

Directorate General Cash and Branches

20/08/2021

ANTI-COUNTERFEITING.

Powers of the Banco de España and of the Banco de España Monetary Offences Investigation Brigade in the handling of suspected counterfeit euro banknotes and coins.

In the exercise of its duties relating to the identification of counterfeit euro banknotes and coins and the gathering and analysis of technical and statistical data on counterfeit banknotes and coins, and in its capacity as a **National Analysis Centre** (NAC) for banknotes and a **Coin National Analysis Centre** (CNAC), the Banco de España coordinates its actions with the State Secretariat for Security through the Banco de España Monetary Offences Investigation Brigade of the Directorate General of Police of the Ministry of the Interior, in charge of investigating and prosecuting currency counterfeiting offences and operating as a **National Central Office** (NCO). Both institutions are, therefore, bound in their actions as **competent national authorities** under Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting.

1 Purpose

The aim of this document is to detail the exclusive powers conferred on the two authorities in relation to suspected counterfeit banknotes and coins identified in the financial and police channels, and how the duties are organised and coordinated between them.

Broadly speaking, to discharge these duties, the Banco de España's Cash and Issue Department, which carries out the functions of competent national authority and NAC and CNAC conferred on the Banco de España, coordinates its actions with the Banco de España Monetary Offences Investigation Brigade as competent national authority and NCO.

2 Legal basis

Anti-counterfeiting in Spain rests on three pillars:

- **Expertise** emerges as one of the cornerstones of anti-counterfeiting. In the specific case of the euro, the above-mentioned Council Regulation (EC) No 1338/2001 of 28 June 2001 provides, among other measures, that the technical and statistical data on counterfeit banknotes and coins shall be gathered, analysed, indexed and communicated to the European Central Bank by the competent national authorities. It

also stipulates that the Member States shall designate, in accordance with their national law and practice, an NAC and a CNAC in charge of analysing and identifying suspected counterfeit banknotes and coins.

- **Policing**, based on the International Convention for the Suppression of Counterfeiting Currency signed at Geneva on 20 April 1929, which lays down that the investigations of counterfeit banknotes and coins shall be organised in each country by an NCO, which must be in close contact with banks of issuing bodies, the country's police authorities and other countries' NCOs. Furthermore, Royal Decree 857/2003 of 4 July 2003 establishes the coordination between the law enforcement agencies and the Banco de España Monetary Offences Investigation Brigade in the fight against currency counterfeiting.
- The **judicial authorities**, underpinned by the Criminal Code (Article 386), which establishes, inter alia, sentences of 8-12 years and fines of up to 10 times the apparent value of the currency for those who counterfeit or alter it, import it into Spain or any other EU Member State, or export, transport, spend or distribute it while knowing that it is counterfeit. In addition, depending on the apparent value of the currency, Article 386 also establishes as an offence (punishable by sentences of 3-6 months' imprisonment or a fine of 6-24 months) spending or distributing it, after discovering that it is counterfeit, despite having received it in good faith.

3 Powers

3.1 Banco de España: competent national authority, National Analysis Centre (NAC) and Coin National Analysis Centre (CNAC)

Article 72 of Law 24/2001 of 27 December 2001 on fiscal, administrative and social measures inserted Additional Provision Four into Law 46/1998 of 17 December 1998 on the introduction of the euro. This additional provision conferred on the Banco de España, for the purposes of the provisions of the first three sub-points of Article 2(b) of Regulation (EC) No 1338/2001, the status of competent national authority in the protection of the euro against counterfeiting vis-à-vis identifying counterfeit euro banknotes and coins, and gathering and analysing technical and statistical data relating to counterfeit euro banknotes and coins. It also designated it NAC and CNAC for the purposes of the provisions of Articles 4 and 5 of the above-mentioned Regulation (EC) No 1338/2001.

The main functions discharged by the Banco de España (either as the competent national authority or as the NAC/CNAC) are as follows:

- **The gathering and analysis of technical and statistical data relating to counterfeit euro banknotes and coins.** To do so, the Banco de España centralises the receipt of suspected counterfeit euro banknotes and coins discovered in Spain, analyses them and indexes the related technical and statistical data, communicating them to the ECB (for their storage and processing).
- **The analysis and identification of suspected counterfeit euro banknotes** and the sending to the Counterfeiting Analysis Centre (CAC) of the ECB or to the European Technical and Scientific Centre (ETSC), as appropriate, of every new type of suspected counterfeit banknote or coin.

- **The issue of technical reports at the request of the judicial or police authorities** of Spain and personal ratification – where necessary – via in-person or remote appearances by specialist experts at any hearings that may take place.
- **Cooperation** in order to protect the euro against counterfeiting. Specifically, by exchanging information to prevent counterfeiting and the uttering of counterfeit banknotes and coins. This also includes scientific and technical support. To do so, the Banco de España experts are in constant contact with the ECB and European Commission counterfeiting experts and with other primarily European and American competent authorities.

Expertise is crucial and absolutely necessary for the anti-counterfeiting law enforcement bodies to be able to duly perform their tasks. Without it, arresting and trying counterfeiters and distributors would be particularly difficult, time-consuming and resource-intensive. Robust, reliable and regular cooperation between technical and police experts is a first-rate lever for boosting success in the fight against counterfeiting.

3.2 Banco de España Monetary Offences Investigation Brigade

Internationally, the police frameworks are structured around each country's NCO. In Spain, the NCO functions are conferred on the Banco de España Monetary Offences Investigation Brigade.

The brigade was created in 1934 by a Decree that provided for the establishment at the Banco de España of a Banknote Counterfeiting Investigation and Suppression Office. In compliance with the Ministry of the Interior Order of 10 September 2001, implementing Royal Decree 1449/2000 of 28 July 2000, amending and implementing the basic organisational structure of the Ministry of the Interior, which regulated the organisational structure and functions of the central and peripheral services of the Directorate General of Police, since 2001 the Banco de España Monetary Offences Investigation Brigade has **assumed the investigation** of offences related to national and foreign currency counterfeiting, operating as an NCO.

Pursuant to Ministry of the Interior Order INT/28/2013 of 18 January 2013, implementing the organisational structure and functions of the central and peripheral services of the Directorate General of Police, the Banco de España Monetary Offences Investigation Brigade is part of the Central Unit for Economic and Fiscal Crime of the Commissariat General of Criminal Police (UDEF by its Spanish initials).

The Banco de España Monetary Offences Investigation Brigade's main functions and obligations in relation to counterfeit banknotes and coins are as follows:

- **The gathering and analysis of data relating to euro counterfeiting.**
- **Coordination with any law enforcement agencies** so as to receive the suspected counterfeit banknotes and coins discovered or seized, in addition to data, documents and other effects.
- The obligation to **transmit suspected counterfeit euro banknotes and coins to the NAC/CNAC** and provide them with any other data relevant to the exercise of their powers regarding counterfeit banknotes and coins, together with any

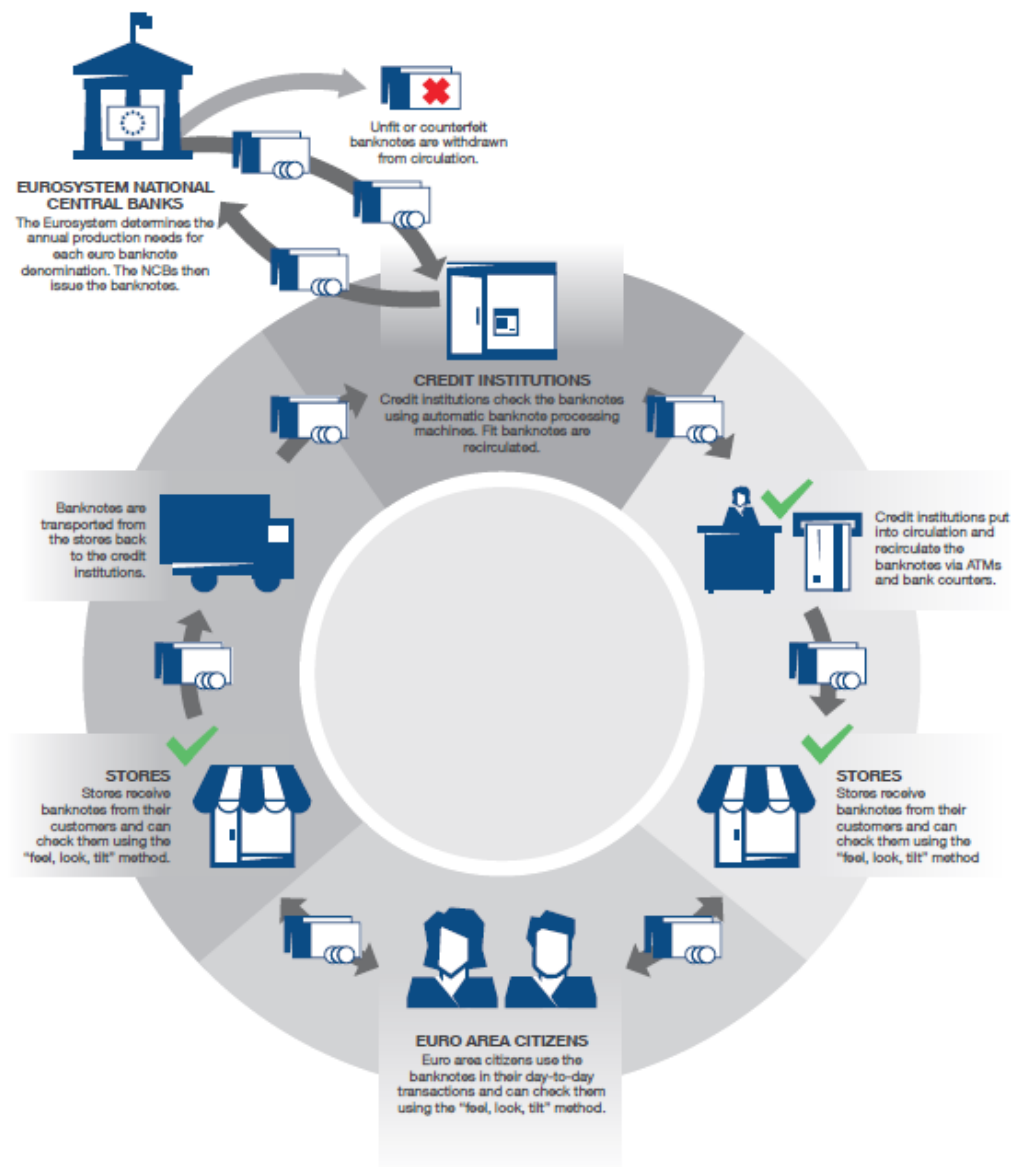
instruments and tools used in the counterfeiting that, in any event, shall be available to the competent judicial authority.

- **The investigation and prosecution of offences related to the counterfeiting** of national and foreign currency, operating as an NCO, and the centralisation of all reports that may facilitate the investigations, prevention and suppression of currency counterfeiting.
- **Information sharing** between the NCO and the Europol National Unit.
- The implementation of the **rapid alert and coordination procedures**, as appropriate, provided for in the communication systems established with Europol and Interpol.
- **Cooperation** in order to protect the euro against counterfeiting.

4 The identification of suspected counterfeit euro banknotes and coins

Suspected counterfeit **banknotes and coins** can be identified in two different channels:

4.1 The financial channel



Credit institutions withdraw banknotes and coins from the Banco de España to meet the public's demand for cash, who withdraw it from bank counters and, chiefly, ATMs. Retailers and the public deposit cash at credit institutions, which eventually deposit the cash they receive from the public at the Banco de España.

The Banco de España acts as a filter in the cash cycle, by keeping the banknotes and coins in circulation in good condition and withdrawing counterfeit banknotes and coins.

In accordance with Article 6 of Regulation (EC) No 1338/2001, credit institutions, other payment service providers and any other **economic agents** engaging in the sorting and distribution to the public of banknotes and coins (including, among others, bureaux de change and cash-in-transit companies) are **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 must also immediately hand them over to the competent national authorities.** Credit institutions using the Banco de España's ordinary cash service for euro banknotes and coins shall hand over to the Banco de España the suspected counterfeit banknotes and coins within **fifteen working days of their identification.**

If the Banco de España's analysis concludes that the banknotes or coins handed over are genuine, their amount will be paid to the credit institution as soon as possible. If the particulars of the person/firm from whom the currency was retained have been provided, the amount shall be repaid directly; otherwise, it shall be repaid to the credit institution or cash-in-transit company that handed it over.

4.2 Police channel

As a result of citizens **handing over a suspected counterfeit banknote or coin to the police** or on account of police seizures, **any law enforcement agency unit that identifies suspected counterfeit banknotes or coins**, or that is presented with the opportunity to seize them, **is obliged to communicate the information available to the Banco de España Monetary Offences Investigation Brigade** as soon as it is detected, without prejudice to it continuing its relevant actions in accordance with its criminal police powers. In addition, they shall send to the Banco de España Monetary Offences Investigation Brigade the suspected counterfeit banknotes and coins seized and the instruments and tools used in the counterfeiting.

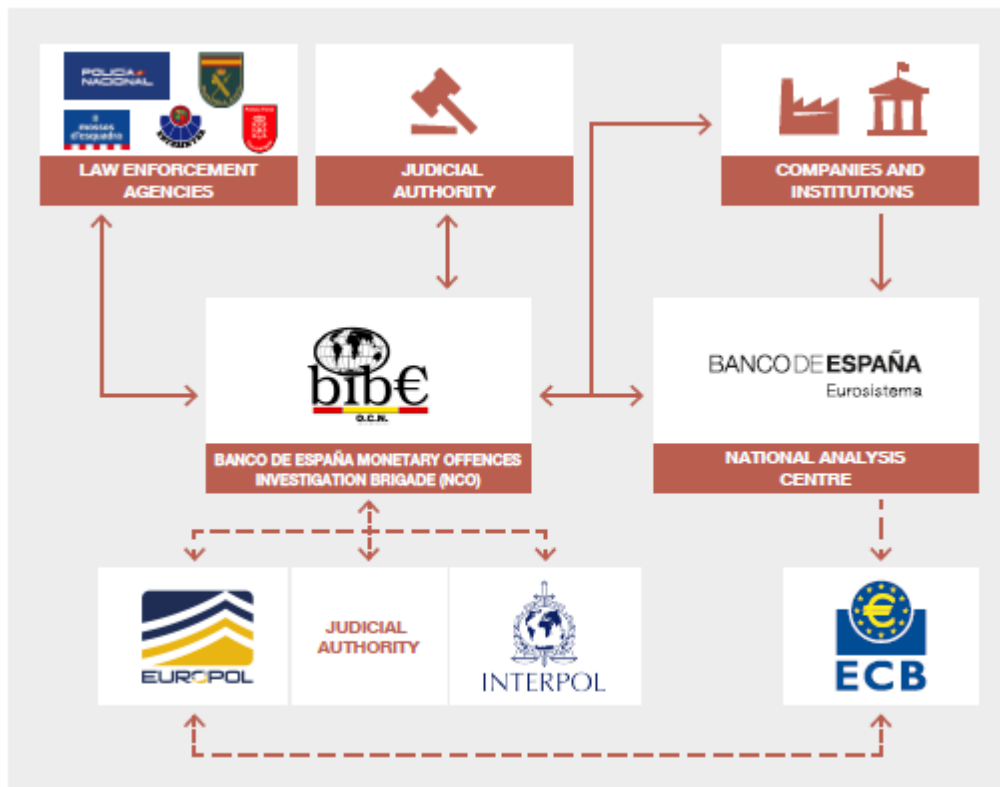
Once the Banco de España Monetary Offences Investigation Brigade has received the suspected counterfeit banknotes and coins seized, it shall transmit them without delay to the NAC (banknotes) or to the CNAC (coins). It shall also provide them with any other data relevant to the exercise of their powers regarding counterfeit banknotes and coins, together with any instruments and tools used in the counterfeiting that, in any event, shall always be available to the competent judicial authority.

The expertise provided by the Banco de España helps the police in their investigations, from the identification of the suspected counterfeit banknote or coin to the dismantling of the printing works or minting workshop and the subsequent legal proceedings.

5 Coordination of functions

In the coordination of the handling of suspected counterfeit banknotes and coins and of the processing of the data generated, it should be noted that the legal framework for the protection of the euro against counterfeiting confers on the **Banco de España the function of analysing the suspected counterfeit euro banknotes and coins and identifying the counterfeits**. This legal framework also centralises at the Banco de España the related available information, either directly or through the Banco de España Monetary Offences Investigation Brigade (as competent authority in charge of investigating and prosecuting offences related to euro counterfeiting and as NCO), which, in turn, must centralise all information detected through the law enforcement agencies.

The flow that suspected counterfeit banknotes and coins and the data generated must follow is depicted in the following image:



ANNEX 1. CURRENCY COUNTERFEITING LEGAL FRAMEWORK

Key legislation

- Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02001R1338-20090123&from=EN>
- Law 46/1998 of 17 December 1998 on the introduction of the euro.
<https://www.boe.es/buscar/pdf/1998/BOE-A-1998-29216-consolidado.pdf>
- Royal Decree 857/2003 of 4 July 2003 on the coordination of anti-counterfeiting measures between the law enforcement agencies and the Banco de España Monetary Offences Investigation Brigade.
<https://www.boe.es/eli/es/rd/2003/07/04/857>
- Ministerial Order INT/28/2013 of 18 January 2013, implementing the organisational structure and functions of the central and peripheral services of the Directorate General of Police.
<https://www.boe.es/eli/es/o/2013/01/18/int28/con>
- Decision of the European Central Bank of 19 April 2013 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (ECB/2013/10) (2013/211/EU).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013D0010-20210104&from=EN>
- 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).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02003O0005-20201215&from=ES>

Other legislation

Directives

- 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.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0062&from=es>
- Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02015L0849-20180709&from=EN>

- Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0713&from=ES>

Regulations

- Competent national authorities referred to in Article 2(b) of Council Regulation (EC) No 1338/2001 (2009/C 56/02).

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009XC0310\(02\)&from=SK](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009XC0310(02)&from=SK)

- Council Regulation (EC) No 1339/2001 of 28 June 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.

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02001R1339-20090211&from=ES>

- 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

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010R1210&from=ES>

- Regulation (EU) No 331/2014 of the European Parliament and of the Council of 11 March 2014 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles 2020' programme) and repealing Council Decisions 2001/923/EC, 2001/924/EC, 2006/75/EC, 2006/76/EC, 2006/849/EC and 2006/850/EC.

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0331&from=ES>

- Council Regulation (EU) 2015/768 of 11 May 2015 extending to the non-participating Member States the application of Regulation (EU) No 331/2014 of the European Parliament and of the Council establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles 2020' programme)

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R0768&from=ES>

- Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins.

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02004R2182-20090211&from=EN>

- Council Regulation (EC) No 2183/2004 of 6 December 2004 extending to the non-participating Member States the application of Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins.

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02004R2183-20090211&from=EN>

- Council Regulation (EU) No 729/2014 of 24 June 2014 on denominations and technical specifications of euro coins intended for circulation (Recast) (OJEU of 2 July)

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0729&from=ES>

Laws

- Law 10/1975 of 12 March 1975 on Regulation of Coinage.
<https://www.boe.es/eli/es/l/1975/03/12/10/con>
- Law 8/2012 of 30 October 2012 on the write-down and sale of real estate assets of the financial sector.
Additional provision four.
<https://www.boe.es/eli/es/l/2012/10/30/8>
- Law 24/2001 of 27 December 2001 on Fiscal, Administrative and Social Measures.
<https://www.boe.es/eli/es/l/2001/12/27/24>
- Organic Law 10/1998 of 17 December 1998 supplementing the Law on the introduction of the euro.
<https://www.boe.es/eli/es/lo/1998/12/17/10>

Decisions

- Decision of the European Central Bank of 8 November 2001 on certain conditions regarding access to the Counterfeit Monitoring System (CMS) (ECB/2001/11) (2001/912/EC).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001D0011&from=ES>
- Council Decision of 6 December 2001 on the protection of the euro against counterfeiting (2001/887/JHA)
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001D0887&from=ES>
- Council Decision of 8 December 2003 concerning analysis and cooperation with regard to counterfeit euro coins (2003/861/EC).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003D0861&from=ES>
- Council Decision of 8 December 2003 extending the effects of Decision 2003/861/EC concerning analysis and cooperation with regard to counterfeit euro coins to those Member States which have not adopted the euro as their single currency (2003/862/EC)
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003D0862&from=ES>
- Commission Decision of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect euro coins against counterfeiting (2005/37/EC).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02005D0037-20170918&from=EN>
- Council Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, by designating Europol as the Central Office for combating euro counterfeiting.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32005D0511&from=ES>
- Decision of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (ECB/2010/14) (2010/597/EU).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02010D0014-20200109&from=EN>

- Decision of the European Central Bank of 20 December 2013 on the accreditation procedures for manufacturers of euro secure items and euro items and amending Decision ECB/2008/3 (ECB/2013/54) (2014/106/EU)

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013D0054\(01\)-20161101&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013D0054(01)-20161101&from=EN)

- Decision (EU) 2020/637 of the European Central Bank of 27 April 2020 on accreditation procedures for manufacturers of euro secure items and euro items (ECB/2020/24) (recast)

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32020D0637>

- Commission Decision of 19 October 2015 setting up the Counterfeit Coin Experts Group on the Commission's policy and Regulations regarding the protection of euro coins against counterfeiting (2015/C 347/05)

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015D1020\(01\)&from=ES](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015D1020(01)&from=ES)

- Commission Decision of 12 February 2016 setting up the Euro Counterfeiting Experts Group (2016/C 58/06).

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016D0213\(01\)&from=ES](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016D0213(01)&from=ES)

Recommendations

- Recommendation of the European Central Bank of 7 July 1998 regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins (ECB/1998/7).

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:51998HB0007&from=ES>

- Commission Recommendation of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation (2005/504/EC).

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32005H0504&from=ES>

- Recommendation of the European Central Bank of 6 October 2006 on the adoption of certain measures to protect euro banknotes more effectively against counterfeiting (ECB/2006/13).

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006HB0013&from=ES>

Guidelines

- 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).

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:01999O0003-20030326&from=ES>

- ETSC Guidelines on the implementation of 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.

- o ETSC Guidelines, public version, October 2019 update. Ref: Ares (2019)6661509

https://ec.europa.eu/info/business-economy-euro/euro-area/anti-counterfeiting/european-technical-and-scientific-centre-etsc_en

Other

- International Convention for the Suppression of Counterfeiting Currency signed at Geneva on 20 April 1929 (published in the Gazette of Madrid of 8 March 1931). Notifications made under Articles 12 and 15 of the Convention by the Kingdom of Spain to designate a Central Office (Declaration of the Kingdom of Spain to designate Europol as central office to combat euro counterfeiting). (Official State Gazette of 11 August 2006).

[https://www.boe.es/eli/es/ai/2006/08/01/\(1\)](https://www.boe.es/eli/es/ai/2006/08/01/(1))

- Agreement between the European Police Office (EUROPOL) and the European Central Bank (ECB) (2015/C 123/01)

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015Y0417\(01\)&from=ES](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015Y0417(01)&from=ES)

- Cooperation Agreement between the European Central Bank (ECB) and the International Criminal Police Organisation (INTERPOL) (2004/C 134/06).

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004X0512\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004X0512(01)&from=EN)

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