



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 23 February 2021**  
**on the protection of the euro against counterfeiting**  
**(CON/2021/5)**

**Introduction and legal basis**

On 13 January 2021 the European Central Bank (ECB) received a request from the Irish Minister for Finance for an opinion on the Counterfeiting Bill 2020 (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the first, second and third indents of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft law relates to currency matters, means of payment and the Central Bank of Ireland (hereinafter, the 'CBI'). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

**1. Purpose of the draft law**

- 1.1 The draft law aims at aligning the Irish legal framework on the protection of the euro against counterfeiting with the relevant Union legislation in this area. The draft law seeks to give effect to four Union legal acts in Ireland: (i) Directive 2014/62/EU of the European Parliament and of the Council<sup>2</sup> (hereinafter, 'the Directive'); (ii) Council Regulation (EC) No 1338/2001<sup>3</sup> as amended by Council Regulation (EC) 44/2009<sup>4</sup> (hereinafter, 'the Counterfeit Regulation'); (iii) Regulation (EU) No 1210/2010 of the European Parliament and of the Council<sup>5</sup> (hereinafter, 'the Coin Regulation'); and (iv) Decision ECB/2010/14 of the European Central Bank<sup>6</sup> (hereinafter, 'the ECB Banknote Decision').
- 1.2 The draft law seeks to implement the Directive by amending the Criminal Justice (Theft and Fraud Offences) Act 2001 to create criminal offences in respect of the relevant counterfeiting activities outlined in that Directive. These include (i) offences in respect of the fraudulent making, receiving, obtaining or possession of a currency instrument, a counterfeiting instrument or of security features which serve to protect against counterfeiting and (ii) offences in respect of the import or export of

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<sup>1</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>2</sup> Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ L 151, 21.5.2014, p. 1).

<sup>3</sup> Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6).

<sup>4</sup> Council Regulation (EC) No 44/2009 of 18 December 2008 amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 17, 22.1.2009, p. 1).

<sup>5</sup> Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (OJ L 339, 22.12.2010, p. 1).

<sup>6</sup> Decision ECB/2010/14 of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (OJ L 267, 9.10.2010, p. 1).

counterfeits. The draft law ensures jurisdiction in respect of such offences and inchoate offences.

- 1.3 The draft law provides for the enforcement of the Counterfeit Regulation, the Coin Regulation and the ECB Banknote Decision by vesting responsibility in the CBI.
- 1.4 First, the draft law provides that the CBI is designated as the National Analysis Centre for euro notes, as required by Article 4(1) of the Counterfeit Regulation, and as the Coin National Analysis Centre for euro coins, as required by Article 5(1) of the Coin Regulation. It is understood that such designation provides a clear statutory footing to the existing role of the CBI's Currency Centre.
- 1.5 Second, the draft law provides for functions and powers of the CBI. The CBI must monitor and take all necessary measures to ensure compliance by 'relevant persons' with their obligations under the Counterfeit Regulation, the Coin Regulation and the ECB Banknote Decision, including in respect of authenticity and fitness checking of euro banknotes and coins. The CBI is empowered to verify (a) the procedures governing the operation and control of banknote handling machines and coin processing machines and (b) the treatment of, and any manual authenticity and fitness checking of notes and coins. The draft law also empowers the CBI to impose requirements on relevant persons to comply with certain provisions of the Coin Regulation and the ECB Banknote Decision; to adopt regulations to provide for the implementation of the ECB Banknote Decision; and to require information, records, plans or other documents to be provided by relevant persons to the CBI. A 'relevant person' for the purpose of the draft law means (a) a credit institution, (b) within the limits of its payment activity, a payment service provider, (c) An Post (the Irish Postal Service), and (d) any other person engaged in the processing and distribution to the public of notes, coins, or both.
- 1.6 Third, the draft law provides that the CBI may appoint authorised officers for the purpose of the performance by it of its functions and sets out the powers of authorised officers. These include, *inter alia*, powers to enter premises, including pursuant to a warrant issued by a judge of the District Court; to search and inspect premises and records; to secure a premises for later inspection; to secure for later inspection, records or data equipment, including a computer in which records may be held; to monitor and inspect banknote handling machines and coin inspection machines; and to remove samples of processed notes and coins for further inspection.
- 1.7 Fourth, the draft law creates criminal offences for relevant persons, *inter alia*, for failure to comply with specific obligations of the Counterfeit Regulation, the Coin Regulation, and the ECB Banknote Decision, and any requirements imposed by the CBI. The draft law provides that summary proceedings for such an offence may be brought and prosecuted by the CBI. The draft law also creates a criminal offence of obstructing or impeding the CBI or an authorised officer; for providing false or misleading information to the CBI or an authorised officer; and for failing to comply with the requirements of the CBI.

## 2. General observations

- 2.1 The ECB welcomes the draft law, which will ensure the preservation of euro banknotes and coins in circulation, resulting in continued public confidence in euro banknotes<sup>7</sup>.

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<sup>7</sup> See paragraph 2.1 of Opinion CON/2011/92 and paragraph 2.1 of Opinion CON/2010/90. All ECB opinions are published on EUR-Lex.

- 2.2 The ECB welcomes the introduction under the draft law of a comprehensive set of functions and instruments at the disposal of the CBI in this area. In particular, the ECB takes positive note that the draft law will enable compliance in Ireland with the ECB Banknote Decision.

### 3. Specific observations

#### 3.1 *Tasks of the CBI*

- 3.1.1 The CBI acts within the Eurosystem framework with regard to the protection of euro banknotes<sup>8</sup>. Under existing provisions of Irish law, the CBI should receive forged banknotes, machinery, implements, utensils or materials used or intended to be used for the forgery of banknotes<sup>9</sup>. Thus, the draft law complements and enhances the CBI's existing tasks in this area. The draft law does not confer genuinely new tasks on the CBI in this respect.
- 3.1.2 With regard to its coin-related tasks, the CBI does not act within the Eurosystem framework. Article 128(2) of the Treaty provides that the right to issue euro coins rests with the Member States. Therefore, it is up to each euro area Member State to specify the legal issuer of the euro coins. In most euro area Member States issuance of euro coins is undertaken by the State. In some of those Member States, the national central banks (NCBs) act as agents for their treasuries with regard to minting euro coins and putting them into circulation<sup>10</sup>. This is the case in Ireland, where coins denominated in euro or in cent are issued by the Minister for Finance through the CBI<sup>11</sup>. In some other euro area Member States<sup>12</sup> coin issuance is a competence of the NCB<sup>13</sup>.
- 3.1.3 Thus, the CBI's coin-related tasks are conferred upon the CBI as a function other than those specified in the Statute of the European System of Central Banks and of the European Central Bank, which, in accordance with Article 14.4 of that Statute, shall be performed on the responsibility and liability of the CBI and shall not be regarded as forming part of the functions of the Eurosystem<sup>14</sup>.
- 3.1.4 That said, as noted above, the CBI has already been conferred with certain tasks under Irish law in respect of the issuance and circulation of coins. Thus, the draft law complements and enhances the CBI's existing tasks in this area. The draft law does not confer genuinely new tasks on the CBI in this respect.

#### 3.2 *Monetary financing prohibition*

The monetary financing prohibition laid down in Article 123(1) of the Treaty prohibits overdraft facilities or any other type of credit facility with the ECB or the NCBs in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States<sup>15</sup>. In view of the fact that

<sup>8</sup> See paragraph 2.1 of Opinion CON/2016/58.

<sup>9</sup> See sections 54 and 55 of the Central Bank Act 1942.

<sup>10</sup> For example, Greece, Luxembourg and Malta. In the Member States where the NCBs act as agents for their treasuries, the NCBs are reimbursed in full for the cost of minting and/or putting euro coins into circulation.

<sup>11</sup> See section 11 of the Economic and Monetary Union Act 1998.

<sup>12</sup> For example, Cyprus, Estonia, Latvia, Lithuania and Slovakia.

<sup>13</sup> See paragraph 2.1 of Opinion CON/2016/4.

<sup>14</sup> See paragraph 2.1 of Opinion CON/2016/58.

<sup>15</sup> The precise scope of application of the monetary financing prohibition is further clarified by Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ 332, 31.12.1993, p. 1).

the coin-related tasks conferred on the CBI do not form part of the functions of the Eurosystem, and that coins in euro are issued through the CBI as agent for the Minister for Finance, and in order to ensure that no circumventions of the monetary financing prohibition occur, the CBI should be remunerated for its tasks insofar as they relate to euro coins, in particular in relation to the protection of the euro against counterfeiting<sup>16</sup>. The ECB would welcome clarification that provision will be made for this. While existing provisions of Irish law appear to provide for reimbursement and remuneration in respect of the provision of euro coins<sup>17</sup>, these provisions do not appear to encompass all the CBI's tasks, including the issuance, circulation and protection of coins against counterfeiting. Thus, the draft law should ensure a full and adequate payment of all costs incurred in performing the relevant tasks on the basis of 'arm's length' commercial terms. Such payment should either occur in advance of costs being incurred or on a regular and prompt basis as the costs arise<sup>18</sup>.

### 3.3 *Sanctions*

- 3.3.1 The ECB has noted in previous opinions that even though national authorities are not required to consult the ECB on measures taken to ensure that breaches of Article 6(1) of the Counterfeit Regulation are subject to effective, proportionate and deterrent sanctions, it is nonetheless beneficial to address this issue in order to encourage a harmonised approach across the Union to the extent possible, subject to national peculiarities<sup>19</sup>. In the same context, the ECB also stresses that the power to impose criminal law sanctions, issue injunctions and impose financial penalties at the national level would be without prejudice to the ECB's sanctioning power<sup>20</sup>.
- 3.3.2 The ECB takes note of the creation of a variety of criminal offences under the draft law, including those offences in respect of which summary proceedings may be brought and prosecuted by the CBI. In this manner, the draft law achieves an effective system of deterrent criminal law sanctions in relation to the protection of the euro against counterfeiting and thus contributes to maintaining public confidence in euro banknotes and coins in circulation.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 23 February 2021.

[signed]

*The President of the ECB*

Christine LAGARDE

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<sup>16</sup> See paragraph 3.2 of Opinion CON/2019/33 and paragraph 3.2.2 of Opinion CON/2016/58.

<sup>17</sup> See sections 13, 14 and 14A of the Economic and Monetary Union Act 1998.

<sup>18</sup> See paragraph 2.2 of Opinion CON/2018/57, paragraph 3.2.2 of Opinion CON/2016/58, and paragraph 2.2 of Opinion CON/2016/57.

<sup>19</sup> See paragraph 3.3 of Opinion CON/2019/33.

<sup>20</sup> See paragraph 4.2 Opinion CON/2008/17 and recital 6 of the ECB Banknote Decision entitling the ECB to take appropriate administrative measures.