# 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

## 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

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 Commission,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Parliament[(2)],

Whereas:

(1) Council Regulation (EC) No 1338/2001[(3)] requires credit institutions and any other related institutions to withdraw from circulation all euro notes and coins received by them which they know or have sufficient reason to believe to be counterfeit and hand them over to the competent national authorities.

(2) It is important to ensure that circulating euro notes and coins are authentic. To that end, credit institutions, other payment service providers and other economic agents involved in the processing and distribution of notes and coins should check the authenticity of the euro notes and coins they receive before they put them back into circulation, except where they come from other establishments or persons who are themselves under an obligation to check or where they have been obtained from the authorities authorised to issue them. Other economic agents, such as traders and casinos, should also be subject to these obligations where they supply, on a secondary basis, automated teller machines (cash dispensers), but they may not be involved beyond these secondary activities. In order to comply with the obligation to check for authenticity, these economic agents nevertheless need time to adapt their internal functioning. As regards notes, the procedures laid down for Member States which have adopted the euro as a single currency may also cover the suitability of the checked notes for circulation.

(3) Appropriate adjustment of the equipment is a prerequisite for checking the authenticity of euro notes and coins. In order to adjust the equipment used for the checks for authenticity it is essential that the necessary quantities of counterfeit notes and coins are available at the places where testing is conducted. It is, therefore, appropriate to permit the transporting of counterfeit notes and coins between competent national authorities as well as institutions and bodies of the European Union.

**Changes to legislation:** *There are currently no known outstanding effects for the Council Regulation (EC) No 44/2009. (See end of Document for details)*

(4) The European Technical and Scientific Centre (ETSC) is now formally established within the Commission by Council Decision 2003/861/EC[(4)] and Commission Decision 2005/37/EC[(5)]. Therefore, the provision stating that the ETSC communicates data to the Commission is no longer necessary.

(5) Regulation (EC) No 1338/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments**

Regulation (EC) No 1338/2001 is hereby amended as follows:

1. Article 2 shall be amended as follows:

   (a) point (c) shall be replaced by the following:

   (c) "credit institutions" shall mean the credit institutions referred to in Article 4(1)(a) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[(6)];;

   (b) the following point shall be added:

   (g) "payment service providers" shall mean the payment service providers referred to in Article 1(1) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market[(7)].;

2. Article 4 shall be amended as follows:

   (a) the title shall be replaced by the following:

   Obligation to transmit counterfeit notes;

   (b) at the end of paragraph 2 the following sentences shall be added:

   'For the purpose of facilitating the checking for authenticity of circulating euro notes, the transporting of counterfeit notes between the competent national authorities as well as the institutions and bodies of the European Union shall be permitted. During transportation, the counterfeit notes shall be accompanied at all times by transport orders received for that purpose from the abovementioned authorities, institutions and bodies.';

   (c) at the end of paragraph 3 the following sentence shall be added:

   'The competent national authorities may however transmit to the NAC, and, where appropriate, to the ECB, part of a batch of these notes for examination or testing.';

3. Article 5 shall be amended as follows:

   (a) the title shall be replaced by the following:

Obligation to transmit counterfeit coins;

(b) **[**[X1]at the end of paragraph 2 the following sentences shall be added:

'For the purpose of facilitating the checking for authenticity of circulating euro coins, the transporting of counterfeit coins between the competent national authorities as well as the institutions and bodies of the European Union shall be permitted. During transportation, the counterfeit coins shall be accompanied at all times by transport orders received for that purpose from the abovementioned authorities, institutions and bodies.';**]**

(c) at the end of paragraph 3 the following sentence shall be added:

'The competent national authorities may however transmit to the CNAC, and, where appropriate, to the ETSC, part of a batch of these coins for examination or testing.';

(d) paragraph 4 shall be replaced by the following:

4. The ETSC shall analyse and classify every new type of counterfeit euro coin. To that end, the ETSC shall have access to the technical and statistical data stored at the ECB on counterfeit euro coins. The ETSC shall communicate the relevant final results of its analysis to the competent national authorities and, according to its areas of responsibility, to the European Central Bank. The European Central Bank shall communicate those results to Europol, in accordance with the agreement referred to in Article 3(3).;

4. Article 6 shall be amended as follows:

(a) the title shall be replaced by the following:

Obligations relating to credit institutions engaged in the processing and distribution to the public of notes and coins;

(b) paragraph 1 shall be replaced by the following:

1. 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, including:

— establishments whose activity consists in exchanging notes and coins of different currencies, such as bureaux de change,

— transporters of funds,

— other economic agents such as traders and casinos engaged on a secondary basis in the processing and distribution to the public of notes via automated teller machines (cash dispensers), within the limit of these secondary activities,

shall be obliged 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.

For euro notes, this check shall be carried out in line with procedures defined by the ECB[(8)].