



# Manufacture and importation of coin-like objects - Information basis

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Date

9 September 2019

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## Information concerning the manufacture and importation of coin-like objects

### 1. Introduction

#### 1.1. Background

With the entry into force of the [Federal Act of 22 December 1999 on Currency and Payment Instruments \(CPIA; SR 941.10\)](#) on 1 May 2000, the authorisation requirement relating to the manufacture or importation of coin-like objects was lifted; an authorisation as provided for in Article 8 paragraph 1 of the Federal Act of 18 December 1970 on Coinage is no longer required. Accordingly, the (preliminary) examination is no longer carried out by the FFA, as was the case under the old law. The FFA is no longer responsible for this; nor is it responsible for the publication of corresponding fact sheets which set out the administrative practice. The fact sheet of 1 May 2000 and the later supplement of 15 November 2000 are subsequently no longer applicable.

Anyone who manufactures, imports, offers or circulates coin-like objects must take responsibility for ensuring that the applicable legal provisions are complied with. These include in particular [Article 11 of the CPIA](#), [Article 243 of the Criminal Code \(SCC, SR 311.0\)](#), the [Coat of Arms Protection Act \(CAPA, SR 232.21\)](#) and the [Precious Metals Control Act \(PMCA, SR 941.31\)](#).

The present information is based on the materials and corresponding literature indicated in the text or appendix.

#### 1.2. Purpose of the information basis

This information basis contains only references to potentially applicable provisions (see section 2). The application of these and any other provisions of relevance to specific individual

cases is the sole responsibility of the parties concerned. The FFA does not make any assessments in this respect. The application of the above provisions and their interpretation is the responsibility of the competent prosecution authorities or courts.

If there are any uncertainties regarding the application of the provisions mentioned, we recommend that you contact the competent authorities listed below (see sections 2.4 and 2.5) or experts or a law firm you trust.

## 2. Legal basis

### 2.1. Article 11 of the CPIA

According to [Article 11 of the CPIA](#), anyone who issues or puts into circulation coins or banknotes denominated in Swiss francs, in contravention of the provisions contained in Article 99 of the Federal Constitution and the CPIA, shall be liable to a custodial sentence or a monetary penalty. This provision guarantees the protection under criminal law of the monopoly on issuing coins and banknotes denominated in Swiss francs. At the centre of this protection is the concept of the Swiss franc as the country's unit of currency. Coin-like objects with a face value in Swiss francs *which could be misused as means of payment* are therefore no longer permissible under the monopoly protection (BBI 1999 7258 7281).

Based on the decision of the [Federal Supreme Court 6S.472/2005](#) of 13 March 2006 (in particular E. 3.4), and contrary to what is stated in the dispatch on the CPIA (BBI 1999 7258 7281), it is in particular decisive whether the coin-like objects bear a face value in Swiss francs and/or whether there is a *risk of confusion or misuse* (see point 2.3). If this is the case, this fact may affect the currency sovereignty of the Confederation; Article 11 of the CPIA is applicable according to the Federal Supreme Court. If, on the other hand, the coin-like items do not bear a face value in Swiss francs or if there is no danger of confusion or misuse, the coinage monopoly of the Confederation is not infringed. According to the Federal Supreme Court, Article 11 of the CPIA is not applicable in such cases.

### 2.2. Article 243 of the SCC

According to [Article 243 of the SCC](#), a custodial sentence of up to three years or a fine may be imposed in particular on anyone who, without the intention of forgery, produces objects which in their appearance, weight and size are similar to coins in circulation, or which show the nominal value or other characteristics of coins in circulation, and thus create the risk that persons or machines will confuse such coins with coins which are in circulation. Any person who imports, offers or puts into circulation such objects will also be subject to the same punishment. If the offender acts negligently, he will be liable to a fine.

Also in the context of Article 243 of the SCC, the creation of a *risk of confusion or a possibility of abuse* is decisive (see section **Fehler! Verweisquelle konnte nicht gefunden werden.**). There must actually be a (specific) danger of confusion, but actual confusion is not required.

### 2.3. Risk of confusion according to Article 11 of the CPIA and Article 243 of the SCC

As with ensuring compliance with all legal provisions, the assessment of the likelihood of confusion is the sole responsibility of the person or persons manufacturing, importing, offering or circulating coin-like objects. The following information serves as a guide, but a judgement in individual cases is always decisive.

In the case of coin-like objects, there may be a risk of confusion in particular if they bear similarities to genuine coins in appearance, weight or size. A likelihood of confusion may also exist if the coin-like objects bear a nominal value (currency unit combined with an indication of quantity) or other characteristics of an official minting, e.g. a coat of arms or a reference to a minting site (dispatch of 26 May 1999 *on a Federal Act on Currency and Payment Instruments (CPIA)*; [BBI 1999 7258, 7283](#)).

The following information, among other sources, may be used to assess the risk of confusion:

- [Swissmint FAQ](#)
- The measurements of the Swiss circulation coins according to the CPIA can be found on the Swiss National Bank's website: "[Coins currently in circulation](#)".
- [Swiss National Bank Q&A on coins](#)

#### **2.4. Coat of Arms Protection Act**

The Coat of Arms Protection Act (CAPA) regulates, among other things, the use of

- Coats of arms (Swiss coat of arms, the coats of arms of the cantons, districts and communes; Art. 5 and 8 of the CAPA);
- Official designations (e.g. "Confederation", "Swiss Confederation", "federal", "canton", "cantonal", "commune", "communal", "www.admin.ch", "Confoederatio Helvetica", known abbreviations of authorities (FDJP, DDPS, ETH etc.), "police"; Art. 6 and 9 of the CAPA);
- Flags and other national emblems (in particular the Swiss flag, official hallmarks, seals, stamps; Art. 10 of the CAPA and Art. 4 of the [Coat of Arms Protection Ordinance, CAPO, SR 232.211](#));
- National figurative and word signs (signs that refer to national symbols such as landmarks, heroic figures, sites, myths or monuments of Switzerland, e.g. Stiftsbibliothek St. Gallen, Tre Castelli in Bellinzona, Matterhorn, William Tell, Winkelried, Helvetia, Rütli Schwur etc., Art. 7 and 11 of the CAPA); and
- Public Swiss signs and public foreign signs (Art. 12 of the CAPA).

The use of coats of arms or other public signs is subject to various conditions (see Art. 8 to 12 of the CAPA). Flags and other national emblems as well as national figurative and word signs may be used, unless their use is misleading or contrary to public order, morality or applicable law; on this matter see [BBI 2009 8533, 8632 et seq.](#)

According to Article 28 of the CAPA, anyone who wilfully and unlawfully uses public signs is liable to a custodial sentence not exceeding one year or a monetary penalty. If the offender acts for commercial or financial gain, the penalty will be a custodial sentence not exceeding five years or a monetary penalty.

Information in connection with the protection of coats of arms and indications of origin can be obtained from the [Swiss Federal Institute of Intellectual Property](#), Stauffacherstrasse 65/59g, 3003 Bern, telephone: +41 31 377 77 77, email: [info@ipi.ch](mailto:info@ipi.ch).

#### **2.5. Precious Metals Control Act**

According to [Article 44 of the PMCA](#), anyone who submits articles for hallmarking or, for the purpose of sale, makes, commissions or imports, supplies or offers to supply articles (also coin-like objects such as medals) under a mark that is liable to be misleading or that is prohibited under the PMCA, being articles that do not meet the prescribed standard of fineness

as precious metal articles or articles not meeting the provisions of the Act, or any person who stamps on precious metal articles or multi-metal articles a mark purporting to represent a higher fineness than actually exists, among other things, will be liable to punishment. Anyone acting with intent will be liable to a term of imprisonment or to a fine not exceeding CHF 100,000. If the offender acts professionally, the term of imprisonment will be no less than one month (see however Art. 333 para. 2 lit. c of the SCC).

Information on Swiss precious metal legislation can be obtained from the [Central Office for Precious Metal Control](#), Federal Customs Administration, Industriestrasse 37, 2555 Brugg, Tel. +41 (0)58 462 66 22, email: [sekretariate.ozd-emk@ezv.admin.ch](mailto:sekretariate.ozd-emk@ezv.admin.ch)

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## Appendix:

### Selected materials and literature (with no claim to be exhaustive)

#### Materials

Dispatch of 26 May 1999 on a Federal Act on Currency and Payment Instruments (CPIA); [BBI 1999 7258](#).

Dispatch of 18 November 2009 on amending the Trademark Protection Act and a Federal Act on the Protection of the Swiss Coat of Arms and Other Public Signs ("Swissness" bill) [BBI 2009 8533, 8620](#) et seq.

Coat of Arms Protection Ordinance, Explanatory report on the "Swissness" implementation law of 2 September 2015, available at <https://www.ejpd.admin.ch/dam/data/ejpd/aktuell/news/2015/2015-09-02/bericht-wschv-d.pdf> (last visited 24.06.2019).

#### Literature

DOBLER SIMONE; Es ist nicht alles Gold was glänzt, in: Jusletter 18 February 2013.

DUPUIS MICHEL ET AL., *Petit commentaire Code pénal*, 2<sup>e</sup> édition, 2017, Article 243.

KLAUSER PETER, Das neue Währungs- und Zahlungsmittelgesetz (WZG), in: Nobel Peter [Hrsg.], *Aktuelle Rechtsprobleme des Finanz- und Börsenplatzes Schweiz*, 8/1999, Stämpfli 2000, p. 15 et seq.

KLAUSER PETER, Neues Währungs- und Zahlungsmittelgesetz, in: *Die Schweizerische Nationalbank 1907-2007*, NZZ Libero 2007, p. 529 et seq.

LENJES MEILI CHRISTINE/KELLER STEFAN, in: *Basler Kommentar, Strafgesetzbuch*, 4th ed., 2018, Articles 240 and 243.

NIGGLI MARCEL A./FIOLKA GERHARD; Geld, Gold und die Kunst der Gesetzgebung, in: *Schweizerische Zeitschrift für Strafrecht*, 2000 (119), p. 257-281.

OESCH MATTHIAS/KAMMERMANN BARBARA, in: *Basler Kommentar, Bundesverfassung*, 2015, Article 100.

TRECHSEL STEFAN/HANS VEST, in: *Praxiskommentar Schweizerisches Strafgesetzbuch*; 3. Aufl., 2017, Article 243.

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