



THE CHAIRMAN & CEO

## WARNING RELATED TO COIN ALTERATION PRACTICES

Dear Sir or Madam,

I have noted that many coins issued by Monnaie de Paris have been altered by colouring or by gilding and were being sold on to the public in this altered form.

These practices, which affect, in particular, the 2-euro commemorative coins issued by Monnaie de Paris, together with some collectors' items, are illegal. They contravene the intellectual property rights of Monnaie de Paris, and also various statutory and regulatory provisions, of French and Community law, governing the status and the appearance of euro currency coins.

It is essential that a stop is put to these practices.

This warning letter, the intention of which is to provide a reminder of the provisions in force, is sent to all of the resellers of Monnaie de Paris.

You are reminded that Monnaie de Paris' sovereign and exclusive mission of minting tender coins and collectors' coins is derived from law and in particular from Articles L 121-2 and L 121-3 of the French Monetary and Financial Code.

Monnaie de Paris also manages, on its Pessac site, the Coin National Analysis Centre (CNAP – Centre National d'Analyse des Pièces) and the European Technical and Scientific Centre (ETSC). Combating counterfeiting is therefore at the heart of its mission.

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- **ALTERING COINS INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF MONNAIE DE PARIS**

The coins issued by Monnaie de Paris and the designs that appear on those coins are intellectual works protected by copyright as defined by Articles L 111-1 et seq. of the French Intellectual Property Code.

Monnaie de Paris owns the copyright on the coins that it issues in accordance with Article L.123-1 of the French Monetary and Financial Code which stipulates that:

*"Bank notes and coins have the benefit of the protection given to intellectual works by Articles L. 122-4 and L. 335-2 of the French Intellectual Property Code. The issuing authorities are vested with the copyright".*

With regard, more specifically, to the common reverse of euro coins, you are reminded that this was subject to a European Commission communication dated 22 October 2010 stating that copyright was transferred by the Commission to the member States. Monnaie de Paris is the institution that owns the copyright in France.

It is obliged to take all measures to stop copyright infringements, where applicable.

The practice of altering coins, whether by colouring or by gilding, entails a blatant distortion of the original works which constitutes an infringement of the moral right which includes the right to have the integrity of the protected work respected.

Moreover, as far as the unauthorised use of the coins, which are transformed by colouring or gilding into novelty coin-like products, is concerned, this also infringes the patrimonial rights of Monnaie de Paris.

Monnaie de Paris is therefore entitled to sue, for copyright infringement, in the civil and criminal courts, any person or legal entity that produces or sells coins that are altered without authorisation.

In addition, Monnaie de Paris is required to forge partnerships, particularly in the form of licenses, with right holders whose trademarks, logos, graphics and other creations protected by copyright or other intellectual property rights are likely to appear on the coins issued. It can also ask external artists to produce the original designs to be engraved on the coins.

All of these right holders are also entitled to sue for counterfeiting in the event of an infringement to their own rights as a result of the unauthorised alteration of the coins.

Any alteration therefore lays its perpetrator and the resellers concerned open to legal proceedings not only from Monnaie de Paris but also from all of the assigns, where applicable, with it being made clear that these various proceedings may be cumulative.

- **ALTERING COINS CONTRAVENES THE SPECIFICATIONS SET BY THE COMMUNITY BODIES AND THE MINISTER FOR THE ECONOMY**

The coins issued by Monnaie de Paris are also subject to precise specifications, governed by Community regulations and/or set by an order of the Minister responsible for the economy.

EU Council regulation no. 566/2012, of 18 June 2012, amending EC regulation no. 975/98 on denominations and technical specifications of euro coins intended for circulation defines the status of euro coins in respect of their appearance, their designs and their technical specifications.

This regulation sets out a procedure for the Council to approve the national sides of coins before any coins are issued. Under this procedure, member States are obliged to advise each other of the proposed designs plus, for commemorative coins, the estimated coin issue volume before the design is officially approved. The Commission is also consulted.

Euro coins intended for circulation, including € 2 commemorative coins, are therefore subject to a specific approval process before they are issued and it excludes any subsequent alteration.

Also, within French law, every year, the Minister in charge of the Economy defines, by means of an order, the composition, the characteristics and the putting into circulation of collectors' coins issued by Monnaie de Paris. This ministerial order specifically defines the themes, designs and appearance of the coins.

These precise specifications also exclude any subsequent modification, in particular through colouring or gilding.

The integrity of the coins - those in circulation and commemorative and collectors' coins - must therefore be preserved, even if you are not aware of the initial regulatory and official specifications.

- **ALTERING COINS MAKES THEM UNFIT FOR CIRCULATION AND DEPRIVES THEM OF ANY LEGAL TENDER STATUS**

In any event, altering coins, in particular by colouring or gilding, makes them unfit for circulation and deprives them of any legal tender status.

Regulation no. 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning the authentication of euro coins and the handling of euro coins unfit for circulation clearly lays down that it is not only coins which have been rejected during an authentication process but also "*euro coins whose appearance has been significantly altered*" which are unfit for circulation (Article 2).

Pursuant to this wording, coins which have undergone colouring or gilding, which has, in all cases, had the effect of significantly altering their appearance, become unfit for circulation, which is not without consequences.

Under the terms of Article 8 of regulation no. 1210/2010, in fact:

- coins unfit for circulation must be withdrawn from circulation,
- member States can refuse to reimburse coins unfit for circulation which have been deliberately altered.

In addition, member States must make sure that, once the euro coins that are unfit for circulation have been withdrawn, they are destroyed so that they cannot be put back into circulation or submitted for reimbursement purposes.

The result is not only that coloured or gilded coins are forbidden from circulation and deprived of any legal tender status, but that they no longer have any value, not even up to their face value.

This also applies to collectors' coins issued by Monnaie de Paris which, having been improperly coloured or gilded, lose their legal tender status in France and no longer have any nominal value.

It must be recalled that the mutilation of euro coins - both those in circulation and collectors' items - is not desirable and can only be tolerated on an ad hoc basis, when it is done for artistic purposes, and, under no circumstances systematically or for mass marketing purposes (Commission recommendation no. 2010/191/EU of 22 March 2010 concerning the scope and effects of legal tender of euro banknotes and coins, Article 7).

## ALTERED COINS RISK BEING CONFUSED WITH LEGAL TENDER COINS

As coloured or gilded coins are unfit for circulation, deprived of both the status of legal tender and any nominal value, they must be considered to be mere novelty coin-like products.

However, the risk of confusion with real, unaltered coins which have retained their legal tender status, is obvious.

Council regulation no. 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins, amended by Council regulation no. 46/2009 of 18 December 2008, protects euro coins against medals and tokens similar to coins, in order to prevent any risk of confusion.

This regulation bans, inter alia, the production, the sale, and the importation and distribution, for sale or other commercial purposes, of medals and tokens a) whose surface includes the words "euro", "euro cent" or the euro symbol, b) whose size is within a reference band defined by the regulation or c) whose surface includes a design similar to those present on euro coins. These conditions are alternative and if just one of them applies, this results in the ban on producing, selling, importing or distributing the contentious product.

There is no question that coloured or gilded coins fall within the scope of this wording and the ban that it stipulates since in such a scenario the three conditions are met.

In fact, the average consumer with such a coloured or gilded coin, or one altered in any other way, in his/her hand, may think that it is a euro coin in circulation or a collectors' coin that is still legal tender and has been issued as such by the relevant institution.

The risk of confusion is even greater when the colouring, in particular that of the commemorative 2-euro coins, generally only involves the national side, with the common side bearing the face value and the word "euro" not being coloured.

For these reasons also, such processes are unacceptable and illegal.

They are also likely to justify criminal legal proceedings in France given that, under the terms of Article 442-6 of the French Penal Code *"the manufacture, sale or distribution of any objects, printed documents or forms which resemble the monetary instruments referred to in Article 442-1 so as to facilitate their acceptance instead and in place of the imitated instruments are punishable by one year's imprisonment and a fine of €15,000"*.

- **ALTERED COINS CONTRAVENE THE FRENCH CONSUMER CODE**

Beside the fact that the product is illegal and deceptive, any communication intended for consumers which does not clearly advise them of the loss of legal tender status of the coins sold and the other consequences detailed above must be deemed to be deceptive.

It is pointed out that deceptive business practices are made a criminal offence by Articles L121-1 and L 213-1 of the French Consumer Code, with the latter article punishing the offence of deceit by two years' imprisonment and/or a € 37,500 fine (€ 187,500 for legal entities).

Under the terms of Article L121-1 of the French Consumer Code, a business practice is deceptive, inter alia:

- when it creates confusion with another good or service, a trademark, a trade name or another distinctive sign of a competitor;
- when it is based on claims, information or presentations that are false or likely to mislead and which relate to the product's basic characteristics, including its substantive qualities, its origin, its mode and its date of manufacture, or even the conditions of its use and its fitness for purpose;
- when the person or legal entity of behalf of whom/which it is done is not clearly identifiable.

The sale of a coloured or gilded coin constitutes such a practice as long as the consumer has good reason to think that the product sold is still a coin, has been issued as such by Monnaie de Paris and is still legal tender.

The deception is strengthened by the fact that the consumer, in the light of the face value still appearing on the coloured or gilded coin, is necessarily misled since he/she is not very clearly advised of the lack of any nominal or reimbursement value of the coin, which is likely, on the contrary, to be retained by the relevant monetary institution without any reimbursement in accordance with the above-mentioned regulation no.1210/2010 of 15 December 2010.

Such a product is thus radically different from an unaltered collectors' coin which has kept its legal tender status and which can, in some cases, be sold at a price higher than its face value, and may increase in value, but for which the purchaser is assured that its residual value will never be less than its face value.

In this regard, the sale of coloured or gilded coins is particularly deceptive for consumers.

Monnaie de Paris will therefore act, in all cases, on this basis, in particular by referring the matter to the French Directorate General for Competition, Consumer Affairs and Repression of Fraud.

- **THE PENAL CODE HEAVILY PUNISHES THE FALSIFICATION OF MONEY**

It must be recalled that the French Penal Code punishes as a crime not only the counterfeiting of money but also the falsification of money:

*Article 442-1 of the French Penal Code:*

*The counterfeiting or the falsification of coins or banknotes which are legal tender in France or are issued by authorised foreign or international institutions for that purpose is punishable by thirty years' criminal imprisonment and a fine of €450,000 (...).*

*Article 442-2 of the French Penal Code:*

*Transporting, putting into circulation or holding, with a view to putting into circulation, any falsified or counterfeited money referred to in the first paragraph of Article 442-1, or illegally produced money referred to in the second paragraph of that article, is punishable by ten years' imprisonment and a fine of €150,000.*

*The offences mentioned in the previous paragraph are punishable by thirty years' criminal imprisonment and a fine of €450,000 when they are committed by an organised gang (...).*

The generic notion of "falsification" mentioned in those two articles includes the colouring of money, which was punished as such by the previous wordings which they have replaced.

It should also be pointed out that Council regulation no. 1338/2001 of 28 June 2001 laying down measures necessary for protection against counterfeiting stipulates that counterfeiting shall mean "any fraudulent making or alteration of euro notes or coins regardless of the means used to achieve the result".

The criminal offences mentioned above would therefore be intended to apply if it was argued or suggested that coloured or gilded coins offered for sale are still intended for circulation or likely to be put into circulation.

- **THE PRODUCTION AND THE SELLING ON OF ALTERED COINS CONSTITUTE ACTS OF UNFAIR COMPETITION**

Money-altering processes are also likely to infringe the rules of lawful and fair competition.

Indeed, the consumer is led to believe that Monnaie de Paris has itself issued the coloured or gilded coins, which is not the case. The risk of confusion already mentioned *supra* can therefore justify a legal action by Monnaie de Paris for unfair competition based on Article 1382 of the French Civil Code.

There is also unfair competition through parasitic behaviour since, in such a case, the dealer rides on the coat-tails of Monnaie de Paris and takes advantage of its creations to sell a product which the dealer itself has coloured without any authorisation. This practice is also punishable under Article 1382 of the French Civil Code.

Obviously, the use of such products as a loss leader or resale at loss them would constitute acts of specific unfair competition.

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**Consequently, Monnaie de Paris is insistently asking you not to alter coins issued by it.**

If you are involved in the production, promotion and marketing of coins issued by Monnaie de Paris which have been coloured, gilded or altered in any other way, you are ordered to cease within a period of fifteen days of receipt of this letter.

Monnaie de Paris will henceforth take all measures to put an end to such behaviour, to have such behaviour punished and to obtain compensation for the damage suffered, both in and outside France, including:

- breaches will be recorded by a bailiff;
- the French Directorate General for Competition, Consumer Affairs and Repression of Fraud, the supervisory authorities of Monnaie de Paris and the relevant Community and local authorities will be notified;



- with regard to offences committed on the Internet (online promotion and selling), Monnaie de Paris may send formal demands to the hosts of the contentious websites pursuant to Article 6-1-5 of law no. 2004-575 of 21 June 2004 for the purpose of getting the illegal content withdrawn;
- advertising inserts in the written and online press may result in a complaint to the Advertising Ethics Jury of the French professional advertising regulation authority (ARPP), whose decisions are published;
- Monnaie de Paris will also carry out its obligations under Article 40 of the French Criminal Procedure Code by reporting criminally reprehensible behaviour to the Public Prosecutor
- more generally, Monnaie de Paris will initiate all appropriate legal proceedings, before both civil and criminal courts, to put an end to the violations and obtain the relevant financial compensation.

Yours faithfully,

Christophe BEAUX