EUROPEAN CENTRAL BANK

EUROSYSTEM

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 27 August 2008**

**at the request of the Central Bank of Malta**
**on a draft Central Bank of Malta Directive No 10 on the banknote recycling framework**

**(CON/2008/38)**

## Introduction and legal basis

On 24 July 2008 the European Central Bank (ECB) received a request from the Central Bank of Malta for an opinion on a draft Central Bank of Malta Directive No 10 on the banknote recycling framework (hereinafter the 'draft directive').

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 directive 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 directive

The draft directive supplements 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] and provides for a specific legal framework for the recycling of euro banknotes by credit institutions and other professional cash handlers. The aim of the draft directive is to reinforce the Central Bank of Malta's powers with respect to the detection of counterfeits and fitness sorting of euro banknotes and, in particular, provides for:

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 181, 4.7.2001, p. 6. According to Article 6, credit institutions engaged in the sorting and distribution to the public of notes and coins as a professional activity, including establishments whose activity consists of exchanging notes and coins of different currencies, such as bureaux de change, are obliged to withdraw from circulation all euro notes and coins received by them which they know or have sufficient reason to believe to be counterfeit. The same article also imposes an obligation on these institutions to immediately hand such notes over to the competent national authorities and for Member States to take the necessary measures to ensure that the establishments which fail to discharge their obligations are subject to effective, proportionate and deterrent sanctions.

(i) implementation of the Eurosystem's banknote recycling framework[3];

(ii) the collection of information from, and conduct of on-site checks at, credit institutions and other professional cash handlers to enable the Central Bank of Malta to monitor banknote recycling activities on an ongoing basis and to establish a regime to sanction non-compliance by credit institutions and other professional cash handlers.

## 2. General observations

Maintaining the integrity and fitness of euro banknotes in circulation is an important objective of the ECB and the national central banks (NCBs) of the Member States that have adopted the euro. Only banknotes in good physical condition can be easily and reliably checked by the public for counterfeits. The ECB therefore welcomes this initiative by the Maltese authorities since one of the Central Bank of Malta's statutory tasks as part of the Eurosystem is to maintain the integrity and quality of euro banknotes and to manage their smooth circulation throughout the territory of Malta. Furthermore, it is acknowledged that credit institutions and other professional cash handlers can usefully contribute to the recycling of euro banknotes provided that those institutions reliably check them in line with the procedures pursuant to the Eurosystem's banknote recycling framework before the banknotes are put back into circulation.

## 3. Specific observations

3.1 *Reference to the Treaty*

Article 3 of the draft directive refers to Articles 106(1) and 105(2) of the Treaty. The reference to Article 106(1) is justified insofar as it lays down that the ECB and the NCBs may issue euro banknotes, thereby entitling the ECB and the NCBs to take all necessary measures to ensure the integrity and preservation of euro banknotes. However, the reference to Article 105(2) of the Treaty appears unnecessary, given that neither currency nor means of payment are mentioned in the aforementioned provision.

3.2 *Definitions and terminology*

3.2.1 The definition of 'professional cash handlers' is a key definition for the proper implementation of the draft directive and it is therefore important that it is well formulated. The scope of the institutions engaged in the professional activity of sorting and distributing euro banknotes to the public differs among Member States. Therefore, this definition must be as broad as possible to ensure that all professional cash handlers fall within the scope of the draft directive. Furthermore,

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3 The Eurosystem's banknote recycling framework means the framework for banknote recycling laid down in the document entitled 'Recycling of euro banknotes: framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers' adopted by the Governing Council on 16 December 2004 and published on the ECB's website in January 2005, as modified from time to time, as well as the documents relating to the deadlines for its implementation at national level.

the ECB noted in ECB Opinion CON/2007/42 of 17 December 2007 at the request of the Council of the European Union on a proposal for a Council Regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting[4], that the reference in Article 6(1) of Regulation (EC) No 1338/2001 to 'other institutions engaged in the sorting and distribution to the public of notes and coins as a professional activity' leaves out of its scope other organisations that run self-service devices supplying euro banknotes to the public, even if not as a professional activity. The practical implementation of the Eurosystem's banknote recycling framework at national level has revealed the narrowness of the term, especially as regards retailers who re-fill automated teller machines. Therefore, the ECB proposed a broader definition of the addressees of the obligation contained in Article 6(1). A regulation amending Regulation (EC) No 1338/2001 has not yet been adopted and the banknote recycling framework continues to address only professional cash handlers. In order to extend the scope of Maltese professional cash handlers, a reformulation of the definition proposed in the draft directive could however be considered.

3.2.2 Some of the definitions contained in Article 7 could be improved to ensure clarity and consistency, especially those related to the different categories of banknote handling machines, e.g. authentication machines, banknote handling equipment and staff-operated machines. The ECB document on the common implementation rules and procedures for the Eurosystem's banknote recycling framework would be a useful reference in this respect.

3.2.3 The defined terms in Article 7, particularly those related to banknote handling machines, which should replace the term 'banknote handling equipment', should be used consistently throughout the draft directive. For example, in Article 8, 'banknote handling machines' is not defined and should therefore be replaced by an appropriately defined term. In Articles 10 and 11 the words 'cannot be put back into circulation' and 'shall not be re-issued' appear to be synonyms; it would be preferable to use one and the same term to designate the same action. The ECB would suggest that the term 'put back into circulation' be used throughout the draft directive rather than the term 're-issue' in order to designate the recycling of euro banknotes that have been authenticated as genuine and sorted as fit. In addition, the definitions should appear in alphabetical order.

3.3 *Principles*

3.3.1 As regards Article 8, it needs to be clarified that the banknote handling machines to be used for checking banknotes have to be tested by an NCB according to the Eurosystem's common test procedures, as referred to in Section 2.6 of the banknote recycling framework.

3.3.2 In addition, Articles 10 and 11 could be merged for the sake of clarity.

4 OJ C 27, 31.1.2008, p. 1.

3.4 *Requirements for banknote handling*

3.4.1 The second sentence of Article 12 of the draft directive should make it clear that both authenticity checks and fitness checks are obligatory for banknotes received from customers that are intended to be put back into circulation.

3.4.2 Banknote handling machines that have passed the Eurosystem's common test procedures are listed centrally by the Eurosystem on one dedicated ECB webpage and all NCBs have to add links from their websites to this ECB webpage; Article 13 should reflect this approach.

3.4.3 Article 13(2) stipulates that intermediaries have to notify the use of banknote handling machines to the central bank prior to putting them into operation. To ensure consistency with the banknote recycling framework, this provision should clarify that only new types of banknote handling machines need to be notified to the central bank before they are used for recycling purposes. Such notification is not required if additional machines of an already notified machine type are put into operation.

3.4.4 The formulation of Article 14 could be reconsidered in view of the Eurosystem's banknote recycling framework, which states on page 4 that 'banknotes which have been checked for authenticity by trained staff members, either manually or without the use of successfully tested banknote handling equipment, shall not be returned to circulation via ATMs'. The current wording of Article 14 is not clear in this respect.

3.5 *Sanctions*

Article 24 should be further clarified especially with regard to measures to ensure compliance with the draft directive. Reference could be made to the power to impose sanctions on intermediaries that do not comply with the draft directive.

3.6 *Role of the manufacturers of banknote handling equipment*

3.6.1 The last sentence of Article 24 provides that where the tested banknote handling equipment does not fulfil all the criteria set by the draft directive, 'the respective intermediary shall update all its relevant machines without delay.' This wording could be more precise to make it clear that contacts of the intermediary with the manufacturer(s) of the relevant equipment may be necessary. In addition, the timeframe within which unfit machines should be updated could be specified.

3.6.2 The meaning of 'without delay' is quite vague. The wording could be improved by setting some precise deadlines that should be different depending on whether the authentication control or the fitness sorting control of the equipment is impaired. The separate ECB document on the common implementation rules and procedures for the banknote recycling framework could be referred to in this respect.

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

Done at Frankfurt am Main, 27 August 2008.

[signed]

*The President of the ECB*

Jean-Claude TRICHET