

GUIDELINE OF THE EUROPEAN CENTRAL BANK

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

(ECB/2003/5)

(2003/206/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community and in particular to Article 106(1) thereof,

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

Having regard to Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes ⁽¹⁾,

Whereas:

- (1) Guideline of the European Central Bank of 7 July 1998 on certain provisions regarding euro banknotes, as amended on 26 August 1999 (ECB/1999/3) ⁽²⁾, provides for enforcement of the European Central Bank's (ECB's) copyright on euro banknotes.
- (2) The rules on enforcement of the ECB's copyright require updating and supplementing with a comprehensive set of rules and procedures ensuring the protection of euro banknotes against non-compliant reproductions.
- (3) Article 106(1) of the Treaty and Article 16 of the Statute provide that the ECB has the exclusive right to authorise the issue of euro banknotes within the Community. These Articles also provide that the ECB and the national central banks may issue such notes. Pursuant to Article 10 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro ⁽³⁾, the ECB and the national central banks of the participating Member States (hereinafter 'NCBs') shall put euro banknotes into circulation. This right to authorise the issue of euro banknotes includes the competence to take measures to protect the integrity of euro banknotes as a means of payment and to establish a minimum level of protection in all participating Member States. Where there is no risk of confusing reproductions of euro banknotes with genuine euro banknotes however, such reproductions should be permitted. In order to prevent such confusion Decision ECB/2003/4 has laid down common rules for the reproduction of euro banknotes.
- (4) Such rules on the reproduction of euro banknotes and the ECB's copyright on euro banknotes need to be applied and enforced, in close cooperation between the

ECB and the NCBs and, if appropriate, between them and the relevant national authorities, and are to be applied without prejudice to national criminal laws prohibiting the production, uttering or possession of reproductions of euro banknotes that might be mistaken by the general public for genuine euro banknotes. In this context it is appropriate for the ECB to have recourse to the NCBs in order to prevent or take action against non-compliant reproductions of euro banknotes. In any case, the provisions of the present Guideline should be without prejudice to the application of criminal law, in particular regarding counterfeiting.

- (5) As an additional safeguard of the integrity of euro banknotes as a means of payment, the ECB and the NCBs will endeavour to raise the general public's awareness of ECB decisions concerning its rules on the reproduction of euro banknotes, in particular by publishing such decisions in the national media and in the *Official Journal of the European Union*.
- (6) The provisions on the exchange and withdrawal of euro banknotes in Decision ECB/2003/4 need to be implemented by the NCBs.
- (7) In order to raise further the general public's awareness of any ECB decision to withdraw types or series of euro banknotes, the NCBs will be entrusted with the task of making announcements in the national media.
- (8) In accordance with Articles 12.1 and 14.3 of the Statute, ECB guidelines form an integral part of Community law,

HAS ADOPTED THIS GUIDELINE:

Article 1

Definition of non-compliant reproductions

A 'non-compliant reproduction' means any reproduction referred to in Article 2(1) of Decision ECB/2003/4 that:

- (a) is unlawful as defined in Article 2 of Decision ECB/2003/4; or
- (b) infringes the ECB's copyright on euro banknotes for instance by adversely affecting the standing of euro banknotes.

⁽¹⁾ See page 16 of this Official Journal.

⁽²⁾ OJ L 258, 5.10.1999, p. 32.

⁽³⁾ OJ L 139, 11.5.1998, p. 1.

*Article 2***Enforcement of measures to counter non-compliant reproductions**

1. Where an NCB becomes aware of a non-compliant reproduction in its national territory, it shall, by means of a standardised communication provided by the ECB, order the non-compliant party to stop producing the non-compliant reproduction, and shall, where deemed appropriate, order the party in possession of the non-compliant reproduction to hand over the non-compliant reproduction. Where an NCB becomes aware of a non-compliant reproduction made available electronically on websites, 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 ECB shall then take all possible steps to remove the non-compliant reproduction from the electronic location.

2. Where the non-compliant party does not comply with an order issued under paragraph 1, the relevant NCB shall inform the ECB without delay.

3. A subsequent decision to initiate an infringement procedure on the basis of Article 3(1) of Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the ECB to impose sanctions⁽¹⁾ 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 reproduction, 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 reproduction, no infringement procedure under Regulation (EC) No 2532/98 shall be initiated.

4. Where the ECB decides that an infringement procedure under Regulation (EC) No 2532/98 shall be initiated, it may require the NCBs to conduct legal proceedings. In this case, the ECB shall instruct the relevant NCBs and grant them any necessary powers of attorney. All legal costs shall be borne by the ECB. To the extent deemed appropriate and possible, the ECB or the NCB, as the case may be, shall ensure that the non-compliant reproductions are withdrawn.

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

- (a) the origin of the non-compliant reproduction cannot reasonably be established; or
- (b) the non-compliant reproduction has been or will be produced in the territories of several participating Member States; or

- (c) the non-compliant reproduction has been or will be produced outside the territories of the participating Member States.

*Article 3***Requests for confirmation of compliance of reproductions**

1. All inquiries and requests for confirmation as to whether a reproduction is lawful as defined in Article 2 of Decision ECB/2003/4 shall be dealt with:

- (a) on behalf of the ECB, by the NCB in the national territory in which such reproductions have been or will be produced; or
- (b) by the ECB in the cases described in Article 2(5).

2. NCBs shall inform the ECB of all responses given to requests for confirmation under the provisions of paragraph 1. The ECB shall collect this information and shall distribute to the NCBs the consolidated information on responses to requests for confirmation. The ECB may also publish this consolidated information from time to time.

*Article 4***Exchange of mutilated or damaged euro banknotes**

1. The NCBs shall duly implement Decision ECB/2003/4.
2. When implementing Decision ECB/2003/4, and subject to any legal constraints, NCBs may destroy any mutilated or damaged euro banknotes or any parts thereof, unless there are legal grounds for them to be preserved or returned to the applicant.
3. The NCBs shall appoint a single organ or body to take decisions on the exchange of mutilated or damaged euro banknotes for the cases provided for in Article 3(1)(b) of Decision ECB/2003/4, and shall inform the ECB accordingly.

*Article 5***Withdrawal of euro banknotes**

The NCBs shall announce any decision of the Governing Council to withdraw an euro banknote type or series in the national media at their own expense in accordance with any instructions that may be issued by the Executive Board.

*Article 6***Amendments to Guideline ECB/1999/3**

Articles 1, 2 and 4 of Guideline ECB/1999/3 are hereby repealed. References to the repealed Articles shall be construed respectively as references to Articles 2, 4 and 5 of this Guideline.

⁽¹⁾ OJ L 318, 27.11.1998, p. 4.

*Article 7***Final provisions**

1. This Guideline is addressed to the national central banks of participating Member States.
2. This Guideline shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 20 March 2003.

On behalf of the Governing Council of the ECB
Willem F. DUISENBERG
