



HM TREASURY

# **UK enforcement measures for EU regulations 44/2009 and 45/2009 on counterfeit Euros:**

**the Government response to the  
consultation**

December 2011





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# 1

## Introduction

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### Summary

**1.1** Two European Regulations that came into force in early 2009 strengthened the steps all European Union (EU) Member States, including countries like the United Kingdom (UK) which have not adopted the Euro, need to take to address the risks of counterfeit Euros being circulated by businesses in the UK.

**1.2** The Regulations require relevant UK businesses to have in place measures to identify and remove counterfeit Euros from circulation. In particular the Regulations introduced new requirements on certain businesses to check euro notes and coins for counterfeits.

**1.3** All EU Member States including the UK have until 31 December 2011 to implement domestic measures to ensure compliance with the EU Regulations. This paper has no impact on any steps for the UK to join the Euro. The Government has made it clear that it will not join or prepare to join the Euro in this Parliament.

### Consultation

**1.4** From 1 August to 1 November 2011, the Government consulted on the best way for the UK to ensure compliance with the EU Regulations. Two options were considered. One proposal was to amend the existing UK law which imposes criminal penalties for breaching the existing EU rules relating to counterfeit Euros so that businesses involved in Euro handling and distribution would be subject to criminal sanctions if they breach the new EU Regulations. This would be done by creating an offence of failure to comply. The other proposal was to implement a new regulatory regime to ensure compliance by relevant businesses with the requirements of the Regulations. In this case, civil penalties would be imposed in response to breaches.

**1.5** This paper gives the results of the consultation and states the Government decision.





# 2

## Background and Consultation

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### The EC Regulations

**2.1** The consultation concerned Council Regulations (EC) No 44/2009 ('Regulation 44') and No 45/2009 ('Regulation 45'), which were published in January 2009. They amend Regulation 1338/2001 and 1339/2001 respectively.

**2.2** Regulation 44 creates a new requirement on certain businesses to check Euro notes and coins for counterfeits before putting them back into circulation. Regulation 45 extends this requirement to businesses in non-Eurozone Member states including the UK.

**2.3** Businesses must check Euro notes and coins either using machines approved by the European Central Bank (ECB) and the European Commission (EC) or using staff trained to identify counterfeit Euros.

**2.4** The requirements under the EU Regulations apply directly in the UK. The UK and other Member states are required, by 31 December 2011, to introduce effective, proportionate and deterrent sanctions for breach of the requirements of the Regulations.

**2.5** The consultation focused on how best to do this.

**2.6** There is a risk that businesses will encounter counterfeit Euro notes and coins in the UK. However, the current picture appears to be that this risk is limited due to the size of the Euro market in the UK.

### Consultation

**2.7** A consultation was held on two possible options to ensure UK compliance with the EU Regulations. To access the consultation document and detailed impact assessment of both options please refer to:

[http://www.hm-treasury.gov.uk/consult\\_counterfeit\\_euros.htm](http://www.hm-treasury.gov.uk/consult_counterfeit_euros.htm)

### Summary of Options

#### Criminal Sanction

**2.8** In the consultation the Government stated its preferred approach was a criminal sanction, carrying the same penalties as the existing offence of failing to withdraw from circulation counterfeit notes and coins. The maximum penalties for this on summary conviction are a fine not exceeding the statutory maximum (currently £5,000), or three months' imprisonment, or both, and on conviction on indictment an unlimited fine, or imprisonment for a maximum of two years, or both. The penalties for the offence of failing to hand over counterfeit notes and coins to the relevant bodies are slightly different: on summary conviction a fine not exceeding the statutory maximum, and on conviction on indictment an unlimited fine.

**2.9** As well as being in line with the existing approach, a criminal offence was preferred as it minimises the impact on businesses by avoiding the creation of new regulatory or supervisory

arrangements. This would also be in line with the Government's commitment to minimise the impact of new regulation on businesses.

### **Regulatory Penalty**

**2.10** A second option was the introduction of regulatory measures. These would be applied by one or more regulatory bodies exercising regulatory or supervisory functions over the relevant businesses. Breach of the requirements in this case could have been dealt with using a civil penalty or other regulatory measures.

**2.11** The Government's preferred approach was a criminal sanction, rather than regulation, as the latter could be costly to both businesses and supervisors in terms of regulatory fees, training of staff and time taken up by supervisory visits.

# 3

## Responses to the Consultation

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### Engagement

**3.1** Prior to and during the consultation, the Government engaged with key industry stakeholders including representatives of the sectors that have to comply with the Regulations. The Government met and engaged with the Bank of England, the Serious Organised Crime Agency (SOCA), the Payments Council, the Financial Services Authority (FSA), the British Bankers Association (BBA) and the Gambling Commission as well as businesses affected by the EU Regulations. The British Bankers Association, Her Majesty's Revenue and Customs (HMRC), the Payments Council and the Gambling Commission brought the consultation to the attention of their members or firms they supervise.

**3.2** The Government response to the consultation is based on this wider engagement, as well as the formal responses to the consultation that were received. Five formal responses to the consultation were received, four of which addressed the questions that were set out.

**3.3** To ensure our response was proportionate and in line with other countries' measures, the Government also engaged with several non-Eurozone EU Member states.

### Summary of responses

#### Regulatory Penalty

**3.4** One respondent, a large money transmitter, expressed a preference for a regulatory penalty on the basis that a criminal penalty might discourage a risk-based approach. They were also concerned about a penalty of imprisonment being disproportionate to the offence.

**3.5** Three respondents, including a supervisor, were not in favour of a regulatory penalty, stating that it would be burdensome for businesses, for example in terms of fees, and could be applied inconsistently.

#### Criminal Sanction

**3.6** Several stakeholders with whom the Government engaged were in favour of a criminal sanction on the basis that it would be consistent with the existing UK law for the protection of the Euro against counterfeiting. They also cited the burdens associated with a regulatory regime. Others thought a criminal sanction would act as a good deterrent to businesses and said the penalties being proposed supported the offence.

**3.7** Those who disagreed with a criminal sanction thought that the penalty might be harsher than that which would be received in a country that has adopted the Euro, or thought a regulatory regime would be more flexible, for example in terms of allowing for mistakes and adjustments.

#### Other Countries

**3.8** Most other non-Eurozone EU Member states which the Government has engaged with plan to implement a fine as a penalty for non-compliance with the EU Regulations. Some were using a supervisory regime to enforce this and some were just implementing a criminal or administrative penalty.



# 4

## Government Response and Implementation

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### Government Response

**4.1** Thanks are expressed to those who took the time to engage both before and during the consultation period.

**4.2** Based on the responses received to the consultation and the wider engagement with stakeholders, the Government will be taking forward the creation of a new criminal offence for failure to comply with the checking requirements of the EU regulations in relation to counterfeit Euros.

**4.3** The creation of a new criminal offence will not generate any direct costs for businesses and will not create any additional regulatory burdens on businesses. A criminal offence discharges the legal obligation on the UK as well as being consistent with the precedent set in the existing UK legislation. It also does not require the creation of new regulatory or supervisory arrangements which could be costly for businesses both in terms of registration fees and time taken for compliance visits etc.

**4.4** A new criminal offence will be an effective, proportionate and deterrent sanction, something that the UK is legally obliged to adopt in their chosen measure.

**4.5** The Government acknowledges respondents' comments that a criminal offence punishable by imprisonment could be disproportionate. With this in mind, the Government is proceeding with the introduction of a new criminal offence, but limiting the penalty to a fine (see Annex A). This is also consistent with the approach of most other EU countries which were engaged.

**4.6** With respect to the absence of a risk-based approach under a criminal liability regime, the Government notes that the requirements under the EU Regulations are absolute i.e. there is an absolute requirement to carry out the required checks before euro notes and coins are put back into circulation. A criminal penalty will apply whenever the requirements are breached. However, prosecutions are only undertaken in the public interest and will usually focus on cases of repeat and/or deliberate breaches of the Regulations rather than minor, procedural or accidental regulatory failures. Although the requirements are absolute, the Regulations contain scope for some flexibility for businesses in the approach they take to meet these requirements. The definition of trained staff is flexible. Businesses can choose whether to use machines or trained staff or both; and they can also choose which machine they use from the approved lists.

### Implementation

**4.7** The deadline for the UK to implement domestic measures that are required to ensure compliance with the EU Regulations is 31 December 2011. The Government will implement a new criminal offence to meet this deadline. The sections below include further information on the requirements for businesses, including the Regulations themselves and what is expected of businesses affected by the Regulations.

## Complying with the Requirements – What It Means in Practice

4.8 The requirements apply to:

- Credit institutions (i.e. banks and building societies);
- Payment service providers within the limit of their payment activity;
- Bureaux de change and similar businesses;
- Transporters of funds;
- Other interested businesses (for example secure printers and businesses that design and produce equipment to check notes and coins); and
- Any other businesses (such as retailers or casinos) that distribute Euro notes and coins.

4.9 In practice, the requirements mean that these businesses must have procedures in place selectively to check Euro notes and coins using an approved method.

4.10 The approved methods are either to check notes and coins using **machines** that comply with the specified standards or to **train staff** to identify counterfeit Euros. The Government expects that businesses will normally use one method or the other, but businesses can use both methods where that makes good operational sense for them.

### Machines:

4.11 As stipulated in Regulation 44, the machines that can be used are on the following lists:

- 1 the ECB, for banknotes (<http://www.ecb.int/euro/cashhand/devices/results/html/index.en.html>); and
- 2 the EC, for coins ([http://ec.europa.eu/anti\\_fraud/pages\\_euro/euro-coins/machines.pdf](http://ec.europa.eu/anti_fraud/pages_euro/euro-coins/machines.pdf))

### Trained staff:

4.12 No guidance has been released which specifies how 'trained staff' is defined. Based on our engagement with EU partners and the EC, trained staff can be summarised as follows:

Training for manual authentication by staff should provide information on genuine Euro notes and coins and give guidance on how to check them for authenticity. The training aims to enable the participant to identify genuine Euros and separate them from counterfeits. A training seminar may include 'hands-on' training where the trainees are given a mix of counterfeit and genuine Euros to check their authenticity. Alternatively, an interactive or online training tool could be used. The training could end with an assessment of the knowledge acquired.

# A The Regulations

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 STATUTORY INSTRUMENTS
 

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2011 No.

**BANKS AND BANKING****FINANCIAL SERVICES**

The Protection of the Euro against Counterfeiting (Amendment)  
Regulations 2011

<i>Made</i> - - - -	<i>7th December 2011</i>
<i>Laid before Parliament</i>	<i>8th December 2011</i>
<i>Coming into force</i> - -	<i>31st December 2011</i>

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the protection of the euro against counterfeiting.

The Treasury, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Protection of the Euro against Counterfeiting (Amendment) Regulations 2011 and come into force on 31st December 2011.

**Amendment of the Protection of the Euro against Counterfeiting Regulations 2001**

2.—(1) The Protection of the Euro against Counterfeiting Regulations 2001(c) are amended as follows.

(2) In regulation 1(2)(a), after “counterfeiting” insert “as amended by Council Regulation (EC) No. 44/2009 of 18 December 2008”(d).

(3) In regulations 2 and 3(1), for “A credit institution, or other institution or establishment within” substitute “An institution or economic agent referred to in”.

(4) After regulation 3 insert—

**“3A.—(1) An institution or economic agent referred to in Article 6(1) of the Community Regulation, which fails to ensure that euro notes and euro coins which it has received and**

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(a) S.I. 2001/961.

(b) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

(c) S.I. 2001/3948.

(d) O.J. No. L 17, 22.1.09, p.1. Council Regulation (EC) No. 45/2009 (OJ No. L 17 22.1.2009, p.4) amends Council Regulation (EC) No. 1339/2001 (OJ No. L 181 4.7.2001, p. 11) so that the amendments to Council Regulation (EC) No. 1338/2001 (OJ No. L 181 4.7.2001, p. 6) made by Council Regulation 44/2009 also apply in Member States which have not adopted the euro as their single currency.



which it intends to put back into circulation are checked for authenticity by trained personnel or by a machine authorised for that purpose by the European Central Bank, in the case of banknotes, or the European Commission, in the case of coins, shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.”.

## **Review**

3.—(1) The Treasury must from time to time—

- (a) carry out a review of regulation 2,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how Council Regulation (EC) No. 1339/2001, as amended by Council Regulation (EC) No. 44/2009, is implemented in other member states.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by regulation 2,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with an alternative system.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision relating to the enforcement of Council Regulation (EC) No. 1338/2001, as amended by Council Regulation (EC) No. 44/2009.

These Regulations amend the Protection of the Euro against Counterfeiting Regulations 2001 (“the 2001 Regulations”), so that it is a criminal offence for banks and certain other financial institutions to fail to comply with the requirement in Article 6(1) of Council Regulation (EC) No. 1338/2001, as amended, to ensure that euro notes and coins are checked for authenticity.

The Regulations also amend the category of persons who commit an offence under the 2001 Regulations if they fail to comply with the other requirements of Council Regulation (EC) No. 1338/2001, reflecting amendments made to that Regulation by Council Regulation (EC) No. 44/2009.

The Regulations set out the maximum penalties which can be imposed on persons convicted of those offences.

Regulation 3 requires the Treasury to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain

as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An Impact Assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available on the Treasury's website ([hm-treasury.gov.uk](http://hm-treasury.gov.uk)) and is published with the Explanatory Memorandum alongside these Regulations on the [legislation.gov.uk](http://legislation.gov.uk) website.

### **HM Treasury contacts**

This document can be found in full on our website: <http://www.hm-treasury.gov.uk>

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