



# Reports of Cases

## OPINION OF ADVOCATE GENERAL MEDINA

delivered on 15 December 2022<sup>1</sup>

### Case C-772/21

#### UAB ‘Brink’s Lithuania’

(Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania))

(Reference for a preliminary ruling – Protection of the euro against counterfeiting – Regulation (EC) No 1338/2001 – Article 6(1) – Payment service providers engaged in the processing and distribution of notes to the public – Interpretation of Article 6(2) of Decision ECB/2010/14 – Detection of unfit euro banknotes – Automated fitness checking – Minimum standards published on the ECB’s website and amended from time to time – Personal scope – Extent of cash handlers’ obligations – Binding force – Principle of legal certainty)

### I. Introduction

1. This request for a preliminary ruling concerns the interpretation of Decision ECB/2010/14,<sup>2</sup> which lays down common rules and procedures on the authenticity and fitness checking of euro banknotes under Article 6(1) of Regulation No 1338/2001.<sup>3</sup>

2. The request has been made in the context of proceedings between UAB ‘Brink’s Lithuania’ (‘Brink’s Lithuania’),<sup>4</sup> on the one hand, and Lietuvos bankas (Bank of Lithuania), on the other, concerning a decision<sup>5</sup> by which the latter ordered Brink’s Lithuania to ensure that the tolerance level of its banknote handling machines, for the automated fitness checking of euro banknotes for recirculation, did not exceed 5%.

3. In the present case, the Court is called upon to determine whether Article 6(2) of Decision ECB/2010/14 and, in particular, the minimum standards laid down by the European Central Bank (ECB) for the automated fitness checking of euro banknotes, as referred to in that provision, apply to cash handlers. If they do not, the Court must then examine whether Article 6(2) of Decision ECB/2010/14, read in conjunction with Article 3(5) of the same decision, precludes a provision of

<sup>1</sup> Original language: English.

<sup>2</sup> Decision of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (ECB/2010/14) (2010/597/EU) (OJ 2010 L 267, p. 1), as amended by Decision of the European Central Bank of 7 September 2012 (ECB/2012/19) (2012/507/EU) (OJ 2012 L 253, p. 19) (‘Decision ECB/2010/14’).

<sup>3</sup> Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ 2001 L 181, p. 6), as amended by Council Regulation (EC) No 44/2009 of 18 December 2008 (OJ 2009 L 17, p. 1) (‘Regulation No 1338/2001’).

<sup>4</sup> Brink’s Lithuania acts in the main proceedings as the legal successor of UAB ‘G4S Lietuva’.

<sup>5</sup> Decision No V2019/(30.90)-394-I of 28 February 2019 entitled ‘Injunction addressed to UAB “G4S Lietuva”’ (‘the contested decision’).

national law requiring cash handlers to comply with those minimum standards. Finally, the referring court asks whether the ECB's minimum standards and Article 6(2) of Decision ECB/2010/14 are valid and, therefore, legally binding in the light of the principle of legal certainty and Article 297(2) TFEU.

## II. Legal framework

### A. *European Union law*

#### 1. *Regulation No 1338/2001*

4. Regulation No 1338/2001 lays down measures necessary with a view to uttering euro notes and coins in such a manner as to protect them against counterfeiting.<sup>6</sup>

5. Article 6 of Regulation No 1338/2001, entitled 'Obligations relating to credit institutions engaged in the processing and distribution to the public of notes and coins', provides in paragraph 1 and 2:

'1. Credit institutions, and, within the limits of their payment activity, other payment service providers, and any other institutions engaged in the processing and distribution to the public of notes and coins, including:

...

– transporters of funds,

...

shall be obliged to ensure that euro notes and coins which they have received and which they intend to put back into circulation are checked for authenticity and that counterfeits are detected.

For euro notes, this check shall be carried out in line with procedures defined by the ECB ...

The institutions and economic agents referred to in the first subparagraph shall be obliged to withdraw from circulation all euro notes and coins received by them which they know or have sufficient reason to believe to be counterfeit. They shall immediately hand them over to the competent national authorities.

...

2. Member States shall take the necessary measures to ensure that the establishments referred to in paragraph 1 which fail to discharge their obligations under the said paragraph are subject to effective, proportionate and deterrent sanctions.'

<sup>6</sup> Article 1 of Regulation No 1338/2001.

## 2. *Decision ECB/2010/14*

6. Recital 2 of Decision ECB/2010/14 provides:

‘To protect the integrity of euro banknotes and enable a proper detection of counterfeits, euro banknotes in circulation must be maintained in good condition to ensure that they can be easily and reliably checked for genuineness, and therefore euro banknotes must be checked for fitness. Furthermore, suspect counterfeit euro banknotes must be quickly detected and handed over to the competent national authorities.’

7. Article 1 of Decision ECB/2010/14, under the heading ‘Scope’, provides:

‘This Decision lays down common rules and procedures on the authenticity and fitness checking and recirculation of euro banknotes under Article 6(1) of Regulation [No 1338/2001].

8. Article 2 of that decision, entitled ‘Definitions’, provides:

‘For the purposes of this Decision:

1. “NCB” means the national central bank of a Member State whose currency is the euro.
2. “Cash handlers” means the institutions and economic agents referred to in Article 6(1) of Regulation [No 1338/2001].
3. “Recirculation” means the action, by cash handlers, of putting back into circulation, directly or indirectly, euro banknotes that they have received, either from the public as payment or as a deposit in a bank account, or from another cash handler.
4. “Banknote handling machine” means a customer-operated or staff-operated machine as defined in Annex I.
5. “Type of banknote handling machine” means a banknote handling machine that can be distinguished from other banknote handling machines as described in Annex I.
6. “Common test procedures” means the test procedures, as specified by the ECB, to be applied by NCBs in order to test types of banknote handling machine.

...

11. “Unfit euro banknotes” means euro banknotes which are evaluated as unsuitable for recirculation following the fitness checking referred to in Article 6.

...’

9. Article 3 of Decision ECB/2010/14, under the heading ‘General principles’, provides in paragraphs 1 and 3 to 5:

‘1. The obligation of cash handlers to check euro banknotes for authenticity and fitness shall be carried out in line with procedures laid down in this Decision.

...

3. The authenticity and fitness checking shall be carried out either by a type of banknote handling machine successfully tested by an NCB, or manually by a trained staff member.

4. Euro banknotes may only be recirculated via customer-operated machines or cash dispensers if they have been checked for authenticity and fitness by a type of banknote handling machine successfully tested by an NCB and classified as genuine and fit. ...

5. Staff-operated machines, when used for the purpose of authenticity and fitness checking, and customer-operated machines may only be put into operation by cash handlers if they have been successfully tested by an NCB and listed on the ECB's website as laid down in Article 9(2). The machines shall be used only for the denominations and series of euro banknotes listed on the ECB's website for the corresponding machines, with the standard factory settings, including any updates thereof, that have been successfully tested unless stricter settings are agreed between the NCB and the cash handler.'

10. Article 6 of Decision ECB/2010/14, entitled 'Detection of unfit euro banknotes', provides in paragraphs 1 to 3:

'1. Manual fitness checking shall be carried out in accordance with the minimum standards laid down in Annex III.

2. Automated fitness checking shall be carried out by a successfully tested banknote handling machine according to the minimum standards which are published on the ECB's website and amended from time to time.

3. An NCB may, after informing the ECB, lay down stricter standards for one or more denominations or series of euro banknotes if this is justified, for example by a deterioration in the quality of the euro banknotes in circulation in its Member State. These stricter standards shall be published on that NCB's website.'

11. Article 9 of that same decision, entitled 'Eurosystème's common test procedures for banknote handling machines', states in paragraphs 1 to 3:

'1. Types of banknote handling machines shall be tested by NCBs in accordance with the common test procedures.

2. All successfully tested types of banknote handling machines shall be listed on the ECB's website during the periods of validity of the test results, as referred to in paragraph 3. A type of banknote handling machine that becomes unable during this period to detect all counterfeit euro banknotes known to the Eurosystème shall be removed from the list in accordance with a procedure specified by the ECB.

3. Where a type of banknote handling machine is successfully tested, the test results shall be valid throughout the euro area for one year from the end of the month in which the test was carried out, provided that it remains capable of detecting all counterfeit euro banknotes known to the Eurosystème during this period.'

12. Article 10 of Decision ECB/2010/14, under the heading 'Eurosystem monitoring activities and corrective measures', provides in paragraphs 1 and 3:

'1. Subject to national law requirements, NCBs are authorised (i) to carry out on-site inspections, including unannounced ones, at cash handlers' premises to monitor their banknote handling machines, in particular the machines' capacity to check for authenticity and fitness and to trace suspect counterfeit euro banknotes and euro banknotes that are not clearly authenticated to the account holder; and (ii) to verify the procedures governing the operation and control of the banknote handling machines, the treatment of checked euro banknotes and any manual authenticity and fitness checking.

...

3. When an NCB detects non-compliance by a cash handler with the provisions of this Decision, it shall require the adoption by the cash handler of corrective measures within a specified time limit. Until the non-compliance is rectified, the requiring NCB may, on behalf of the ECB, prohibit the cash handler from recirculating the euro banknote denomination(s) of the series concerned. If the non-compliance is due to a failure of the type of banknote handling machine, this may lead to its removal from the list referred to in Article 9(2).'

### *3. Decision ECB/2012/19*

13. Decision ECB/2012/19 amended Decision ECB/2010/14. In particular, recital 3 of Decision ECB/2012/19 states:

'The minimum standards for automated fitness checking of euro banknotes, as set out in Annex IIIa to Decision ECB/2010/14, constitute requirements applying to the functionalities of banknote handling machines. They are therefore only of interest to manufacturers of banknote handling machines and have no impact on the authenticity and fitness checking procedures laid down in Decision ECB/2010/14, with which cash handlers have to comply. As they are outside the scope of Decision ECB/2010/14, the minimum standards for automated fitness checking should be integrated into the rules and procedures for the testing of banknote handling machines, data collection and monitoring.'

### *4. Guideline ECB/2010/NP16 and the minimum standards*

14. Guideline ECB/2010/NP16 lays down the rules and procedures for the testing of banknote handling machines, data collection and monitoring.<sup>7</sup>

15. Article 2 of Guideline ECB/2010/NP16, under the heading 'Tests for banknote handling machines', provides in paragraph 1:

'At the request of manufacturers, NCBs shall carry out verification tests of types of banknote handling machines prior to and upon their installation by cash handlers. ...'

<sup>7</sup> Guideline of the European Central Bank of 16 September 2010 on rules and procedures for the testing of banknote handling machines, data collection and monitoring (ECB/2010/NP16), as amended by Guideline of the European Central Bank of 7 September 2012 (ECB/2012/NP20) ('Guideline ECB/2010/NP16').

16. Article 2a of Guideline ECB/2010/NP16, entitled 'Minimum standards for automated fitness checking', provides:

'The minimum standards for automated fitness checking by banknote handling machines referred to in Article 6 of Decision ECB/2010/14 shall be defined by the Eurosystem, set out in Annex IV to this Guideline and published on the ECB's webpage.'

17. Annex IV to Guideline ECB/2010/NP16 states:

'This Annex lays down minimum standards for automated fitness checking of euro banknotes by banknote handling machines.

In the course of the fitness checks, euro banknotes with any defect in respect of which a mandatory requirement has been defined as set out below are unfit.

The acceptable tolerance level for the fitness checks by banknote handling machines is 5%. This means that a maximum of 5% of the euro banknotes that do not meet the fitness criteria may be misclassified by the machines and sorted as fit.'

18. The content of Annex IV to Guideline ECB/2010/NP16 has been published by the ECB on its website under the title 'Minimum standards for automated fitness checking of euro banknotes by banknote handling machines'.<sup>8</sup>

## ***B. Lithuanian law***

19. Article 6(3) of the Lietuvos banko įstatymas (Law on the Bank of Lithuania)<sup>9</sup> provides that:

'The Bank of Lithuania shall supervise how cash handlers, that is to say, the institutions specified in Article 6(1) of Regulation [No 1338/2001] ("cash handlers"), perform the requirements provided for in Regulation [No 1210/2010]<sup>10</sup> and Decision ECB/2010/14 for cash handling activities – authenticity and fitness checking and recirculation of euro banknotes and coins ("cash handling activities").'

20. Article 47<sup>5</sup>(1) of that law provides:

'The Bank of Lithuania shall supervise the cash handling activities of cash handlers and shall issue instructions to cash handlers in accordance with the provisions of this Law, Regulation [No 1338/2001], Regulation [No 1210/2010], Decision ECB/2010/14 and the legal acts of the Bank of Lithuania on the supervision of the activities of cash handlers. ...'

21. Article 47<sup>6</sup>(1) of that law states:

'The Bank of Lithuania shall organise and carry out checks in order to determine compliance with the requirements established in the legal acts referred to in Article 6(3) of this Law.'

<sup>8</sup> See <https://www.ecb.europa.eu/euro/cashprof/cashhand/recycling/html/fitness.en.html>.

<sup>9</sup> Law of the Republic of Lithuania on the Bank of Lithuania, in the version of Law No XII-1304 of 27 June 2018.

<sup>10</sup> 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 (OJ 2010 L 339, p. 1) ('Regulation No 1210/2010').

22. Article 47<sup>7</sup>(1)(2) of the Law on the Bank of Lithuania provides:

‘Upon detection of infringements, the Bank of Lithuania shall issue one or more mandatory instructions to the cash handler:

...

(2) to remedy the infringements within the period set by the Bank of Lithuania.’

23. Article 47<sup>7</sup>(4) and (5) of that law provides:

‘4. The Bank shall impose on the infringer one or more of the following measures:

(1) a warning concerning the infringements;

(2) the fines provided for in this Article.

5. Measures may be imposed on one or more of the following grounds:

...

(2) failure to comply with or improper compliance with injunctions issued by the Bank of Lithuania;

...

(4) infringement of the requirements ... of [Decision ECB/2010/14].’

24. Point 16.3 of the Resolution of the Board of Directors of the Bank of Lithuania of 10 September 2015 describing the procedure for the supervision of cash-handling activities (‘the resolution on the procedure for the supervision of cash-handling activities’) provides that, during an inspection, officials are required to test the ability of the banknote handling machines used by cash handler to check euro banknotes and coins for authenticity and fitness.

25. Point 16.6 of that resolution provides that, during an inspection, officials are required to assess whether the cash handler is complying properly with the procedures set out in Point 16.5 of that resolution and other requirements for cash handling activities laid down, inter alia, in Regulation No 1338/2001, Decision ECB/2010/14, and the Resolution of the Board of Directors of the Bank of Lithuania of 16 September 2014 describing the procedure for authenticity and fitness checking and recirculation of euro banknotes and coins (‘the resolution on the procedure for authenticity and fitness checking’).

26. Point 12 of the resolution on the procedure for authenticity and fitness checking states:

‘Cash handlers shall check euro banknotes for authenticity and fitness by means of automated systems, in compliance with the minimum standards published on the ECB’s website ..., using the following:

12.1. Customer-operated machines, for which the banknotes shall be classified and treated in accordance with the procedure established in Annex IIa to Decision [ECB/2010/14];

12.2. Staff-operated machines, for which the banknotes shall be classified and treated in accordance with the procedure established in Annex IIB to Decision [ECB/2010/14].'

### **III. The facts in the main proceedings and the questions referred**

27. On 18 December 2018, officials of the Bank of Lithuania carried out an on-site inspection at the branch of Brink's Lithuania situated in Panevėžys (Lithuania). During that inspection, the officials verified whether the banknote handling machines used in that branch complied with the requirements governing the treatment of cash intended for recirculation. In particular, they tested the capability of those machines to check euro banknotes for authenticity and fitness.

28. The test revealed that one of the handling machines had sorted, as fit for circulation, 18.26% of the unfit euro banknotes contained in the test package. For a second machine, that rate was 13.91%. The results of the test were set out in an inspection report, which recognised, nonetheless, that the machines in question belong to a type of banknote handling machine which had already been tested successfully and was listed on the ECB's website.

29. On 28 February 2019, the Director of the Cash Department of the Bank of Lithuania adopted the contested decision. That decision declared that Brink's Lithuania had infringed the minimum standards referred to in Article 6(2) of Decision ECB/2010/14, which requires the tolerance level for the fitness checking of euro banknotes to be no higher than 5%. It also ordered Brink's Lithuania to adopt the necessary measures to remedy the infringement within five days.

30. In essence, the contested decision stated that the ability of banknote handling machines to check euro banknotes for authenticity and fitness depends not only on the manufacturers of those machines, but also on their users – namely cash handlers – regarding in particular their technical maintenance. Moreover, it pointed out that the mere fact of using those machines with the standard factory settings, as required by Article 3(5) of Decision ECB/2010/14, could not be regarded as evidence of compliance with those obligations. Finally, the contested decision stated that only inspections carried out at the cash handler's premises can reveal whether appropriate use and maintenance of the handling machines is ensured, whether the requirements applicable to cash treatment are duly complied with and whether appropriate procedures are implemented to test those machines.

31. Brink's Lithuania brought an action seeking annulment of the contested decision, first, before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) and, subsequently, before the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania), the referring court in the present case. In the dispute in the main proceedings, it is common ground that Brink's Lithuania, as a transporter of funds, must be regarded as a cash handler within the meaning of Article 2(2) of Decision ECB/2010/14. However, the referring court has doubts as to the interpretation and validity of Article 6(2) of Decision ECB/2010/14, namely whether the minimum standards referred to in that provision are binding on cash handlers.

32. In particular, the referring court points out that the wording of the Lithuanian version of that provision suggests that the automated fitness checking of euro banknotes must be carried out in conformity with the ECB's minimum standards. That would entail that cash handlers, who are in charge of performing that task, would have to comply with those standards. However, recital 3 of Decision ECB/2012/19 states, at the same time, that the ECB's minimum standards are only of

interest to manufacturers of banknote handling machines and have no impact on the automated fitness checking procedures which cash handlers have to perform. In that context, the referring court is uncertain whether, in the light of the various linguistic versions of Article 6(2) of Decision ECB/2010/14, that provision requires cash handlers to ensure the respect of the ECB's minimum standards.

33. Moreover, the referring court observes that, if Article 6(2) of Decision ECB/2010/14 were to be interpreted as imposing on cash handlers the obligation to test their banknote handling machines according to the ECB's minimum standards, that obligation could be not fully compatible with the one arising under Article 3(5) of the same decision, given that the latter provision expressly requires cash handlers to use those machines with the standard factory settings. The referring court also takes the view that it is difficult to determine how cash handlers should carry out that test, taking into account that no indication is provided by Decision ECB/2010/14 on that point. By contrast, the referring court notes that, if the obligation to comply with the minimum standards under Article 6(2) of Decision ECB/2010/14 were not applicable to cash handlers, the use of only banknote handling machines with the standard factory settings could undermine the objective of ensuring that euro banknotes are kept in good condition.

34. Finally, should cash handlers be bound by the minimum standards referred to in Article 6(2) of Decision ECB/2010/14, the referring court expresses its doubts as to whether those standards respect the principle of legal certainty. In that regard, the referring court points out that, according to that same provision, minimum standards are merely published on the ECB's website and not in the *Official Journal of the European Union*. The referring court therefore questions whether the minimum standards can be regarded as binding and can be invoked as the legal basis for an injunction against a cash handler. The referring court is also unsure whether the rule set out in Article 6(2) of Decision ECB/2010/14 is compatible with Article 297(2) TFEU, and thus valid, in so far as it provides that the minimum standards for automated fitness checking of euro banknotes must be published in that manner.

35. In those circumstances, the Lietuvos vyriausiosios administracinės teisės (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Should Article 6(2) of Decision ECB/2010/14 be interpreted as meaning that the minimum standards referred to in that rule must be complied with by a cash handler who carries out automated fitness checking of euro banknotes?
- (2) If, in accordance with Article 6(2) of Decision ECB/2010/14, the minimum standards referred to therein are applicable only to manufacturers of banknote handling machines, but not to cash handlers, should Article 6(2) of Decision ECB/2010/14, read in conjunction with Article 3(5) thereof, be interpreted as precluding a provision of national law according to which the obligation to comply with those minimum standards does apply to a cash handler?
- (3) Do the minimum standards for automated fitness checking of euro banknotes by banknote handling machines, regard being had to the fact that they are published on the ECB's website, comply with the principle of legal certainty and with Article 297(2) TFEU, and are they binding on, and capable of being relied upon, as regards cash handlers?

- (4) Is Article 6(2) of Decision ECB/2010/14, in so far as it provides that the minimum standards for automated fitness checking of euro banknotes are published on the ECB's website and amended from time to time, contrary to the principle of legal certainty and to Article 297(2) TFEU, and therefore invalid?

36. The request for a preliminary ruling was lodged at the Court Registry on 14 December 2021. Written observations have been presented by the Republic of Lithuania, the European Commission and the European Central Bank. A hearing was held on 20 October 2022.

#### **IV. Legal assessment**

37. By its questions, the referring court is essentially asking the Court to rule on whether Article 6(2) of Decision ECB/2010/14 requires cash handlers to comply with the minimum standards referred to in that provision when carrying out the automated fitness checking of euro banknotes. If that question is answered in the negative, the referring court further seeks to ascertain whether a national provision such as the one at issue in the main proceedings, which sets out an obligation of that sort for cash handlers, is compatible with Article 6(2) of Decision ECB/2010/14, read in combination with Article 3(5) thereof. Moreover, the referring court asks whether, in the event that cash handlers are required to comply with the minimum standards referred to in that provision, the mere publication of those standards on the ECB's website, as prescribed by Article 6(2) of Decision ECB/2010/14, is sufficient to consider them to be in accordance with the principle of legal certainty and with Article 297(2) TFEU and thus to be binding. By the same token, the referring court also calls into question the validity of Article 6(2) of Decision ECB/2010/14.

##### **A. Question 1**

38. The first question addressed by the referring court relates to the scope of the obligations imposed on cash handlers by Decision ECB/2010/14 to protect the euro against counterfeiting. More specifically, that question seeks to determine whether the minimum standards referred to in Article 6(2) of Decision ECB/2010/14 apply to cash handlers when they discharge their obligation to carry out automated fitness checking of euro banknotes.

39. As a preliminary point, I must recall that Article 6 of Regulation No 1338/2001 lays down measures necessary for the protection of the euro against counterfeiting. That provision requires institutions engaged in the sorting and distribution to the public of banknotes as a professional activity – including cash handlers – to withdraw from circulation all euro banknotes received by them which they know or have sufficient reason to believe to be counterfeit, and to immediately hand them over to the competent national authorities. That same provision stipulates that Member States must take the necessary measures to ensure that credit institutions and other professional cash handlers, which fail to discharge the aforementioned obligations, are subject to effective, proportionate and deterrent sanctions.

40. Decision ECB/2010/14 gives further expression to Article 6 of Regulation No 1338/2001.<sup>11</sup> In particular, Article 3(1) of that decision requires cash handlers to check euro banknotes for authenticity and fitness in line with the procedures laid down in that same decision. The underlying aim is to ensure the good condition of euro banknotes, so that they can be easily and

<sup>11</sup> See Article 1 of Decision ECB/2010/14.

reliably checked for genuineness, and thus to enable the detection of counterfeits.<sup>12</sup> Moreover, Article 3(3) of Decision ECB/2010/14 specifies that authenticity and fitness checking is to be carried out either by a type of banknote handling machine successfully tested by a national central bank of the Eurosystem, or manually by a trained staff member. In cases of staff- or customer-operated machines,<sup>13</sup> Article 3(5) of Decision ECB/2010/14 also stipulates that those machines are to be used only for the denominations and series of euro banknotes listed on the ECB's website for the corresponding machines, with the standard factory settings, including any updates thereof.

41. Regarding automated fitness checking, which is at the core of the present case, Article 6(2) of Decision ECB/2010/14, under the heading 'Detection of unfit euro banknotes', sets out that that checking '[must] be carried out by a successfully tested banknote handling machine according to the minimum standards which are published on the ECB's website and amended from time to time'. That provision does not specify whether those minimum standards apply to cash handlers, nor does it define, in particular, whether cash handlers are required to monitor that the machines that they use to carry out automated fitness checking of euro banknotes for recirculation comply with those standards.

42. The Court has consistently held that, for the purpose of interpreting a provision of EU law in response to a request for a preliminary ruling, it is necessary to consider not only the wording of that provision, but also its context and the objectives of the rules of which it is part.<sup>14</sup>

43. In the first place, I observe that, as the referring court points out, Article 6(2) of Decision ECB/2010/14 could be interpreted as meaning, from a textual perspective, that automated fitness checking must be performed on euro banknotes in conformity with the ECB's minimum standards. That interpretation would derive from the use, within that provision, of the phrase 'automated fitness checking shall be carried out' and the phrase 'according to the minimum standards'. Given that, pursuant to Article 3(1) of Decision ECB/2010/14, cash handlers are entrusted with the performance of that task, Article 6(2) of that decision would lead to the conclusion that those economic agents have the obligation to ensure that automated fitness checking is carried out on euro banknotes in conformity with those minimum standards.

44. However, a close reading of Article 6(2) of Decision ECB/2010/14 reveals that the phrase 'according to the minimum standards published' appears immediately after the phrase 'successfully tested banknotes handling machine', and not after the phrase 'automated fitness checking shall be carried out'. Considering the structure of the sentence and the fact that tests are, by definition, carried out in relation to previously defined standards, I would therefore be inclined to read the term 'the minimum standards' in that provision as a reference to the tests that banknote handling machines must succeed prior to their installation and use by cash handlers, and not as a reference to the procedure that cash handlers have to follow in order to carry out automated fitness checking of euro banknotes. Otherwise, the phrase 'automated fitness checking shall be carried out' would have been logically followed by the phrase 'according to the minimum standards published', which would also lead to a coherent and well-structured sentence, but would, in that case, imply a different meaning.

<sup>12</sup> See, in that regard, recital 2 of Decision ECB/2010/14.

<sup>13</sup> See, for a categorisation of banknote handling machines, Annex I to Decision ECB/2010/14.

<sup>14</sup> See, *inter alia*, judgment of 16 November 2016, *Hemming and Others* (C-316/15, EU:C:2016:879, paragraph 27 and the case-law cited).

45. That conclusion, which stems from the analysis of the English version of Decision ECB/2010/14, also appears to me to be supported by the wording of other linguistic versions of Article 6(2) of that decision. For instance, as the ECB notes, the French version of Article 6(2) of Decision ECB/2010/14 declares that 'le contrôle automatique est effectué avec un équipement de traitement des billets testé positivement conformément aux normes minimales qui sont publiées sur le site internet de la BCE et modifiées périodiquement'. Also, the Spanish version stipulates that 'la comprobación automática de aptitud se efectuará mediante una máquina de tratamiento de billetes que haya superado una prueba de acuerdo con las normas mínimas que, junto con sus oportunas modificaciones, se publican en la dirección del ECB en Internet'.<sup>15</sup> According to the structure of the provision in all those linguistic versions, which also correspond to the structure of the Lithuanian version, applicable to the case at issue in the main proceedings, the reference to the ECB's minimum standards should be regarded, in my view, as relating to the banknote handling machines which have to be tested successfully pursuant to those standards, and not to any obligation that cash handlers are required to perform when checking the fitness of euro banknotes before recirculation.

46. It follows that a textual interpretation of Article 6(2) of Decision ECB/2010/14, based on a comparative analysis of the different language versions of that provision, suggests that minimum standards do not apply to the automated fitness checking that cash handlers carry out in the course of their professional activity. Nor does it suggest that cash handlers are required to monitor or test their banknote handling machines in conformity with those standards when performing those checks. By contrast, the reference to the ECB's minimum standards in Article 6(2) of Decision ECB/2010/14 implies that cash handlers must perform their duties using machines previously tested according to those standards.

47. In any event, notwithstanding the relative ambiguity of Article 6(2) of Decision ECB/2010/14, I must point out that a contextual and systematic interpretation of that decision supports the understanding that cash handlers are not bound by the ECB's minimum standards as regards the automated fitness checking of euro banknotes.

48. First, recital 3 of Decision ECB/2012/19 – that is to say, the main legal act that has been adopted by the ECB to amend Decision ECB/2010/14 –<sup>16</sup> states that the minimum standards for automated fitness checking of euro banknotes are requirements relating to the functionalities of banknote handling machines. That same recital further declares unequivocally that '[the minimum standards] are therefore *only* of interest to manufacturers of banknote handling machines and have no impact on the authenticity and fitness checking procedures laid down in Decision ECB/2010/14 with which cash handlers have to comply'.<sup>17</sup> There should therefore be no residual doubt as to the purpose of the amendment introduced by Decision ECB/2012/19 as regards the scope of the minimum standards.

49. Second, it is important to note that, in its original version, Article 6 of Decision ECB/2010/14 provided that fitness checking of euro banknotes had to be carried out in accordance with the minimum standards laid down in Annexes IIIa and IIIb to that decision. In particular, Annex IIIa

<sup>15</sup> The Spanish version is probably the most revealing version in that regard, inasmuch as the phrase 'que haya superado una prueba de acuerdo con las normas mínimas' introduces a relative statement that can *only* refer to 'máquina de tratamiento de billetes', that is 'banknotes handling machine'. The Portuguese version is similar to the Spanish version in that regard.

<sup>16</sup> See also Decision (EU) 2019/2195 of the European Central Bank of 5 December 2019 amending [Decision ECB/2010/14] (OJ 2019 L 330, p. 91), which introduces a number of technical amendments and some further clarification and improvement of certain rules, procedures and definitions.

<sup>17</sup> Emphasis added.

thereto laid down the minimum standards applicable to automated fitness checking by banknote handling machines, whereas Annex IIIb established the minimum standards for manual fitness checking by trained staff members.

50. Yet, after the adoption of Decision ECB/2012/19, Annex IIIa to Decision ECB/2010/14 has been repealed with the express aim, according to recital 3 of the first decision, to place the minimum standards for automated fitness checking 'outside the scope' of the second decision.<sup>18</sup> In parallel, those minimum standards have been integrated into Guideline ECB/2010/NP16,<sup>19</sup> which sets out the rules and procedures for the testing of types of banknote handling machines, and apply, according to Article 2 of that guideline, to checks carried out on those types of machines 'at the request of manufacturers ... prior to and upon their installation by cash handlers'. Minimum standards are since then listed in Annex IV to that Guideline, without prejudice to the publication that must be made, according to the Article 6(2) of Decision ECB/2010/14, on the ECB's website. Curiously enough, Decision ECB/2012/19 and the amendment introduced in Guideline ECB/2012/NP16 share the same date of adoption.

51. Decision ECB/2012/19 therefore demonstrates that the personal scope of the minimum standards was adjusted so that those standards would apply exclusively to tests carried out by manufacturers on their types of banknote handling machines. As the ECB quite rightly noted during the hearing, that amendment relies on a deliberate policy choice on the part of that institution to avoid any interference with or manipulation of the machines which perform automated fitness checking. As I shall explain below, that policy choice is further based on the complementary obligation imposed on cash handlers to use their machines only with the standard factory settings.

52. Third, if minimum standards were to be considered as applying not only to manufacturers of banknote handling machines, as pointed out above, but also to cash handlers, several provisions of Decision ECB/2010/14, which are aimed at establishing a complete set of rules and procedures for authenticity and fitness checking, would become meaningless or would, at any rate, produce a redundant outcome.

53. That would be the case, first and foremost, of the obligation of cash handlers to use banknote handling machines with the standard factory settings under Article 3(5) of Decision ECB/2010/14. As mentioned, the objective of that obligation is to avoid a situation whereby cash handlers interfere with the standard factory settings set by the manufacturers of those machines, so as to avoid discrepancies between the results of authenticity and fitness checking of euro banknotes throughout the euro area. It is clear that if cash handlers were to verify their machines according to the requirements imposed by the ECB's minimum standards, they would not be able to comply with the obligation requiring them not to alter the standard factory settings set by the manufacturer before their delivery or upon their installation. Consequently, an interpretation favouring the imposition of minimum standards on cash handlers would bring about a contradiction within Decision ECB/2010/14, which would not only undermine its internal normative coherence, but also compromise the policy choice made by the ECB when adopting Decision ECB/2012/19.

<sup>18</sup> By contrast, the minimum standards for manual fitness checking remain applicable to cash handlers by virtue of Article 6(1) of the amended version of Decision ECB/2010/14, as listed in Annex III thereto. That difference in treatment is because cash handlers, when carrying out manual fitness checking by means of their own staff, without thus relying on a machine that has previously been configured by a manufacturer, are still required to ensure that those standards are respected.

<sup>19</sup> That integration was done through Guideline ECB/2012/NP20. See footnote 7 above.

54. Moreover, a similar understanding should apply in relation to the obligation of cash handlers to use, for the purposes of the automated fitness checking of euro banknotes, solely types of banknote handling machines successfully tested by national central banks, as established in Article 3(3) of Decision ECB/2010/14. Once again, if cash handlers were obliged to test their machines to ensure that they comply with the ECB's minimum standards, then that would call into question the purpose of the rules and procedures for testing those machines, in which manufacturers and national central banks play a central role according to Article 9 of Decision ECB/2010/14 and other applicable norms, namely Guideline ECB/2010/NP16. Furthermore, doubts would remain as to the method and the regularity of the tests carried out by cash handlers. In my view, the absence of any indication in that regard in Decision ECB/2010/14 certainly militates in favour of the conclusion that the ECB, as the author of that decision and its subsequent amendment, understood that cash handlers are not under any obligation to test their machines in the light of the ECB's minimum standards.

55. A contextual and systematic interpretation of Article 6(2) of Decision ECB/2010/14 does not therefore call for a re-examination of the textual reading of that regulation, as has been set out in point 46 of the present Opinion. On the contrary, it supports the view that ECB's minimum standards do not impose on cash handlers any obligation to test their machines in conformity with those standards.

56. Finally, regarding the teleological interpretation of Decision ECB/2010/14 and Article 6(2) of that decision, it is important to note that one of the primary tasks for ensuring the public's trust in euro banknotes in circulation is to maintain them in good condition.<sup>20</sup> Given that banknotes inevitably deteriorate during circulation, worn or defective banknotes should be withdrawn from circulation and replaced by new or fit banknotes. The main objective in that regard is to ensure not only that euro banknotes are accepted as a means of payment, but also that they can be easily and reliably checked for genuineness and thus to protect the euro against counterfeiting.

57. In that respect, it is true that establishing two levels of tests for banknote handling machines in the light of the ECB's minimum standards – performed, initially, by the manufacturers of those machines and, subsequently, by cash handlers – could be conceived as a way to reduce the probability of unfit banknotes being recirculated to the public.

58. However, apart from the fact that such an understanding would be contrary to the literal interpretation of Article 6(2) of Decision ECB/2010/14 and would undermine the internal coherence of that decision, as I have already argued, it is not certain that that objective could be achieved, for similar reasons to those set out in point 53 of the present Opinion. After all, for cash handlers to carry out their own tests of banknote handling machines, the standard factory settings of those machines would need to be adjusted, which would have the effect of increasing the risk that automated fitness checking would be distorted or fail and, consequently, produce a less effective outcome. Furthermore, as the ECB noted during the hearing, given the limited number of manufacturers of those machines in the euro area, in comparison to the more significant number of cash handlers, more targeted and cost-efficient testing can be performed when the obligation to ensure the minimum standards is limited to the manufacturers of banknote handling machines, instead of extending that same obligation to cash handlers.

<sup>20</sup> See recital 2 of Decision ECB/2010/14.

59. The objectives pursued by Decision ECB/2010/14 – and Article 6(2) of that decision – do not therefore seem to me to warrant a departure from the interpretation that cash handlers are not required to monitor and test their banknote handling machines in the light of the minimum standards adopted by the ECB.

60. It results from the previous considerations that none of the canons of interpretation laid down by the Court to discern the meaning of the provisions of EU law permit the conclusion the minimum standards referred to in Article 6(2) of Decision ECB/2010/14 apply to cash handlers when they discharge their obligation to carry out automated fitness checking of euro banknotes.

61. Nevertheless, as the Commission points out in its written observations, the question remains as to whether a cash handler, whose banknote handling machines do not respect the 5% tolerance level laid down by the ECB's minimum standards, can refuse to comply with an injunction addressed by a national central bank, after an on-site inspection at its premises, ordering the cash handler to remedy that situation. In the present case, I would invite the Court to address this relevant issue, which, as it results from the information provided in the order for reference, is essential to enable the referring court to determine the case before it,<sup>21</sup> in particular to assess whether the contested decision is well founded.

62. In that regard, it should be pointed out that the normative framework set out by Decision ECB/2010/14 and other applicable legislation, namely Guideline ECB/2010/NP16, for the purposes of ensuring that only euro banknotes in good condition are recirculated to the public, relies, in essence, on three main pillars. Those are (i) the production and configuration of banknote handling machines in conformity with the minimum standards for automated fitness checking, which, after being successfully tested by a national central bank at the request of a manufacturer, are listed by type on the ECB's website;<sup>22</sup> (ii) the imposition of a set of obligations concerning cash handlers, in particular regarding automated fitness checks on euro banknotes; and (iii) the recognition of monitoring and supervisory powers to national central banks to ensure that the relevant entities comply with their respective obligations.<sup>23</sup>

63. With respect to the obligations imposed on cash handlers, I have already explained that they mostly arise under Article 3 of Decision ECB/2010/14,<sup>24</sup> which not only imposes a general obligation to carry out authenticity and fitness checks on euro banknotes in paragraph 1 of that decision, according to the established procedures therein, but also sets out additional obligations, in particular in paragraphs 3, 4 and 5. Those obligations require cash handlers, first, to use a type of banknote handling machine that has been successfully tested by a national central bank, in accordance with the minimum standards published by the ECB; second, to employ the banknote handling machines only for the denominations and series of euro banknotes listed on the ECB's website; and, third, to use those machines with the standard factory settings, including any updates applicable to them.

64. In turn, Article 10(1) of Decision ECB/2010/14 provides that national central banks are authorised to carry out on-site inspections at cash handlers' premises, in particular to monitor the capacity of their banknote handling machines to check for authenticity and fitness of euro banknotes, and to verify the procedures governing the operation and control of those machines.

<sup>21</sup> See, to this effect, the judgment of 27 October 2022, *Iveco Orecchia* (C-68/21 and C-84/21, EU:C:2022:835, paragraphs 57 and 58 and case-law cited).

<sup>22</sup> See inter alia Article 9 of Decision ECB/2010/14 and Article 2(1) and (2) of Guideline ECB/2010/NP16.

<sup>23</sup> See inter alia Article 10 of Decision ECB/2010/14 and Articles 2(3) and 4 of Guideline ECB/2010/NP16.

<sup>24</sup> See point 40 of the present Opinion.

Article 10(3) of Decision ECB/2010/14 further states that, when a national central bank detects non-compliance by a cash handler with the provisions of that decision, it is to require the adoption of corrective measures within a specified time limit. That means that national central banks can address injunctions to cash handlers when they fail to discharge their obligations, and even impose sanctions, provided that they are effective, proportionate and deterrent.<sup>25</sup>

65. During the hearing, both the Commission and the ECB indicated that a combined reading of, on the one hand, the obligations defined by Decision ECB/2010/14 for cash handlers and, on the other, Article 10(3) of Decision ECB/2010/14 constitutes a sufficient legal basis to justify a national decision, such as that at issue in the main proceedings, ordering a cash handler to remedy a situation where its banknote handling machines exceed the tolerance level of 5% for the fitness checking of euro banknotes. According to those same parties, that combined reading should prevent a cash handler from refusing to act in conformity with the injunction addressed to it by the national central bank.

66. I would like to emphasise, from the outset, that Article 10(3) of Decision ECB/2010/14 expressly stipulates that, in order for a national central bank to adopt an injunction or indeed impose a sanction, it must detect 'non-compliance by a cash handler with the provisions of [Decision ECB/2010/14]'. Yet, if the minimum standards referred to in Article 6(2) of that decision do not apply to cash handlers, it would remain necessary to establish which provision has in fact been infringed by the cash handler where its banknote handling machines do not respect the tolerance level laid down by those standards for automated fitness checking.

67. In that regard, I think that it is sufficiently evident that, inasmuch as Article 3(1) of Decision ECB/2010/14 imposes on cash handlers the obligation to carry out automated fitness checks, those cash handlers must employ banknote handling machines that are capable of performing those checks and, in particular of detecting unfit or deteriorated euro banknotes. Otherwise, they would fail to comply with their fundamental duty under Decision ECB/2010/14, which, moreover, is an expression of the more general obligation imposed on them by Article 6(1) of Regulation No 1338/2001 to participate in the fight against counterfeiting. Within that context, if a national central bank, after an inspection at the cash handler's premises, detects a failure in its banknote handling machines, that cash handler is required to adopt the necessary measures to ensure that those machines are repaired. Admittedly, as mentioned above, the current wording of Decision ECB/2010/14 relies on the principle that cash handlers should not interfere with their banknote handling machines, in order to avoid the impairment of the standard factory settings introduced by the manufacturer of those machines. However, that should in no way deter a cash handler from acting – and, if necessary, cooperating with the manufacturer – to remedy that situation.

68. It follows that a cash handler cannot refuse to comply with an injunction addressed by a national central bank, after an on-site inspection at its premises, ordering the cash handler to remedy that situation where its handling equipment does not respect the 5% tolerance level laid down by the minimum standards for automated fitness checking. Having said that, that decision can only be based, in my view, on Article 3(1) of Decision ECB/2010/14, read in the light of Article 6(1) of Regulation No 1338/2001.

<sup>25</sup> See, in that regard, Article 6(2) of Regulation No 1338/2001.

69. In the light of the foregoing, I conclude that Article 6(2) of Decision ECB/2010/14 must be interpreted as meaning that the minimum standards of the ECB referred to in that provision do not apply to cash handlers when they carry out automated fitness checking of euro banknotes. However, Article 3(1) of that same decision, read in the light of Article 6(1) of Regulation No 1338/2001, must be interpreted as meaning that cash handlers must adopt the necessary measures to remedy a situation where an inspection by a national central bank detects that their banknote handling machines are not capable of detecting the unfit condition of euro banknotes below a 5% tolerance level.

## **B. Question 2**

70. By its second question, the referring court asks whether Article 6(2) of Decision ECB/2010/14, read in conjunction with Article 3(5) thereof, should be interpreted as precluding a provision of national law requiring cash handlers to comply with the minimum standards adopted by the ECB and published on its website.

71. According to a well-established principle of EU law, Member States have the competence, in accordance with their institutional autonomy, to lay down the conditions under which their public authorities and bodies may implement EU law. As the ECB rightly points out, the Court has held that, even in areas falling within the exclusive competence of the European Union, Member States may introduce measures necessary for the effective application and enforcement of EU law.<sup>26</sup> In doing so, nevertheless, Member States must respect, by virtue of the principles of effectiveness and sincere cooperation, all the normative elements resulting from the EU law provision under implementation.

72. As regards the protection of the euro against counterfeiting, I observe that the Republic of Lithuania has adopted provisions intended to ensure the implementation of Decision ECB/2010/14 and, in particular, the obligations of that decision which apply to cash handlers by virtue, *inter alia*, of Article 3(1), (3) to (5).

73. More specifically, it results from the referring order that, under Article 47<sup>5</sup> of the Law on the Bank of Lithuania, in the version applicable to the main proceedings, the Bank of Lithuania supervises cash handling activities in accordance with the applicable provisions, namely Decision ECB/2010/14. Similarly, Article 47<sup>7</sup> of the Law on the Bank of Lithuania confers on the Bank of Lithuania the power to adopt corrective measures, which emanates directly from Article 10(3) of Decision ECB/2010/14.

74. In addition, the Bank of Lithuania has approved the resolution on the procedure for the supervision of cash-handling activities. That legal act confers on the Bank of Lithuania the competence to test, in the course of an inspection, the ability of the cash handling machines used by a cash handler to check euro banknotes for authenticity and fitness. The Bank of Lithuania has also adopted the resolution on the procedure for authenticity and fitness checking, which, in point 12, requires cash handlers to check the authenticity and quality of euro banknotes ‘in accordance with the minimum standards published on the ECB’s website’.

<sup>26</sup> See, *inter alia*, judgment of 6 March 2008, *Comisión del Mercado de las Telecomunicaciones* (C-82/07, EU:C:2008:143, paragraph 24 and the case-law cited).

75. My analysis of the first question referred led me to conclude that Article 6(2) of Decision ECB/2010/14 must be interpreted as meaning that the minimum standards of the ECB referred to in that provision do not apply to cash handlers when they carry out automated fitness checking of euro banknotes. In that analysis, I also explained that Article 3(5) of Decision ECB/2010/14 imposes on cash handlers the obligation to use their banknote handling machines with the standard factory settings when carrying out automated fitness checking of euro banknotes. Again, the purpose in that regard is that cash handlers should not interfere with the standard factory settings of those machines set by their manufacturers, so as to avoid the risk of inconsistent or failed automated fitness checking in the euro area.<sup>27</sup>

76. The ECB concedes that the relevant provisions of Lithuanian law are not necessarily precluded under such an interpretation of Article 6(2) of Decision ECB/2010/14. According to that institution, those provisions could be interpreted in a manner consistent with Decision ECB/2010/14, in so far as the reference to compliance by cash handlers with ECB's minimum standards is understood as an obligation to comply with the provisions of Decision ECB/2010/14 which are of direct relevance to them, namely Article 3 of that decision.

77. To my mind, however, there is no room for such a margin of interpretation in the present case. The interpretation of Article 6(2) of Decision ECB/2010/14 that I propose to the Court is in direct contradiction to the plain wording of point 12 of the resolution on the procedure for authenticity and fitness checking adopted by the Bank of Lithuania. In those circumstances, I would be inclined to consider that it is not possible to interpret that national provision in such a way that it is consistent with that decision and would not be rendered inapplicable.

78. Moreover, as the referring court points out, the Lithuanian provision, under its current wording, is in direct contradiction to the obligation of cash handlers to use banknote handling machines only with the standard factory settings. In that regard, the wording of that provision not only creates a context of legal uncertainty – as the present case clearly illustrates – but might also lead cash handlers to monitor their machines and to take action over them where necessary to guarantee that minimum standards are met. For that reason, that provision is, in my view, precluded by Article 3(5) of Decision ECB/2010/14.<sup>28</sup>

79. In the light of the foregoing, I conclude that Article 6(2) of Decision ECB/2010/14, read in conjunction with Article 3(5) thereof, must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, requiring cash handlers to comply with the minimum standards adopted by the ECB and published on its website.

80. In view of the answers I propose to give to the first and second questions referred for a preliminary ruling, there is no need to examine the third and fourth questions submitted by the referring court.

<sup>27</sup> See, to that effect, point 58 of the present Opinion.

<sup>28</sup> I should briefly add that, even though it is true that Article 3(5) of Decision ECB/2010/14 provides that a national central bank and a cash handler may agree on stricter settings than those configured at factory level, that possibility does not amount, nevertheless, to allowing Member States to impose on cash handlers the obligation to test their equipment according to ECB's minimum standards.

## V. Conclusion

81. On the basis of the analysis set out above, I propose that the Court answer the first two questions referred by the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania) as follows:

- (1) Article 6(2) of Decision of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (ECB/2010/14) (2010/597/EU), as amended by Decision of the European Central Bank of 7 September 2012 (ECB/2012/19) (2012/507/EU),

must be interpreted as meaning that the minimum standards of the ECB referred to in that provision do not apply to cash handlers when they carry out automated fitness checking of euro banknotes.

However, Article 3(1) of that same decision, read in the light of Article 6(1) of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, as amended by Council Regulation (EC) No 44/2009 of 18 December 2008,

must be interpreted as meaning that cash handlers must adopt the necessary measures to remedy a situation where an inspection by a national central bank detects that its banknote handling machines are not capable of detecting the unfit condition of euro banknotes below a 5% tolerance level.

- (2) Article 6(2) of Decision ECB/2010/14 of the European Central Bank (2010/597/EU), as amended by Decision ECB/2012/19 of the European Central Bank (2012/507/EU), read in conjunction with Article 3(5) thereof,

must be interpreted as precluding a provision of national law requiring cash handlers to comply with the minimum standards adopted by the ECB and published on its website.