EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 10 October 2002

at the request of the Bank of Greece
concerning a draft legislative provision on the protection of euro banknotes

(CON/2002/26)

1. On 23 August 2002 the European Central Bank (ECB) received a request from the Bank of Greece for an opinion concerning a draft legislative provision on the protection of euro banknotes (the 'draft legislative provision'). On 3 October 2002 the ECB received revised versions of both the draft legislative provision and the explanatory report. This opinion takes into account these revised versions.

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 the first 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 legislative provision deals with the legal protection of euro banknotes. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank[2], this opinion has been adopted by the Governing Council of the ECB.

3. The draft legislative provision provides for the protection of euro banknotes by introducing rules on their reproduction and exchange. Pursuant to the explanatory report, the draft legislative provision has a twofold aim. Firstly, to fill a gap in the legislation after the repeal of the Greek law regarding the protection of banknotes denominated in drachma. Secondly, to adapt the Greek legislation in accordance with Community legislation. In particular, the draft legislative provision reflects the rules laid down in Decision ECB/2001/7 of the European Central Bank of 30 August 2001 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes[3], as amended by Decision ECB/2001/14[4].

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1 OJ L 189, 3.7.1998, p. 42.
2 OJ L 125, 19.5.1999, p. 34.
3 OJ L 233, 31.8.2001, p. 55.
4 OJ L 5, 9.1.2002, p.26.

4. Sections 1 to 3 of the draft legislative provision ensure, in line with Article 2(1) of Decision ECB/2001/7, that the ECB's copyright on euro banknotes shall be protected in Greece without any time limit and that it shall be exercised in Greece by the Bank of Greece on behalf of the ECB. The ECB welcomes these rules as they follow Recommendation ECB/1998/7 of the European Central Bank of 7 July 1998 regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins[5], which provides that Member States 'should ensure that banknote designs may legally benefit from copyright protection'[6].

5. Section 1 of the draft legislative provision establishes that 'copyright [on] euro banknotes, as such banknotes are specified in the applicable provisions, which belongs to the European Central Bank, shall be exercised within the Greek territory by the Bank of Greece for the account of the European Central Bank and its duration shall be subject to no time limits'. The ECB would suggest clarifying that the ECB can always enforce the copyright on euro banknotes in the Greek territory on its own. The ECB further welcomes the reference made in the revised version of the explanatory report to the agreement on the drawing-up of draft designs for euro banknotes (the 'Agreement') concluded between the European Monetary Institute (EMI) and the author of the selected designs in the Europe-wide competition concerning the design of a series of euro banknotes organised by the EMI in 1996, from which the ECB's ownership of copyright stems. Pursuant to this Agreement, the ECB holds copyright on the designs of the euro banknotes, as mentioned in Article 2(1) of Decision ECB/2001/7.

6. With the aim of ensuring copyright protection of euro banknotes, Section 1 of the draft legislative provision enables the Bank of Greece to exercise the ECB's copyright and thus to take action, including initiating legal proceedings, in the case of infringement. The ECB welcomes the fact that such enforcement powers have been given to the Bank of Greece, since this accords with the decentralised approach contained in Article 1 of Guideline ECB/1999/3 of the European Central Bank of 7 July 1998 on certain provisions regarding euro banknotes, as amended on 26 August 1999[7]. Article 1(1) of Guideline ECB/1999/3 imposes on the national central banks (NCBs) the obligation to take all necessary and feasible measures, according to their national legal systems, to ensure that there is no breach of the copyright on the euro banknote designs held by the ECB. Article 1(2) further compels NCBs, when they become aware of unauthorised reproductions of euro banknotes having occurred on their national territory, to take immediate action to ensure that such reproduction ceases and that any copies produced in this manner are withdrawn, and to inform the ECB without delay.

7. The ECB takes note that Section 4 of the draft legislative provision introduces criminal law penalties for the damage and mutilation of euro banknotes. It renders any damage, including any

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5 OJ C 11, 15.1.1999, p. 13.

6 Article 3.

7 OJ L 258, 5.10.1999, p. 32.

alteration effected by various means, or mutilation of euro banknotes, a criminal offence carrying a penalty of imprisonment for a term of one up to six months or a fine of not less than 500 euro. Damaged or mutilated euro banknotes shall be handed over to the Bank of Greece. The procedure for exchanging damaged or mutilated banknotes is in conformity with the rules laid down in Article 3(3) of Decision ECB/2001/7. Notwithstanding this, the Greek authorities are invited to apply the provisions laid down in Section 4 of the draft legislative provision in such a way that it does not discourage the acceptance of euro banknotes.

8. 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 10 October 2002.

The President of the ECB

[signed]

Willem F. DUISENBERG