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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 5 August 2008

at the request of Latvijas Banka on a draft regulation on lats banknotes and coins

(CON/2008/36)

Introduction and legal basis

On 15 July 2008 the European Central Bank (ECB) received a request from Latvijas Banka for an opinion on a draft regulation on lats banknotes and coins (hereinafter the 'draft regulation').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the first and the second 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 regulation relates to currency matters and 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 regulation

The draft regulation replaces the Regulation on lats banknotes[2] by amending and supplementing its provisions. It provides for: (i) the numbering, registration, and monetary backing of lats banknotes and coins, (ii) the procedure for withdrawing banknotes and coins from circulation, (iii) the procedure for exchanging damaged banknotes and coins, and (iv) the introduction of special circulation and collector coins issued by Latvijas Banka.

2. General observations

2.1 While Latvia is a Member State with a derogation and the ECB requirements regarding the organisation of national cash cycles in Member States that have adopted the euro currently do not apply to Latvijas Banka, these requirements will become applicable to Latvijas Banka once Latvia adopts the euro and Latvijas Banka becomes a fully integrated member of the Eurosystem. As a general comment, the ECB notes that the provisions of the draft regulation on replacement of banknotes and coins differ to some extent from Eurosystem practices and that before Latvia adopts

1 OJ L 189, 3.7.1998, p. 42.

2 Regulation on lats banknotes and coins approved by Latvijas Banka Council Resolution No 131/8, 16.11.2006 (*Latvijas Vēstnesis*, 192 (3560), 1.12.2006) issued in compliance with the first and second part of Article 34 of the Law on Latvijas Banka (*Ziņotājs*, 22/23, 4.6.1992, in force since 19.5.1992).

the euro[3] these provisions will have to be aligned with Eurosystem standards and, in particular, with Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes[4].

2.2 Under Article 106 of the Treaty, the ECB has the exclusive right to authorise the issue of banknotes within the Community, whereas coins are issued by Member States subject to the ECB's approval of the volume. Consequently, the Eurosystem's regulatory competence concerns only banknotes. In addition, in view of the accession of national central banks (NCBs) to the Eurosystem, the ECB supports a clear and consistent separation between national rules relating to banknotes and rules relating to coins. Therefore, the ECB considers that the draft regulation would benefit from introducing such consistent internal separation between rules concerning banknotes and those concerning coins. This would facilitate the legal convergence of the Latvian legislative framework, which is necessary for Latvia to become a full participant in economic and monetary union.

3. Specific observations

3.1 *Withdrawing and replacing banknotes*

Point 6 of the draft regulation concerning the rationale for withdrawing and replacing banknotes could be expanded. Changes in the subject matter and design of banknotes are not only triggered by outdated banknotes and counterfeiting problems. Indeed, one of the main aims of updating currency design is to modernise banknote security in view of the latest developments in security design and technology.

3.2 *Alignment of Latvian legislation with the ECB's legal framework*

3.2.1 Point 18 of the draft regulation, which provides that Latvijas Banka will not replace severely damaged banknotes and coins, could be clarified and further aligned with Article 3 of Decision ECB/2003/4 pursuant to which the status of genuine euro banknotes as legal tender is not affected by their physical condition, including such elements as mutilation or damage[5]. There are however some circumstances in which the exchange of a mutilated or damaged euro banknote can be refused[6]

3.2.2 Moreover, regarding banknotes, the draft regulation specifies that if less than 51% of a banknote is presented or if security features and the nominal value cannot be discerned, it will not be exchanged. Such rule differs from the ECB's rules for euro banknotes, which specify that a Eurosystem NCB may exchange a euro banknote for 100% of its face value if more than 50% of

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3 See, in particular, ECB Opinion CON/2007/28 of 25 September 2007 at the request of the President of Narodowy Bank Polski on a draft ordinance on the method and procedure for counting, sorting, packaging and labelling packaging units of banknotes and coins, and in conducting activities related to the supply of banknotes and coins to banks and ECB Opinion CON/2008/26 of 16 June 2008 at the request of Narodowy Bank Polski on a draft ordinance amending the principles and procedure for replacing banknotes and coins which have ceased to be legal tender in Poland as a result of wear and tear or damage.

4 OJ L 78, 25.3.2003, p. 16.

5 See Article 3(1) of Decision ECB/2003/4.

6 See Article 3(3) of Decision ECB/2003/4.

the euro banknote is presented, whether presented in one piece or not or, alternatively, when 50% or less of the euro banknote is presented and the applicant proves that the missing parts have been destroyed[7].

3.2.3 The ECB invites Latvijas Banka to already consider aligning national rules to the extent possible with the respective transitional regime for the implementation of the ECB's *Framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers*[8]. In addition, for the purposes of legal clarity, it would be advisable to clarify the scope of point 12. The ECB understands that this point applies not only to unfit banknotes and coins but covers also those that are no longer legal tender, in which case speaking of 'banknotes and coins in circulation' may be misleading.

3.2.4 Under point 17, it may be advisable to specify that Latvijas Banka will only replace genuine (excluding counterfeit) worn and damaged banknotes and coins.

3.2.5 Regarding point 23, the ECB invites Latvijas Banka to take into account possible adaptations of and investments in banknote sorting machines that will have the technical ability to sort according to ECB sorting criteria, including processing of non-faced and non-orientated banknotes.

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

Done at Frankfurt am Main, 5 August 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

7 Article 3(1) of Decision ECB/2003/4.

8 Available on the ECB's website at www.ecb.europa.eu. Equivalent rules for euro coins are contained in the Commission's Recommendation of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation (COM(2005) 1540 final).