The information provided shall include the number of controls carried out under Article 6(2) and coin processing machines tested, the test results, the volume of coins processed by these institutions, the number of suspect euro coins analysed and the number of reimbursed euro coins unfit for circulation.
2. The Commission shall report to the Economic and Financial Committee on developments concerning euro coin authentication and euro coins that are unfit for circulation.

Article 13

Applicability

This Regulation shall apply in the participating Member States listed in Annex to Regulation (EC) No 974/1998.

Article 14

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*.

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.

Done at Brussels,

For the Council
The President