EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 29 December 2006

at the request of the Portuguese Ministry of Finance and Public Administration

on a draft decree-law on the recycling, the detection of counterfeits and the fitness sorting of euro banknotes

(CON/2006/62)

Introduction and legal basis

On 16 October 2006 the European Central Bank (ECB) received a request from the Portuguese Ministry of Finance and Public Administration for an opinion on a draft decree-law on the detection of counterfeits and the fitness sorting of euro banknotes (hereinafter the 'draft decree-law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the 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 decree-law relates to means of payment and the Banco de Portugal. 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 law

The purpose of the draft decree-law is to establish a legal framework at national level that is consistent with the ECB's Framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers (hereinafter the 'Banknote Recycling Framework')[2]. More specifically, the proposed draft decree-law (i) regulates the detection of counterfeits and fitness sorting of euro banknotes carried out outside the Banco de Portugal; (ii) establishes requirements to ensure that the relevant operators duly withdraw from circulation worn or defective banknotes that are unfit for circulation, or banknotes that are, or are suspected to be counterfeit or forged; and (iii) grants the Banco de Portugal rights to issue additional regulations in this field, to inspect banknote sorting machines and to impose fines for breaches of the duties imposed by the draft decree-law.

1 OJ L 189, 3.7.1998, p. 42.

2 Available on the ECB's website at www.ecb.int.

2. General observations

2.1 The Banknote Recycling Framework aims to, inter alia: (i) implement a common policy regarding banknote recycling by credit institutions and other professional cash handlers (hereinafter collectively referred to as 'professional cash handlers'); and (ii) recommend that professional cash handlers meet certain due diligence standards concerning the handling of euro banknotes, so as to contribute to maintaining the quality and authenticity of euro banknotes in circulation. As issuing authorities, it is of the utmost importance to the ECB and the national central banks of the Member States that have adopted the euro (hereinafter 'participating NCBs') that euro banknotes in circulation are in good physical condition so that the general public, as well as professional cash handlers, can check their authenticity in a reliable and proper manner and separate authentic banknotes from counterfeits or suspected counterfeits.

2.2 The ECB welcomes this legislative initiative to implement the Banknote Recycling Framework in Portugal, which will enable the Banco de Portugal better to perform its statutory tasks of maintaining the integrity and quality of euro banknotes in circulation, by ensuring compliance with the Eurosystem's common policy and standards concerning authenticity and quality checks of euro banknotes.

2.3 The draft decree-law establishes a regime which is broadly compatible with Community law concerning the protection of the euro against counterfeiting, in particular Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting[3]. Assuming that it is fully implemented and that the Banco de Portugal issues the envisaged follow-up regulations, the new regime will contribute to the process of reinforcing public trust in the euro.

3. Specific observations

3.1 As the maintenance of the integrity of euro banknotes in circulation forms part of the duties deriving from a participating NCB's role as an issuing authority, the consulting authority may wish to consider stressing this aspect in the draft decree-law.

3.2 The ECB notes that the wording of Article 2(2) of the draft decree-law is fairly broad. As the draft decree-law imposes sanctions on the addressees for non-compliance with the duties imposed by the draft decree-law, in any event the ECB would also invite the consulting authority to consider whether the scope of the addressees is sufficiently clear to fulfil the requirement of legal certainty under Portuguese law on administrative sanctions.

3.3 For the sake of legal clarity, it is recommended that Article 12(3) of the draft decree-law should specify the procedural rules which apply to the sanctions referred to in Article (1) and (2) of the draft-decree-law.

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3 OJ L 181, 4.7.2001, p. 6.

3.4 In order to ensure consistency, the title of Article 9 and the main body of both Article 11(2) and (3) and Article 12(2)(a) and (c) should expressly refer to ‘euro banknotes’, given that only Article 3 and Article 12(1) deal with foreign notes.

3.5 Finally, given that the draft decree-law deals exclusively with the recycling regime of banknotes and that a separate decree-law is being prepared covering coins, the ECB recommends that the references to coins in Article 3 and Article 12(1) of the present draft law are deleted.

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

Done at Frankfurt am Main, 29 December 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET