EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 August 2001

at the request of the Bank of Greece on a draft law presented to the Greek Parliament by the Minister of National Economy and Finance with respect to the circulation of euro banknotes and coins and other related provisions

(CON/2001/21)

1. On 1 August 2001 the European Central Bank (ECB) received a request from the Bank of Greece for an opinion on a draft law with respect to the circulation of euro banknotes and coins and other related provisions (hereinafter referred to as the "Draft Act").

2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the "Treaty") 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] since the Draft Act deals with currency matters and means of payment. Article 11(2) of 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 (hereinafter referred to as the "framework Decision")[2] provides the ECB with the possibility to contribute in relation to the provisions transposing into national law the obligations imposed on Member States under the framework Decision. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank[3], this opinion has been adopted by the Governing Council of the ECB.

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1 OJ L 189, 3.7.1998, p. 42.
2 OJ L 140, 14.6.2000, p. 1.
3 OJ L 125, 19.5.1999, p. 34.

3. In line with Article 15 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[4], Article 1 of the Draft Act introduces a parallel circulation period, which will be limited to the period running from 1 January 2002 to 28 February 2002.

4. The Draft Act provides that the right to issue coins is vested in the Greek State and that approval by the ECB is necessary for issuance. A reference to Article 106(2) of the Treaty is made in connection with this issuance and also in respect of commemorative coins. Features and designs of the national side of the first series of coins, the procedure to select the designs of the national side for future series and the production of coins, as well as the withdrawal of coins, are stipulated in the Draft Act. The Bank of Greece, according to the national cash changeover scenario, shall have the obligation to exchange banknotes denominated in drachmae for euro until 1 March 2012, while the Bank of Greece and the Internal Revenue Offices shall exchange coins denominated in drachmae for euro until 1 March 2004.

5. Member States are free to design the national sides of euro coins provided that 12 stars are displayed on such national side[5]. For the sake of legal clarity, the ECB appreciates that appropriate wording regarding this condition applying to the national sides has been introduced in Article 3(4) of the Draft Act.

6. The Draft Act prohibits frontloading and sub-frontloading beyond the conditions set out in Article 7(2) of the Draft Act and pursuant to the provisions of Guideline ECB/2001/1 of 10 January 2001 adopting certain provisions on the 2002 cash changeover[6]. The ECB welcomes that the eligible institutions for frontloading are stipulated in the Draft Act. The conditions for sub-frontloading are broadly laid down, while the general public may be provided with euro coins in the form of "starter kits" from 17 December 2001. In addition to the credit institutions, the Bank of Greece, and other institutions designated by the Minister of Finance following a proposal by the Bank of Greece may sub-frontload the general public with euro coins in the form of "starter kits", from the same date. By a similar decision, the Bank of Greece and eligible credit institutions may be authorised to supply retailers with euro coins. The ECB welcomes that the Bank of Greece may modify the terms and conditions for frontloading and sub-frontloading in accordance with the relevant guidelines and decisions of the European Central Bank. In Article 7(3), the Draft Act makes provision for adequate collateral for frontloading.

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4 OJ L 139, 11.5.1998, p 1.

5 Directorate-General for Economic and Financial Affairs, European Commission, *Euro coins, From design to circulation,* May 2000, p. 8.

6 OJ L 55, 24.2.2001, p. 80.

7. Furthermore, the ECB welcomes the provision in Article 7(5) specifying the parameters for the imposition of administrative sanctions by the Bank of Greece on credit institutions in the case of violation of their obligations under frontloading agreements. Following harmonisation in the respective field with other participating NCBs, the administrative sanction has been set at the level of 10 % of the amount of the violation or, if such amount cannot be determined, as a lump sum between 10,000 and up to one million euro.

8. From the publication of the Draft Act until 31 December 2001, Article 7(6) of the Draft Act prohibits the production, issuance, distribution or supply of collectors' coins, medals or tokens bearing the words "euro" or "*lepta*/cent" or designs, similar to those appearing on the common sides of the euro coins.

9. The ECB welcomes the provision of Article 7(4) of the Draft Act that frontloading and sub-frontloading agreements in respect of euro banknotes and coins shall not be subject to any tax or levy or any other fiscal burden, direct or indirect. This underlines the principle that the cash changeover should have no impact on costs.

10. 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 Article 3, paragraph 1 of the framework Decision, are punishable. The ECB notes that apart from specific provisions of the Draft Act, provisions of general Greek criminal law are also relevant in so far as they provide that all forms of participation to the commission of the said offences are punishable. In that regard, specific provisions of the Penal Code are to be amended by means of Article 8 of the Draft Act, which transposes into Greek law the provisions of Articles 3 and 4 of the framework Decision. Furthermore, legislation regarding the protection of national currency continues to apply according to Article 8(6) of the Draft Act. With regard to the offences of instigating, participating in and attempting the conduct referred to in Article 3(1) points (a) to (c) of the framework Decision, the present wording of the Draft Act does not address these issues. It is understood that these offences should be punishable under the general provisions of Greek criminal law (Articles 42 to 49 of the Greek Penal Code). It is noted that the minimum punishment of incarceration will be augmented for all offences covered by the framework Decision.

11. The Draft Act provides for administrative sanctions imposed on legal entities in the case that individuals with a power of representation of that legal person, or authority to take decisions on behalf of it, or authority to exercise control within it, pursue activities described in the provisions of Article 8 of the Draft Act implementing Articles 3 and 4 of the framework Decision.

12. The ECB welcomes that the Draft Act provides that conduct referred to in Articles 3 and 4 of the framework Decision is punishable if it relates to banknotes and coins in national currency units of Member States which are accepted for exchange by competent agencies.

13. The ECB further notes that the Draft Act does not include any provisions allowing Greece to comply with its obligations under Articles 4 and 5 of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down the measures necessary for the protection of the euro against counterfeiting[7]. It is understood that the Greek authorities are bound to take the necessary measures to comply with the obligations under the above Regulation prior to its entry into force.

14. The ECB welcomes that Article 7 of the Draft Act protects the frontloading and subfrontloading operations in Greece by penalising the use of euro banknotes as a means of payment before 1 January 2002.

15. The ECB takes note of Article 8(7) of the Draft Act empowering the Government, by joint decision of the competent Ministers, to adjust financial amounts in drachmae, such as fines, fees, pecuniary penalties, charges, levies etc., after rounding into euro from 1 January 2002. With regard to a number of legislative provisions, a smoothing of rounded amounts is considered necessary for greater legal certainty and transparency. In this context, the ECB should like to recall the joint statement by the members of the Eurogroup of 4 June 2001, whereby, overall, conversion into euro of all prices, charges and fees administered by governments will be price neutral or smoothed in favour of the consumer.

16. The ECB confirms that it has no objection to the publication of this opinion at the discretion of the consulting authority.

Done at Frankfurt am Main on 30 August 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG

[7] OJ L 181, 4.7.2001, p. 6.