

# Counterfeiting Bill 2020

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## Abstract

The purpose of the *Counterfeiting Bill 2020* is to transpose outstanding elements of [Directive 2014/62/EU](#) on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing [Council Framework Decision 2000/383/JHA](#).

The Bill also provides for the implementation and transposition of [Council Regulation 1338/2001](#), [Council Regulation 1210/2010](#) and the [Decision of the European Central Bank \(ECB/2010/14\)](#). The Bill strengthens and adds to existing offences in the [Criminal Justice \(Theft and Fraud Offences\) Act 2001](#).



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## Glossary

This section sets out a number of definitions for the purpose of this Bill Digest.

The 2001 Act: refers to the [Criminal Justice \(Theft and Fraud Offences\) Act 2001](#).

The Central Bank: refers to the Central Bank of Ireland.

A Counterfeit – refers to something that is not a currency note or coin but resembles a currency note or coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or coin of that description, or if it is a currency note or coin which has been so altered that it is capable of passing for a note or coin of some other description. [Section 32\(2\)](#) of the 2001 Act provides a definition of a counterfeit for the purposes of Part 5 of the 2001 Act.

The Directive: refers to [Directive 2014/62/EU](#) of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Framework Decision 2000/383/JHA.

The Euro Banknote Decision: refers to the [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.

The Euro Coin Regulation: refers 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.

The Euro Counterfeiting Regulation: refers to [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.

## Summary

The *Counterfeiting Bill 2021* [the Bill] was published by the Minister for Justice [the Minister] on 16<sup>th</sup> December 2020. The Government approved drafting of the Bill on the 17<sup>th</sup> July 2019.<sup>1</sup> A draft General Scheme of the Bill was published on the 29<sup>th</sup> July 2019.<sup>2</sup> The Committee on Justice and Equality waived the requirement for Pre-Legislative Scrutiny in relation to the General Scheme of the Bill.

The Bill provides for the transposition of outstanding elements of [Directive 2014/62/EU](#) [the Directive] on the protection of the euro and other currencies against counterfeiting. The Bill also provides for the implementation of a number of other European instruments in relation to the protection of the euro from counterfeiting and concerning measures to ensure the appropriate authentication of euro coins and notes, including [Regulation \(EC\) No. 1338/2001](#), [Regulation \(EU\) No. 1210/2010](#) and the [Decision of the European Central Bank \(ECB/2010/14\)](#).

The Directive calls on Member States to introduce criminal offences and sanctions relating to counterfeiting of the euro and other currencies. It introduces common measures in respect of same. The Directive also addresses territorial jurisdiction and requires special investigation measures. The importance of protecting against counterfeiting lies in the need to ensure confidence and trust in the authenticity of currency. The deadline for transposing the Directive was 23 May 2016. Ireland is the only Member State that is yet to transpose the Directive.<sup>3</sup>

The Directive supplements and facilitates the 1929 International Convention for the Suppression of Counterfeiting Currency [the Convention] and its Protocol, to which Ireland is a signatory.<sup>4</sup> This requires that signatories to the Convention ensure that sufficiently severe criminal penalties exist in relation to counterfeiting offences and sets out rules in relation to cooperation and jurisdictional issues.

[Part 5](#) of the [Criminal Justice \(Theft and Fraud Offences\) Act 2001](#) [the 2001 Act] provides for offences related to counterfeiting in Irish law. The Bill provides for a number of amendments to Part 5 of the 2001 Act. The Bill also provides for a range of new powers and functions for the Central Bank of Ireland in respect of monitoring and enforcement measures relating to suspect counterfeit euro currency and euro currency that is not deemed to be suitable for recirculation.

Part 1 of the Bill provides for preliminary and general matters such as the short title and commencement. Part 2 of the Bill provides for a number of amendments to Part 5 of the *Criminal*

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<sup>1</sup> See Department Press Release, "Criminal Justice (Counterfeiting) Bill 2019". Available at [http://www.justice.ie/en/JELR/Pages/Criminal\\_Justice\\_\(Counterfeiting\)\\_Bill\\_2019](http://www.justice.ie/en/JELR/Pages/Criminal_Justice_(Counterfeiting)_Bill_2019).

<sup>2</sup> Available at [http://www.justice.ie/en/JELR/Draft\\_General\\_Scheme\\_of\\_Criminal\\_Justice\\_\(Counterfeiting\)\\_Bill\\_2019.pdf/Files/Draft\\_General\\_Scheme\\_of\\_Criminal\\_Justice\\_\(Counterfeiting\)\\_Bill\\_2019.pdf](http://www.justice.ie/en/JELR/Draft_General_Scheme_of_Criminal_Justice_(Counterfeiting)_Bill_2019.pdf/Files/Draft_General_Scheme_of_Criminal_Justice_(Counterfeiting)_Bill_2019.pdf).

<sup>3</sup> Denmark (Recital 30 to the Preamble to the Directive) has opted out of this Directive. Denmark does not use the euro.

<sup>4</sup> International Convention for the Suppression of Counterfeiting Currency and Protocol. Signed at Geneva on 20<sup>th</sup> April 1929, [1931] *League of Nations Treaty Series* Vol. 112, at p. 371. Available at <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20112/v112.pdf>.

*Justice (Theft and Fraud Offences) Act 2001*, proposing to update the provisions of Irish law that relate to currency counterfeiting in line with Directive 2014/62/EU.

Part 3 of the Bill provides for measures related to the implementation of the Euro Banknote Decision, the Euro Coin Regulation and the Euro Counterfeiting Regulation. Part 3 provides for monitoring, supervision and enforcement powers in respect of the Central. Part 3 also provides for obligations in respect of “relevant persons”.

Part 4 of the Bill provides for the designation of the Currency Centre of the Central Bank as the National Analysis Centre [NAC] for euro notes and Coin National Analysis Centre [CNAC] for euro coins. Part 4 also contains a number of consequential amendments to other Acts arising out of the Bill.

## Table of Provisions

Section	Title	Effect
<b>Part 1: Preliminary and General</b>		
1.	Short title and commencement	Standard provision that defines the short title of the Bill and provides for commencement by Ministerial order. Parts 1 and 2 of the Bill will come into operation upon a commencement order being made by the Minister for Justice. Part 3 of the Bill will come into operation upon a commencement order being made by the Minister for Finance following consultation with the Minister for Justice. No provision is made for commencement of Part 4 of the Bill. Commencement orders may be limited to particular provisions of the Bill or purposes.
<b>Part 2: Amendment to <i>Criminal Justice (Theft and Fraud Offences) Act 2001</i></b>		
2.	Definition (Part 2)	Standard provision that provides for the <a href="#"><i>Criminal Justice (Theft and Fraud Offences) Act 2001</i></a> to be defined as the “Act of 2001” in this Bill.
3.	Amendment of section 32 of Act of 2001	Provides for the amendment of section 32 of the 2001 Act by way of the insertion of definitions for “currency note”, “coin”, “counterfeiting instrument”, “currency authority”, “currency instrument”, “designated”, “Directive 2014/62/EU” and “security feature”.
4.	Amendment of section 33 of Act of 2001	Provides for the amendment of section 33 of the 2001 Act to include an offence that is committed where a person fraudulently makes or alters notes or coins that have been designated for issue but have yet to be lawfully issued.
5.	Amendment of section 34 of Act of 2001	Provides for the amendment of section 34 of the 2001 Act to include an offence that is committed where a person receives, obtains or transports a counterfeit note or coin.
6.	Amendment of section 36 of Act of 2001	Provides for the substitution of the offences in section 36 of the 2001 Act with new offences relating to making, receiving, obtaining or

		having control or custody of currency instruments, counterfeiting instruments or security features in line with Article 3(1)(d) of Directive 2014/62/EU.
7.	Amendment of section 37 of Act of 2001	Provides for the substitution of section 37(1) of the 2001 Act with a new offence of importing or exporting a counterfeit of a currency note or coin, in line with Article 3(1)(c) of Directive 2014/62/EU.
8.	Amendment of section 38 of Act of 2001	Provides for the amendment of section 38 of the 2001 Act to provide for extraterritorial jurisdiction to apply in respect of offences under sections 33, 34, 35, 36, 37 and 38A of the 2001 Act. The amendment proposes to introduce new extraterritorial provisions relating to a person other than an Irish citizen, which provide that proceedings will only be taken with the consent of the DPP, where any extradition request has been refused and counterfeit currency denominated in euro in relation to the offence has been detected in the State.
9.	Liability for offences by body corporate, etc. (Part 5)	Provides for the insertion of a new section 38A into the 2001 Act, to provide that where offences under Part 5 of the 2001 Act are committed by a body corporate and are attributable to a person who is a director, manager, secretary or other officer of the body corporate, that person, as well as the body corporate, may be found guilty of an offence.
10.	Amendment of section 39 of Act of 2001	Provides for the amendment of section 39 of the 2001 Act by including new definitions of “designated body”, “credit institution”, “transporter of funds” and “payment service provider”.
<b>Part 3: Obligations of Relevant Persons in Respect of Ensuring Authenticity and Fitness of Euro Banknotes and Coins</b>		
11.	Definitions (Part 3)	Standard provision that defines a number of terms used in Part 3 of the Bill.
12.	Functions and powers of the Central Bank	Provides for the functions and powers of the Central Banks in respect of ensuring

		compliance with the Euro Banknote Decision, the Euro Coin Regulation and the Euro Counterfeiting Regulation.
13.	Central Bank may impose requirement on relevant person	Provides for requirements that may be imposed by the Central Bank arising under Article 6.7 of the Euro Coin Regulation, Article 7.1 of the Euro Banknote Decision and Article 10.3 of the Euro Banknote Decision.
14.	Regulations (Part 3)	Provides for the making of regulations by the Central Bank following consultation with the Minister for Finance. Regulations made under this section are required to be published by the Central Bank on their website as soon as practicable. Regulations made under this section are required to be laid before each House of the Oireachtas as soon as possible after it is made and may be subject to a resolution in either House annulling the regulation, if passed within 21 days of the laying of the regulation.
15.	Power of Central Bank to require information, records, plans, etc.	Provides that in the performance of the Central Bank's functions under Part 3 of the Bill, the Central Bank may require a relevant person to provide information, records or other documents in such manner and form as required by the Central Bank.
16.	Appointment of authorised officers	Provides for the appointment by the Central Bank of its officers, employees, or other suitably qualified persons to be authorised officers, for the purpose of exercising its functions under section 12 of the Bill and exercising its powers under Part 3 of the Bill.
17.	Warrant of appointment	Provides that authorised officers are to be furnished with a warrant of appointment. When exercising a power under Part 3 an authorised officer will be required to produce such warrant with a form of personal identification for inspection if requested by a person affected by the exercise of the power.
18.	Power of authorised officer to enter premises	Provides that authorised officers will have a power to enter premises for the purpose of performance by the Central Bank of its

		functions under section 12 of the Bill. Such power is subject to an authorised officer having reasonable grounds to believe that the premises are or have been used for the business of a relevant person or the keeping of records related to the business of a relevant person. A dwelling may not be entered unless an authorised officer has the consent of the occupier or a warrant under section 20 of the Bill.
<b>19.</b>	Powers of authorised officer	Provides for the powers of an authorised officer under Part 3 of the Bill. These include powers to inspect records, secure records for later inspection and to require a relevant person to answer questions.
<b>20.</b>	Warrant required to enter premises	Provides that a judge of the District Court may issue a warrant authorising an authorised officer accompanied by other authorised officers or members of An Garda Síochána to enter a premises specified in the warrant or exercise the powers set out in Part 3 of the Bill. The judge must be satisfied on sworn information of an authorised officer that there are reasonable grounds for believing that records are to be found on the premises. The warrant will be valid for one month from its date of issue, but its period of validity may be extended.
<b>21.</b>	Provision of information, record or other document not to be treated as breach or to affect lien	Provides that the provision of information to the Central Bank by a person under Part 3 of the Bill will not be treated as a breach of any restriction under any enactment or legal rule. This section also provides that where a person is required under Part 3 of the Bill to provide a record or document over which they claim a lien, the provision of the such record or document will be without prejudice to the lien.
<b>22.</b>	Privileged legal material	Provides that where a person refuses to produce information, pursuant to a requirement under Part 3 of the Bill, on the basis that the information contains privileged legal material, the Central Bank may apply to

		the High Court within 6 months of that refusal for a determination as to whether the information is privileged legal material.
23.	Obligations of relevant persons	Provides for obligations arising out of the Euro Counterfeiting Regulation, the Euro Coin Regulation and the Euro Banknote Decision. Section 23 of the Bill also provides for offences for failing to comply with these obligations.
24.	Failure to comply with a requirement	Provides that where a relevant person fails to comply with a requirement imposed by the Central Bank or an authorised officer under Part 3 of the Bill, the Central Bank or authorised officer may certify the failure or refusal to the High Court. Where such certification occurs, the High Court may inquire into the case and make such order or direction as the High Court sees fit.
25.	Offence of obstruction, etc.	Provides for an offence of obstruction. Subsection 1 provides for the description of the offence and the requisite elements of the offence. Subsection 2 provides for the levels of punishment based on whether a summary or indictable offence is committed. Subsection 3 relates to the privilege against self-incrimination and its interaction with the requirement to respond to questions or comply with requirements under Part 3 of the Bill.
26.	Liability for offences by body corporate, etc. (Part 3)	Provides that where offences under Part 3 of the Bill are committed by a body corporate and are attributable to a person who is a director, manager, secretary or other officer of the body corporate, that person, as well as the body corporate, may be found guilty of an offence.
<b>Part 4: Miscellaneous</b>		
27.	Designation of National Analysis Centre for euro notes and Coin National Analysis Centre	Provides for the Currency Centre of the Central Bank to be designated as the National Analysis Centre for euro notes pursuant to Article 4(1) of the Euro Counterfeiting Regulation, and the Coin National Analysis Centre for euro coins for the purposes of

		Article 5(1) of the Euro Counterfeiting Regulation.
28.	Amendment of <i>Central Bank Act 1942</i>	<p>Provides for the amendment of <a href="#">section 2(2A)</a> of the <i>Central Bank Act 1942</i>, inserting the Euro Counterfeiting Regulation, the Euro Coin Regulation and the Euro Banknote Decision into section 2(2A). Section 2(2A) of the <i>Central Bank Act 1942</i> provides for the definition of designated enactments in the <i>Central Bank Act 1942</i>.</p> <p>Section 28 of the Bill also provides for the amendment of <a href="#">Part 1 of Schedule 2 of the Central Bank Act 1942</a>, inserting the Counterfeiting Act 2020 into Part 1 of Schedule 2. Part 1 of Schedule 2 provides for designated enactments and designated statutory instruments under the <i>Central Bank Act 1942</i>.</p>
29.	Amendment of <i>Criminal Justice Act 1994</i>	Provides for consequential amendments to Schedule 1A <sup>5</sup> of the <a href="#">Criminal Justice Act 1994</a> , inserting the new and amended offences in Part 5 of the 2001 Act, into paragraph 10 of Part 2 of Schedule 1A. Part 2 of Schedule 1A provides for relevant offences which are extended confiscation offences under the <i>Criminal Justice Act 1994</i> .
30.	Amendment of Criminal Justice Act 2011	Provides for a consequential amendment to <a href="#">Schedule 1 of the Criminal Justice Act 2011</a> , inserting the new section 38A, as provided for under section 8 of the Bill, into paragraph 23 of Schedule 1. Schedule 1 of the <i>Criminal Justice Act 2011</i> provides for relevant offences for the purposes of the <i>Criminal Justice Act 2011</i> .
31.	Amendment of <i>European Union (Passenger Name Record Data) Regulations 2018</i>	Provides for a consequential amendment to Schedule 2 of the <i>European Union (Passenger Name Record Data) Regulations 2018</i> [ <a href="#">S.I. No. 177/2018</a> ], inserting the new section 38A,

<sup>5</sup> Schedule 1A of the Criminal Justice Act 1994 was inserted by Regulation 18 of the *European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulations 2017* [[S.I. No. 540/2017](#)].

		<p>as provided for under section 8 of the Bill, into paragraph 17 of Schedule 2. Schedule 2 of the <i>European Union (Passenger Name Record Data) Regulations 2018</i> provides for those offences coming under the definition of “serious crime” under the <i>European Union (Passenger Name Record Data) Regulations 2018</i>.</p>
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## Background

This section provides general background information in relation to:

- The protection of the euro against counterfeiting;
- The *Criminal Justice (Theft and Fraud Offences) Act 2001*;
- Directive 2014/62/EU;
- The Euro Counterfeiting Regulation;
- The Euro Coin Regulation; and
- The Euro Banknote Decision.

### The protection of the euro against counterfeiting

This section analyses the measures taken by different bodies in respect of the protection of the euro against counterfeiting. The importance of combatting euro counterfeiting lies in the need to maintain trust in the security of the euro as a means of payment. This is evident from the Preamble to [Directive 2014/62/EU](#), which notes that:

“(1) ... since its introduction in 2002, as a currency continuously targeted by organised crime groups active in money counterfeiting, counterfeiting of the euro has caused financial damage of at least EUR 500 million. It is in the interests of the Union as a whole to oppose and pursue any activity that is likely to jeopardise the authenticity of the euro by counterfeiting.”<sup>6</sup>

### Ireland

The National Analysis Centre [NAC] analyses suspect counterfeit banknotes and coins that are sent to the Central Bank.<sup>7</sup> The NAC examines, records and monitors suspect counterfeits as part of joint efforts to respond to the challenges that counterfeiting presents to the euro. The NAC provides training to professional cash handlers, members of An Garda Síochána, customs officials and other bodies on counterfeit detection.

The importance of protecting the euro has also been acknowledged by the Court of Appeal when addressing sentencing in relation to counterfeiting offences. In *DPP v Molloy*,<sup>8</sup> the appellant appealed against the severity of a 6 year sentence handed down for involvement in a counterfeiting operation involving the IRA. The appellant argued that the sentence was disproportionate, and that insufficient allowance had been made for all the mitigating factors in the case especially the plea of guilty. The appellant was also not a member of the IRA but was aware of the involvement of the IRA in the operation.

The Court quashed the original sentence due to the lack of clarity over what reduction was given in the headline sentence based on the mitigating factors and resented the appellant to 5 years

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<sup>6</sup> Recital 1 of the Preamble to Directive 2014/62/EU.

<sup>7</sup> For more information see <https://www.centralbank.ie/consumer-hub/notes-and-coins/suspect-counterfeits>.

<sup>8</sup> *DPP v Molloy* [2016] IECA 239.

and 6 months with the last 18 months suspended. The Court discussed the potential harm caused by counterfeiting, stating that:

“In terms of the harm done, counterfeiting is a particularly egregious crime in its potential effects in that the circulation of forged currency tends to undermine and devalue the legitimate currency of a state, and if conducted on a large scale is capable of macro-economic effects. In this particular instance the quantity involved was almost certainly not sufficient to give rise to noticeable macro-economic effects but it was nonetheless an activity tending to undermine the Euro as a currency, thereby interfering with and disrespecting, not just the sovereignty of this State, but the sovereignty of all of the states in the Euro zone, which reserve unto themselves the sole right to issue and circulate the Euro as a currency. In addition, innocent persons such as retailers who might unwittingly receive counterfeit currency are placed at risk of embarrassment and loss.”<sup>9</sup>

## Europol

Europol is the EU's central office for combatting euro counterfeiting and works closely with the ECB and Member States law enforcement authorities in major euro counterfeiting investigations.<sup>10</sup> Through its Analysis Project AP Soya, Europol provides:

- Intelligence;
- Joint investigation teams;
- Financial, technical, statistical and forensic support; and
- On-the-spot assistance.

Europol provides technical expertise in relation to the equipment used by counterfeiters. The forged currency unit of Europol also provides intelligence to partners on illegal trading platforms on the darknet. Europol recently assisted in a series of coordinated counterfeiting operations across 13 different countries, including Ireland, against suspects who bought counterfeit euro banknotes on illegal platforms on the Darknet.<sup>11</sup> Commenting on Europol's role in this joint investigation, Wil van Gemert, Europol's Deputy Executive Director of Operations, stated:

“This joint effort highlights that complete anonymity on the internet and the Darknet doesn't exist. When you engage in illegal activity online, be prepared to have police knocking on your door sooner or later. Europol will continue to assist Member States in their efforts of protecting the euro against counterfeiting, both in the real world as in the virtual one.”<sup>12</sup>

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<sup>9</sup> *DPP v Molloy* [2016] IECA 239, at para 39.

<sup>10</sup> More information about Europol's counterfeiting operations is available at <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/forgery-of-money-and-means-of-payment/euro-counterfeiting>.

<sup>11</sup> See Europol, Press Release (07 December 2018), “EU-wide action against buyers of counterfeit money on the Darknet”. Available at <https://www.europol.europa.eu/newsroom/news/eu-wide-action-against-buyers-of-counterfeit-money-darknet>.

<sup>12</sup> *Ibid.*

## The ECB

The “Euro” section of the ECB website<sup>13</sup> provides detailed security information in relation to each denomination of euro note. There are two series of euro banknotes, with the more recent Europa series providing for more sophisticated security measures aimed at ensuring the security of the currency from counterfeiters. The Europa series of banknotes comes in the same denominations as the first series, however, there is no new €500 note. The additional security measures can be observed through the feel-look-tilt method and include:

- The use of raised print;
- A portrait watermark of the Greek goddess Europa;
- The use of a security thread;
- A portrait window of the Greek goddess Europa;
- A portrait hologram (i.e. the silvery stripe on the right of the note) showing the portrait of Europa, the main image and the value of the banknote; and
- The use of a satellite hologram at the top of the silvery stripe where the € symbols move around the number when the note is tilted.

The ECB also provide training material in the form of an e-learning course covering the characteristics of euro banknotes, the authenticity of banknotes, the fitness of banknotes and damaged banknotes to complement professional cash handlers’ training.<sup>14</sup>

The ECB provides a biannual update on counterfeit notes removed from circulation. In their most recent update for the second half of 2019 they note that 308,000 counterfeit euro banknotes were withdrawn from circulation in the second half of 2019.<sup>15</sup> This represents a 22.7% increase when compared with the first half of 2019 and a 17.6% increase on the amount in the second half of 2018. Of these counterfeit notes, 96.4% were found in euro area countries.

Table 1, below, is a reproduction of a table set out in an ECB press release, providing a breakdown of counterfeited note by denomination.<sup>16</sup>

**Table 1: Breakdown of counterfeited note by denomination**

Denomination	€5	€10	€20	€50	€100	€200	€500
Percentage of total	2.4%	13.5%	34.2%	36.5%	9.6%	1.4%	2.4%

<sup>13</sup> Available at <https://www.ecb.europa.eu/euro/banknotes/security/html/index.en.html>.

<sup>14</sup> More information on euro banknote training material provided by the ECB is available at <https://www.ecb.europa.eu/euro/cashprof/trainingmat/html/index.en.html>.

<sup>15</sup> ECB, (26 July 2019) “Euro banknote counterfeiting remained low in the second half of 2019”. Available at <https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200124~242b62d123.en.html>.

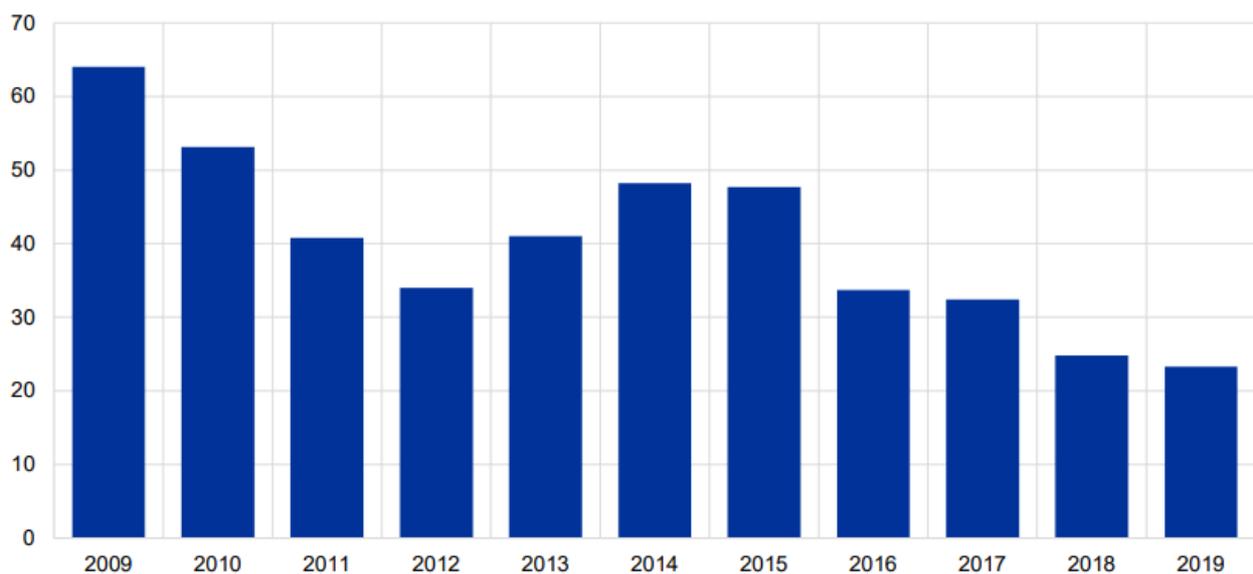
<sup>16</sup> *Ibid.*

Source: ECB, Press release, Note 13

Chart 1, below, is a reproduction of Chart 27 set out in the ECB's Annual Report for 2019.<sup>17</sup> It shows that compared with the number of genuine euro banknotes in circulation, the proportion of counterfeits has decreased by over 50% in the last 10 years. It also shows that when compared to the amount of genuine euro banknotes in circulation, the amount of counterfeit euro banknotes is relatively low, amounting to approximately 25 counterfeits to every million genuine euro banknotes in 2019.

### Chart 1: Number of counterfeit banknotes per million genuine euro banknotes in circulation

(parts per million)



Source: ECB, Annual Report, at p. 74

### The European Commission

The European Commission's [the Commission] anti-counterfeiting strategy<sup>18</sup> is based on four pillars:

- **Prevention:** EU legislation in the area of counterfeiting provides for a system of information collection, designated national authorities for analysis, national central offices to coordinate investigations and authentication measures to be applied by credit institutions and other cash handlers. The European Technical and Scientific Centre<sup>19</sup> is established within the

<sup>17</sup> ECB, (April 2019) *Annual Report 2019*. Available at <https://www.ecb.europa.eu/pub/annual/html/index.en.html>.

<sup>18</sup> More information about the Commission's role in anti-counterfeiting operations is available at [https://ec.europa.eu/info/business-economy-euro/euro-area/euro/anti-counterfeiting\\_en](https://ec.europa.eu/info/business-economy-euro/euro-area/euro/anti-counterfeiting_en).

<sup>19</sup> More information about the European Technical and Scientific Centre is available at [https://ec.europa.eu/info/business-economy-euro/euro-area/euro/anti-counterfeiting/european-technical-and-scientific-centre-etsc\\_en](https://ec.europa.eu/info/business-economy-euro/euro-area/euro/anti-counterfeiting/european-technical-and-scientific-centre-etsc_en).

Commission in Brussels and provides national authorities with technical assistance, training and classifies new types of counterfeit coins;

- **Repression:** through criminal measures that are required in all Member States, such as those set out in the Directive. Common rules and coordination of efforts stemming from EU initiatives facilitates national authorities working together to suppress the counterfeiting of the euro;
- **Training:** is provided through the Pericles 2020 programme. This programme funds staff exchanges, seminars, training and studies for law enforcement and judicial authorities, banks and other bodies that are involved in combating the counterfeiting of the euro; and
- **Cooperation:** is at the heart of the Commission's strategy with the Commission engaging in several cooperation forums that bring together various experts from different bodies to explore, direct and coordinate actions in relation to issues relating to counterfeiting. These groups include the Euro Counterfeit Experts Group, the Counterfeit Coin Experts Group and the Inter-institutional Steering Group.

## The Criminal Justice (Theft and Fraud Offences) Act 2001

This section provides a brief overview of the current provisions in [Part 5 of the Criminal Justice \(Theft and Fraud Offences\) Act 2001](#) [the 2001 Act]. Part 5 of the 2001 Act provides for counterfeiting offences in Irish law. [Section 32](#) provides for the definition of a number of terms used in Part 5 of the 2001 Act. [Section 33\(1\)](#) of the 2001 Act provides that a person who makes a counterfeit of a currency note or coin, with the intention that said note or coin will be passed or tendered as genuine, is guilty of an offence. Section 33(2) of the 2001 Act provides that where an offence is committed under section 33(1), a person will be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

[Section 34](#) of the 2001 Act provides for the offences of passing, tendering or delivering counterfeit currency notes or coins. [Section 35](#) of the 2001 Act provides for an offence where a person is in custody or control of counterfeit currency notes and coins. [Section 36](#) of the 2001 Act provides for an offence where a person is in custody or control of materials and implements for counterfeiting. [Section 37](#) of the 2001 Act provides for offences of importing and exporting counterfeit currency notes and coins. [Section 38](#) of the 2001 Act provides for extraterritorial effect for offences under sections 33, 34, 35, 36 and 37. Extraterritorial effect for offences is required to provide Irish courts with the jurisdiction to hear cases where a person whilst outside the State, commits an act that would be an offence if committed in the State, and to enable such an act to be punishable as an offence as if the act was carried out in the State.

[Section 39](#) of the 2001 Act provides for measures to detect counterfeiting. Section 39(1) sets out definitions for the purpose of this section, including a list of a number of bodies that are considered a “designated body.” Section 39(2) provides that designated bodies must withdraw suspect counterfeit currency from circulation and transmit suspect counterfeit currency, along with information as to the time, location and receipt of the currency to the Central Bank of Ireland. Section 39(3) provides that designated bodies may transmit suspect or counterfeit currency to An Garda Síochána in accordance with a recognised code of practice. Section 39(4) list the measures that a recognised code of practice may contain in relation to procedures designed to detect and combat counterfeiting. Section 39(5) provides that designated body that contravenes section 39(2) or provides false or misleading information on matters referred to in that subsection shall be guilty of an offence. Section 39(6) provides for a defence to an offence under section 39:

- where a designated body can show it had established procedures to comply with section 39; or
- where it can show it had complied with the relevant provisions of a recognised code of practice; or
- where a person employed by a designated body can show that he or she transmitted the currency notes or coins concerned, or gave the relevant information, to another person in accordance with an internal reporting procedure or a recognised code of practice.

## Directive 2014/62/EU

This section examines some of the key provisions of [Directive 2014/62/EU](#) of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Framework Decision 2000/383/JHA [the Directive]. This section will draw on the findings of the Commission in their 2019 Report<sup>20</sup> which analysed the transposition of the Directive in the Member States that had notified the Commission of national transposition of the Directive. Accordingly, this section focuses on those Articles of the Directive that are considered in the 2019 Report.

### Article 3 – Offences

Article 3 sets out offences which Member States are required to legislate for. Article 3(1) requires Member States to criminalise production offences,<sup>21</sup> distribution offences<sup>22</sup> and preparatory offences<sup>23</sup> in relation to counterfeiting. The Commission have noted that transposition issues have arisen in relation to Article 3(1)(d) on preparatory offences, stating that:

“preparatory offences were not transposed into national law as self-standing (*sui generis*) offences. Instead, in a number of Member States, preparatory offences were regarded as attempted production offences. This would imply the intent to commit the production offence as an additional constituent element of the preparatory offences. The Directive does however, not require this element.”<sup>24</sup>

Article 3(2) provides for the criminalisation of the misuse, in terms of conduct coming under Article 3(1)(a), (b) and (c), of facilities used by competent authorities for the lawful production of coins and notes. The Commission highlight that four Member States did not transpose this provision and that:

“A number of other Member States’ national transposition measures lack clarity as no reference is made to the violation of the rights or the conditions under which competent authorities may issue notes or coins or without reference to all conduct specified in Article 3(1)(a), (b) and (c) of the Directive. Some Member States – contrary to the Directive – limit criminal liability to the conduct of persons who are authorised to produce legal currency.”<sup>25</sup>

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<sup>20</sup> European Commission, (9 July 2019) *Report from the Commission to the European Parliament and the Council: on the application of 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*. Available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2019:311:FIN>.

<sup>21</sup> Production offences refers to the fraudulent making or altering of currency (Art. 3(1)(a)).

<sup>22</sup> Distribution offences refers to the fraudulent uttering of counterfeit currency (Art. 3(1)(b)) and the import, export, transport, receiving or obtaining of counterfeit currency with a view to uttering the same (Art. 3(1)(c)).

<sup>23</sup> Preparatory offences refer to making, receiving, obtaining or possession of (i) means peculiarly adapted for the counterfeiting or altering of currency or (ii) security features (Art. 3(1)(d)).

<sup>24</sup> European Commission, 2019 Report, Note 20, at p. 3.

<sup>25</sup> *Ibid.*

## Article 4 – Incitement, aiding and abetting, and attempt

Article 4 calls on Member States to criminalise incitement, aiding and abetting, and attempting to carry out any of the offences set out in Article 3. The Commission note that most Member States have general criminal codes which provides for the measures set out in Article 4. The Commission also note that a few Member States have inserted a specific reference to criminalise attempt crimes for each offence set out in the Directive.

## Article 5 – Sanctions for natural persons

Article 5(1) requires Member States to provide for “effective, proportionate and dissuasive criminal sanctions.” The Commission note that all Member States have complied with these general criteria.<sup>26</sup> Article 5(2) provides that preparatory offences will be punishable by a maximum sanction which provides for imprisonment. The Commission note that almost all Member States have provided for imprisonment for preparatory offences.<sup>27</sup>

Article 5(3) provides that production offences shall be punishable by a maximum term of imprisonment of at least eight years. In relation to Article 5(3) the Commission note that:

“Transposition issues occur in a number of Member States providing for a maximum sanction of at least eight years only for “severe” forms of the production offence and/or providing for maximum sanctions below eight years for “minor” cases and/or for cases where mitigating circumstances apply. Definitions of what is a “severe” or a “minor” case respectively in which case mitigating circumstances apply, exist in some of these Member States, and in others not. In any event, the Directive does not restrict the maximum sanction of eight years to only certain (severe or not minor) categories of the offences referred to in Article 5(3).”<sup>28</sup>

Article 5(4) provides that distribution offences must be punishable by a maximum term of imprisonment of at least five years. The Commission note that in relation to Article 5(4), similar transposition issues as described above under Article 5(3) occur.<sup>29</sup>

Article 5(5) provides that in relation to the offence of fraudulent uttering of counterfeit currency (Article 3(1)(b)), Member States may provide for sanctions other than those referred to in Article 5(4) if the currency was received without knowledge but passed on with knowledge that it is counterfeit. The Commission note that eighteen Member States have applied this option imposing different terms of imprisonment, fines or other forms of restrictions than those set out in Article 5(4).

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<sup>26</sup> *Ibid*, at p. 8.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*.

<sup>29</sup> *Ibid*.

## Article 6 – Liability of legal persons

Article 6(1) provides that Member States will provide for criminal liability to attach to legal persons for offences under Articles 3 and 4, where they are committed for the benefit of the legal person by a person holding one of the following roles within the legal entity:

- a) power of representation of the legal person;
- b) an authority to take decision on behalf of the legal person; or
- c) an authority to exercise control within the legal person.

Article 6(2) provides that Member States shall provide for a legal person can be held liable where the lack of supervision or control by person holding a role set out above, made it possible for offences under Articles 3 and 4 to be committed. The Commission note that the majority have Member States have transposed Article 6(2).<sup>30</sup>

Article 6(3) provides that liability of a legal person under Article 6 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offences referred to in Articles 3 and 4. The Commission note that the majority have Member States have transposed Article 6(2).<sup>31</sup>

## Article 7 – Sanctions for legal persons

Article 7 provides that Member States shall ensure that legal persons held liable pursuant to Article 6 are subject to effect, proportionate and dissuasive sanctions that shall include fines. Article 7 also provides the following non-exhaustive list of sanctions which may be applied:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

The Commission note that the large majority of Member States appropriately transposed Article 7.<sup>32</sup>

## Article 8 – Jurisdiction

Article 8(1) requires that where an offence is carried out in a Member State or the offender is a national of a Member State then the Member State in question should establish jurisdiction over the offence. Article 8(2) requires Member States whose currency is the euro to establish

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<sup>30</sup> *Ibid*, at p. 10.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Ibid*, at p. 11.

jurisdiction where an offence under Articles 3 and 4 is committed outside the Member State, at least where the offence relates to the euro, where:

- a) the offender is within the jurisdiction and not extradited; or
- b) counterfeit notes and coins have been detected within the jurisdiction.

Article 8 also requires that in relation to production offences, Member States' extraterritorial jurisdiction shall not be made conditional on the acts constituting the offence being a criminal offence in the place where they are committed.

The Commission notes that issues have arisen in relation to the transposition of Article 8(2), stating that:

"The large majority of the Member States did not transpose Article 8(2)(b) at all.

The majority of the Member States transposed Article 8(2) second subparagraph. Either, jurisdiction is established (explicitly or not) irrespective of whether the offence is criminalised in the state where the offence was committed, or an explicit exception from the general principle of double criminality has been made for criminal offences referred to in the Directive and transposed into national law.

Transposition issues occur in some Member States, which apply the double criminality principle to the offences under the Directive, i.e. always require that the acts constitute also an offence at the place where they were committed. In another Member State, the double criminality requirement is only exempted where the offence violates the Member States' interests or where the offender cannot be extradited."<sup>33</sup>

## Article 9 – Investigative tools

Article 9 provides that Member States shall take the necessary measures to ensure that effective investigative tools, such as those used to combat organised crime and serious crime, are available to bodies responsible for investigating or prosecuting offences under Articles 3 and 4. In relation to the transposition of Article 9, the Commission notes that:

"The majority of the Member States transposed this provision. Issues occur where certain investigative tools are applicable to credit institution, payment service providers and other economic operators referred to in Article 6(1) of Regulation 1338/2001 but not to other "persons" (e.g. natural and legal persons).

In some Member States, the preparatory offences in Article 3(1)(d) of the Directive do not qualify for serious-crime-investigative measures at all or qualify for only some of the available serious-crime-investigative measures. Few Member States have – contrary to the Directive – introduced "petty" forms of the crimes under the Directive that do not qualify – according to their national law – for the use of investigative tools used for serious crime cases."<sup>34</sup>

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<sup>33</sup> *Ibid*, at p. 12.

<sup>34</sup> *Ibid*, at pp. 12-13.

## Article 10 – Obligation to transmit counterfeit euro notes and coins for analysis and detection of counterfeits

Article 10 provides that in criminal proceedings Member States shall allow for the examination of suspect counterfeit notes and coins by their National Analysis Centres and Coin National Analysis Centres without delay. In relation to the transposition of Article 10, the Commission note:

“Only seven Member States transposed this provision into their national law. The large majority of the Member States did not adequately transpose this provision. While some Member States did not transpose this provision at all, most Member States had issues with the complete transposition of the individual elements of the provision. Most transposition issues occur with regard to (i) the delay in which counterfeit currency must be transmitted and (ii) the purposes (analysis, identification and detection of further counterfeits) for which the counterfeit currency should be examined.”<sup>35</sup>

## Article 11 – Statistics

Article 11 provides that at least every two years, Member States shall provide statistics on the number of offences, prosecutions and convictions to the Commission every two years. In relation to the transposition of Article 11, the Commission note:

“The large majority of the Member States did not transpose this provision at all or not adequately. In 2018, at the request of the Commission the majority of the Member States transmitted statistical material – as contained in their national databases. In some Member States the accuracy of the statistical data as well as the coordination among different Member States' authorities to collect these data could be further improved.”<sup>36</sup>

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<sup>35</sup> *Ibid*, at p. 13.

<sup>36</sup> *Ibid*.

## The Euro Counterfeiting Regulation

This section considers the effect of [Regulation 1338/2001](#) 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 [the Euro Counterfeiting Regulation]. The Euro Counterfeiting Regulation was introduced prior to the introduction of the euro to allow for the setting up of a system to facilitate EU countries to gather and exchange information on counterfeit notes and coins among themselves, with the ECB, the Commission, Europol and non-EU countries. Article 6 of the Euro Counterfeiting Regulation requires credit institutions and other bodies involved in the distribution of notes and coins to withdraw counterfeit notes and coins from circulation.

Regulation 44/2009 substantially amended Article 6 of the Euro Counterfeiting Regulation, providing for a broader range of bodies to come within the scope of the obligations set out in the Euro Counterfeiting Regulation, and now explicitly includes payment service providers, transporters of funds and other economic agents such as traders and casinos that engage in a secondary basis in the processing and distribution of notes via cash dispensing machines. Article 6 now also requires these bodies to check any euro notes and coins received by them for authenticity prior to recirculating them, with any counterfeits that are found, to be removed.<sup>37</sup>

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<sup>37</sup> This check is to be carried out in line with procedures established in the ECB Banknote Recycling Framework, available at <https://www.ecb.europa.eu/pub/pdf/other/recyclingeurobanknotes2005en.pdf?9e91946a0f1d1f52574cd93b5bcf9034>.

## The Euro Coin Regulation

This section considers the effect of [Regulation 1210/2010](#) of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation [the Euro Coin Regulation]. The purpose of the Euro Coin Regulation is to ensure effective and uniform authentication of euro coins within the euro area through the provision of rules on common procedures relating to the authentication of euro coins in circulation. It complements the Euro Counterfeiting Regulation.

Article 3 of the Euro Coin Regulation relates to testing the authenticity of euro coins by means of appropriate coin-processing machines or through personnel trained specifically for this purpose. Article 4 of the Euro Coin Regulation provides that any coin-processing equipment used must have successfully passed a detection test carried out by the designated national authority or by the European Technical and Scientific Centre.

Article 6 of the Euro Coin Regulation provides that Member States must perform on-the-spot controls in institutions to determine whether, by means of detections tests, that a representative number of coin-processing machines are functioning correctly. Article 8 provides for the withdrawal and reimbursement of euro coins that are deemed unfit for circulation. Article 9 provides that each national authority handling euro coins unfit for circulation may levy a handling fee in relation to the expense that arise in the process.

Article 12 set out reporting requirements for Member States and the Commission. The Commission prepares an annual report under Article 12(4) of the Euro Coin Regulation from the national reports provided by Member States, to monitor the correct implementation of the procedures required in relation to the authentication of euro coins. The latest annual report notes that:

- The total amount of counterfeit coins detected in circulation in 2018 amounted to 188, 983 coins;<sup>38</sup>
- Ireland is among 18 Member States that “carry out controls of the correct implementation of the authentication obligation by the institutions referred to in Article 6 of the Euro Counterfeiting Regulation”;<sup>39</sup> and
- The objectives of the Euro Coin Regulation of ensuring “effective and uniform authentication of euro coins throughout the euro area are progressively achieved.”<sup>40</sup>

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<sup>38</sup> European Commission, (15 October 2019) *Report from the Commission to the Economic and Financial Committee under Article 12(4) of 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*, at p. 5. Available at [https://ec.europa.eu/info/sites/info/files/economy-finance/c\\_2017\\_6734\\_f1\\_report\\_from\\_commission\\_en\\_v3\\_p1\\_949174.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/c_2017_6734_f1_report_from_commission_en_v3_p1_949174.pdf).

<sup>39</sup> *Ibid.*, at p. 6

<sup>40</sup> *Ibid.*

## The Euro Banknote Decision

This section considers the effect of [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 [the Euro Banknote Decision]. The Euro Banknote Decision builds on the ECB Banknote Recycling Framework<sup>41</sup> in setting out in a legal act the common rules and procedures in relation to checks required under Article 6 of Euro Counterfeiting Regulation. It should be noted that the Euro Banknote Decision does not extend to euro coins as this area does not come within the competence of the ECB. The requirements for fitness and authenticity checks for euro coins are set out in the Euro Coin Regulation, above.

The ECB has described the effect of the Euro Banknote Decision, stating that:

“Decision ECB/2010/14 ensures that credit institutions and cash handlers only recirculate euro banknotes if they have been checked for both fitness and authenticity. These checks can be carried out either: (i) by a type of banknote handling machine which has been tested by a Eurosystem NCB [National Central Bank]; or (ii) by trained staff. Banknotes that have successfully passed machine checks can be reissued via automated teller machines or other customer-operated machines. Banknotes which have been tested by trained staff can only be disbursed over the counter.”<sup>42</sup>

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<sup>41</sup> ECB, *Recycling of Euro Banknotes: Framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers*. Available at <https://www.ecb.europa.eu/pub/pdf/other/recyclingeurobanknotes2005en.pdf>.

<sup>42</sup> ECB, *Banknote recirculation by credit institutions and other cash handlers*. Available at <https://www.ecb.europa.eu/euro/cashprof/cashhand/recycling/html/index.en.html>.

## Principal Provisions of the Bill

This section of the Digest examines the main provisions of the Bill. The Bill comprises 31 sections. Section 1 relates to the short title and commencement of the Bill. Sections 2 and 11 relate to definitions for Parts 2 and 3 of the Bill. Section 8 relates to extraterritorial jurisdiction for counterfeiting offences. Sections 9 and 26 relate to corporate liability. Sections 28, 29, 30 and 31 relate to consequential amendments to legislation arising out of the proposed amendments in the Bill. Sections 1, 2, 8, 9, 11, 26, 28, 29, 30 and 31 are standard provisions and for that reason they are not discussed below. A short synopsis of each provision is given in the Table of Provisions (above).

### Amendments to the 2001 Act

Part 2 of the Bill provides for a number of amendments to Part 5 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*, proposing to update the provisions of Irish law that relate to currency counterfeiting in line with Directive 2014/62/EU.

#### Amendment of section 32 of the 2001 Act

Section 3 of the Bill provides for the amendment of section 32 of the 2001 Act to include definitions in line with the requirements in Article 3 of Directive 2014/62/EU. Section 3 inserts the following definitions into section 32 of the 2001 Act:

‘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 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 denominated in euro or in cent;

‘counterfeiting instrument’ includes any instrument, article, computer programme or data, and any other means specially designed 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 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;

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

Section 3 of the Bill also provides for the insertion of a new subsection 4 into section 32. It provides that words and expressions used in Part 5 of the 2001 Act have the same meaning as that set out in Directive 2014/62/EU, unless the contrary intention appears.

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

Section 4 of the Bill provides for the insertion of a new subsection 1A into section 33 of the 2001 Act. It creates a new offence of making or altering a designated note or coin, with the intention that he or she or another shall pass or tender it as genuine. This provides for the offence set out in Article 3(1)(a) of Directive 2014/62/EU.

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

Section 5 of the Bill provides for the insertion of a new subsection 2A into section 34 of the 2001 Act. It creates a new offence of receiving, obtaining or transporting 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. This provides for the elements of “receiving, obtaining and transporting” in the offence set out in Article 3(1)(c) of Directive 2014/62/EU.

### **Amendment of section 36 of the 2001 Act**

Section 6 of the Bill provides for the substitution of the offences in section 36 of the 2001 Act with new offences relating to making, receiving, obtaining, and having control or custody of currency instruments, counterfeiting instruments or security features for the purpose of making a counterfeit of a currency note or coin with the intention that it be passed or tendered as genuine. This provides for the offence set out in Article 3(1)(d) of Directive 2014/62/EU.

The offence of making, receiving or obtaining currency instruments, counterfeiting instruments or security features for the purpose of making a counterfeit of a currency note or coin with the intention that it be passed or tendered as genuine is an indictable offence<sup>43</sup> and is punishable by a fine or term of imprisonment not exceeding 10 years.

The offence of having control or custody of currency instruments, counterfeiting instruments or security features for the purpose of making a counterfeit of a currency note or coin with the intention that it be passed or tendered as genuine is an indictable offence and is punishable by a fine or term of imprisonment not exceeding 5 years.

### **Amendment of section 37 of the 2001 Act**

Section 7 of the Bill provides for the substitution of subsection 1 in section 37 of the 2001 Act. It creates a new offence of importing or exporting 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

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<sup>43</sup> A conviction on indictment relates to a conviction for an offence in the Circuit Court or the Central Criminal Court before a Judge and jury.

she or another shall pass or tender it as genuine. This provides for the elements of “importing and exporting” in the offence set out in Article 3(1)(c) of Directive 2014/62/EU.

### Amendment of section 39 of the 2001 Act

Section 10(a) of the Bill provides for the amendment of section 39 of the 2001 Act by defining “designated bodies” in line with the definition of “relevant persons” to which Part 3 of the Bill applies. This includes inserting definitions of “credit institution”, “transporter of funds” and “payment service provider” in section 39(1)(ii). This amendment will have the effect of removing the references to the following bodies from section 39:

- bodies licensed to carry on banking business under the [Central Bank Act 1971](#), or authorised to carry on such business under the *ACC Bank Acts 1978 to 2001*, or regulations under the *European Communities Acts 1972 to 1998*;
- building societies;
- trustee savings banks; and
- credit unions.

These bodies are now covered within the meaning of a “credit institution” as defined in section 10 of the Bill.

Section 10(b) of the Bill inserts a new subsection 1A into section 39 of the 2001 Act. It provides that a reference in section 39 to a note or coin does not include a reference to euro currency.

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

Part 3 of the Bill provides for measures related to the implementation of the Euro Banknote Decision, the Euro Coin Regulation and the Euro Counterfeiting Regulation. Part 3 provides for monitoring, supervision and enforcement powers in respect of the Central. Part 3 also provides for obligations in respect of “relevant persons”.<sup>44</sup>

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<sup>44</sup> A “relevant person” is defined in section 11 of the Bill as:

- “ (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 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,
  - (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.”

## Functions and powers of the Central Bank

Section 12(1) of the Bill provides that the Central Bank shall monitor and take necessary measures to ensure compliance by relevant persons with their obligations arising under the Euro Banknote Decision, the Euro Coin Regulation and the Euro Counterfeiting Regulation.

Section 12(2)(a) provides that the Central Bank may verify the procedures governing the operation and control by relevant persons of banknote and coin processing machines. Section 12(2)(b) provides that the Central Bank may verify the treatment of, and any manual authenticity and fitness checking of, euro notes and euro coins by relevant persons.

Section 12(3)(a) provides that the Central Bank shall perform the controls referred to in Article 6 of the Euro Coin Regulation. Article 6 of the Euro Coin Regulation provides that Member States must perform on-the-spot controls in institutions to determine whether, by means of detections tests, that a representative number of coin-processing machines are functioning correctly.

Section 12(3)(b) provides that the Central Bank shall perform the functions referred to in Articles 8, 9, 11 and 12 of the Euro Coin Regulation. Article 8 provides for the withdrawal and reimbursement of euro coins that are deemed unfit for circulation. Article 9 provides that each national authority handling euro coins unfit for circulation may levy a handling fee in relation to the expense that arise in the process. Article 11 provides for checks of euro coins to determine whether they are unfit for circulation. Article 12 provides for reporting requirements relating to Member States activities as regards authentication of euro coins.

## Requirements which may be imposed by the Central Bank on relevant persons

Section 13(1)(a) of the Bill provides that where a relevant person is required to take measures rectifying non-compliance with the Euro Coin Regulation, the Central Bank may impose a requirement on the relevant person to take such measures as the Central Bank deems necessary.

Section 13(1)(b) of the Bill provides that the Central Bank may impose a requirement on a relevant person to comply with a condition of a permission granted by the Central Bank under Article 7.1 of the Euro Banknote Decision. Article 7.1 relates to an exception that may be sought in respect of remote branches of credit institutions with a low level of cash operations. Such credit institutions may seek permission from the Central Bank to allow trained staff members to carry out manual fitness checking of euro banknotes to be recirculated via customer-operated machines or cash dispensers, provided that authenticity checking is carried out by a type of banknote handling machine successfully tested by the Central Bank.

Section 13(1)(c) of the Bill provides that the Central Bank may impose a requirement on a relevant person where Article 10.3 of the Euro Banknote Decision applies to take such corrective measure to rectify non-compliance with the Euro Banknote Decision as the Central Bank deems necessary, and prohibiting the recirculation of the euro banknote denomination of the series concerned. Article 10.3 provides that where a Central Bank detects non-compliance with the provisions of the Euro Banknote Decision, it will require the adoption by the cash handler of corrective measures within a specified time limit.

Section 13(2) of the Bill provides that where a relevant person is the subject of a requirement by the Eurosystem<sup>45</sup> under Article 8.4 of the Euro Banknote Decision, this will be deemed to be a requirement imposed by the Central Bank under section 13, and Part 3 of the Bill will apply. Article 8.4 of the Euro Banknote Decision provides that cash handlers may be required to take action where informed by the Eurosystem of counterfeit threats. Such action may include imposing a temporary prohibition on the recirculation of the euro banknote denomination(s) of the series concerned.

### Regulations (Part 3)

Section 14(1) of the Bill provides that the Central Bank, following consultation with the Minister for Finance, may make regulations providing for:

- the designation of a relevant person for the purposes of where two or more relevant persons are involved in the recirculation of the same euro banknotes, and a designated relevant person is required to check such euro banknotes for authenticity and fitness;
- the manner and time limit within which a relevant person shall hand over to the Central Bank banknotes where Article 5 of the Euro Banknote Decision applies;
- stricter standards than those established by the Euro Banknote Decision concerning manual and automated fitness checking of euro banknotes of a particular denomination or series; and
- the manner and time limit within which a relevant person shall hand over to the Central Bank unfit banknotes.

Section 14(2) of the Bill provides that regulations providing for stricter standards than those established by the Euro Banknote Decision concerning manual and automated fitness checking of euro banknotes will only be made where the Central Bank is satisfied that the making of such regulations is justified, 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 has informed the European Central Bank of its intention to make such regulations prior to doing so.

Regulations made under this section are required to be published by the Central Bank on their website as soon as practicable. Regulations made under this section are required to be laid before each House of the Oireachtas as soon as possible after it is made and may be subject to a resolution in either House annulling the regulation, if passed within 21 days of the laying of the regulation.

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<sup>45</sup> The Eurosystem comprises the ECB and the national central banks of those countries that have adopted the euro. The Central Bank of Ireland represents Ireland in the Eurosystem. See <https://www.centralbank.ie/about/the-eurosystem>.

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

Section 15 provides that in the performance of the Central Bank's functions under Part 3 of the Bill, the Central Bank may require a relevant person to provide information, records or other documents in such manner and form as required by the Central Bank. A relevant person will be notified in writing of this requirement. The Central Bank may take copies or extracts from any records or other documents provided in compliance with a requirement under section 15.

### Appointment of authorised officers

Section 16 provides for the appointment by the Central Bank of its officers, employees, or other "suitably qualified persons" to be authorised officers, for the purpose of exercising its functions under section 12 of the Bill and exercising its powers under Part 3 of the Bill. A "suitably qualified person" is defined as "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."

### Warrant of appointment

Section 17 provides that authorised officers are to be furnished with a warrant of appointment. When exercising a power under Part 3 an authorised officer will be required to produce such warrant with a form of personal identification for inspection if requested by a person affected by the exercise of the power.

### Power of authorised officers to enter premises

Section 18(1) provides that authorised officers will have a power to enter premises for the purpose of performance by the Central Bank of its functions under section 12 of the Bill. Such power is subject to an authorised officer having reasonable grounds to believe that the premises are or have been used for the business of a relevant person or the keeping of records related to the business of a relevant person.

Section 18(2) provides that a dwelling may not be entered unless an authorised officer has the consent of the occupier or a warrant under section 20 of the Bill. Article 40.5 of the Constitution provides for the inviolability of the dwelling in Irish law. It provides that a dwelling "shall not be forcibly entered save in accordance with law." The term "dwelling" is not defined in the Bill.<sup>46</sup>

Section 18(3) provides that "premises" includes a "vessel, aircraft, vehicle and any other means of transport, as well as land and any other fixed or moveable structure."

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<sup>46</sup> The term "dwelling" has been defined differently in several pieces of legislation, based on the statutory context. For example, different definitions of dwelling are set out in [section 2 of the Housing \(Miscellaneous Provisions\) Act 2009](#), [section 27 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010](#), [section 1 of the Criminal Law \(Defence and the Dwelling\) Act 2011](#) and [section 2 of the Water Services \(No.2\) Act 2013](#).

## Powers of authorised officers

Section 19 provides for the powers of authorised officers under Part 3 of the Bill. These include:

- to search and inspect the relevant premises or records held at the premises;
- to secure the premises or records at the premises for later inspection;
- to require the production of records;
- to take copies of relevant records;
- to require a relevant person to provide a on any matter about which the authorised officer reasonably believes the person has relevant information;
- to require a relevant person who has charge of data equipment, to give the authorised officer access and reasonable assistance in relation to the operation of this equipment;
- to require a relevant person to explain entries in relevant records;
- to require a relevant person at the premises to answer questions.
- to inspect banknote handling machines and coin processing machines; and
- to remove samples of processed banknotes and coins for further testing;

## Warrant required to enter premises

Section 20 provides for the procedures relating to the issuing of a warrant by a judge of the District Court authorising an authorised officer accompanied by other authorised officers or members of An Garda Síochána to enter a premises specified in the warrant or exercise the powers set out in Part 3 of the Bill. The judge must be satisfied on sworn information of an authorised officer that there are reasonable grounds for believing that records are to be found on the premises. The warrant will be valid for one month from its date of issue, but its period of validity may be extended.

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

Section 21(1) provides that the provision of information to the Central Bank by a person under Part 3 of the Bill will not be treated as a breach of any restriction under any enactment or legal rule.

Section 21(2) provides that where a person is required under Part 3 of the Bill to provide a record or document over which they claim a lien, the provision of the such record or document will be without prejudice to the lien.<sup>47</sup>

## Privileged legal material

Section 22 of the Bill provides that where a person refuses to produce information pursuant to a requirement under Part 3 of the Bill, on the basis that such information contains privileged legal material, the Central Bank may apply to the High Court for a determination as to whether the

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<sup>47</sup> A lien refers to the right to hold the property of another as security for the performance of an obligation. See definition of lien in *Murdoch and Hunt's Encyclopaedia of Irish Law*, available at [https://www.bloomsburyprofessionalonline.com/view/murdoch\\_hunt/lien.xml?rskey=ldyEV3&](https://www.bloomsburyprofessionalonline.com/view/murdoch_hunt/lien.xml?rskey=ldyEV3&). [For internal Oireachtas users.]

information is privileged legal material. Such an application is required to be brought within six months (or such longer period as the High Court may allow) of the date of refusal.

Section 22 defines “privileged legal material” as “information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.”

To bring an application the Central Bank must have reasonable grounds for believing the material is not privileged legal material, or due to the manner which such information is presented, it is impossible or impractical to extract only such information. The Central Bank is also required to have reasonable grounds to suspect that the information contains evidence relating to the commission of an offence under Part 3 of the Bill.

Section 22(3) of the Bill provides for an obligation on a person who refuses to produce information on the basis that it is privileged legal material. Such a person is required to preserve such information, pending the outcome of an application to the High Court under section 22.

### Obligations of relevant persons

Section 23(1)(a) of the Bill provides for an offence of failing to comply with Article 6.1 of the Euro Counterfeiting Regulation. Article 6.1 requires relevant bodies to check any euro notes and coins received by them for authenticity prior to recirculating them, with any counterfeits that are found, to be removed.

Section 23(1)(b) provides for an offence of failing to comply with Articles 3.1, 3.2 or 4.1 of the Euro Coin Regulation. Article 3.1 of the Euro Coin Regulation provides for the authentication of euro coins by coin-processing machines and trained personnel. Article 3.2 of the Euro Coin Regulation provides for submission of all suspected counterfeit coins and euro coins unfit for circulation to the designated national authority. Article 4.1 of the Euro Coin Regulation provides for the use of coin-processing machines that have met specified detection testing requirements.

Section 23(2) provides for an offence where a relevant person gives an assurance pursuant to Article 6.2 of the Euro Coin Regulation that is false or misleading. Article 6.2 of the Euro Coin Regulation refers to assurances from institutions that their personnel are appropriately trained to manually check the authenticity of euro coins to be put back into circulation.

Section 23(3) provides for an obligation on relevant persons to check euro banknotes for authenticity and fitness in accordance with the procedures in the Euro Banknote Decision and any regulations made under section 14 of the Bill.

Section 23(4) provides for an obligation on relevant persons to only recirculate euro banknotes in accordance with the Euro Banknote Decision.

Section 23(5) provides for an obligation on relevant persons to hand over counterfeit and unfit euro banknotes to the Central Bank.

Section 23(6) provides for an obligation on relevant persons to inform the Central Bank, prior to putting a type of banknote handling machine into operation and to provide the Central Bank with the information specified in Annex IV of the Euro Banknote Decision. Annex IV of the Euro Banknote Decision refers to data collection for cash handlers.

Section 23(7) provides for an offence where a relevant person fails to comply with an obligation arising under subsections (3), (4), (5) or (6).

Section 23(8)(a) provides that an offence under section 23 is punishable on summary conviction<sup>48</sup> to a class A fine or to a term of imprisonment of no greater than 12 months, or both. A “class A fine” refers to a maximum fine of €5,000. Section 23(8)(b) provides that an offence under section 23 is punishable on indictment to an unlimited fine or to a term of imprisonment of no greater than 5 years, or both.

Section 23(9) provides that where two relevant persons are involved in the recirculation of the same euro banknotes, the obligation under section 23(3) shall apply in respect of the person designated in regulations as set out in section 14 of the Bill, or where no regulations are in effect, as designated in contractual arrangements between those relevant persons.

Section 23(10) provides that summary proceedings for offences under section 23 may be brought and prosecuted by the Central Bank.

### Failure to comply with a requirement

Section 24 of the Bill provides that where a relevant person fails to comply with a requirement imposed by the Central Bank or an authorised officer under Part 3 of the Bill, the Central Bank or authorised officer may certify the failure or refusal to the High Court. Where such certification occurs, the High Court may inquire into the case and make such order or direction as the High Court sees fit, after hearing any witnesses produced and statement offered in defence.

### Offence of obstruction, etc.

Section 25 provides for a new offence of obstruction. Section 25(1) provides that this offence is committed where a person:

- obstructs or impedes the Central Bank or an authorised officer in the exercise of any powers under Part 3 of the Bill;
- without reasonable excuse, does not comply with a requirement imposed under Part 3 of the Bill;
- in purported compliance with a requirement imposed under Part 3 of the Bill, 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
- falsely represents himself or herself to be an authorised officer.

Section 25(2)(a) provides that an offence under section 25 is punishable on summary conviction to a class A fine or to a term of imprisonment of no greater than 12 months, or both. Section 25(2)(b) provides that an offence under section 25 is punishable on indictment to a maximum fine of €250,000 or to a term of imprisonment of no greater than 5 years, or both.

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<sup>48</sup> A summary conviction relates to a conviction for an offence in the District Court before a Judge without a jury.

Section 25(3) provides for where a person refuses to answer a question or comply with a requirement under Part 3 of the Bill, on the grounds that such an answer or compliance might tend to incriminate the person. Section 25(3) provides that a person shall not refuse to answer the question or comply with the requirement. However, any answer given or any information provided will not be admissible as evidence in criminal proceedings against the person, save in relation to proceedings under section 25.

## **Miscellaneous**

Part 4 of the Bill provides for the designation of the Currency Centre of the Central Bank as the National Analysis Centre [NAC] for euro notes and Coin National Analysis Centre [CNAC] for euro coins. Part 4 also contains a number of consequential amendments to other Acts arising out of the Bill.

### **Designation of NAC for euro notes and CNAC for euro coins**

Section 27(a) of the Bill provides that for the purposes of Article 4(1) of the Euro Counterfeiting Regulation, the Currency Centre of the Central Bank is designated as the NAC for euro notes.

Section 27(b) of the Bill provides that for the purposes of Article 5(1) of the Euro Counterfeiting Regulation, the Currency Centre of the Central Bank is designated as the CNAC for euro coins.

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