EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 August 2006

at the request of Banka Slovenije
on a draft decision on the cash changeover

(CON/2006/43)

Introduction and legal basis

On 2 August 2006 the European Central Bank (ECB) received a request from Banka Slovenije for an opinion on a draft decision on the cash changeover (hereinafter the 'draft decision').

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 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 decision 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 decision

The main objective of the draft decision is to regulate the procedures and method for exchanging banknotes and coins denominated in tolars for banknotes and coins denominated in euro, and the conditions for transport, storage, security, provision of collateral and statistical monitoring in this respect. The draft decision also establishes the regime for frontloading and sub-frontloading of euro banknotes and coins in Slovenia before the introduction of the euro on 1 January 2007. Pursuant to the draft decision, Banka Slovenije will begin frontloading euro coins to banks from the draft decision's entry into force, but not before 1 September 2006, and euro banknotes on 11 December 2006.

2. General observations

2.1 The ECB welcomes the draft decision as part of preparations for the adoption of the euro in Slovenia. The draft decision is intended to complement other draft or already adopted legislation on the introduction of the euro, in particular the Law on Banka Slovenije[2] and the draft law on the

1 OJ L 189, 3.7.1998, p. 42.

2 *Zakon o Banki Slovenije, Uradni List RS* No 72/06 – official consolidated version.

introduction of the euro on which the ECB already expressed its opinion, including the provisions on frontloading[3].

2.2 Furthermore, the draft decision is intended to ensure compliance of the Slovenian regime with Guideline ECB/2006/9 of 14 July 2006 on certain preparations for the euro cash changeover and on frontloading and sub-frontloading of euro banknotes and coins outside the euro area[4], and provide the national legal basis for frontloading and sub-frontloading of euro coins. Following Council Decision 2006/495/EC of 11 July 2006 in accordance with Article 122(2) of the Treaty on the adoption by Slovenia of the single currency on 1 January 2007[5] which abrogated the derogation in favour of Slovenia, these efforts are in line with Article 10 of the Treaty according to which the Member States take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. In addition to the above, Banka Slovenije exercises its power to establish the framework for issue of euro coins in accordance with Article 106(2) of the Treaty. By adopting the draft decision, Banka Slovenije also acts in accordance with Article 19 of Guideline ECB/2006/9 pursuant to which the rules in relation to euro coins laid down in Guideline ECB/2006/9 are recommendations to be applied by the national central banks within the framework for the issue of euro coins to be set up by the competent national authorities of the future participating Member States. Banka Slovenije also introduces some solutions not found in Guideline ECB/2006/9.

2.3 In the ECB's view, the envisaged possibility of starting frontloading euro cash well ahead of 1 January 2007 should contribute to a smooth euro changeover on that date.

3. The definition of indirect recipients

Indirect recipients are defined in the tenth indent of Article 2 of the draft decision as natural persons that pursue business activities, State authorities, local government authorities and legal persons that in accordance with the law governing the introduction of the euro are obliged to return exclusively in euro cash the difference between the amount charged for goods or services and the amount received, and other persons that transact business in cash. The ECB would recommend supplementing this definition with an additional requirement that the indirect recipients must be located in Slovenia. This element is expressly included in the corresponding definition of 'professional third parties' in Guideline ECB/2006/9 to avoid any potential misuse of frontloaded euro cash.

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3 See paragraph 3.20 of ECB Opinion CON/2006/17 of 13 March 2006 at the request of the Slovenian Ministry of Finance on a draft law amending the Law on Banka Slovenije and paragraph 4.3 of ECB Opinion CON/2006/29 of 12 June 2006 at the request of the Slovenian Ministry of Finance on a draft law on the introduction of the euro.

4 OJ L 207, 28.7.2006, p. 39.

5 OJ L 195, 15.7.2006, p. 25.

4. Diligence of a good expert

Article 10 of the draft decision provides that banks must store frontloaded euro cash in their vaults with the 'diligence of a good expert'. The ECB understands that this concept represents a national legal standard that must be assessed in every individual case, but emphasises that the diligence of a good expert must in any event include compliance with security standards that are expected from and normally applied by banks for cash handling.

5. Costs of transport and security for frontloaded euro cash

5.1 According to Article 11 of the draft decision, Banka Slovenije must cover the costs of transport and security for frontloaded euro cash to the site designated by banks for accepting euro cash. Such acceptance sites will be designated in the contract on euro cash frontloading referred to in Article 4(2) of the draft decision.

5.2 The ECB notes in this context the position of the Eurogroup at its meeting on 16 October 2000 when they considered requests by a number of business sectors for compensation for costs related to the euro changeover in 2002[6]. Ministers acknowledged the existence of these costs, but held a view that the costs were relatively low compared with future gains for all business sectors and should be considered as an investment for the common good. Ministers agreed that changeover costs should in principle be borne by the sectors where they arise. Taking this agreement into account, the Governing Council also stressed that the Eurosystem should in no way become involved in compensating banks for the operational costs of the changeover[7].

5.3 Notwithstanding the above, Banka Slovenije could take measures to compensate the costs provided that certain conditions are fulfilled. To this end, the compensation schemes would in particular have to: (i) be implemented to ensure smooth logistics for the cash changeover; and (ii) comply with the equal treatment principle and avoid significant cross-border spillover effects[8].

6. Return of surplus quantities of euro cash

Articles 8 and 9 of the draft decision provide that frontloaded euro cash may be returned to Banka Slovenije in the period between 15 and 31 January 2007, whereby the payment of any such returned frontloaded cash will be offset against banks' liabilities arising from the application of the linear debiting model described in Article 12 of the draft decision. Given that all frontloaded euro banknotes become legal tender and are treated as 'banknotes in circulation' as of the date of the introduction of the euro in Slovenia (pursuant to Article 4(7) of Guideline ECB/2006/9), and in order not to undermine the linear debiting model set out in Article 15(1) in conjunction with Article 15(3) of Guideline ECB/2006/9, which

6 Referred to in '*Evaluation of the 2002 cash changeover'*, April 2002. Available on the ECB's website at www.ecb.int.

7 *Ibidem.*

8 *Ibidem.*

has been developed to support a smooth cash changeover, the ECB recommends that the possibility of offsetting returned euro banknotes against banks' liabilities is omitted. To this end: (i) Article 9 of the draft decision should be reworded to refer only to the return of surplus quantities of frontloaded euro cash in accordance with the rules for standard cash returning; and (ii) the second sentence of the first paragraph of Article 12 of the draft decision should be deleted.

7. Storage of frontloaded euro cash

The draft decision refers to the requirement that frontloaded and sub-frontloaded cash has to be stored 'correctly'[9]. This should be understood as storage in accordance with the conditions laid down in Article 10 of the draft decision. For reasons of legal clarity, the ECB would suggest amending the wording so as to refer to storage being in accordance with the conditions laid down in Article 10 of the draft decision rather than it being 'correct'.

8. Use of the term 'sub-frontloading'

Article 5 of the draft decision provides that frontloaded euro cash may only be frontloaded onwards by banks and that banks may frontload euro cash onwards only to indirect recipients. It appears that 'frontload onwards' in this context should be understood as 'sub-frontload'. If this is the case, the ECB would suggest using the terminology consistently to avoid any misinterpretation of the draft decision.

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

Done at Frankfurt am Main, 25 August 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

9 See Article 14 (Consequences of breaches) and Article 16 (Contract on sub-frontloading) of the draft decision.