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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 June 2008

at the request of Narodowy Bank Polski

on a draft ordinance amending the principles and procedure for replacing banknotes and coins which have ceased to be legal tender in Poland as a result of wear and tear or damage

(CON/2008/26)

Introduction and legal basis

On 21 May 2008 the ECB received a request from the President of Narodowy Bank Polski (NBP) for an opinion on a draft ordinance amending the NBP President's Ordinance No. 1/2003 on the detailed principles and procedure for replacing banknotes and coins which have ceased to be legal tender in Poland as a result of wear and tear or damage[1] (hereinafter the 'draft ordinance').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the first and second indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[2], as the draft law relates to currency matters and means of payment. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft ordinance

The draft ordinance follows the NBP President's Ordinance No 19/2007 of 24 October 2007 on the method and procedure to be used in counting, sorting, packaging and labelling banknotes and coins, on which the ECB commented in Opinion CON/2007/28[3]. The draft ordinance, which regulates only the circulation of the Polish currency[4], has as its main objective ensuring compliance of the principles for

1 Ordinance of the NBP President No 1/2003 on the detailed principles and procedure for replacing banknotes and coins which have ceased to be legal tender within the territory of the Republic of Poland as a result of wear and tear or damage (Dz. Urz. NBP of 15 January 2003 No 1, Item 1, as amended). Article 34(2) of the Law on Narodowy Bank Polski of 29 August 1997 forms the statutory basis (consolidated text: Dz.U. of 2005 No 1, item 2, as amended; hereinafter the 'Law on NBP').

2 OJ L 189, 3.7.1998, p. 42.

3 See ECB Opinion CON/2007/28 of 25 September 2007 at the request of the President of Narodowy Bank Polski on a draft ordinance on the method and procedure for counting, sorting, packaging and labelling packaging units of banknotes and coins, and in conducting activities related to the supply of banknotes and coins to banks.

4 Although the draft ordinance does not refer to any specific currency, Articles 32 to 34 of the Law on NBP, constituting the legal basis for the adoption of Ordinance No 1/2003, as amended by the current draft ordinance, limit the scope to the Polish currency issued by NBP.

coin replacement with the principles for determination of coins unfit for circulation in the NBP President's Ordinance No 19/2007[5]. As a result of the draft proposal, the criteria for replacing damaged coins will be defined in a more general manner, without referring to specific types of damage which may be incurred by coin elements[6].

2. General observations

2.1 The draft ordinance introduces into the NBP President's Ordinance No 1/2003 a number of detailed technical amendments related mainly to circulation and the withdrawal of coins on which the ECB has no specific comments.

2.2 At the same time, the ECB would like to reiterate some of its more general comments made in Opinion CON/2007/28 which are also valid in the context of the NBP President's Ordinance No. 1/2003, as amended by the draft ordinance[7]. While the ECB's requirements for the exchange and withdrawal of euro banknotes in Member States that have adopted the euro currently do not apply to Poland as a Member State with a derogation, these requirements will apply once Poland adopts the euro and NBP becomes a fully integrated part of the Eurosystem. The ECB notes that NBP's provisions on the principles and procedure for replacing banknotes differ substantially from the Eurosystem rules and that they will have to be aligned with Eurosystem practice before Poland adopts the euro. In the meantime, the continued divergence of the NBP's provisions and Eurosystem practice gives rise to some concerns, as indicated in the following.

3. Alignment of Polish legislation with the ECB's legal framework

3.1 From the underlying principle of the NBP President's Ordinance No 1/2003, it follows that banknotes and coins which do not fulfil NBP's conditions because of wear or damage cease to be legal tender in Poland and are subject to exchange[8]. However, according to the ECB's rules for euro banknotes, the status of genuine euro banknotes as legal tender is not affected by their physical condition, including such elements as mutilation or damage[9].

3.2 The ECB further notes the requirement in paragraph 3(1)(1) of the NBP President's Ordinance No 1/2003, as amended by the draft ordinance[10], and in paragraph 7 of the NBP President's Ordinance No 1/2003 following which banknotes may be exchanged if between 45% and 75% of a banknote's original surface is presented, either in one piece (when presented to commercial banks) or possibly in a number of pieces (when presented to NBP's branches). Such rules differ from the

5 See the explanatory memorandum to the draft ordinance, p. 1.

6 See e.g. paragraph 1(2) of the draft ordinance, amending paragraph 2(1)(2) of the NBP President's Ordinance No 1/2003.

7 See paragraphs 2.1 and 2.3 of ECB Opinion CON/2007/28.

8 See Article 34(1) of the Law on NBP and further implemented by the NBP President's Ordinance No 1/2003.

9 See Article 3(1) of Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (OJ L 78, 25. 3. 2003, p. 16).

10 See paragraph 1(3) of the draft ordinance.

ECB's for euro banknotes, following which a Eurosystem national central bank may exchange a euro banknote for 100% of its face value if more than 50% of the euro banknote is presented, whether presented in one piece or not[11].

3.3 The ECB is concerned that the abovementioned provisions tend to diverge from the solutions already firmly established under the ECB's legal framework for euro banknotes. In view of Poland's future adoption of euro, the ECB invites the NBP to already consider aligning its standards for exchange and withdrawal of banknotes with a view to approximating these standards with the rules applicable to euro banknotes.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 16 June 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

11 Or, alternatively, when 50% or less of the euro banknote is presented and the applicant proves that the missing parts have been destroyed. See Article 3(1) of Decision ECB/2003/4.