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**An Bille um Ghóchumadh, 2020**  
**Counterfeiting Bill 2020**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE UM GHÓCHUMADH, 2020  
COUNTERFEITING BILL 2020**

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**CONTENTS**

**PART 1**

**PRELIMINARY AND GENERAL**

**Section**

1. Short title and commencement

**PART 2**

**AMENDMENT TO CRIMINAL JUSTICE (THEFT AND FRAUD OFFENCES) ACT 2001**

2. Definition (Part 2)
3. Amendment of section 32 of Act of 2001
4. Amendment of section 33 of Act of 2001
5. Amendment of section 34 of Act of 2001
6. Amendment of section 36 of Act of 2001
7. Amendment of section 37 of Act of 2001
8. Amendment of section 38 of Act of 2001
9. Liability for offences by body corporate, etc. (Part 5)
10. Amendment of section 39 of Act of 2001

**PART 3**

**OBLIGATIONS OF RELEVANT PERSONS IN RESPECT OF ENSURING AUTHENTICITY AND FITNESS OF EURO  
BANKNOTES AND COINS**

11. Definitions (Part 3)
12. Functions and powers of the Central Bank
13. Central Bank may impose requirement on relevant person
14. Regulations (Part 3)
15. Power of Central Bank to require information, records, plans, etc.
16. Appointment of authorised officers
17. Warrant of appointment

18. Power of authorised officer to enter premises
19. Powers of authorised officer
20. Warrant required to enter premises
21. Provision of information, record or other document not to be treated as breach or to affect lien
22. Privileged legal material
23. Obligations of relevant persons
24. Failure to comply with a requirement
25. Offence of obstruction, etc.
26. Liability for offences by body corporate, etc. (Part 3)

#### PART 4

##### MISCELLANEOUS

27. Designation of National Analysis Centre for euro notes and Coin National Analysis Centre
28. Amendment of Central Bank Act 1942
29. Amendment of Criminal Justice Act 1994
30. Amendment of Criminal Justice Act 2011
31. Amendment of European Union (Passenger Name Record Data) Regulations 2018

ACTS REFERRED TO

Central Bank Act 1942 (No. 22)

Central Bank Act 1997 (No. 8)

Companies Act 2014 (No. 38)

Criminal Justice (Theft and Fraud Offences) Act 2001 (No. 50)

Criminal Justice Act 1994 (No. 15)

Criminal Justice Act 2011 (No. 22)

European Arrest Warrant Act 2003 (No. 45)

Extradition Act 1965 (No. 17)





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**AN BILLE UM GHÓCHUMADH, 2020  
COUNTERFEITING BILL 2020**

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# Bill

*entitled*

An Act to give effect to Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014<sup>1</sup> on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA and for that purpose to amend the Criminal Justice (Theft and Fraud Offences) Act 2001; to give full effect to Council Regulation (EC) No. 1338/2001 of 28 June 2001<sup>2</sup> laying down measures necessary for the protection of the euro against counterfeiting, as amended by Council Regulation (EC) No. 44/2009 of 18 December 2008<sup>3</sup>; to give full effect to Regulation (EU) No. 1210/2010 of the European Parliament and of the Council of 15 December 2010<sup>4</sup> concerning authentication of euro coins and handling of euro coins unfit for circulation; and to give full effect to Decision ECB/2010/14 of the European Central Bank of 16 September 2010<sup>5</sup> on the authenticity and fitness checking and recirculation of euro banknotes, as amended by Decision ECB/2012/19 of 7 September 2012<sup>6</sup> and by Decision ECB/2019/2195 of 5 December 2019<sup>7</sup>; to make further provision in relation to the designation of the National Analysis Centre for euro notes and the Coin National Analysis Centre for euro coins; and to provide for related matters.

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### **Short title and commencement**

**1.** (1) This Act may be cited as the Counterfeiting Act 2020. 25

1 OJ No. L151, 21.5.2014, p.1

2 OJ No. L181, 4.7.2001, p.6

3 OJ No. L17, 22.1.2009, p.1

4 OJ No. L339, 22.12.2010, p.1

5 OJ No. L267, 9.10.2010, p.1

6 OJ No. L253, 20.9.2012, p.19

7 OJ No. L330, 20.12.2019, p.91

- (2) *Parts 1 and 2* shall come into operation on such day or days as the Minister for Justice may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.
- (3) *Part 3* shall come into operation on such day or days as the Minister for Finance 5 following consultation with the Minister for Justice may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

## PART 2

### AMENDMENT TO CRIMINAL JUSTICE (THEFT AND FRAUD OFFENCES) ACT 2001 10

#### **Definition (*Part 2*)**

2. In this Act, “Act of 2001” means the Criminal Justice (Theft and Fraud Offences) Act 2001.

#### **Amendment of section 32 of Act of 2001**

3. Section 32 of the Act of 2001 is amended— 15

(a) in subsection (1)—

- (i) by the substitution of the following definitions for the definitions of “currency note” and “coin”:

“ ‘currency note’ means a currency note lawfully issued or customarily used as money in the State or in any other state or a territorial unit 20 within it and includes a currency note denominated in euro;

‘coin’ (other than in relation to a coin referred to in the definition of ‘designated’ and a coin to which subsection (2)(aa) applies) means a coin lawfully issued or customarily used as money in the State or in any other state or a territorial unit within it and includes a coin 25 denominated in euro or in cent;”

and

- (ii) by the insertion of the following definitions:

“ ‘counterfeiting instrument’ includes any instrument, article, computer programme or data, and any other means specially designed 30 or adapted for making a counterfeit of a currency note or coin;

‘currency authority’ means an authority or body referred to in paragraph (a), (b) or (c) of the definition of ‘lawfully issued’;

‘currency instrument’ includes any instrument, article, computer programme or data and any other means specially designed or adapted 35 for making a currency note or coin;



‘designated’ means, in relation to a note or coin, designated for circulation as legal tender but not yet lawfully issued;

‘Directive 2014/62/EU’ means 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; 5

‘security feature’ includes a hologram, watermark or other component of currency which serves to protect against counterfeiting;”,

(b) in subsection (2)—

(i) in paragraph (a), by the substitution of “description,” for “description, or”, 10  
and

(ii) by the insertion of the following paragraph after paragraph (a):

“(aa) if it is a note or coin which has been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which a currency authority may issue currency notes or coins, or”, 15

(c) by the insertion of the following subsection after subsection (2):

“(2A) A reference in section 34, 35, 36, 37 and 38 to a counterfeit of a currency note or coin shall be deemed to include a reference to a designated note or coin.”, 20

and

(d) by the insertion of the following subsection after subsection (3):

“(4) A word or expression used in this Part that is also used in Directive 2014/62/EU has, unless the contrary intention appears, the same meaning in this Part as it has in that Directive. 25

#### **Amendment of section 33 of Act of 2001**

4. Section 33 of the Act of 2001 is amended by the insertion of the following subsection after subsection (1):

“(1A) A person who makes or alters a designated note or coin, with the intention that he or she or another shall pass or tender it as genuine, is guilty of an offence.”. 30

#### **Amendment of section 34 of Act of 2001**

5. Section 34 of the Act of 2001 is amended—

(a) by the insertion of the following subsection after subsection (2):

“(2A) A person who receives, obtains or transports anything which is, and which he or she knows or believes to be, a counterfeit of a currency note or coin with the intention that he or she or another shall pass or tender it as genuine is guilty of an offence.”, 35

and

- (b) in subsection (3)(b), by the substitution of “subsection (2) or (2A)” for “subsection (2)”.

**Amendment of section 36 of Act of 2001**

6. The Act of 2001 is amended by the substitution of the following for section 36: 5
- “36. (1) A person who makes, receives or obtains a currency instrument, counterfeiting instrument or security feature, with the intention that he or she or another shall use the currency instrument, counterfeiting instrument or security feature for the purpose of making a counterfeit of a currency note or coin with the intention that it be passed or 10  
tendered as genuine, is guilty of an offence.
- (2) A person who has in his or her custody or under his or her control a currency instrument, counterfeiting instrument or security feature with the intention that he or she or another shall use the currency instrument, counterfeiting instrument or security feature for the 15  
purpose of making a counterfeit of a currency note or coin with the intention that it be passed or tendered as genuine, is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding— 20
- (a) in the case of an offence under subsection (1), 10 years, or
- (b) in the case of an offence under subsection (2), five years.”.

**Amendment of section 37 of Act of 2001**

7. Section 37 of the Act of 2001 is amended by the substitution of the following subsection for subsection (1): 25
- “(1) A person who imports or exports a counterfeit of a currency note or coin, which he or she knows or believes to be a counterfeit of a currency note or coin, with the intention that he or she or another shall pass or tender it as genuine is guilty of an offence.”.

**Amendment of section 38 of Act of 2001**

8. The Act of 2001 is amended by the substitution of the following section for section 38: 30
- “(1) An Irish citizen who does an act in a place outside the State that, if done in the State, would constitute—
- (a) an offence under section 33, 34, 35, 36, 37 or 38A, or
- (b) an offence of inciting, aiding and abetting, or attempting the 35  
commission of an offence referred to in paragraph (a),
- is guilty of an offence.

- (2) Subject to subsection (4), a person other than an Irish citizen who does an act in a place outside the State that, if done in the State, would constitute—
- (a) an offence under section 33, 34, 35, 36, 37 or 38A, or
  - (b) an offence of inciting, aiding and abetting, or attempting the commission of an offence referred to in paragraph (a),
- is guilty of an offence. 5
- (3) A person guilty of an offence under subsection (1) or (2) is liable on conviction on indictment to the penalty to which he or she would have been liable if he or she had done the act that constitutes the offence in the State. 10
- (4) Subsection (2) shall apply where the counterfeit of a currency note or coin to which the act related was a counterfeit of a currency note denominated in euro or a coin denominated in euro or in cent.
- (5) Where a person is charged with an offence under subsection (2), no further proceedings in the matter (other than a remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions. 15
- (6) The Director of Public Prosecutions may take proceedings for an offence under subsection (2) if satisfied that— 20
- (a) a request for a person’s surrender for the purpose of trying him or her for an offence in respect of the conduct concerned has been made by a state in relation to which Part II of the Extradition Act 1965 applies, and that request has been finally refused (whether as a result of a decision of a court or otherwise), 25
  - (b) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct concerned, and a final determination has been made that the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned, or 30
  - (c) a counterfeit of a currency note denominated in euro or a coin denominated in euro or in cent related to the offence has been detected in the State. 35
- (7) Proceedings for an offence under subsection (1) or (2) may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.”.

**Liability for offences by body corporate, etc. (Part 5)**

9. The Act of 2001 is amended by the insertion of the following section after section 38: 40

**“Liability for offences by body corporate, etc. (Part 5)**

- 38A.** (1) Where a relevant offence is committed for the benefit of a body corporate by a relevant person and the commission of the relevant offence is attributable to the failure, by a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, to exercise, at the time of the commission of the relevant offence and in all the circumstances of the case, the requisite degree of supervision or control of the relevant person, the body corporate shall be guilty of an offence. 5
- (2) In proceedings for an offence under subsection (1), it shall be a defence for a body corporate against which such proceedings are brought to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence. 10
- (3) Where a relevant offence is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 15 20
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 25
- (5) Subsection (1)—
- (a) is without prejudice to the other circumstances, under the general law, whereby acts of a natural person are attributed to a body corporate resulting in criminal liability of that body corporate for those acts, and 30
- (b) does not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence referred to in that subsection.
- (6) A person guilty of an offence under subsection (1) is liable on conviction on indictment to a fine. 35
- (7) In this section—
- ‘relevant person’, in relation to a body corporate, means—
- (a) a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, or
- (b) an employee, subsidiary or agent of the body corporate; 40
- ‘relevant offence’ means an offence—
- (a) under section 33, 34, 35, 36 or 37, or

(b) of inciting, aiding and abetting, or attempting the commission of an offence referred to in paragraph (a);

‘subsidiary’, in relation to a body corporate, has the same meaning as it has in the Companies Act 2014.”.

**Amendment of section 39 of Act of 2001**

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**10.** Section 39 of the Act of 2001 is amended—

(a) in subsection (1)—

(i) by the substitution of the following definition for the definition of “designated body”:

“ ‘designated body’ means—

10

(a) a credit institution,

(b) within the limits of its payment activity, a payment service provider,

(c) An Post, and

(d) any other person engaged in the processing and distribution to the public of currency notes or coins, or both, including—

15

(i) a person whose activity consists of exchanging currency notes and coins of different currencies, including a person or body authorised under the Central Bank Act 1997 to carry on bureau de change business,

20

(ii) a transporter of funds, and

(iii) a person who is engaged on a secondary basis in the processing and distribution to the public of currency notes via automated teller machines (ATMs), within the limit of that secondary basis;”

25

and

(ii) by the insertion of the following definitions:

“ ‘credit institution’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No. 575/2013<sup>8</sup> of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012;

30

‘transporter of funds’ has the same meaning as it has in Regulation (EC) No. 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, as amended by Council Regulation (EC) No. 44/2009 of 18 December 2008;

35

‘payment service provider’ means a person referred to in Regulation 6(1) of the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018);”,

(b) by the insertion of the following subsection after subsection (1):

“(1A) A reference in this section to a note or coin does not include a reference to a note or coin that is denominated, or purports to be denominated, in euro or in cent.”,

and

(c) by the deletion of subsection (8).

### PART 3

10

#### OBLIGATIONS OF RELEVANT PERSONS IN RESPECT OF ENSURING AUTHENTICITY AND FITNESS OF EURO BANKNOTES AND COINS

##### **Definitions (*Part 3*)**

11. (1) In this Part—

“Central Bank” means the Central Bank of Ireland; 15

“credit institution” means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012;

“Euro Banknote Decision” means Decision ECB/2010/14 of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes, as amended by Decision ECB/2012/19 of 7 September 2012 and by Decision ECB/2019/2195 of 5 December 2019; 20

“Euro Coin Regulation” means 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; 25

“Euro Counterfeiting Regulation” means Regulation (EC) No. 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, as amended by Council Regulation (EC) No. 44/2009 of 18 December 2008; 30

“payment service provider” means a person referred to in Regulation 6(1) of the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018);

“relevant person” means—

(a) a credit institution,

(b) within the limits of its payment activity, a payment service provider, 35

(c) An Post, and

|   |  |    |
|---|--|----|
| (d)   | any other person engaged in the processing and distribution to the public of notes or coins, or both, including—   |    |
| (i)   | a person whose activity consists of exchanging notes and coins of different currencies, including a person or body authorised under the Central Bank Act 1997 to carry on bureau de change business,   | 5  |
| (ii)  | a transporter of funds, and  |    |
| (iii)   | a person who is engaged on a secondary basis in the processing and distribution to the public of notes via automated teller machines (ATMs), within the limit of that secondary basis.   |    |
| (2)   | A word or expression used in this Part that is also used in the Euro Banknote Decision, the Euro Coin Regulation or the Euro Counterfeiting Regulation has, unless the contrary intention appears, the same meaning in this Part as it has in the Euro Banknote Decision, the Euro Coin Regulation or the Euro Counterfeiting Regulation as the case may be. | 10 |
| <b>Functions and powers of the Central Bank</b>               |  | 15 |
| 12.   | (1) The Central Bank shall monitor, and take all necessary measures to ensure, compliance by relevant persons with their obligations under—  |    |
| (a)   | the Euro Banknote Decision,  |    |
| (b)   | the Euro Coin Regulation, and  |    |
| (c)   | the Euro Counterfeiting Regulation.  | 20 |
| (2)   | Without prejudice to the generality of <i>subsection (1)</i> , the Central Bank may verify—  |    |
| (a)   | the procedures governing the operation and control by relevant persons of banknote and coin processing machines, and   |    |
| (b)   | the treatment of, and any manual authenticity and fitness checking of, euro notes and euro coins by relevant persons.  | 25 |
| (3)   | The Central Bank shall perform—  |    |
| (a)   | the controls referred to in Article 6, and   |    |
| (b)   | the functions referred to in Articles 8, 9, 11 and 12, of the Euro Coin Regulation.  |    |
| <b>Central Bank may impose requirement on relevant person</b> |  | 30 |
| 13.   | (1) The Central Bank may impose a requirement on a relevant person:  |    |
| (a)   | where Article 6.7 of the Euro Coin Regulation applies in relation to the relevant person, to take such measures, within such time limit, as are specified in the requirement and as the Central Bank considers necessary to ensure that the non-compliance by the relevant person with the Regulation is rectified promptly;                                 | 35 |
| (b)   | to comply with a condition of a permission granted by the Central Bank under Article 7.1 of the Euro Banknote Decision;  |    |

- (c) where Article 10.3 of the Euro Banknote Decision applies in relation to the relevant person—
  - (i) to adopt such corrective measures, within such time limit, as are specified in the requirement and as the Central Bank considers necessary to ensure that the non-compliance by the relevant person with the provisions concerned of the Decision is rectified promptly, or 5
  - (ii) prohibiting the relevant person from recirculating the euro banknote denomination of the series concerned.
- (2) Where a relevant person is the subject of a requirement by the Eurosystem under Article 8.4 of the Euro Banknote Decision, the requirement shall be deemed to be a requirement of the Central Bank imposed on the relevant person under this section, and this Part shall apply accordingly. 10

### Regulations (*Part 3*)

14. (1) The Central Bank, after consultation with the Minister for Finance, may by regulation provide for the following: 15
- (a) the designation of a relevant person for the purposes of *section 23(9)*;
  - (b) the manner in which, and the time limit within which, a relevant person shall hand over to the Central Bank banknotes to which Article 5 of the Euro Banknote Decision applies;
  - (c) the standards (being stricter standards than those provided for in the Euro Banknote Decision) according to which manual fitness checking and automated fitness checking, or both, of euro banknotes of a particular denomination or series is to be carried out; 20
  - (d) the manner in which, and the time limit within which, a relevant person shall hand over to the Central Bank unfit banknotes. 25
- (2) The Central Bank, after consultation with the Minister for Finance, shall make regulations under *subsection (1)(c)* only where it—
- (a) is satisfied that the making of such regulations is justified, including having regard to the quality of the euro banknotes in circulation in the State, in order to protect the integrity of euro banknotes and to enable the proper detection of counterfeits, and 30
  - (b) has, prior to the making of the regulations, informed the European Central Bank of its intention to do so.
- (3) The Central Bank shall cause regulations under *subsection (1)(c)* to be published on its website as soon as is practicable after they are made. 35
- (4) Regulations made under this section may contain any incidental, supplementary and consequential provisions that appear to the Central Bank to be necessary or expedient for the purposes of the regulations.
- (5) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that 40



House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

**Power of Central Bank to require information, records, plans, etc.**

15. (1) Where it is necessary to do so for the purpose of the performance of the Central Bank's functions under this Part, the Central Bank may, by notice in writing given to a relevant person, require the relevant person to— 5
- (a) provide to the Central Bank—
    - (i) the information specified in the notice, or
    - (ii) the records so specified, 10or
  - (b) to prepare and provide to the Central Bank the documents so specified.
- (2) A relevant person on whom a requirement is imposed under *subsection (1)* shall comply with the requirement—
- (a) at such time or times, or within such period, as may be specified in the notice or in a further notice given by the Central Bank, and 15
  - (b) at such place as may be so specified.
- (3) The Central Bank may require that information, records or other documents provided in compliance with a requirement under *subsection (1)* be certified or attested as to their authenticity or correctness in such manner as the Central Bank may reasonably require, including by statutory declaration. 20
- (4) The Central Bank may take copies of, or extracts from, any records or other documents provided in compliance with a requirement under *subsection (1)*.
- (5) This section does not limit any other power of the Central Bank to require the provision of information or records or the preparation and provision of documents. 25
- (6) The Central Bank may require that information, records or other documents provided in response to a requirement under *subsection (1)* be provided in such form and manner as the Central Bank may reasonably require.
- (7) A person who fails to provide any information, records or other documents in the form reasonably required by the Central Bank shall be treated as not having provided it or them in compliance with the requirement. 30

**Appointment of authorised officers**

16. (1) Where it is necessary to do so for the purpose of the performance by it of its functions under *section 12*, the Central Bank may appoint any of its officers or employees or other suitably qualified persons to be authorised officers and to exercise any of the powers conferred by this Part. 35
- (2) The Central Bank may revoke any appointment made by it under *subsection (1)*.
  - (3) An appointment or revocation under this section shall be in writing.

- (4) A person’s appointment by the Central Bank as an authorised officer ceases on the earliest of—
- (a) the revocation by the Central Bank of the appointment,
  - (b) in a case where the appointment is for a specified period, the expiration of the period, 5
  - (c) the person’s resignation from the appointment, and
  - (d) in the case where the person is an officer or employee of the Central Bank—
    - (i) the resignation of the person as an officer or employee of the Central Bank, or
    - (ii) the termination of the person’s employment with the Central Bank, or when the person’s term of office ceases, for any reason. 10
- (5) Whenever requested to do so by the Central Bank, an authorised officer shall give to the Central Bank a report on the exercise by him or her of all or any of the powers conferred on an authorised officer by this Part.
- (6) In this section, “suitably qualified person” means any person (other than an officer or employee of the Central Bank) who, in the opinion of the Central Bank, has the qualifications and experience necessary to exercise the powers conferred on an authorised officer by this Part. 15

#### **Warrant of appointment**

17. Every authorised officer appointed by the Central Bank shall be furnished with a warrant of his or her appointment, and when exercising a power conferred by this Part shall produce such warrant or a copy of it, together with a form of personal identification, for inspection if requested to do so by a person affected by the exercise of the power. 20

#### **Power of authorised officer to enter premises**

18. (1) Subject to *subsection (2)*, an authorised officer may, for the purpose of the performance by the Central Bank of its functions under *section 12*, at all reasonable times enter any premises— 25
- (a) which the authorised officer has reasonable grounds to believe are or have been used for, or in relation to, the business of a relevant person, or
  - (b) at, on or in which the authorised officer has reasonable grounds to believe that records relating to the business of a relevant person are kept. 30
- (2) An authorised officer shall not enter a dwelling, otherwise than—
- (a) with the consent of the occupier, or
  - (b) pursuant to a warrant under *section 20*.
- (3) In this Part, “premises” includes vessel, aircraft, vehicle and any other means of transport, as well as land and any other fixed or moveable structure. 35

## Powers of authorised officer

19. (1) An authorised officer may, for the purpose of the performance by the Central Bank of its functions under *section 12*, do any one or more of the following:
- (a) search and inspect premises entered under *section 18* or pursuant to a warrant under *section 20*; 5
  - (b) require a relevant person who apparently has control of, or access to, records, to provide the records;
  - (c) summon, at any reasonable time, a relevant person—
    - (i) to give to the authorised officer such information as the authorised officer may reasonably require, 10
    - (ii) to provide to the authorised officer any records which the person has control of, or access to, and which the authorised officer may reasonably require, or
    - (iii) to provide an explanation of a decision, course of action, system or practice or the nature or content of any records provided under this section;
  - (d) inspect records so provided or found in the course of searching and inspecting premises; 15
  - (e) take copies of or extracts from records so provided or found;
  - (f) subject to *subsection (3)*, take and retain records so provided or found for the period reasonably required for further examination;
  - (g) secure, for later inspection, any records so provided or found and any data equipment, including any computer, in which those records may be held; 20
  - (h) secure, for later inspection, premises entered under *section 18* or pursuant to a warrant under *section 20*, or any part of such premises, for such period as may reasonably be necessary for the purposes of the exercise of his or her powers under this Part, but only if the authorised officer considers it necessary to do so in order to preserve for inspection records that he or she reasonably believes may be kept there; 25
  - (i) require a relevant person to answer questions and to make a declaration of the truth of the answers to those questions;
  - (j) require a relevant person to provide an explanation of a decision, course of action, system or practice or the nature or content of any records; 30
  - (k) require a relevant person to provide a report on any matter about which the authorised officer reasonably believes the person has relevant information;
  - (l) if a relevant person who is required to provide a particular record is unable to provide it, require the person to state, to the best of that person's knowledge and belief, where the record is located or from whom it may be obtained; 35
  - (m) require that any information given to an authorised officer under this Part to be certified as accurate and complete by such person or persons and in such manner as the Central Bank or the authorised officer may require;

- (n) conduct such inspections of and checks on banknote handling machines and coin processing machines at the premises as the authorised officer considers necessary to ensure compliance with the instruments referred to in *section 12(1)*;
    - (o) remove samples of processed euro notes and euro coins from the premises for further checking. 5
- (2) Where records are not in legible form, an authorised officer, in the exercise of any of his or her powers under this Part, may—
  - (a) operate any data equipment, including any computer, or cause any such data equipment or computer to be operated by a person accompanying the authorised officer, and 10
  - (b) require any person who appears to the authorised officer to be in a position to facilitate access to the records stored in any data equipment or computer or which can be accessed by the use of that data equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including— 15
    - (i) providing the records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,
    - (ii) giving to the authorised officer any password necessary to make the records concerned legible and comprehensible, or
    - (iii) otherwise enabling the authorised officer to examine the records in a form in which they are legible and comprehensible. 20
- (3) Where the Central Bank or an authorised officer proposes to retain, pursuant to this section, any records taken by the authorised officer under *subsection (1)* for a period longer than 14 days after the date on which the records are taken, the Central Bank or the authorised officer shall, before the end of that period of 14 days, or such longer period as the person concerned may agree, furnish, on request, a copy of the records to the person who it appears to the Central Bank or the authorised officer, but for the exercise of the powers under this section, is entitled to possession of it. 25
- (4) A relevant person shall give to an authorised officer such assistance as the authorised officer may reasonably require and make available to the authorised officer such reasonable facilities as are necessary for the authorised officer to exercise his or her powers under this Part including such facilities for inspecting and taking copies of any records as the authorised officer reasonably requires. 30
- (5) Subject to any warrant issued under *section 20*, an authorised officer may be accompanied, and assisted in the exercise of the officer's powers under this Part, by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate. 35
- (6) An authorised officer may require a person to provide him or her with his or her name and address where—
  - (a) the authorised officer has reasonable grounds for believing that the person— 40
    - (i) is committing or has committed an offence under *section 23* or *25*, or

(ii) has deliberately concealed or destroyed evidence, or is deliberately concealing or destroying evidence, or is likely to deliberately conceal or destroy evidence, of such an offence,

or

(b) the authorised officer has reasonable grounds for requiring such information for the purpose of applying for a warrant under *section 20*. 5

### **Warrant required to enter premises**

20. (1) Without prejudice to the powers conferred on an authorised officer by or under any other provision of this Part, if a judge of the District Court is satisfied on the sworn information of the authorised officer that there are reasonable grounds for believing that records are to be found on, at or in any premises, the judge may issue a warrant authorising an authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times within the period of validity of the warrant, on production, if so requested, of the warrant— 10
- (a) to enter the premises specified in the warrant, if need be by reasonable force, and 15
- (b) to exercise the powers conferred on authorised officers by this Part or such of those powers as are specified in the warrant.
- (2) The period of validity of a warrant shall be one month from its date of issue but that period of validity may be extended in accordance with *subsection (3)* and *(4)*.
- (3) The authorised officer may, during the period of validity of a warrant (including such period as previously extended under *subsection (4)*), apply to a judge of the District Court for an order extending the period of validity of the warrant and such an application shall be grounded upon information on oath laid by the authorised officer stating, by reference to the purpose or purposes for which the warrant was issued, the reasons why the authorised officer considers the extension to be necessary. 20 25
- (4) If the judge of the District Court is satisfied that there are reasonable grounds for believing, having regard to that information so laid, that further time is needed so that the purpose or purposes for which the warrant was issued can be fulfilled, the judge may make an order extending the period of validity of the warrant by such period as, in the opinion of the judge, is appropriate and just; and where such an order is made, the judge shall cause the warrant to be suitably endorsed to indicate its extended period of validity. 30
- (5) Nothing in the preceding subsections prevents a judge of the District Court from issuing, on foot of a fresh application made under *subsection (1)*, a further search warrant under this section in relation to the same premises. 35

### **Provision of information, record or other document not to be treated as breach or to affect lien**

21. (1) The provision to the Central Bank or an authorised officer of any information, record or other document by a person under this Part shall not be treated, for any purpose, as a breach of any restriction under any enactment or rule of law on provision by the 40

person or any other person on whose behalf the information, record or other document is provided.

- (2) Where a person required under this Part to provide a record or other document claims a lien on it, the provision of it shall be without prejudice to the lien.

## **Privileged legal material**

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22. (1) In this section—

“Court” means the High Court;

“privileged legal material” means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

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- (2) If a person refuses to produce information or give access to it, pursuant to a requirement under this Part, on the grounds that the information contains privileged legal material, the Central Bank may, at any time within six months (or such longer period as the Court may allow) of the date of such refusal, apply to the Court for a determination as to whether the information, or any part of the information, is privileged legal material where—

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- (a) in relation to the information concerned—

(i) the Central Bank has reasonable grounds for believing that it is not privileged legal material, or

(ii) due to the manner or extent to which such information is presented together with any other information, it is impossible or impractical to extract only such information,

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and

- (b) the Central Bank has reasonable grounds to suspect that the information contains evidence relating to the commission of an offence under this Part.

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- (3) A person who refuses to produce information or give access to it, pursuant to a requirement under this Part, on the grounds that the information contains privileged legal material shall preserve the information and keep it in a safe and secure place and manner pending the determination of an application under *subsection (2)* and shall, if the information is so determined not to be privileged legal material, produce it in accordance with such order as the Court considers appropriate.

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- (4) A person shall be considered to have complied with the requirement under *subsection (3)* to preserve information, where the person has complied with such requirements as may be imposed by an authorised officer under *paragraph (g) or (h) of section 19(1)*.

- (5) Where an application is made by the Central Bank under *subsection (2)*, the Court may give such interim or interlocutory directions as the Court considers appropriate including, without prejudice to the generality of the foregoing, directions as to the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the Court considers to be appropriate for the purpose of—

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- (a) examining the information, and

- (b) preparing a report for the Court with a view to assisting or facilitating the Court in the making by the Court of its determination as to whether the information is privileged legal material.
- (6) An application under *subsection (2)* shall be by motion and may, if the Court so directs, be heard otherwise than in public. 5

**Obligations of relevant persons**

- 23.** (1) A relevant person shall be guilty of an offence where he or she fails to comply with—
- (a) Article 6.1 of the Euro Counterfeiting Regulation, or
  - (b) Article 3.1, 3.2 or 4.1 of the Euro Coin Regulation.
- (2) A relevant person who gives an assurance referred to in Article 6.2 of the Euro Coin Regulation that is false or misleading shall be guilty of an offence. 10
- (3) Subject to *subsection (9)*, a relevant person shall check euro banknotes for authenticity and fitness in accordance with the procedures laid down in—
- (a) the Euro Banknote Decision, and
  - (b) where applicable, regulations under *section 14*. 15
- (4) A relevant person shall recirculate euro banknotes only in accordance with the Euro Banknote Decision.
- (5) A relevant person shall hand over to the Central Bank—
- (a) banknotes to which Article 5 of the Euro Banknote Decision applies, in accordance with that Article and, where applicable, regulations under *section 14*, and 20
  - (b) unfit euro banknotes, in accordance with regulations under *section 14*.
- (6) A relevant person shall—
- (a) before it puts a type of banknote handling machine into operation, inform the Central Bank in writing (including by electronic means) of the fact, and 25
  - (b) provide, in accordance with Annex IV of the Euro Banknote Decision, the Central Bank with the information specified in that Annex.
- (7) A relevant person who fails to comply with *subsection (3), (4), (5) or (6)* shall be guilty of an offence.
- (8) A relevant person who is guilty of an offence under this section shall be liable— 30
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or both.
- (9) Where two or more relevant persons are involved in the recirculation of the same euro banknotes, *subsection (3)* shall apply only to the relevant person— 35
- (a) designated in regulations under *section 14*, or

- (b) where no regulations referred to in *paragraph (a)* are in effect, designated in contractual arrangements between those relevant persons.
- (10) Summary proceedings for an offence under this section may be brought and prosecuted by the Central Bank.

**Failure to comply with a requirement** 5

24. (1) If any relevant person fails or refuses to comply with a requirement imposed by the Central Bank or an authorised officer under this Part, the Central Bank or the authorised officer may certify the failure or refusal to the High Court.
- (2) When the Central Bank or an authorised officer certifies a failure or refusal referred to in *subsection (1)* to the High Court, the High Court may inquire into the case and may make such order (including interim or interlocutory orders) or direction as the High Court thinks fit, after hearing—
- (a) any witnesses who may be produced against or on behalf of the person concerned, and 10
  - (b) any statement which may be offered in defence. 15

**Offence of obstruction, etc.**

25. (1) A person shall be guilty of an offence if he or she—
- (a) obstructs or impedes the Central Bank or an authorised officer in the exercise of any powers under this Part,
  - (b) without reasonable excuse, does not comply with a requirement imposed under this Part, 20
  - (c) in purported compliance with a requirement imposed under this Part, provides information or records or other documents to the Central Bank or an authorised officer that the person knows to be false or misleading in a material respect, or
  - (d) falsely represents himself or herself to be an authorised officer. 25
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding five years, or both. 30
- (3) If a person refuses to answer a question asked of him or her or to comply with any other requirement made, under this Part, on the grounds that the answer or compliance with the requirement might tend to incriminate the person and the person is informed of his or her obligation to answer the question or to comply with the requirement, the person shall not refuse to answer the question or to comply with the requirement but the answer given or information provided on that occasion shall not be admissible as evidence in criminal proceedings against the person other than proceedings against him or her under this section. 35



### Liability for offences by body corporate, etc. (Part 3)

26. (1) Where an offence under this Part is committed for the benefit of a body corporate by a responsible person and the commission of the relevant offence is attributable to the failure, by a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, to exercise, at the time of the commission of the relevant offence and in all the circumstances of the case, the requisite degree of supervision or control of the responsible person, the body corporate shall be guilty of an offence. 5
- (2) In proceedings for an offence under *subsection (1)*, it shall be a defence for a body corporate against which such proceedings are brought to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence. 10
- (3) Where an offence under this Part is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 15
- (4) Where the affairs of a body corporate are managed by its members, *subsection (3)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 20
- (5) *Subsection (1)*—
- (a) is without prejudice to the other circumstances, under the general law, whereby acts of a natural person are attributed to a body corporate resulting in criminal liability of that body corporate for those acts, and 25
- (b) does not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence referred to in that subsection.
- (6) A person guilty of an offence under *subsection (1)* is liable on conviction on indictment to a fine. 30
- (7) In this section—
- “responsible person”, in relation to a body corporate, means—
- (a) a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, or 35
- (b) an employee, subsidiary or agent of the body corporate;
- “subsidiary”, in relation to a body corporate, has the same meaning as it has in the Companies Act 2014.

## PART 4

### MISCELLANEOUS

#### **Designation of National Analysis Centre for euro notes and Coin National Analysis Centre**

27. The Currency Centre of the Central Bank of Ireland is designated as—
- (a) the National Analysis Centre for euro notes for the purposes of Article 4(1) of the Euro Counterfeiting Regulation, and 5
  - (b) the Coin National Analysis Centre for euro coins for the purposes of Article 5(1) of the Euro Counterfeiting Regulation.

#### **Amendment of Central Bank Act 1942**

28. The Central Bank Act 1942 is amended— 10
- (a) in section 2(2A)—
    - (i) in paragraph (az) (inserted by Regulation 39(a)(ii) of the European Union (Prospectus) Regulations 2019 (S.I. No. 380 of 2019)), by the substitution of “14 March 2019;” for “14 March 2019.”, and
    - (ii) by the insertion of the following after paragraph (az): 15
      - “(ba) Council Regulation (EC) No. 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, as amended by Council Regulation (EC) No. 44/2009 of 18 December 2008;
      - (bb) 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; 20
      - (bc) Decision ECB/2010/14 of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes, as amended by Decision ECB/2012/19 of 7 September 2012 and by Decision ECB/2019/2195 of 5 December 2019.” 25
- and
- (b) in Part 1 of Schedule 2 by the insertion of the following:
    - “47 No. ... of 2020 *Counterfeiting Act 2020* Part 3”. 30

#### **Amendment of Criminal Justice Act 1994**

29. Schedule 1A (inserted by Regulation 18 of the European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulations 2017 (S.I. No. 540 of 2017)) of the Criminal Justice Act 1994 is amended in paragraph 10 of Part 2—
- (a) by the insertion of the following after subparagraph (i): 35
    - “(ia) section 33(1A);”,

(b) by the insertion of the following after subparagraph (k):

“(ka) section 34(2A);”,

(c) in subparagraph (p), by the substitution of “38(1);” for “38(1).”, and

(d) by the insertion of the following after subparagraph (p):

“(q) section 38(2);

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(r) section 38A(1).”.

#### **Amendment of Criminal Justice Act 2011**

**30.** The Criminal Justice Act 2011 is amended, in paragraph 23 of Schedule 1, by the insertion of “38A,” after “38.”.

#### **Amendment of European Union (Passenger Name Record Data) Regulations 2018**

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**31.** The European Union (Passenger Name Record Data) Regulations 2018 (S.I. No. 177 of 2018) are amended in paragraph 17 of Schedule 2, by the substitution of “37, 38 or 38A” for “37 or 38”.

# BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do thabhairt éifeacht do Threoir 2014/62/AE an 15 Bealtaine 2014, ó Pharlaimint na hEorpa agus ón gComhairle maidir leis an euro agus airgeadraí eile a chosaint ar ghéachumadh leis an dlí coiriúil, agus lena ndéantar Creat-Chinneadh 2000/383/JHA ón gComhairle a ionadú agus, chun na críche sin, do leasú an Achte um Cheartas Coiriúil (Cionta Gadaíochta agus Calaoise), 2001; do thabhairt lánéifeacht do Rialachán (CE) Uimh. 1338/2001 an 28 Meitheamh 2001 ón gComhairle, lena leagtar síos bearta is gá chun an euro a chosaint ar ghéachumadh, arna leasú ag Rialachán (AE) Uimh. 44/2009 an 18 Nollaig 2008 ón gComhairle; do thabhairt lánéifeacht do Rialachán (AE) Uimh. 1210/2010 an 15 Nollaig 2010 ó Pharlaimint na hEorpa agus ón gComhairle maidir le fiordheimhniú bonn euro agus láimhsiú bonn euro nach bhfuil inchúrsaíochta; agus do thabhairt lánéifeacht do Chinneadh BCE/2010/14 an 16 Meán Fómhair 2010 ó Bhanc Ceannais na hEorpa maidir le seiceáil fire agus feidhmiúlachta nótaí bainc euro agus maidir le hathchúrsaíocht an chéanna, arna leasú le Cinneadh BCE/2012/19 an 7 Meán Fómhair 2012 agus le Cinneadh BCE/2019/2195 an 5 Nollaig 2019; do dhéanamh socrú breise i ndáil le sainainmniú an Lárionaid Náisiúnta um Anailísiú le haghaidh nótaí euro agus an Lárionaid Náisiúnta um Anailísiú Bonn le haghaidh boinn euro; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An tAire Dlí agus Cirt a thíolaic,*

16 Nollaig, 2020

# BILL

(as initiated)

entitled

An Act to give effect to 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 and for that purpose to amend the Criminal Justice (Theft and Fraud Offences) Act 2001; to give full effect to Council Regulation (EC) No. 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, as amended by Council Regulation (EC) No. 44/2009 of 18 December 2008; to give full effect to 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; and to give full effect to Decision ECB/2010/14 of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes, as amended by Decision ECB/2012/19 of 7 September 2012 and by Decision ECB/2019/2195 of 5 December 2019; to make further provision in relation to the designation of the National Analysis Centre for euro notes and the Coin National Analysis Centre for euro coins; and to provide for related matters.

*Presented by the Minister for Justice,*

16th December, 2020

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,

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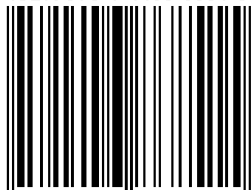
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