EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK
of 26 January 2001

at the request of Portuguese Minister of Finance concerning two draft decree-law concerning (I) the dual circulation of banknotes and coins denominated in euro and in escudos; and (II) amendments to the organic law of the Banco de Portugal

(CON/2001/01)

1. On 8 January 2001 the European Central Bank (ECB) received a request from the Portuguese Minister of Finance for an opinion on two draft decree-law concerning (I) the dual circulation of banknotes and coins denominated in euro and in escudos; and (II) amendments to the organic law of the Banco de Portugal.

2. The ECB's competence to deliver an opinion is based on the first, second and third 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 legislative proposals contain provisions concerning currency matters, means of payment and the national central bank statute. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, this opinion has been adopted by the Governing Council of the ECB.

3. The first draft decree-law contains the provisions necessary to implement into the Portuguese legal system Articles 15 and 16 of Council Regulation (EC) 974/98 of 3 May 1998 on the introduction of the euro[2]. It deals with the period during which banknotes and coins denominated in escudos remain legal tender by limiting such period to two months after the end of the transitional period (Articles 1 and 2). This is in line with the common statement on the introduction of euro banknotes and coins issued by the ECOFIN Council on 8 November 1999 and with the solution adopted by a majority of participating Member States. The ECB has no objections to this solution and especially welcomes the measures adopted in the field of exchange and withdrawal of banknotes and coins denominated in escudos (Articles 3 and 4). The exchange and withdrawal of banknotes denominated in escudos will take place until

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1 OJ L 189, 3.7.1998, pp. 42-43.

2 OJ L 139, 11.5.1998, pp. 1-5.

30 June 2002 at the counters of the Banco de Portugal and of credit institutions, and at the local offices of the tax authorities, thus contributing in a positive manner to a smoother cash changeover. It should be mentioned that whilst credit institutions are entitled to limit the volume and frequency of exchange operations, they will have to inform the Banco de Portugal in advance and will not be allowed to establish such limits if the Banco de Portugal is opposed thereto (Article 3(2)). The same rules are applicable to the exchange and withdrawal of coins, with the particularity that the Banco de Portugal will accept coins for exchange at its counters until 31 December 2002 (Article 4).

4. Article 5 of the draft decree-law deals with the automatic redenomination of bank accounts. Whilst not legally indispensable in the light of Article 14 of Council Regulation (EC) 974/98, this provision introduces an element of additional legal certainty in the large-scale operation involving the redenomination of bank accounts, which cannot be underestimated.

5. Article 6 of the same draft legal act establishes a free-of-charge rule for the exchange and withdrawal of banknotes and coins, and for the redenomination of bank accounts, that also contributes to additional legal certainty and to a smoother cash changeover.

6. Article 7(1) of the draft decree-law requires that only the conversion rate 1 euro = 200,482 escudos be applied for the exchange and withdrawal of banknotes and coins and for the redenomination of bank accounts. The ECB has doubts about the appropriateness of this provision in the light of Articles 14 and 16 of Council Regulation (EC) 974/98, Article 4(3) of Council Regulation (EC) 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro[3] and Article 1 of Council Regulation (EC) 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro[4]. Indeed, consistent case-law of the Court of Justice has established that Member States should not pass any measures having the effect of transposing a Community regulation into national legislation. Community regulations are an integral part of the national legal order and Member States are under the obligation not to introduce any measures that might affect the uniform interpretation and application of Community law. Converting provisions of a Community regulation into national legislation could be deemed to affect the uniform interpretation and application of Community law in a field where Member States are unable to adopt national legislation. However, the ECB understands that these provisions may be intended for reasons of clarity and to reinforce the principle that the exchange and withdrawal of banknotes and coins and the redenomination of bank accounts should be made without charge and without mark-up or commission; but would prefer the use of a cross-reference to the applicable provisions of Community law. The same considerations are applicable to Article 7(2) of the draft decree-law, dealing with rounding on the occasion of the exchange of banknotes and

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3 OJ L 162, 19.6.1997, pp. 1-3.

4 OJ L 359, 31.12.1998, pp. 1-2.

coins and the redenomination of bank accounts. Such rounding rules mirror Article 5 of Council Regulation (EC) 1103/97, and, as such, would not be legally necessary. However, it is admitted that such rounding rules would contribute to clarity and legal certainty for the cash changeover in Portugal and again could contribute to avoiding the imposition of fees or commission in the exchange and withdrawal of banknotes and coins, and the redenomination of bank accounts.

7. Article 8 grants to the Banco de Portugal regulatory powers to adopt additional provisions that may prove necessary to implementing the draft decree-law. The ECB has no objections to this solution and notes that it might prove extremely useful in order to ensure a smooth cash changeover. Article 9 deals with sanctions and infringements to the provisions of the draft decree-law and to the regulations adopted for its implementation by the Banco de Portugal under the aforementioned Article 8. The ECB welcomes this provision as it ensures that appropriate sanctions will be levied in the case of infringement of the draft decree-law and the Banco de Portugal regulations adopted pursuant thereof ('avisos'), namely where exchange obligations or the free-of-charge rules are not adhered to.

8. Finally, with regard to the wording of Article 10 of the draft decree-law, the ECB would prefer that, for accounting reasons, a solution in line with the wording of Article 9(2) of the organic law of the Banco de Portugal, in the wording set forth by decree-law 337/90 of 30 October, would be used, so that a reference to the accounting treatment of national banknotes that are no longer legal tender would be maintained.

9. The second draft decree-law dealing with amendments to the organic law of the Banco de Portugal contains two sets of rules. On the one hand, it covers the Banco de Portugal responsibility to issue its own official bulletin (amendments to Article 59) and clarifies the legal nature of the Banco de Portugal according to the Portuguese legal system (amendments to Articles 39 and 64). On the other hand, it introduces in the organic law of the Banco de Portugal the necessary adaptations to terminate the legal tender status of banknotes and coins denominated in escudos. Indeed, the current wording of Article 65 of the organic law of the Banco de Portugal requires the approval of special legislation in order to repeal Articles 6 to 9 of the organic law in the wording set forth by decree-law 337/90, Those Articles were kept in force by the said Article 65 as they concern the issuance of banknotes denominated in escudos which retained their status as legal tender according to Article 9 of Council Regulation (EC) 974/98. The new wording of Article 65 revokes those provisions in conformity with the termination of the legal tender status of banknotes denominated in escudos[5]. Only this last set of rules relating to the cessation of the legal tender status of banknotes and coins denominated in escudos is relevant for the present opinion, as the other matters are mainly internal in nature.

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5 The new wording of Article 65 of the organic law of Banco de Portugal reads as follows: 'Notwithstanding the exclusive powers of the European Central Bank to authorise the issue, Articles 6 to 9 of the organic law of the Banco de Portugal, as amended by decree-law No 337/90, shall remain in force up to 28 February 2002, from which date they shall be deemed revoked'.

10. The ECB welcomes the new wording of Article 65 of the organic law of the Banco de Portugal as it ensures consistency with the provisions of the first draft decree-law on the dual circulation of banknotes and coins denominated in euro and in escudos, namely with Article 2 of that legal act; and embodies a necessary legal adaptation to the organic law of the Banco de Portugal in view of the cessation of the legal tender status of banknotes and coins denominated in escudos. As a consequence, Article 6(1) of the organic law of the Banco de Portugal law, in the wording set forth by Law 5/98 of 31 January, will become the only provision in the organic law of the Banco de Portugal dealing with banknote issuance. In this respect, the opportunity could be used to update the reference made in Article 6(1) of the organic law of the Banco de Portugal law to the EC Treaty, as Article 105a was renumbered by the Amsterdam Treaty as Article 106.

11. The ECB confirms that it has no objection to this opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 26 January 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG