EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 December 2001

at the request of the Austrian Ministry of Finance on a draft law amending the *Nationalbankgesetz* (the National Bank Act)

(CON/2001/40)

1. On 19 November 2001 the European Central Bank (ECB) received a request for an opinion from the Austrian Ministry of Finance on a draft law amending the *Nationalbankgesetz* (the National Bank Act), hereinafter referred to as the "draft law".

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

3. The main purpose of the draft law is the creation of the possibility to impose sanctions for non-compliance with the duties imposed by Article 6(1) of Council Regulation No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting[2] as required by Article 6(2) and (3). Furthermore, the draft law extends the obligations under Article 79 of the National Bank Act to bureaux de change.

4. The ECB welcomes the draft law which intends to impose effective sanctions on credit institutions and any other institutions engaged in the sorting and distribution to the public of banknotes and coins as a professional activity, where they fail to withdraw from circulation all euro notes and coins received by them, which they know or have sufficient reason to believe to be counterfeit.

5. The ECB notes that the obligations contained in the directly applicable Article 6(1) of Council Regulation No 1338/2001 are also covered by Article 79 of the National Bank Act as amended by the draft law. On that basis, Article 79a of the draft law sanctions failure to comply with

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1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 181, 4.7.2001, p. 6.

Article 79 of the National Bank Act, instead of sanctioning the failure to comply with the duties laid down in Article 6(1) of Council Regulation No 1338/2001 in order to fulfil the obligations imposed on Austria by Article 6(2) and (3) of Council Regulation No 1338/2001.

6. In view of this method chosen to apply Article 6 of Council Regulation No 1338/2001, the ECB underlines the importance for establishments subject to sanctions according to Article 79a National Bank Act to be the same as the establishments referred to in Article 6(1) of Council Regulation No 1338/2001. Furthermore, it is understood that by using the term "*verdächtige*" in Article 79a of the Austrian National Bank Act, reference is made not only to banknotes and coins that are suspected of being counterfeit, but also to those banknotes and coins which banks and any other institution know or have sufficient reason to believe to be counterfeit, as laid down in Article 6(1) of the Council Regulation.

7. The ECB would welcome efforts by the national central banks and the banking industry to ensure the effectiveness of the detection and the withdrawal from circulation of potential counterfeits, as an accompaniment to the draft law's implementation of Article 6 of Council Regulation No 1338/2001.

8. The ECB notes the introduction of an administrative penalty of up to EUR 7 000 for establishments that fail to discharge their obligations under Article 79(1) of the National Bank Act.

9. The ECB notes that the draft law does not provide for a specific date of entry into force and thus it will enter into force on the day after publication in the *Bundesgesetzblatt*. The ECB notes that the time limit for adoption of sanctions provisions is 1 January 2002.

10. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion.

Done at Frankfurt am Main on 20 December 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG