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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 December 2006

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

on a draft decree-law on the authentication and treatment of euro coins

(CON/2006/61)

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 authentication of euro coins and the treatment of euro coins which are unfit for circulation or reissue (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 aim of the draft decree-law is to align the Portuguese legal framework for the protection of the euro with Commission Recommendation 2005/504/EC of 27 May 2005 concerning authentication of euro coins and the treatment of euro coins unfit for circulation[2]. More specifically, the draft decree-law: (i) regulates the recycling of euro coins by credit institutions and other professional cash handlers (hereinafter collectively 'operators'); (ii) establishes requirements to ensure that operators duly withdraw from circulation coins which are unfit for circulation, counterfeit or forged, or are suspected to be counterfeit or forged; and (iii) grants the Banco de Portugal rights to issue regulations in this field, to inspect coin 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 OJ L 184, 15.7.2005, p. 60.

2. General observations

2.1 Pursuant to Article 11 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[3], the issue of euro coins is the responsibility of the Member States that have adopted the euro; however, this is subject to the ECB's approval of the volume of coin issuance. In Portugal the Ministry of Finance's Treasury department is responsible for issuing euro coins, whilst the Banco de Portugal ensures that such coins are put into circulation. The draft decree-law will enhance the Banco de Portugal's role since it delegates new tasks to the Banco de Portugal in relation to coin recyling which complement the euro banknote recycling tasks that the Banco de Portugal already performs.

2.2 The ECB welcomes the fact that, in future, the Banco de Portugal will be able to control the cash cycle more efficiently by supervising and monitoring coin handling operations that are conducted externally by operators. It also welcomes the fact that the Banco de Portugal will be able to centrally process and report information on the totality of recycling operations.

2.3 The draft decree-law establishes a regime concerning the protection of the euro against counterfeiting, which will contribute to the process of reinforcing public trust in the euro, assuming that it is fully implemented and that the Banco de Portugal issues follow-up regulations.

3. Specific observations

3.1 Article 2(1) of the draft decree-law sets out the addressees of the draft decree-law, i.e. credit institutions and other professional cash handlers, and clarifies that the scope of the latter includes companies which transport valuables. The ECB notes that the wording of Article 2(2) is fairly broad, and as the draft decree-law imposes sanctions on the addressees for non-compliance with the duties imposed by the draft decree-law, the ECB invites 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.

3.2. The ECB notes that breaches of the duties imposed by the draft decree-law constitute an offence punishable by an administrative fine. For the sake of legal clarity, it is recommended that the procedure for imposing such fines described in Article 11(3) of the draft decree-law is set out in more detail.

3.3 Moreover, given that the draft decree-law deals exclusively with the recycling of coins, the ECB recommends that the reference to banknotes in Article 11(1) is deleted, since the draft decree-law does not cover banknotes and thus any possible confusion with the separate and specific recycling regime applicable to euro banknotes would be avoided.

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3 OJ L 139, 11.5.1998, p. 1. Regulation as last amended by Regulation (EC) No 1647/2006 (OJ L 309, 9.11.2006, p. 2).

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

Done at Frankfurt am Main, 20 December 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET