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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 October 2008

at the request of the German Ministry of Finance

on a draft order on the replacement of euro coins and German euro commemorative coins which are unfit for circulation and the charging of appropriate fees

(CON/2008/49)

Introduction and legal basis

On 25 August 2008 the European Central Bank (ECB) received a request from the German Ministry of Finance for an opinion on a draft order on the replacement of euro coins and German euro commemorative coins which are unfit for circulation and the charging of appropriate fees (hereinafter the 'draft order').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 order 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 order

The draft order is based on § 9a of the Law on coins[2] which was subject to a separate ECB opinion earlier this year[3]. This provision forms the legal basis for charging a fee as well as for setting up requirements for the sorting, packaging and labelling of packaging in the framework of the replacement and the receipt of unfit euro coins and German euro commemorative coins by the Deutsche Bundesbank.

The draft order is intended to implement Commission Recommendation 2005/504/EC of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation[4], whose purpose is to create equal conditions for the replacement of coins unfit for circulations in the euro area.

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1 OJ L 189, 3.7.1998, p. 42.

2 *Bundesgesetzblatt* I, p. 809, 813, 8.5.2008.

3 ECB Opinion CON/2008/3 of 9 January 2008 at the request of the German Ministry of Finance on a draft law consolidating federal law within the field of competence of the Ministry of Finance and amending the Law on coins.

4 OJ L 184, 15.7.2005, p. 60.

2. General observations

2.1 The draft order provides for a general fee to be charged for replacing unfit euro coins and German commemorative euro coins. In this context, the ECB notes that the use of the term 'commemorative coin' ('*Gedenkmünze*') in the draft order follows the definition of the term contained in the German Law on coins[5], according to which commemorative coins are covered by the term 'collector coin', which is different from established EU practice in this regard[6].

Under § 5 amounts of coins falling below specified levels and unfit coins resulting from the manufacture of coin rolls in foil packaging are exempted from a fee. No fee or a reduced fee may be charged 'for reasons of fairness or in the public interest'.

2.2 As coins have a long life-span of more than 25 years, the replacement of coins unfit for circulation can be considered a rather minor activity in the range of cash services provided by euro area national central banks (NCBs). Accordingly the ECB underlines that the principle of basic free-of-charge cash services as part of the public tasks to be provided by euro area NCBs is agreed Eurosystem practice and remains unaffected by the draft order. According to the Eurosystem fee policy and common approach to opening hours and debiting/crediting rules for cash services at NCB counters[7] implemented from 1 March 2002, the different levels of services are:

- free-of-charge: these are the basic services provided by all NCBs, taking into account their unique role in providing the economy with cash; and
- fee-based: these are additional services that NCBs may provide. A fee must be paid for these optional services, taking into account the fact that they may also be provided by commercial third parties.

It should be ensured that the main principle of basic free-of-charge cash services in the Eurosystem is not called into question by the draft order.

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5 Section 2(1) of the Law on coins provides: 'The Federal Government may issue, as collector coins…commemorative coins denominated in euro.' According to Section 2(2) 'the German euro commemorative coins shall be domestic legal tender in accordance with this Law'.

6 At EU level, the terms 'commemorative coins' and 'collector coins' are defined in Commission Recommendation of 29 September 2003 on a common practice for changes to the design of national obverse sides of euro circulation coins (OJ L 264, 15.10.2003, p. 38) and the Communication from the Commission on the recommendation of 29 September 2003 concerning a common practice for changes to the design of national obverse sides of euro circulation coins (OJ C 247, 15.10.2003, p. 5). According to these instruments, commemorative coins are part of euro circulation coins. However, their national side differs in that it is usually destined to commemorate an event or a personality, and the two euro coin should be the sole denomination used for such issues. Collector coins must have a different face value and their legal tender status is restricted to the issuing Member State.

7 ECB Annual Report 2002, p. 134. Available on the ECB's website at www.ecb.europa.eu.

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

Done at Frankfurt am Main, 16 October 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET