



HM TREASURY

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

a consultation

August 2011





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# 1

# Introduction

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## Summary

**1.1** Two European regulations published in 2009 strengthen and modernise the steps all Member States, including countries like the United Kingdom that have not adopted the Euro, need to take to address the risks of counterfeit Euros<sup>1</sup> being put into circulation.

**1.2** The regulations, taken together, require relevant UK businesses to have in place measures to identify and remove counterfeit Euros from circulation. In particular the regulations introduce new requirements on certain businesses to check euro notes and coins, so that counterfeits are more easily identified. The regulations explain what steps need to be taken if counterfeit Euros are found or suspected.

**1.3** The UK has until 31 December 2011 to implement any domestic measures that are required to ensure compliance with the EU Regulations.

**1.4** The EU regulations already have direct effect in the UK. They apply to the UK because while the unit of currency in the UK is pounds sterling, UK institutions that put Euros into circulation are required to comply with the EU Regulations.

**1.5** The EU regulations do not need to be transposed into UK law like a Directive. However the UK needs to take the necessary measures to ensure that the regulations are complied with in the UK.

**1.6** This proposal has no impact on any steps to join the Euro. The Government has made it clear that it will not join or prepare to join the Euro in this Parliament.

## What this paper is about

**1.7** The purpose of this paper is to explain the background to the EU regulations, make policy proposals for the steps to be implemented in the UK, and to seek the views of all interested parties on the costs and benefits of these steps.

## Who should read this paper

**1.8** Businesses and others who may be affected by the new EU measure or the UK proposals should read this paper and, if they wish, comment.

**1.9** The businesses concerned include, but may not be limited to

- Credit institutions, i.e. banks and building societies that handle Euro notes and coins,
- Bureaux de change, and similar businesses, that handle Euro notes and coins,
- Cash transportation businesses that handle Euro notes and coins, and
- Other businesses that issue Euro notes to the public using ATMs.

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<sup>1</sup> The Regulations refer to euro-denominated notes and coins. Generally where we refer to Euros in this paper we mean notes and coins.

- Other interested businesses (such as secure printers and businesses those that design and produce equipment to check notes and coins for example)
- Law enforcement agencies throughout the UK.

## Northern Ireland

**1.10** Businesses, including banks and other credit institutions, and retailers based in Northern Ireland may be disproportionately likely to handle Euro notes and coins as a result of cross-border shopping activity or other economic ties.

**1.11** Accordingly this paper is specifically drawn to the attention of potentially impacted businesses in Northern Ireland.

## What do we propose?

**1.12** In summary, the Government proposes to amend the existing UK law which imposes penalties for breach of the EU rules relating to counterfeit Euros so that the businesses involved in Euro handling and distribution are subject to sanctions if they breach the EU regulations.

**1.13** The Government proposes to ensure compliance with the EU Regulations either by creating an offence of failure to comply with the EU measure or by implementing a new regulatory regime.

## The consultation process

**1.14** The consultation period runs until 1 November.

**1.15** The arrangements for responding to the consultation are set out here.

**1.16** Respondents are encouraged to reply electronically to [aml@hmtreasury.gsi.gov.uk](mailto:aml@hmtreasury.gsi.gov.uk)

**1.17** You can reply by post to

Counterfeit Euro Consultation  
c/o The Counter Illicit Finance Team, Room 3.15  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

**1.18** Please provide basic contact details for yourself and any organisation you represent in your response.

**1.19** Information about the nature and extent of your activities dealing with Euro notes or coins, and the value of Euros passing through your business would be helpful. The Government WILL NOT publish un-aggregated data of that kind.

**1.20** If you have any questions about the consultation please contact

Marion Barbel at [marion.barbel@hmtreasury.gsi.gov.uk](mailto:marion.barbel@hmtreasury.gsi.gov.uk) and 020 7270 5358

## Disclosure of responses

**1.21** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply with and which deals, amongst other things with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

**1.22** An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Your personal data will be processed in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed.

## Next steps

**1.23** The consultation closes on 1 November.

**1.24** The Government will publish the responses received and final draft regulations at the same time, as soon as possible after that.

**1.25** The intention is for the new regulations to be in force by 31 December.



# 2

## Counterfeit Euro notes and coins – experience to date

### Counterfeit Euros

**2.1** The European Central Bank website gives an analysis of overall counterfeit Euro notes detected.

**2.2** In the first half of 2010 a total of 387,000 counterfeit Euro banknotes were withdrawn from circulation. This is a decrease of around 13% on the quantity recovered in the previous six months. The table below indicates the half-yearly trend in the number of counterfeits recovered.

| Period                              | 2006/1 | 2006/2 | 2007/1 | 2007/2 | 2008/1 | 2008/2 | 2009/1 | 2009/2 | 2010/1 |
|-------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Number of counterfeits in thousands | 300    | 265    | 265    | 296    | 312    | 354    | 413    | 447    | 387    |

**2.3** When compared with the increasing number of genuine Euro banknotes in circulation (on average 13.2 billion during the first half of 2010), the proportion of counterfeits remains very low.

**2.4** The table below provides a percentage breakdown, by denomination, of the total number of counterfeits withdrawn from circulation in the first half of 2010.

| Denomination         | €5   | €10  | €20   | €50   | €100 | €200 | €500 |
|----------------------|------|------|-------|-------|------|------|------|
| Percentage breakdown | 0.5% | 1.5% | 41.5% | 42.5% | 12%  | 1.5% | 0.5% |

**2.5** The €20 and €50 denominations continue to be the most counterfeited. During the preceding six months, the share of counterfeit €20 banknotes decreased and the share of €50 banknotes increased. Almost equal numbers of each denomination were recovered during the first half of 2010, together accounting for almost 85% of the total. The €100 banknote is the third most counterfeited denomination at 12% of the total. The share of the other denominations (€5, €10, €200 and €500) is very low.

**2.6** The majority (more than 98%) of counterfeits recovered in the first half of 2010 were found in Euro area countries, with only around 1% being found in EU Member States outside the Euro area and less than 0.5% being found in other parts of the world.

**2.7** The evidence suggests that a few thousand counterfeit Euro notes are recovered each year in the UK. Those are mostly €20 and €50 denomination notes.

### Euro Coins

**2.8** As regards Euro coins, the European Commission has reported that the number of counterfeit Euro coins detected during calendar year 2009 was 172,100 pieces, down from 195,900 coins detected during 2008. This is a decrease of 12 percent.

**2.9** An extremely small number of counterfeit Euro coins are recovered in the UK as Euro coins do not circulate widely here.

## Conclusions

**2.10** The current picture appears to be that there is a limited risk that counterfeits Euro notes and coins will be encountered in the UK.

**2.11** Accordingly, while UK businesses must continue to be vigilant, the Government's preliminary view is that the low expected risk can be factored in to the extent of checking activity conducted by businesses.

# 3

## The legal position

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### The new EC Regulations

**3.1** Council Regulations (EC) No 44/2009 ('Regulation 44') and No 45/2009 ('Regulation 45') were published in January 2009. They amend Regulation 1338/2001 and Regulation 1339/2001 respectively.

**3.2** Regulation 1338/2001 provides for countries that have adopted the Euro to have in place arrangements to withdraw counterfeit notes and coins, and to cooperate in fighting counterfeiting. Regulation 1339/2001 extends these obligations to non-Euro zone members like the UK.

**3.3** Regulation 44 creates a new requirement (effective from 31 December 2011) on institutions to check Euro notes and coins for counterfeits before putting them back into circulation. Regulation 45 extends this requirement to non-Euro zone members.

### The current legal position in the UK

**3.4** Credit Institutions (and other institutions involved in the processing and distribution of notes and coins) in the UK are currently subject to the requirement imposed by Regulation 1338 to withdraw from circulation any Euro notes or coins received by them which they know, or have reason to believe, to be counterfeit, and to hand them over to the relevant national authorities.

**3.5** The existing UK law, The Protection of the Euro against Counterfeiting Regulations 2001 (Statutory Instrument 2001 No. 3948) makes failure to comply with the EU requirements a criminal offence.

### Effect of Regulation 44 in the UK

**3.6** Regulation 44 amends Regulation 1338 to extend the list of institutions subject to the existing requirement to withdraw counterfeit notes and coins. It also imposes a new requirement on these institutions.

**3.7** 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; and
- Any other businesses (such as retailers or casinos) that distribute Euro notes to the public using automated teller machines (ATMs).

**3.8** Regulation 44 requires the institutions listed above to ensure that Euro notes and coins which they have received and which they intend to put back into circulation are checked for authenticity.

**3.9** This means that in practice they would have to have in place procedures to selectively check Euro notes and coins using an approved method.

**3.10** The approved methods are either to check notes and coins using either equipment that complies with the specified standards, or staff trained to identify counterfeit Euros. Generally we expect businesses will normally choose one method or the other, but businesses can use both methods where that makes good operational sense for them.

**3.11** The UK has welcomed this flexibility because it reflects the two principal business models of the businesses that are affected by Regulations 44 and 45. The use of machines is likely to be appropriate in businesses that handle large volumes of cash; the use of trained staff will be appropriate in smaller businesses.

# 4

## What changes are needed in the UK?

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### Legal changes

#### Scope of the required legal changes

**4.1** The UK is not separately implementing the requirements set out in Regulation 44, because they apply automatically to the relevant UK institutions. What the UK has to do is provide for effective sanctions for breaches of Regulation 44, and the Government proposes to do that by amending the existing UK Regulations.

**4.2** The UK must provide for effective, proportionate and deterrent sanctions for failure to comply with the checks required by Regulation 44.

**4.3** The Government aims to minimise the risk of counterfeit currency in circulation, while minimising the burdens on UK businesses and acting as a cooperative and active partner in the EU.

#### Option 1 – Criminal Offence

**4.4** The Government's proposes to create an additional offence of failing to comply with the checking requirements of the EU Regulation.

**4.5** This option will not generate any direct costs for businesses though there may be indirect potential costs related to uncertainty on how to comply with Regulation 44 and avoiding prosecution.

**4.6** The new criminal offence would:

- Discharge the legal obligation on the UK, and therefore avoid either legal action against the UK or reputational damage for non-compliance;
- Be consistent with the precedent set in the existing UK legislation, which imposed criminal penalties for the failure to comply with the initial EU Regulations;
- Not require the creation of new regulatory or supervisory arrangements;
- Not create new obligations on businesses to be regulated or to fund new regulatory arrangements; and
- Not impose the costs associated with supervision or regulation on businesses or regulators.

**4.7** This measure creates a new offence of failure to check the authenticity of Euros in accordance with the requirements of the EU Regulation.

#### Question 1.

**Do you agree with the proposal to create a new offence of this type?**

**4.8** The Government proposes that this offence should carry the same penalties as the existing offence of failing to hand over to the relevant bodies counterfeit notes and coins. On summary conviction the maximum penalties are a fine not exceeding the statutory maximum (currently £5000), or three months imprisonment, or both.

**4.9** The offence can be committed by either businesses or individuals. The maximum penalty on summary conviction is a fine of a maximum £5,000 and / or three months imprisonment, and on conviction on indictment, an unlimited fine and / or two years imprisonment.

**4.10** These are significant maximum sentences. They are designed to deter negligence or more serious conduct, and to punish criminal behaviour. It is the Government's view that they are necessary to be effective and to deter negligent or more serious behaviour, and are therefore appropriate and proportionate.

**4.11** These new offences are quite separate from the sentences for any principal forgery offences, where for serious offences the maximum sentence is 10 years.

**Question 2.**

**Do you agree with the Government's proposals for penalties for the new offence?**

## **Option Two – Introducing a Regulatory Penalty**

**4.12** The introduction of regulatory measures (financial penalties) would be applied by one or more regulatory bodies exercising regulatory or supervisory functions over the businesses covered.

**4.13** The regulatory regime could potentially be costly and intrusive. It may include costs related to:

- The creation and appointment of new supervisors;
- A possible increase in existing supervisors' fees to cover costs emerging from the training of staff, onsite visits and inspections and training and raising awareness activities;
- The introduction of new arrangements and procedures for supervisors to issue and enforce penalties.

**4.14** Similarly businesses would potentially face a range of costs related to paying the costs of supervision, implementing any measures that supervisors require including training staff and/or buying European Central Bank-approved machines and time taken up by visits and inspections from supervisors.

**Question 3**

**3.a) Do you favour a new regulatory regime?**

**3.b) What estimated costs would be incurred by your business/professional body/enforcement body/supervisory authority?**

## **Other issues for UK businesses to consider**

### **Steps UK businesses are advised to take**

**4.15** The preamble to Regulation 45 envisages a respect for “the principle of proportionality”. The Government believes this means that selective checks, proportionate to the risk faced by the business, are appropriate. Individual firms are best placed to understand the threats that they face; accordingly businesses should adopt a risk-based model in their assessment of the risks that they face and the degree of scrutiny and checking they will apply.

**4.16** Businesses should operate appropriate systems and controls to monitor the application of checks.

### **Checks by staff – training**

**4.17** Where a business uses trained staff to detect counterfeits training ought to be proportionate, appropriate and effective. The Government does not propose to specify training requirements in detail.

**4.18** Training will be able to be delivered internally. The Government will not require staff to attend or pass a particular course.

### **Use of machines**

**4.19** The EU regulations only permit machines to be used where they are on the list published by the European Central Bank or the Commission.

**4.20** UK businesses must comply with those requirements where they use machines.

### **Action to be taken with known or suspected counterfeits**

**4.21** The new EU Regulations make no changes to the steps that need to be taken if counterfeit Euros are found or suspected.

**4.22** The existing legislation already requires counterfeit notes to be reported to the Bank of England or the Serious Organised Crime Agency (SOCA) and counterfeit coins to the Royal Mint or SOCA.

### **Supervision**

**4.23** The Government does not propose to create specific supervision arrangements, unless this consultation reveals that is the preferred approach and achieves the aim of minimising the circulation of counterfeit currency while also minimising the burden on business.

### **Consumer impacts**

**4.24** The Government does not expect either the EU regulations or the UK measure to have a significant impact on consumers, for example by reducing access for tourists to Euro notes via banks or bureaux de change.

**4.25** Nor do these measures appear likely to have an impact on the willingness of businesses that already accept Euro notes or coins in payment for goods and services to continue to do so.

**4.26** Given that currently a retail customer finding themselves in possession of counterfeit Euros, which they innocently seek to pass in a shop or bank, will bear that loss themselves the measure might – if it further reduces the counterfeit Euros in circulation – be of assistance to consumers.



# 5

## Other questions for consultation

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**5.1** The questions in part 3 seek to address what appear to be important technical questions.

**5.2** Your answers will help to refine the policy and draft regulations.

**5.3** If you wish to make any other points or observations please feel free to do so as part of your response.

### **Cost benefit analysis**

**5.4** The Government's aim has been to prepare proposals that effectively address the risk of counterfeit Euros being put back into circulation and to minimise the additional burdens and costs on UK businesses that handle Euro notes and coins.

**5.5** The Government understands that UK businesses that handle Euro notes or coins are well aware of the compelling commercial need to ensure that the Euros they put into circulation are genuine. For those businesses that already apply appropriate checks, the EU regulations should not create significant additional requirements.

**5.6** The Government's view is that the specific proposals for a new offence do not of themselves create additional costs for UK businesses, but views of businesses and other interested parties on the cost implications of that proposal are welcomed.

**5.7** The Government looks forward to hearing from interested parties.

### **HM Treasury contacts**

This document can be found in full on our website at:

<http://www.hm-treasury.gov.uk>

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

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