EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 April 2006

at the request of the Portuguese Ministry of Finance and Public Administration

on a draft decree-law on the issue, minting, putting into circulation and marketing of coins

(CON/2006/22)

On 20 March 2006 the European Central Bank (ECB) received a request from the Portuguese Ministry of Finance and Public Administration for an opinion on a draft decree-law on the issue, minting, putting into circulation and marketing of coins (hereinafter the 'draft decree-law').

The ECB's competence to deliver an opinion is based on 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[1], as the draft decree-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 decree-law

The purpose of the draft decree-law is to codify in a single legal act the various laws relating to the classification of coins and the rules on the issue, marketing and distribution of coins that are currently in force in Portugal, namely Decree-Law 293/86 of 12 September 1986, Decree-Law 178/88 of 19 May 1988 and Decree-Law 318/2002 of 28 December 2002. Furthermore, it lays down sanctions for infringements of Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins[2].

2. General observations

2.1 The ECB understands that the aim of the draft decree-law is to regulate those matters relating to the issue, minting, putting into circulation and marketing of coins that are not covered by Community legislation. From a formal point of view, the ECB trusts that grouping all these rules, which are currently dispersed in various legal acts, in the draft decree-law will enhance legal certainty and transparency.

2.2 The ECB welcomes the fact that the draft decree-law includes a sanctions regime for infringements of Regulation (EC) No 2182/2004, as required under Article 6(1) of that Regulation. However, this

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 373, 21.12.2004, p. 1.

opinion does not assess whether the sanctions laid down in the draft decree-law are effective, proportionate and dissuasive, as required by Article 6(1) of Regulation (EC) No 2182/2004, since this is an implementation matter falling outside the ECB's competences under the Treaty establishing the European Community.

3. Issues relating to the classification of coin types

3.1 Articles 2 and 3 of the draft decree-law distinguish between 'standard coins' and 'collector coins'. The former refers to coins that are intended to meet the needs of monetary circulation and Community legislation provides for the visual characteristics of the common side, the face value and technical specifications of such coins; the latter are issued solely for numismatic purposes. The ECB understands that, pursuant to Article 2(3) and (4) of the draft decree-law, commemorative issues may be made of standard coins, and such issues are characterised by a variation in the design of the national side of the coins to celebrate important national or international events.

3.2 The ECB supports including commemorative coins within the classification of 'standard coins', in particular as they are circulation coins which comply with the technical specifications laid down in Council Regulation (EC) No 975/98 of 3 May 1998 on denominations and technical specifications of euro coins intended for circulation[3], even if they have a different national design from the standard national obverse design. Article 2(b) of Commission Recommendation 2003/734/EC of 29 September 2003 on a common practice for changes to the design of national obverse sides of euro circulation coins[4] refers to the 2-euro coin as the sole denomination for commemorative coin issues. Recital 7 to the draft decree-law refers to Recommendation 2003/734/EC, thus anticipating that the decree-law will comply with Recommendation 2003/734/EC, in particular with Article 2(b) thereof, and this Recommendation was endorsed in the EU Council's Conclusions of 8 December 2003 on changes in the design of the national sides of euro coins[5]. The ECB therefore proposes rewording recital 7 to the draft decree-law so that it includes a reference to the fact that Recommendation 2003/734/EC refers to a single denomination for the issuance of commemorative euro circulation coins.

3.3 As for collector coins, the ECB welcomes the fact that these will be issued solely for numismatic purposes, hence not for circulation, and the fact that they have different visual characteristics, face values and technical specifications from standard coins.

4. The issue and putting into circulation of coins

4.1 The ECB notes that Article 5 of the draft decree-law correctly states that the issue of coins is the responsibility of the Portuguese State, irrespective of the type of finish, and that this is subject to

3 OJ L 139, 11.5.1998, p. 6. Regulation as amended by Regulation (EC) No 423/1999 (OJ L 52, 27.2.1999, p. 2).

4 OJ L 264, 15.10.2003, p. 38.

5 Available on the European Commission's website at www.europa.eu.int.

the volume of coin issuance approved by the ECB. The ECB understands that the latter reference includes both standard and collector coins.

4.2 The ECB notes that Article 8(1) of the draft decree-law entrusts the Banco de Portugal with the task of putting coins into circulation. Article 8(4) of the draft decree-law states that the face value of coins put into circulation is paid over by the Banco de Portugal to the Directorate-General of the Treasury. The ECB understands that these payments are only due in relation to the number of euro coins which have actually been put into circulation, rather than in relation to the number of coins the Banco de Portugal holds. In this regard, the ECB recalls that, pursuant to Article 6 of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104(b)(1) of the Treaty[6], 'the holding by the European Central Bank or the national central banks of coins issued by the public sector and credited to the public sector shall not be regarded as a credit facility where the amount of these assets remains at less than 10 % of the coins in circulation'.

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

Done at Frankfurt am Main, 28 April 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

6 OJ L 332, 31.12.1993, p. 1.