

# Procedure file

Basic information	
CNS - Consultation procedure Regulation	2007/0192B(CNS) Procedure completed
Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency	
Amending Regulation (EC) No 1339/2001 <a href="#">2000/0208(CNS)</a>	
Subject 5.20.02 Single currency, euro, euro area 7.30.30.10 Action against counterfeiting	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> <a href="#">Civil Liberties, Justice and Home Affairs</a>		05/11/2007
		PPE-DE <a href="#">DÍAZ DE MERA GARCÍA CONSUEGRA Agustín</a>	
	Former committee responsible		02/12/2008
	<b>LIBE</b> <a href="#">Civil Liberties, Justice and Home Affairs</a>	ALDE <a href="#">DEPREZ Gérard</a>	
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ECON</b> <a href="#">Economic and Monetary Affairs</a>		23/10/2007
		PSE <a href="#">DOS SANTOS Manuel</a>	
	Former committee for opinion		The committee decided not to give an opinion.
	<b>ECON</b> <a href="#">Economic and Monetary Affairs</a>		
European Commission	Council configuration	Meeting	Date
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2917</a>	18/12/2008
European Commission	Commission DG	Commissioner	
	<a href="#">European Anti-Fraud Office (OLAF)</a>	KALLAS Siim	

Key events			
17/09/2007	Legislative proposal published	<a href="#">COM(2007)0525</a>	Summary
29/11/2007	Committee referral announced in Parliament		
29/05/2008	Vote in committee		Summary
05/06/2008	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0230/2008</a>	

17/06/2008	Decision by Parliament	<a href="#">T6-0280/2008</a>	Summary
12/11/2008	Formal reconsultation of Parliament		
02/12/2008	Vote in committee		Summary
09/12/2008	Amended legislative proposal for reconsultation published	<a href="#">14533/2008</a>	Summary
12/12/2008	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0503/2008</a>	
16/12/2008	Results of vote in Parliament		
16/12/2008	Decision by Parliament	<a href="#">T6-0589/2008</a>	Summary
18/12/2008	Act adopted by Council after consultation of Parliament		
18/12/2008	End of procedure in Parliament		
22/01/2009	Final act published in Official Journal		

### Technical information

Procedure reference	2007/0192B(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EC) No 1339/2001 <a href="#">2000/0208(CNS)</a>
Legal basis	EC Treaty (after Amsterdam) EC 308
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/53277; LIBE/6/70936

### Documentation gateway

Legislative proposal		<a href="#">COM(2007)0525</a>	17/09/2007	EC	Summary
European Central Bank: opinion, guideline, report		<a href="#">CON/2007/0042</a> <a href="#">OJ C 027 31.01.2008, p. 0001</a>	17/12/2007	ECB	Summary
Committee draft report		<a href="#">PE405.735</a>	30/04/2008	EP	
Committee opinion	<b>ECON</b>	<a href="#">PE402.930</a>	08/05/2008	EP	
Amendments tabled in committee		<a href="#">PE406.042</a>	14/05/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0230/2008</a>	05/06/2008	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0280/2008</a>	17/06/2008	EP	Summary
Amended legislative proposal for reconsultation		<a href="#">14533/2008</a>	09/12/2008	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0503/2008</a>	12/12/2008	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0589/2008</a>	16/12/2008	EP	Summary

<a href="#">Additional information</a>	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>
<a href="#">Final act</a>	
<a href="#">Regulation 2009/45</a> <a href="#">OJ L 017 22.01.2009, p. 0004</a> Summary	

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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**PURPOSE:** to amend Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting.

**PROPOSED ACT:** Council Regulation.

**BACKGROUND:** Council Regulation (EC) No 1338/2001 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.

Such an obligation relates to the due diligence of credit and other relevant institutions to ensure the authenticity of euro notes and coins that they put back into circulation or the actual detection of counterfeits. While the initial Commission proposal for Regulation 1338/2001 included the obligation for these institutions to check for counterfeits this was not finally adopted mainly due to the lack of agreed uniform and effective methods for large scale authentication of euro notes and coins or for the detection of counterfeits.

Following research in the methods for authenticating euro notes and coins, the ECB issued an advisory framework for the detection of counterfeit notes and the Commission adopted a Recommendation for authentication of euro coins. Discussions amongst national experts, as well as the European institutions and bodies have underlined the importance of introducing legislation requiring the verification of authenticity of circulating euro notes and coins.

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

**CONTENT:** the Commission believes it is important that financial institutions ensure the authenticity of euro banknotes and coins they have received before re-circulating them. Therefore it proposes to add the obligation for these institutions to check for counterfeits. There are already agreed uniform and effective methods of detection of counterfeits in place which make this verification easy and perfectly feasible. The ECB and the Commission, respectively, have formally recommended such methods for euro notes and coins.

Time is provided to allow these institutions to adapt their internal proceedings and upgrade their equipments (December 2009).

These checks are carried out by means of appropriately adjusted sorting machines. The adjustment of the machines is conducted using samples containing both genuine and counterfeit notes or coins. It is therefore necessary to ensure that the appropriate quantities of counterfeit notes and coins are available at the places where testing is conducted, to enable the adjustment of these machines. For this purpose it is necessary to authorise the transport of counterfeit notes and coins amongst competent national authorities as well as EU institutions and bodies. However, the transport of counterfeits for the purpose of adjustment of equipment is not at present authorised at EU level. The transport of counterfeit notes and coins even if not in due course punishable in the absence of an intention to defraud, constitutes the objective element of the offence and would thus still invite the initiation of criminal investigations. To facilitate national legal proceedings, the transport of counterfeits for the purpose of adjustment of equipment should therefore be specifically permitted.

At the time of adoption of Regulation 1338/2001, the European Technical and Scientific Centre (ETSC) was carrying out its tasks on a temporary basis at the French Mint with administrative support and management provided by the Commission but operating independently from the Commission. The ETSC was subsequently permanently established within the Commission, by Council Decision 2003/861/CE and Commission Decision 2005/37/EC. As a result it is no longer necessary to provide that the ETSC communicates data to the Commission.

Lastly, Council Regulation (EC) No 1339/2001 extends the effects of Regulation 1338/2001 to those Member States which have not adopted the euro as their single currency. Article 1 of Regulation 1339/2001 refers to the dynamic relation created between the two Regulations. As a legal consequence, the amendments proposed below, affecting Regulation 1338/2001, shall also automatically apply to non euro Member States.

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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**OPINION OF THE EUROPEAN CENTRAL BANK** at the request of the Council of the European Union on a proposal for a Council Regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting.

On 23 October 2007, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council Regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting.

**General observations:** the ECB recently issued Recommendation ECB/2006/13 on the adoption of certain measures to protect euro banknotes

more effectively against counterfeiting. In that Recommendation, it takes the stance that while, generally, criminal law and the rules of criminal procedure do not fall within the competence of the Community, they may do so when necessary to ensure the effectiveness of Community law. The ECB specifically recommended that the Commission should consider proposing an extension of the powers of national analysis centres for counterfeits (NACs) and of national central banks (NCBs) that are not NACs, so that they may retain identified and analysed examples of counterfeit notes and also request and legitimately transport such notes intra-EU for the purposes of testing.

In principle, the ECB welcomes any use of a first pillar act adopted under the Treaty to protect the euro against counterfeiting, rather than a third pillar act based on police and judicial cooperation in criminal matters, as first pillar acts provide the only appropriate legal means for protecting the euro against counterfeiting within the framework of the Community's economic and monetary union.

Specific observations: the proposed broadening of the scope of the title of Article 4 of the Regulation, so as to impose an obligation to transmit new and old classes of counterfeit notes for purposes other than identification, partially follows the ECB Recommendation. However, the proposed amendment to Article 4(2) does not prevent suspected counterfeit notes from being used or retained in criminal proceedings, thus contradicting the broadening of the scope of the title thereof and jeopardising the effectiveness of the amended provision. To ensure the protection of the euro against counterfeiting, the ECB and the NCBs should, as a rule, be entitled to receive samples of banknotes used or retained as evidence in criminal proceedings, the sole exception being when this is impossible, taking into account the quantity and type of seized counterfeits.

The proposed amendment to Article 6(1) of the Regulation imposes upon credit institutions, and any other institutions engaged in the sorting and distribution to the public of notes and coins as a professional activity, the obligation to ensure that the notes and coins they receive are checked for authenticity and counterfeits are detected. While the object of the obligation is clear and desirable, the wording leaves out of its scope other organisations which operate self-service devices supplying euro banknotes to the public, even if not as a professional activity. A broader definition would thus be the most adequate solution.

Moreover, the proposed Regulation adds to Article 6(3) of the Regulation a provision requiring the Member States to make the laws, regulations and administrative provisions for applying the aforementioned obligation of credit and other institutions, and to adopt them by 31 December 2009 at the latest. The ECB is of the opinion that, as the ECB and the Commission are responsible for laying down the procedures underpinning this obligation, it is the ECB and the Commission that should stipulate the deadlines for their implementation, both for practical and legal reasons. It is therefore suggested that this deadline should be deleted from the proposed Regulation.

As regards the inclusion of coins under the scope of the Regulation on the same level as banknotes, the ECB would observe that this approach could have the drawback of endangering retail payment in Member States, as the technical feasibility of the proposed checking requirement for coins is yet uncertain.

Lastly, as it is not completely clear whether the reference of Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency to Regulation (EC) No 1338/2001 is a dynamic one, there is a need for another proposal for a Regulation, extending to non euro area Member States the effects of the proposed Regulation, in particular as regards the amendments to Articles 4 and 5.

However, in the context of the procedures to be defined by the European Central Bank to which the proposed Regulation will include a reference in Article 6(1) of amended Regulation (EC) No 1338/2001, the ECB is best placed to decide upon the implementation of its procedures in relation to euro banknotes. In this respect and in the light of the limits of the geographic area in which the euro is legal tender, the ECB decided in July 2006 that these procedures will become effective in newly participating Member States once they adopt the euro.

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Agustín DÍAZ DE MERA GARCÍA CONSUEGRA (EPP-ED, ES) amending, under the consultation procedure, the proposal for a Council regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the Euro against counterfeiting.

The main amendments approved by the committee responsible can be summarised as follows:

- Other types of establishment: MEPs hope to extend the scope of the proposal to other types of establishment in addition to large credit institutions to ensure that all institutions and economic agents involved in the sorting and distribution of Euro notes and coins to the public, either directly or via cash distribution machines (this shall include bureaux de change, large shopping centres and casinos), check the authenticity of Euro notes and coins in circulation;
- Small and medium-sized traders: MEPs distinguish from large credit institutions and other establishments, small retailers operating on small or medium-sized premises. While these retailers are able to meet the obligation of verifying the authenticity of Euro notes and coins in accordance with the procedures established by the ECB and the Commission, they do not have the necessary means to do so, which is why MEPs consider that the only obligation for these retailers is to act with due diligence by withdrawing from circulation any Euro notes and coins which they have sufficient reason to believe to be counterfeit;
- Cash transporters: MEPs also extend the provision for the verification and withdrawal of Euro notes and coins to cash transporters but only if they have direct access to the notes and coins concerned;
- Passing on counterfeit money to the competent authorities: for the purpose of facilitating the control for authenticity of circulating Euro notes (and when the quantity seized so permits), an adequate number of counterfeit Euro shall be transmitted to the competent national bodies, even when these constitute evidence in criminal proceedings (for the purpose of calibrating and adjusting Euro-note authentication equipment);
- Non-Euro countries: MEPs state that, in Member States which do not use the Euro, a control procedure shall be laid down for the purpose of checking the authenticity of Euro notes and coins used by the institutions referred to in the regulation (credit institutions, other establishments and small and medium-sized traders) which shall be obliged to withdraw from circulation all Euro notes and coins which they suspect to be counterfeit;
- Implementation: MEPs consider that the regulation should enter into force on 31 December 2011 and not on 31 December 2009 as planned by the Commission, in order to give Member States time to adapt;
- Raise awareness of the risks posed by counterfeiting: lastly, MEPs add a new paragraph to the proposal calling for the creation and

promotion of training and information activities (information booklets, training seminars) for citizens and consumers concerning the risks posed by counterfeiting, the basic security measures and the appropriate authorities to be contacted by those who come into possession of suspected counterfeit notes and/or coins.

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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The European Parliament adopted, by 625 votes to 2 with 54 abstentions, a legislative resolution amending the proposal for a Council regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the Euro against counterfeiting. The report had been tabled for consideration in plenary by Agustín DÍAZ DE MERA GARCÍA CONSUEGRA (EPP-ED, ES) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

The main amendments ? adopted in the framework of the consultation procedure ? are as follows:

- Definitions: Parliament inserted definitions for "other institutions" and "small and medium-sized trader".
- Scope and obligations: credit institutions, cash transporters and any other economic agents engaged in the sorting and distribution to the public of notes and coins, including establishments whose professional activity consists in exchanging notes and coins of different currencies, such as bureaux de change, and economic agents engaged, as a subsidiary activity, in the sorting and distribution of notes to the public by means of automated teller machines, shall be obliged to ensure that euro notes and coins are checked for authenticity and fitness for circulation and counterfeits are detected. Cash transporters shall be required to verify the authenticity of euro notes and coins only where they have direct access to the euro notes and coins which are entrusted to them. The credit institutions and other economic agents and small and medium-sized traders shall be obliged to withdraw from circulation all euro notes and coins received by them which they know or have sufficient reason to believe to be counterfeit. They shall immediately hand them over to the competent national authorities.
- Non-Euro countries: in those Member States other than the participating Member States listed in Regulation (EC) No 974/98, a specific control procedure shall be laid down for the purpose of checking the authenticity of euro notes and coins used by the institutions referred to above.
- Passing on counterfeit money to the competent authorities: for the purpose of facilitating the control for authenticity of circulating Euro notes (and when the quantity seized so permits), an adequate number of counterfeit Euro shall be transmitted to the competent national bodies, even when these constitute evidence in criminal proceedings.
- Adoption: certain provisions should be adopted by 31 December 2011 and not on 31 December 2009 as planned by the Commission.
- Raise awareness of the risks posed by counterfeiting: lastly, MEPs add a new paragraph to the proposal calling for the creation and promotion of training and information activities (information booklets, training seminars) for citizens and consumers concerning the risks posed by counterfeiting, the basic security measures and the appropriate authorities to be contacted by those who come into possession of suspected counterfeit notes and/or coins.

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Gérard DEPREZ (ALDE, BE) approving, without amendment (renewed consultation), the draft Council Regulation amending Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency.

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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On 17 September 2007, the Commission submitted to the European Parliament and the Council a proposal for a Council Regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (see [CNS/2007/0192A](#)).

The proposed Regulation provides, in a recital, that it **shall also apply to non participating Member States** by virtue of Article 1 of Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 to those Member States which have not adopted the euro as their single currency.

The European Parliament delivered its opinion on 17 June 2008.

Following discussions held at the time of the examination of the proposal within the Council, it has been decided to split the proposal into 2 separate texts: one concerning the Member States which have adopted the euro as their single currency and the other (present proposal) applicable to Member States which have not adopted the euro as their single currency.

In addition to the change of legal basis, the Council reviews the initial proposal and provides for the following elements:

- obliging 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;
- ensuring 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 themselves subject to obligatory checks or where they have been taken 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;

- ensuring the appropriate adjustment of 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, important to permit the transporting of counterfeit notes and coins between competent national authorities as well as institutions and bodies of the European Union.

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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The European Parliament adopted, by 521 votes to 10 with 34 abstentions and, on a renewed consultation, adopted a legislative resolution under the consultation procedure approving the Council's draft for a Council Regulation amending Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency.

The report had been tabled for consideration in plenary by Gérard DEPRez (ALDE, BE) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

## Euro: protection against counterfeiting to those Member States which have not adopted the euro as their single currency

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**PURPOSE:** to lay down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency.

**LEGISLATIVE ACT:** Council Regulation (EC) No 45/2009 amending Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency.

**CONTENT:** by Regulation (EC) No 1339/2001 the application of [Regulation \(EC\) No 1338/2001](#) was extended to non-participating Member States as defined in Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro.

Regulation (EC) No 1338/2001 was amended by [Regulation \(EC\) No 44/2009](#). However, it is important that the euro should also be protected in those Member States which have not adopted it as their single currency and the necessary steps should be taken to that end, in compliance with the principle of proportionality.

The aim of this Regulation is to amend Regulation (EC) No 1339/2001 accordingly.

**ENTRY INTO FORCE:** 11 February 2009.