EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 24 August 2001

at the request of the Austrian Ministry of Justice
on a draft law amending Austrian criminal law
(Strafrechtsänderungsgesetz 2001)

(CON/2001/19)

1. On 30 July 2001 the European Central Bank (ECB) received a request from the Austrian Ministry of Justice on a draft law amending Austrian criminal law (*Strafrechtsänderungsgesetz 2001*) (hereinafter referred to as the "draft law").

2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community, the second indent of Article 4(a) of the Statute of the European System of Central Banks and of the European Central Bank and the first indent 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 legislative proposal contains provisions concerning currency matters. The Governing Council of the ECB has adopted this opinion in accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB.

3. The main purpose of the draft law is the conversion of amounts and thresholds in schillings into euro. At the same time, its intention is the adjustment of amounts and thresholds for inflation or their increase on the grounds of criminal law policy.

4. The substitution of schilling amounts with euro amounts is based on the following principles.

   - Thresholds, which, if exceeded, result in a higher punishment, will be adjusted in the light of social considerations. In particular, this concerns offences against property.
   - In respect of minimum and maximum amounts for penalties, it provides for an adjustment for inflation and introduces rounded amounts, which can easily be remembered.

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1 OJ L 189, 3.7.1998, p. 42.

- In the area of fees, the draft law proposes for budgetary reasons a direct conversion according to the conversion rules.

5. The ECB welcomes the draft law, which provides for the replacement of schilling amounts with euro amounts in the area of criminal law. Such adjustments are in the interests of legal clarity and transparency of the national legal system.

6. The ECB notes that as regards certain "signal amounts", smoothing in order to obtain round and convenient figures is considered necessary for reasons of transparency and practicability.

7. The ECB notes that the draft law provides for an adjustment for inflation for the purpose of fines. In its opinion of 17 May 2001 on a draft Second Federal Law containing ancillary measures for the introduction of the euro (*2. Euro-Justiz-Begleitgesetz*), the ECB underlined the importance of the principle of "no impact on costs" in the context of the introduction of the euro. In this respect, it is essential for the legislator to clearly state the reason for the increase of administrative fees or pecuniary penalties, which, of course, is not related to the changeover to the euro. The ECB notes that the explanatory memorandum of the draft law specifies the grounds for the proposed increases, namely the rise of the consumer price index since the last adjustment in 1988 of 35,8 % and the intention to avoid repeated adjustments within a short period of time.

8. The ECB notes that the upward adjustment of thresholds in the field of offences against property is due to criminal law policy. The ECB does not consider itself to be competent to comment on issues of general criminal law policy.

9. The ECB suggests that for the purposes of direct conversion (e.g. Article 52 of the Penal Code (StVG)), the explanatory memorandum make reference to the conversion and rounding rules in Articles 4 and 5 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro[2].

10. The ECB confirms that it has no objections to the publication of this opinion by the competent national authorities.

Done at Frankfurt am Main on 24 August 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG

2 OJ L 162, 19.6.1997, p. 1.