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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 6 December 2010

on authenticity, fitness checking and recirculation of euro banknotes and on sanctions for the failure to protect euro banknotes and coins against counterfeiting

(CON/2010/87)

Introduction and legal basis

On 26 October 2010, the European Central Bank (ECB) received a request from the Bank of Greece (BoG) for an opinion on a draft BoG Monetary Policy Council act on the authenticity and fitness checking and recirculation of euro banknotes and on the imposition of sanctions for failure to withdraw from circulation counterfeit euro notes (hereinafter the 'draft MPC act') and on a draft BoG Governor's act on the imposition of sanctions on credit institutions and bureaux de change that fail to withdraw from circulation counterfeit euro coins (hereinafter the 'draft Governor's act'; the draft MPC act and the draft Governor's act are hereinafter jointly referred to as the 'draft acts').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the first, second and third indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions[1], as the draft acts concern currency matters, means of payment and the Bank of Greece. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.

1. Purpose of the draft acts

1.1 The draft acts will align national law with Article 6 of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting[2]. They establish a sanctions regime for failure to discharge the obligations under Article 6(2) of Regulation (EC) No 1338/2001. In addition, the draft MPC act complements Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes[3]. National authorities are not formally obliged to consult the ECB on the implementation of the Member States' obligation to take the necessary measures to ensure that

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 181, 4.7.2001, p. 6.

3 OJ L 267, 9.10.2010, p. 1.

breaches of Article 6(1) of Regulation (EC) 1338/2001 are subject to effective, proportionate and deterrent sanctions. However, the ECB considers it necessary to harmonise throughout the Union the national measures implementing the abovementioned obligation to the extent possible, subject to national peculiarities. Thus, the present opinion includes some observations on this point.

1.2 The draft MPC act amongst others: (i) aligns national law with Article 6(1) of Regulation (EC) No 1338/2001 and Decision ECB/2010/14 by imposing on cash handlers, which are defined in Article 2 of the Decision ECB/2010/14 by reference to the institutions listed in Article 6 of Regulation (EC) No 1338/2001, the obligation to comply with the euro banknote authenticity and fitness checking and recirculation procedures defined by the ECB and to withdraw from circulation all euro banknotes received by them which they know or have sufficient reason to believe to be counterfeit; (ii) regulates certain issues that the Decision ECB/2010/14 leaves to the discretion of the national central banks (NCBs); (iii) provides that in the event of non-compliance with its provisions and with Decision ECB/2010/14 the BoG's Governor or bodies authorised by the Governor will impose a fine ranging from EUR 10 000 to EUR 200 000, and in the event of repeated non-compliance, up to EUR 300 000, according to the findings of the inspections conducted by the competent authorities; (iv) provides that the BoG will prohibit the recirculation of euro banknotes that are affected by non-compliance by a cash handler with Decision ECB/2010/14 and with the draft MPC act where such non-compliance is detected during an on-site inspection, for as long as it has not been remedied.

1.3 The draft Governor's act (i) imposes on credit institutions and bureaux de change the obligation to withdraw from circulation all euro coins received by them which they know or have sufficient reason to believe to be counterfeit and (ii) provides that a decision of the BoG Banking and Credit Committee will impose on non-compliance with the abovementioned obligation a fine in favour of the Greek State, in the same range provided under the draft MPC act.

1.4 The draft acts will enter into force on 1 January 2011.

2. General observations

2.1 The draft acts will lay down measures on the authenticity and fitness checking and recirculation of euro banknotes and coins, in line with Article 6 of Regulation (EC) No 1338/2001 and Decision ECB/2010/14. In this respect, the ECB welcomes the draft acts.

2.2 With regard to the draft MPC act, the ECB considers that the provisions regulating issues that the Decision ECB/2010/14 leaves to the discretion of the national central banks will contribute to the adequate implementation of this Decision in the Greek legal order. Regarding paragraph 1 of the draft MPC act, the ECB is of the opinion that it should specify more clearly that cash handlers not checking euro banknotes for authenticity and fitness will not be allowed to recirculate these banknotes and may only put in circulation euro banknotes that they have received either directly from an NCB or from another cash handler, such as a credit institution or a cash-in-transit

company, that has checked the euro banknotes for authenticity and fitness according to the procedures laid down in Decision ECB/2010/14.

2.3 The draft Governor's act will apply the withdrawal obligation under Article 6(1) of Regulation (EC) No 1338/2001 to euro coins, requiring only credit institutions and bureaux de change to comply with this obligation. Under Article 128 of the Treaty, the ECB has the exclusive right to authorise the issue of euro banknotes within the Union, whereas euro coins are issued by euro area Member States subject to the ECB's approval of the volume. Consequently, the ECB's regulatory competence concerns only euro banknotes. Thus, the ECB supports a clear and consistent separation between national rules for euro banknotes and coins. The ECB further understands that the reason for limiting the scope of the draft Governor's act to credit institutions and bureaux de change relates to the fact that, in the field of euro coins, the BoG has competence only as regards the institutions it supervises, i.e. credit institutions and bureaux de change. Nevertheless, in respect of euro coins the ECB notes that a Regulation of the European Parliament and of the Council concerning authentication of euro coins and handling of euro coins unfit for circulation was adopted on 29 November 2010 and will apply from 1 January 2012 to all institutions referred to in Article 6(1) of Regulation (EC) No 1338/2001.

3. Specific observations

Sanctions regime

3.1 The ECB welcomes the establishment of a deterrent sanctions regime, composed of enforcement measures and financial sanctions, applicable to non-compliance by cash handlers with their obligations under Decision ECB/2010/14 and the draft MPC act, as such non-compliance may compromise the adequate protection of euro banknotes from counterfeiting in the Greek legal order. In addition to enforcement measures such as the prohibition imposed on a non-compliant cash handler from recirculating euro banknotes, the fact that the BoG may also apply financial sanctions in the context of the exercise of the regulatory powers provided by its Statute allows the effective and consistent application of administrative sanctions against non-compliant cash handlers, without prejudice to potential penal sanctions imposed by the competent authorities.

3.2 With regard to the types and range of sanctions provided by the draft MPC act, the ECB notes that particular importance should be attached to the proportionality between the obligation that the cash handler has not complied with and the sanction imposed on it. In particular, with regard to the second subparagraph of paragraph 6 of the draft MPC act, according to which the BoG will prohibit the recirculation of euro banknotes that are affected by non-compliance by a cash handler with Decision ECB/2010/14 and of the draft MPC act when such non-compliance is detected during an on-site inspection, the ECB stresses that, considering the variety of non-compliances that may be detected during an inspection, it may be disproportionate to prohibit the recirculation of euro banknotes in cases where the non-compliance is minor.

3.3 The principle of proportionality is also relevant to the level of the financial sanction imposed on a non-compliant cash handler. The ECB considers positive that the level of the fines imposed for non-compliance with Decision ECB/2010/14 and the draft MPC act will depend on the findings of the inspections as referred to in paragraph 6 of the draft MPC act.

3.4 The ECB believes that the sanctioning regimes available in the Member States that have aligned their law with Regulation (EC) No 1338/2001 in conjunction with Decision ECB/2010/14 could merit some harmonisation insofar as the ECB procedures laid down in the Decision are equally applicable to all cash handlers located in the euro area. In this respect, the ECB considers it important for national authorities to contribute to the establishment of a level playing field among cash handlers falling within the scope of Regulation (EC) 1338/2001, without prejudice to (i) the particularities of the cash cycle and the organisation of cash handlers at national level, and (ii) the consistency of the levels of financial sanctions available in their legal orders.

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

Done at Frankfurt am Main, 6 December 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET