

Regulatory Impact Assessment: The Protection of the Euro against Counterfeiting Regulations 2001

Submitted by HM Treasury

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Purpose and Intended Effect of the Measure

Issue

On 28 June 2001, the Council of the European Community adopted Council Regulation (EC) No.1338/2001, 'laying down measures necessary for the protection of the euro against counterfeiting'. The measures provided for in the Regulation include obligations on all the Member States which have adopted the euro as their single currency to co-operate in combating counterfeiting of the new currency. In particular, Article 6(2) of the Regulation obliges all these Member States to implement 'effective, proportionate and deterrent sanctions' on certain institutions and establishments (outlined below) which fail to withdraw from circulation and hand in any euro notes or coins which they know or have sufficient reason to believe are counterfeit, as they are required to do under Article 6(1).

On the same date, the Council adopted Regulation (EC) No.1339/2001 extending the effect of the operative provisions of Regulation 1338/2001 to the Member States which have not adopted the Euro as their single currency. It is Regulation 1339/2001 which obliges the UK to implement the obligations in Regulation 1338/2001, but for ease of reference this document refers only to Regulation 1338/2001 and the obligations therein.

While the Regulations are automatically legally binding in the UK under the EC Act 1972, Article 6(2) of Regulation 1338/2001 requires the UK to enact legislation setting out the sanctions for failure to comply with the provisions of Article 6(1). It is to implement this obligation that the new UK Regulations are required.

Euro notes and coins will be introduced into circulation in the twelve participating Member States from 1 January 2002, and will also replace the cash of any legacy currencies held in non-participating Member States, such as in banks and bureaux de change etc. Due to the unfamiliarity of this currency, and its territorial reach across existing national boundaries, this could mean a significant increase in the risk of counterfeit notes and coins leaking into general circulation. This could have an obvious impact on the general population of the UK, but also on confidence in the new currency.

Objectives

- ?? To ensure that the UK plays its part in a co-ordinated response to the threat of counterfeiting euro notes and coins.
- ?? To fulfil the UK's obligations under Article 6(2) of Regulation 1338/2001.

Risk Assessment

The protection of the Euro against counterfeiting will need to be tailored to the fact that it will have an enormous circulation both within and outside Europe. The Euro will become a transaction and reserve currency worldwide and hence the potential for counterfeits will cover a larger territory than that within the jurisdiction of the participating States. However, the scope for intervention by national authorities will be confined to their own national boundaries.

The scope for counterfeiting is increased when an entirely new currency is introduced due to the lack of familiarity. Despite awareness raising campaigns, it will take time for those in contact with the new notes and coins to become used to them. Furthermore, Euro coins will have one standard side and one national side, making recognition of coinage from other Member states more difficult.

There is a possibility of a considerable increase in exchange operations as a result of the introduction of the Euro. The lack of experience in these new operations could present an ideal opportunity for counterfeiters to launder their counterfeit notes and coins.

Advances in technology have made it easier to produce counterfeit notes and coins with an exceptionally high degree of accuracy. As these desktop technologies become more available, small-scale counterfeiters with no printing knowledge could reap the benefit unless there were safeguards in place to remove counterfeit currency from circulation.

Substance of the Regulations

Article 6(1) of Regulation 1338/2001 (described below) obliges certain institutions and establishments to withdraw from circulation any Euro notes or coins which they know or have reason to believe are counterfeit and immediately hand them over to the competent national authorities. In the UK, these will be the National Criminal Intelligence Service or the Royal Mint in the case of coins, and the National Criminal Intelligence Service or the Bank of England in the case of notes.

The UK Regulations provide that any such institution or establishment which fails to withdraw a euro note or coin which it knows or has reason to believe to be counterfeit will be liable, on summary conviction, to a fine or up to three months imprisonment. On conviction on indictment, the institution or establishment will be liable to an unlimited fine or up to two years in prison. They may also be fined if they fail immediately to hand over the note or coin to the relevant authorities.

Directors and managers of companies, partners of partnerships and other comparable officers of companies and similar bodies are also liable to conviction under these Regulations if it can be shown that relevant offences were committed with their consent or connivance or as a result of their neglect.

Benefits

It is difficult to quantify the benefits associated with measures to combat counterfeiting. Some benefits are tangible and can be seen through reductions in criminal activity, some are more intangible and are related to overall confidence in a currency.

The clearest benefit of the Regulations will be that they will provide an effective incentive for adherence with the obligations set out in Article 6(1) of Regulation 1338/2001. The threat of criminal sanctions should mean that counterfeit Euros will be immediately withdrawn from circulation.

However, it would be wrong to determine the success of this proposal by using criminal prosecutions and convictions as the most reliable indicator, because much criminal activity should be disrupted or deterred by the fact institutions are likely to comply with their obligations under the EC Regulations, without leading to prosecutions or convictions. Furthermore, there are more intangible benefits such as:

1. Maintaining confidence in the Euro as a currency.
2. Maintaining the international reputation of the UK's stance in the fight against crime, ensuring that the UK is not the 'weak link' in relation to counterfeiting of euro notes and coins.

Compliance Costs

Business Sectors Affected

Article 6(1) of Regulation 1338/2001 specifies the types of institutions and other establishments which will be subject to the obligations in it and therefore liable to the penalties which we have set out in these new Regulations. They include:

?? 'Credit institutions', defined in Article 1 of Directive 2000/12/EC as:

“(a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or (b) an electronic money institution within the meaning of Directive 2000/46/EC ...”

?? Any other institutions engaged in the sorting and distribution to the public of notes and coins as a professional activity including establishments whose activity consists in exchanging notes and coins of different currencies, such as **bureaux de change**

Banks and bureaux de change will therefore clearly be covered and we expect the Regulations to have the most impact on these two sectors. Charities and voluntary organisations would face no costs and would only benefit from the reduction in the possibility of counterfeit currency in circulation, in much the same manner as the general population. In the UK, as a non-Eurozone country, it will be bureaux de change that will be affected the most as they will have the most frequent contact with Euro notes and coins.

Compliance Costs for a Typical Business: Small Bureau de Change

Compliance with the EC Regulations is likely to impose few extra costs to bureaux de change. The costs to a small, independent bureau de change would simply be an initial training cost for each employee along the lines of that already undertaken for sterling. There would not be any ongoing costs.

These Regulations will involve no additional costs; they simply enforce sanctions on those individuals who fail to meet the new legal requirements.

Total Compliance Costs

There are no accurate figures for the number of bureaux de change outlets in the UK, but initial research indicates that there are between 2,500 and 3,500. It can be assumed that half of these are members of large, franchised groups (eg Thomas Cook). As noted above, we do not expect the proposal to impose extra costs on individual bureaux de change, and we therefore estimate total compliance costs across the sector to be negligible.

Other Costs

The additional costs to Government as a result of the current proposal would be minimal. Some costs will clearly be incurred if prosecutions are carried out under these Regulations, as a result of non-compliance with the obligations they entail. However, these costs could be funded from existing resources already earmarked for investigations into counterfeiting.

Issues of Equity and Fairness

Smaller businesses will face the same obligations as the larger businesses in the Financial Sector. However, the Regulations impose no additional obligations in relation to the mechanisms by which institutions monitor the currencies with which they deal and we would expect smaller bureaux de change, for example, to continue to implement the risk-based checks which they have in place for other currencies.

The obligation to withdraw currency places no differential requirement on smaller businesses. The obligation immediately to hand over counterfeit Euros might be seen to place greater burdens on small businesses; however, the ability to hand in Euros to persons with authority to act on behalf of the Competent National Authorities should help offset this. We anticipate that the Competent National Authorities will give such authority to the Police forces of the UK. In this regard, the practice will fall in line with existing procedures in relation to other counterfeits.

Result of Consultations

Following a six week consultation period, the Treasury received 15 responses. They were generally either positive or registered that the individual or body had no comment to make. The only consistent query was in relation to practicalities of the obligation to hand over counterfeits to the Competent National Authorities – our facility for allowing the Authorities to use agents we feel has offset these concerns.

Enforcement, Sanctions, Monitoring and Review

As is the case with domestic policy and legislation on counterfeiting, successful investigation and conviction for such an offence will be reliant on the relevant national authorities taking action where the need arises, on a case by case basis. For example, a recipient of a counterfeit note or coin from a specified institution, or a person with knowledge of such practices, will report it to the relevant authorities, who will then take the appropriate action against that institution.

The effectiveness of these Regulations will be kept under review by the Treasury.