EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 June 2013

on the treatment of euro banknotes neutralised by anti-theft devices

(CON/2013/43)

Introduction and legal basis

On 24 May 2013, the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Ministry for Home Affairs, for an opinion on five amendments (hereinafter the 'amendments') to a draft law on protection against counterfeiting and the preservation of the quality of cash in circulation (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the first, 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], since the draft amendments concern currency matters, means of payment and the NBB. 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 amendments

The amendments aim to enhance public security by reducing the possibility for thieves to recycle or obtain reimbursement for genuine euro banknotes that have been neutralised following the activation of an anti-theft device[2]. To this end, the amendments introduce the concept of 'presumably neutralised banknotes', i.e. euro banknotes for which there are sufficient reasons to believe that they have been neutralised by certain types of ink stains resulting from the activation of an anti-theft device[3], and apply to such euro banknotes a treatment which is similar to that applied to counterfeits.

First, certain institutions (hereinafter 'professional cash handlers'[4]) will be required to withdraw from circulation all presumably neutralised banknotes that come into their possession, and to hand them over to

1 OJ L 189, 3.7.1998, p. 42.

2 Explanatory memorandum, justification concerning Amendment No 2.

3 Amendment No 1 (proposed new Article 3(3) of the draft law).

4 The amendments and the draft law apply to all institutions falling within the scope of: (a) 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 (OJ L 181, 4.7.2001, p. 6); (b) Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness of checking and recirculation of euro banknotes (OJ L 267, 9.10.2010, p. 1); and (c) Regulation (EU)

the NBB without undue delay[5]. In addition, when presumably neutralised banknotes are found in a banknote handling machine or are discovered by a professional cash handler during a transaction, the professional cash handlers will be required to ensure that they are neither reimbursed nor credited to the account of the person presenting them and that the depositor or the account owner is identified. These obligations will apply in the case of over-the-counter transactions and also upon presentation of presumably neutralised banknotes to banknote handling machines[6]. The presumably neutralised banknotes handed over to the NBB will only be reimbursed in accordance with Decision ECB/2013/10 of 19 April 2013 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes[7].

The monitoring measures that the NBB can take, and the administrative fines and corrective measures it can impose on professional cash handlers with respect to their obligations regarding counterfeits, will also apply with respect to presumably neutralised banknotes[8].

2. Appropriate time to consult the ECB

The amendments concern the draft law, on which the Belgian Ministry of Finance consulted the ECB in the past[9]. The draft law has recently been tabled before the Belgian Parliament and the amendments were introduced by members of Parliament on 22 May 2013. The ECB was requested to deliver an opinion on the amendments as a matter of extreme urgency, if possible within two weeks, because of the imminent vote in the Parliament.

According to Article 4 of Decision 98/415/EC, the ECB must be consulted at an appropriate stage in the legislative process. This implies that the consultation should take place at a point in the legislative process that allows the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion, and the national authorities the possibility to take into account the ECB's views. The ECB stresses that even cases of particular and duly justified urgency do not relieve national authorities of their duty to consult at an appropriate stage in the legislative process and to allow sufficient time for its views to be taken into account in accordance with Decision 98/415/EC.

3. General observation

The ECB understands that the amendments aim at enhancing public security by reducing the risk of criminals being able to put into circulation neutralised euro banknotes, i.e. euro banknotes which have

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No 1210/2010 of the European Parliament and the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (OJ L 339, 22.12.2010, p. 1).

5 Amendment No 2 (proposed new Article 4bis of the draft law).

6 Explanatory memorandum, justification concerning Amendment No 2.

7 Amendment No 2 (proposed new Article 4bis of the draft law).

8 Amendments Nos 3, 4 and 5, introducing a reference to the proposed new Article 4bis in Articles 5, 8 and 9 of the draft law. The consulting authority clarified that a similar reference will also be introduced in Article 6 of the draft law.

9 See Opinion CON/2011/64. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

certain specific types of ink stains resulting from the activation of an anti-theft device. To this end, they introduce in the draft law an Article 4bis, the second paragraph of which prohibits cash handlers from reimbursing neutralised euro banknotes or crediting an account with such euro banknotes, both in the context of cash payment transactions and deposits with banknote handling machines.

4. Transactions settlement in neutralised euro banknotes

4.1 The ECB takes into account that stakeholders (banks, retailers, cash in transit companies, the general public) are actively encouraged to remove neutralised euro banknotes from circulation and return them to the national central banks as it is very likely that such euro banknotes are the proceeds of a theft[10].

4.2 Nevertheless, the ECB notes that neutralised euro banknotes retain their legal tender status and that this has been acknowledged by the European Commission[11]. In this respect, the requirements and prohibitions introduced in the draft law by the amendments would affect the legal tender status of presumably neutralised banknotes. In addition, they would effectively introduce limitations on cash payments in relation to the settlement of cash transactions where such euro banknotes are used in good faith to this end.

4.3 Recital 19 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[12] states that limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available. The ECB acknowledges that: (a) such other lawful means for the settlement of monetary debts, other than neutralised euro banknotes, are available in Belgium; and (b) the draft law's objective of enhancing public security by reducing the risk of criminals' being able to put into circulation neutralised euro banknotes in relation to a crime qualifies as a public reason outweighing the impact of the limitations on cash payments.

4.4 However, limitations on cash payments should be proportionate to the general objective of reducing the risk of criminals being able to put into circulation neutralised euro banknotes and should not go beyond what is necessary to achieve this objective. Any limitations as a result of the amendments should be carefully weighed against the public benefits expected to be derived from them.

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10 See paragraph 5 of the Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ L 83, 30.3.2010, p. 70), and Article 10 of Regulation (EU) No 1214/2011 of the European Parliament and of the Council of 16 November 2011 on the professional cross-border transport of euro cash by road between euro area Member States (OJ L 316, 29.11.2011, p. 1).

11 See Opinion CON/2010/72 and paragraph 5 of the above-mentioned Commission Recommendation.

12 OJ L 139, 11.5.1998, p. 1.

5. Detection by customer-operated machines of presumably neutralised banknotes

The ECB welcomes the amendments, which further develop the existing ECB rules on the treatment of neutralised euro banknotes by customer-operated machines in the context of criminal activity. In this respect, the ECB considers it necessary that these amendments are complemented by technical rules setting out details and criteria defining how euro banknotes neutralised by anti-theft devices will be treated in a manner similar to the regime for suspect counterfeit euro banknotes under Decision ECB/2010/14. In particular, such technical rules should establish details, in line with the existing ECB rules in this respect, about the minimum stained area, the contrast, and the specific spectral signature of the stains, for euro banknotes to be considered as presumably neutralised banknotes, and the success rate expected from the customer-operated machines regarding the correct identification and separation of such presumably neutralised banknotes.

6. A new NBB task

The NBB is entrusted with the task of monitoring professional cash handlers' compliance with the new obligations. The ECB has consistently expressed its concern that, when allocating additional tasks to national central banks, it must be ensured that they have sufficient human and financial resources, both in terms of quantity and quality, for all their tasks, and in particular that their capacity to perform their European System of Central Banks or Eurosystem-related tasks is not affected[13].

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

Done at Frankfurt am Main, 12 June 2013.

[signed]

The President of the ECB

Mario DRAGHI

13 See for instance Opinion CON/2012/15.