EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 17 December 2013

on the processing and distribution of banknotes, and their protection against counterfeiting in Hungary

(CON/2013/89)

Introduction and legal basis

On 25 November 2013, the European Central Bank (ECB) received a request from the Magyar Nemzeti Bank (MNB) for an opinion on a draft decree amending the MNB decree regulating the processing and distribution of banknotes and on the technical tasks relating to the protection of banknotes against counterfeiting (hereinafter referred to as the 'draft decree').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the second indent 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 relates to 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

1.1 The MNB has reviewed the operational risk of the Hungarian automated teller machine (ATM) network with regard to the methods ensuring business continuity in case of a cash-in-transit company's failure. The review focused on ATMs located in credit institutions and the offices of the postal services, as in a critical situation the continued operation of the off-site ATMs is highly unlikely. Pursuant to the explanatory memorandum attached to the draft decree, the review carried out by the MNB found that credit institutions have outsourced their tasks related to the refilling of ATMs to cash-in-transit companies to such an extent that this outsourcing carries a systemic risk. The mitigation of this risk therefore requires intervention by the MNB as the competent authority adopting legislation on this subject matter.

1.2 The Hungarian Financial Supervisory Authority was dissolved and its functions and responsibilities were transferred to the MNB on 1 October 2013. This change in the institutional setup required the adoption of a new Law on the Magyar Nemzeti Bank[2], which, *inter alia*, regulates the MNB's competence in issuing banknotes and coins, as well as its competence in providing for protection of

1 OJ L 189, 3.7.1998, p. 42.

2 Law CXXXIX of 2013 on the Magyar Nemzeti Bank.

the Hungarian currency and currency denominated in euro against counterfeiting. An amendment to the MNB decree regulating the processing and distribution of banknotes and protection of banknotes against counterfeiting[3] (hereinafter referred to as 'the MNB Decree') therefore became necessary to update the references to and implement the Articles of the new Law on the Magyar Nemzeti Bank, on the one hand, and to reflect the relevant Union legislation in this field, on the other hand.

1.3 Apart from providing updated references to the Law on the Magyar Nemzeti Bank in this field, the draft decree also provides new requirements that credit institutions and postal services have to adhere to in order to ensure that the ATMs continue to operate if critical events occur that expose ATMs to risk. With a view to improving business continuity, the draft decree, *inter alia*, requires the entities affected by the draft decree to set up a business contingency plan.

2. General observations

2.1 Since Hungary is a Member State with a derogation pursuant to Article 139 of the Treaty, the ECB's requirements regarding the recirculation of euro banknotes in Member States that have adopted the euro do not apply to the MNB[4]. These requirements will apply once Hungary adopts the euro and the MNB becomes a fully integrated member of the Eurosystem.

2.2 The ECB welcomes that the draft decree imposes requirements on credit institutions and postal services to develop a business contingency plan in relation to cash distribution disruptions and acknowledges that such a provision would address specific issues, as well as mitigate relevant risks to the national cash distribution cycle for the purpose of ensuring its continuity.

2.3 Furthermore, based on correspondence with the Hungarian authorities, the ECB understands that an amendment to the Law on the Magyar Nemzeti Bank is expected in the near future. In this respect, the ECB reiterates its earlier observations as regards the MNB's currency-issuing operations[5], most of which were not taken into consideration when the draft Law on the Magyar Nemzeti Bank was finalised, and urges the Hungarian legislator to consider those observations with regard to any forthcoming amendments to the Law on the Magyar Nemzeti Bank. It is also important that any future amendments to the Law on the Magyar Nemzeti Bank are comprehensive and address all outstanding points with regard to the MNB identified by the ECB in past opinions and its Convergence Report[6], with a view to avoiding frequent changes to Hungarian legislation on the MNB[7].

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3 MNB Decree 11/2011 (IX. 26.).

4 See Opinions CON/2008/90 and CON/2011/59. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

5 See paragraph 3.2.5 of Opinion CON/2013/56.

6 See Opinions CON/2013/56 and CON/2013/71, as well as the ECB's Convergence Report of May 2012, p. 243-248.

7 See, for example, Opinions CON/2007/14, CON2008/83, CON/2010/91, CON/2011/104, CON/2012/43 and CON/2013/56.

3. Specific observations

3.1 The draft decree amends the provision on the scope of the MNB Decree[8]. While recognising the technical character of this amendment, the ECB highlights that the amended provision sets out the instances where specific provisions of the MNB Decree applies to the processing and distribution of foreign banknotes, including euro banknotes. In this respect, Decision ECB/2010/14[9] specifically regulates any issue relating to cash handlers automatically or manually processing euro banknotes and putting those banknotes into circulation. Since Decision ECB/2010/14 applies to cash handlers by virtue of Article 6(1) of Council Regulation (EC) No 1338/2001[10], which refers to procedures defined by the ECB for checking euro banknotes, there is no strict need to implement Decision ECB/2010/14 into Hungarian law[11]. In general, the ECB considers it essential for the draft decree and the MNB Decree to only deviate from Decision ECB/2010/14 where the Decision has expressly allowed such deviations. To ensure consistency, the ECB recommends including direct references in the MNB Decree to the relevant provisions of Decision ECB/2010/14, including its technical annexes[12]. In this respect, the ECB understands that Annex 2 to the MNB Decree defines banknote handling machine types for processing forint banknotes without prejudice to the application in Hungary of the technical annexes to Decision ECB/2010/14 regulating similar aspects in the context of handling euro banknotes.

3.2 The ECB understands that the new definition of fit euro banknotes in the draft decree recognises the requirement for them to be checked for authenticity in accordance with Decision ECB/2010/14 based on the provision of Article 3(4) and 7(1) of the MNB Decree. However, the definition of unfit euro banknotes set out in the draft decree would benefit from aligning with the corresponding definition laid down in Decision ECB/2010/14, thereby ensuring the consistency of this definition with the implementation approach recommended under paragraph 3.1 above.

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8 See Article 4(1) of the draft decree amending Article 1(b) of the MNB Decree on the on processing and distribution of banknotes and on the technical tasks relating to the protection of banknotes against counterfeiting.

9 Decision ECB/2010/14 of 16 December 2010 on the authenticity and fitness checking and recirculation of euro banknotes (OJ L 267, 9.10.2010, p. 1).

10 Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6). The effects of this Regulation, in particular of the second subparagraph of Article 6(1) thereof, have been extended to Member States that have not adopted the euro as their single currency by way of Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency (OJ L 181, 4.7.2001, p. 11).

11 See paragraph 2.1 of Opinion CON/2011/19.

12 See paragraph 3.1 of Opinion CON/2011/78.

3.3 Finally, the ECB draws the attention of the Hungarian authorities to a recent amendment to Decision ECB/2010/14[13], which has abolished the transitional period referred to in Article 13(2) thereof. To this end, the ECB recommends amending Article 7(3) of the MNB Decree in its upcoming recast, which was announced by the MNB in the explanatory memorandum attached to the consultation request.

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

Done at Frankfurt am Main, 17 December 2013.

[signed]

The President of the ECB

Mario DRAGHI

13 Decision ECB/2012/19 amending Decision ECB/2010/14 on the authenticity and fitness checking and recirculation of euro banknotes (OJ L 253, 20.9.2012, p. 19).