EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 August 2000

at the request of the Irish Department of Justice, Equality and Law Reform on a draft legislative proposal on the counterfeiting of euro-denominated notes and coins

CON/00/16

1. On 7 July 2000 the European Central Bank (ECB) received a request from the Irish Department of Justice, Equality and Law Reform for an ECB opinion on a draft Criminal Justice (Theft and Fraud Offences) Bill, 2000.

2. The ECB's competence to deliver an opinion is based on Article 2 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 legislative proposal contains provisions concerning currency matters. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, this ECB opinion has been adopted by the Governing Council of the ECB.

3. Part 5 and Section 56 of the draft Bill establish the criminal law regime under Irish law for the counterfeiting of currency notes and coins, the passing of counterfeit currency notes or coins, the custody or control of counterfeit currency, the custody or control of any thing used for making counterfeit currency, the import and export of counterfeits and the criminal liability for offences committed by artificial legal persons (e.g., bodies corporate and unincorporated). It is noted, in particular, that the draft Bill makes provision for the following: (1) 'currency note' and 'coin' are defined to mean, respectively, a currency note and coin lawfully issued or customarily used as money in the Irish State or in any other State and include a note denominated in the euro unit and a coin denominated in euro or in cent, whether issued or not; (2) a person who outside the Irish State makes a counterfeit of a currency note or coin, with the intention that he or she or another shall pass or tender it in any Member State of the European Union as genuine, is guilty of an offence, and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both; and (3) a person who without lawful authority or excuse imports into, or exports from, a Member State of the European Union a

counterfeit of a currency note or coin is guilty of an offence, and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

4. The ECB recalls its recommendation of 7 July 1998 regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins (ECB/1998/7)[2], and in particular the ECB's recommendation that the Council of the European Union, the European Commission and the Member States should consider a review of current policies to combat counterfeiting, *inter alia* evaluating the need for harmonisation of penal laws in the field of counterfeiting. In this regard, the ECB notes that Article 12 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[3] obliges the Member States participating in economic and monetary union to ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.

5. With respect to the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (2000/383/JHA),[4] the ECB notes that Member States are required to take the necessary measures to comply with this framework Decision by 31 December 2000 as far as Article 5(a) of the framework Decision is concerned and not later than 29 May 2001 as far as the other provisions of the framework Decision are concerned. By the same dates the Member States are required to transmit to the General Secretariat of the Council, the Commission and the ECB the text of the provisions transposing into their national law the obligations imposed on them under this framework Decision, and the Council will, by 30 June 2001 at the latest, on the basis of this information and a written report by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this framework Decision.

6. Under Article 2 of the framework Decision the Member States that have not yet done so undertake to accede to the International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency and its Protocol. The ECB understands that Ireland ratified the Convention and its Protocol on 24 July 1934, and notes that a text evidencing the transposition of the Convention and its Protocol into Irish law has to be transmitted to the ECB not later than 29 May 2001.

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[1] OJ L 189, 3.7.1998, p. 42-43.
[2] OJ C 246, 6.8.1998, p. 9.
[3] OJ L 139, 11.5.1998, pp. 1-5.

7. Article 3(2) of the framework Decision requires each Member State to take the necessary measures to ensure that participating in and instigating the conduct referred to in Article 3(1) of the framework Decision, and attempting the conduct referred to in points (a) to (c) of said Article 3(1), are punishable. The ECB notes that a text evidencing the transposition, as a matter of general Irish criminal law, of the inchoate criminal offences of attempting, conspiring or inciting the commission of offences covered by said Article 3(1) has to be transmitted to the ECB not later than 29 May 2001.

8. Article 4 of the framework Decision requires that Member States ensure that conduct referred to in Article 3 is also punishable with respect to banknotes or coins being or having been manufactured by use of legal facilities or materials in violation of the rights of the competent authorities. Further consideration may need to be given to whether the scope of Section 31(2)(a) of the draft Bill sufficiently covers this offence by extending the concept of a counterfeit to a currency note or coin that 'resembles a currency note or coin (whether on one side only or both) to such an extent that it is reasonably capable of passing for a currency note or coin of that description'.

9. Under Article 5 of the framework Decision each Member State is required to take the necessary measures to ensure that the conduct under Articles 3 and 4 of the framework Decision is punishable if (a) it relates to the future banknotes and coins of the euro and is committed before 1 January 2002; and (b) it relates to banknotes and coins which are not yet issued but are designated for circulation, and are of a currency which is legal tender. Section 31(1) of the draft Bill refers to euro banknotes and coins 'whether issued or not'. Further consideration may need to be given to whether this formula should be more closely tied to the precise wording of Article 5 of the framework Decision. In this context, it could also be considered whether Section 31(1) of the draft Bill, which refers to 'a note denominated *in the euro unit*', could be simplified by referring to 'a note denominated *in euro*'.

10. The ECB notes that Article 7(2) of the framework Decision requires that at least the Member States in which the euro has been adopted take the appropriate measures to ensure that the prosecution of counterfeiting, at least in respect of the euro, is possible, independently of the nationality of the offender and the place where the offence has been committed (the *universality principle*). The ECB notes that under the draft Bill the only criminal offences

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[4] OJ L 140, 14.6.2000, p. 1.

committed outside the Irish State which are proposed to constitute punishable offences under the draft Bill are the offences of (a) a person making a counterfeit of a currency note or coin outside the State with the intention that he or she or another shall pass or tender it in any Member State of the European Union as genuine (Section 32(2)); and (b) a person importing into, or exporting from, a Member State of the European Union a counterfeit currency note or coin (Section 36(1)). The ECB notes that the offences listed in the draft Bill relating to the making (with the intention of passing or tendering it as genuine outside the EU), passing or tendering of counterfeit currency or of having custody or control of counterfeit currency or things to be used for making counterfeit currency are not stated to be punishable offences where committed outside the Irish State.

11. Article 7(3) of the framework Decision provides that where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall co-operate in deciding which Member State shall prosecute the offender or offenders with a view to centralising the prosecution in a single Member State where possible. The ECB notes that Ireland intends to implement such co-operation on the basis of existing administrative procedures, and a text evidencing the transposition of this provision into Irish law will therefore not be transmitted to the ECB.

12. The ECB confirms that it has no objection to this ECB opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 28 August 2000.

The President of the ECB

[signed]

Willem F. Duisenberg