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

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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

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**EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The purpose of the Bill is to complete the transposition of Directive 2014/62/EU, and to make provision for three EU instruments dealing with authenticity and fitness checking of euro banknotes and euro coins and measures for the protection of the euro against counterfeiting.

Part 2 of the Bill will give effect to Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting by criminal law which updates and replaces Council Framework Decision 2000/383/JHA and which was given effect to in Part 5 of the Act of 2001. The Directive updates the offences of making, uttering and importing counterfeit currency and possessing instruments and security features for making counterfeits.

Part 3 of the Bill deals with implementation issues relating to three EU instruments dealing with authenticity, fitness checking and measures to prevent counterfeiting in relation to euro notes and coins. These are matters for the Department of Finance and the Central Bank of Ireland (CBI). The instruments are binding in their entirety and directly applicable in a Member State. However, it is necessary to provide for monitoring, supervision and enforcement powers and some related matters to enable the CBI to ensure compliance with the obligations. These are similar to powers in the Central Bank (Supervision and Enforcement) Act 2013, but adapted for the purposes of this Bill.

The Bill provides a definition of “relevant persons”, which are those bodies to which the obligations in the instruments and Part 3 of the Bill apply. These bodies include both regulated financial service providers (already subject to authorisation and supervision by the CBI) and non-regulated financial service providers.

The relevant EU instruments are the:

- “Euro Banknote Decision” - 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;
- “Euro Coin Regulation” - 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;

- “Euro Counterfeiting Regulation” - 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.

## **Provisions of the Bill**

### **Part 1 Preliminary and General**

#### **Section 1: Short title and commencement**

*Section 1* is a standard provision providing for the short title and commencement.

### **Part 2**

#### **Amendment to Criminal Justice (Theft and Fraud Offences) Act 2001**

##### **Section 2: Definition (Part 2)**

*Section 2* provides that “Act of 2001” means the Criminal Justice (Theft and Fraud Offences) Act 2001.

##### **Section 3: Amendment of section 32 of Act of 2001**

*Section 3* amends section 32 and inserts additional definitions which will apply to the provisions in Part 5 of the 2001 Act. In particular, it includes definitions relevant to providing that the conduct in Articles 3(2) and 3(3) of the Directive are offences and includes definitions for “counterfeiting instrument”, “currency instrument” and “security feature”.

##### **Section 4: Amendment of section 33 of Act of 2001**

*Section 4* inserts a new subsection (1A) in section 33 expressly dealing with the fraudulent making or altering of designated notes or coins for the purposes of Article 3(3) and its application to Article 3(1)(a).

##### **Section 5: Amendment of section 34 of Act of 2001**

*Section 5* inserts a new subsection (2A) in section 34 of the Act of 2001 to provide for the elements of receiving, obtaining or transporting a counterfeit of a currency note or coin.

##### **Section 6: Amendment of section 36 of Act of 2001**

*Section 6* provides for the substitution of section 36 in relation to offences of making, receiving or obtaining or possessing a currency instrument, counterfeiting instrument or security feature in line with Article 3(1)(d).

##### **Section 7: Amendment of section 37 of Act of 2001**

*Section 7* provides for the substitution of section 37(1) which together with section 5 provides for the transposition of Article 3(1)(c).

##### **Section 8: Amendment of section 38 of Act of 2001**

*Section 8* provides for the substitution of section 38.

Subsection (1) provides for the application of extraterritorial jurisdiction in respect of an Irish citizen who does an act in a place outside the State that if done in the State would constitute an offence under sections 33, 34, 35, 36, 37 or 38A of the Act of 2001, or an offence of inciting, aiding and abetting, or attempting the commission of one of these offences.

Subsection (2) provides for the application of extraterritorial jurisdiction in respect of a person who is not an Irish citizen. This jurisdiction is subject to subsections (4) to (7).

Subsection (3) provides that a person guilty of an offence under subsection (1) or (2) shall be liable on conviction on indictment to the

penalty that would apply were the act that constituted the offence done in the State.

Subsection (4) provides that 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.

Subsection (5) provides that proceedings under subsection (2) may only be taken by, or with the consent of, the Director of Public Prosecutions (DPP).

Subsection (6) provides that proceedings under subsection (2) may only be taken where (a) a request for extradition has been finally refused; (b) a European Arrest Warrant (EAW) has been received and a final determination has been made that the EAW should not be endorsed for execution in the State or that the person should not be surrendered to the issuing state concerned; or (c) a counterfeit of a currency note or a coin denominated in euro or in cent related to the offence has been detected in the State.

Subsection (7) provides that proceedings for an offence under subsection (1) or (2) may be taken in any place in the State.

#### **Section 9: Liability for offences by body corporate, etc. (Part 5)**

*Section 9* inserts a new section 38A into the Principal Act providing for liability for offences by corporate bodies.

#### **Section 10: Amendment of section 39 of Act of 2001**

*Section 10* provides for an amendment to section 39 of the Act of 2001 to update the list of designated bodies so that it is in line with the list of “relevant persons” to which Part 3 applies. These bodies include both regulated financial service providers (subject to Central Bank legislation) and non-regulated financial service providers. The amendment also provides that section 39 does not apply to euro currency (as euro matters are dealt with in Part 3).

### **Part 3**

#### **Obligations of relevant persons in respect of ensuring authenticity and fitness of euro banknotes and coins**

#### **Section 11: Definitions (Part 3)**

*Section 11* provides the definitions which apply to Part 3, including the “relevant person” to which the obligations apply.

#### **Section 12: Functions and Powers of the Central Bank**

*Section 12* sets out the functions and powers of the CBI which include monitoring and taking measures to ensure compliance by relevant persons with their obligations under the EU instruments, verifying the specific procedures referred to and performing specific controls and functions.

#### **Section 13: Central Bank may impose requirements on relevant person**

*Section 13* provides that the CBI may impose requirements on a relevant person to take specific measures, to comply with a condition of a permission granted by the CBI or a requirement by the Eurosystem in accordance with the articles of the instruments referred to.

#### **Section 14: Regulations (Part 3)**

*Section 14* provides for regulation making powers for the CBI in consultation with the Minister for Finance.

**Section 15: Power of Central Bank to require information, records, plans, etc.**

*Section 15* provides that where it is necessary for the purpose of the performance of its functions under this Part, the CBI may require a relevant person to provide information, records, plans, etc.

**Section 16: Appointment of authorised officers**

*Section 16* provides for the appointment of authorised officers by the CBI to perform the functions under section 12.

**Section 17: Warrant of appointment**

*Section 17* provides that each authorised officer appointed shall be furnished with a warrant of appointment.

**Section 18: Power of authorised officer to enter premises**

*Section 18* provides that an authorised officer may enter any premises for the purpose of the performance by CBI of its functions under section 12. However, an authorised officer shall not enter a dwelling unless the occupier has consented or a warrant has been issued under section 20.

**Section 19: Powers of authorised officer**

*Section 19* sets out the powers available to an authorised officer under this Part.

**Section 20: Warrant required to enter premises**

*Section 20* provides that a judge of the District Court, if satisfied on the sworn information of the authorised officer that there are reasonable grounds for believing that records are on, at or in any premises, may issue a warrant for an authorised officer to enter the premises specified and to exercise the powers conferred on an authorised officer by this Part or as specified in the warrant.

**Section 21: Provision of information, record or other document not to be treated as breach or to affect lien**

*Section 21* provides that the provision of information by a person under this Part shall not be treated as a breach of any restriction under any enactment or rule of law and shall be without prejudice to the lien on the record or document.

**Section 22: Privileged legal material**

*Section 22* provides that where a person refuses to provide or give access to information on the grounds that it contains privileged legal material (legal professional privilege), the CBI may, subject to certain criteria, apply to the High Court for a determination on the matter.

**Section 23: Obligations of relevant persons**

*Section 23* sets out specific obligations in the Euro Counterfeiting Regulation, the Euro Coin Regulation and the Euro Banknote Decision which must be complied with by a relevant person, and provides that a relevant person who fails to comply is guilty of an offence. This provides for a penalty on summary conviction to a class A fine or to imprisonment for a term of up to 12 months or both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or both.

**Section 24: Failure to comply with a requirement**

*Section 24* provides that if a relevant person fails or refuses to comply with a requirement imposed by the CBI or an authorised officer, this may be certified to the High Court which may inquire into the case and make such order as it thinks fit.

**Section 25: Offence of obstruction etc.**

*Section 25* provides for an offence of obstruction if a person obstructs or impedes the CBI or an authorised officer in the exercise of their powers, does not comply with a requirement, provides information, records or other documents which they know to be false or misleading or falsely represents themselves to an authorised officer. This provides for a penalty on summary conviction to a class A fine or to imprisonment for a term of up to 12 months or both, or on conviction on indictment to a fine not exceeding €250,000 or to imprisonment for a term not exceeding 5 years or both. Subsection (3) deals with self-incrimination.

**Section 26: Liability for offences by body corporate, etc. (Part 3)**

*Section 26* provides for liability for offences by corporate bodies.

**Part 4****Miscellaneous****Section 27: Designation of National Analysis Centre for euro notes and Coin National Analysis Centre**

*Section 27* places on a statutory footing the current position of the Currency Centre of the CBI as the National Analysis Centre for euro notes and the Coin National Analysis Centre for euro coins.

**Section 28: Amendment of Central Bank Act 1942**

*Section 28* amends the Central Bank Act 1942 and inserts in section 2(2A) the Euro Counterfeiting Regulation, the Euro Coin Regulation and the Euro Banknote Decision and in Part 1 of Schedule 2 Part 3 of the Counterfeiting Act 2020.

**Section 29: Amendment of Criminal Justice Act 1994**

*Section 29* provides for consequential amendments to the Criminal Justice Act 1994 to insert the new provisions created by this Bill into Schedule 1A, which already contains counterfeiting provisions from the Act of 2001.

**Section 30: Amendment of Criminal Justice Act 2011**

*Section 30* provides for a consequential amendment to paragraph 23 of Schedule 1 of the Criminal Justice Act 2011 to insert the new section 38A provided for in section 8 of this Bill. This Schedule already contains the counterfeiting provisions from the Act of 2001.

**Section 31: Amendment of European Union (Passenger Name Record Data) Regulations 2018**

*Section 31* provides for a consequential amendment to paragraph 17 of Schedule 2 of the European Union (Passenger Name Record Data) Regulations 2018 (S.I. No. 177 of 2018) to insert the new section 38A provided for in section 8 of this Bill. This Schedule already contains the counterfeiting provisions from the Act of 2001.

*An Roinn Dli agus Cirt*

*Nollaig, 2020.*