EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 August 2006

at the request of Česká národní banka

on a draft decree on the terms and conditions under which it is possible to reproduce banknotes, coins, cheques, securities and payment cards and to produce objects imitating them

(CON/2006/45)

Introduction and legal basis

On 14 July 2006 the European Central Bank (ECB) received a request from Česká národní banka (ČNB) for an opinion on a draft decree on the terms and conditions under which it is possible to reproduce banknotes, coins, cheques, securities and payment cards and to produce objects imitating them (hereinafter the 'draft decree').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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], as the draft decree relates to currency matters and means of payment. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.

1. Purpose of the draft decree

The terms and conditions under which banknotes, coins, cheques, securities and payment cards ('money symbols') may be reproduced or imitated in the Czech Republic are currently laid down in ČNB Decree No 36/1994 Coll[2]. The purpose of the draft decree, which will replace Decree No 36/1994, is to adapt the existing rules to the relevant Community legislation, reflect developments in national administrative offences law[3], and take into account new methods of reproduction of money symbols, i.e. intangible reproductions. In particular, it is necessary to exclude euro coins from the scope of the draft decree since this area is now subject to directly applicable Community regulations[4]. Furthermore, the draft decree is

1 OJ L 189, 3.7.1998, p. 42.

2 Decree of Česká národní banka No 36/1994 Coll., on the terms and conditions under which it is possible to reproduce banknotes, coins, cheques, securities and payment cards and to produce objects imitating them.

3 New Article 46c concerning administrative offences in reproducing money symbols and their imitations was recently inserted into the Law on Česká národní banka No 6/1993 Coll., as amended, providing for a substantially increased penalty as compared to a previously applicable provision of the Law on offences No 200/1990 Coll., as amended.

4 Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins (OJ L 373, 21.12.2004, p. 1) and Council Regulation (EC) No 2183/2004 of 6 December 2004 extending to the non-

aimed at aligning Czech banknote reproduction rules to those applicable to euro banknotes pursuant to Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes[5].

2. Banknote reproduction rules

2.1 In order to protect the integrity of euro banknotes as a means of payment, the general public must be able to distinguish genuine euro banknotes from reproductions. The ECB would therefore like to emphasise the importance of the rules on the reproduction of euro banknotes laid down in Decision ECB/2003/4 (hereinafter the 'euro banknote reproduction rules'). Article 2 of the draft decree lays down the terms and conditions under which it is possible to reproduce banknotes and to produce objects imitating them in the Czech Republic. Since Decision ECB/2003/4 is not yet applicable in the Czech Republic, the above provision of the draft decree effectively provides for the protection of euro banknotes on the national level. In general terms, the ECB welcomes the banknote reproduction rules under the draft decree, as they draw on the euro banknote reproduction rules. However, the ECB notes that certain provisions of the draft decree differ from those of Decision ECB/2003/4. In view of preparations for the future adoption of the euro by the Czech Republic, the ECB would recommend that the euro banknote reproduction rules are taken into account in national legislation as far as possible at this stage. The Czech legislator could consider including a statement in the draft decree that euro banknote reproductions will be governed by the euro banknote reproduction rules, and rules on the enforcement of measures to counter non-compliant reproductions of euro banknotes.

2.2 The ECB also notes that the draft decree does not reflect Article 2(3)(c) of Decision ECB/2003/4, which allows the reproduction of individual design elements of euro banknotes provided that they are not depicted on a background that resembles a banknote. The ECB would also propose aligning the content of Article 2(1)(e) in conjunction with Article 4 of the draft decree with Article 2(3)(e) of Decision ECB/2003/4 as regards the concept of 'material that cannot be mistaken for the original material'.

2.3 Furthermore, the ECB observes that Article 2(1)(c) of the draft decree, which provides for reproductions of parts of banknotes along the lines of Article 2(3)(d) of Decision ECB/2003/4, contains an additional criterion, namely that such parts must be 'produced in a way that does not allow the whole banknote to be assembled from the individual parts'. The ECB welcomes this provision as it further clarifies the conditions under which parts of banknotes may be reproduced in the Czech Republic.

2.4 As far as the conditions under which intangible reproductions can be made are concerned, the ECB points out that Article 2(3)(f) of Decision ECB/2003/4 requires, *inter alia*, the word 'SPECIMEN' to be printed across the reproduction. Under Article 2(2) of the draft decree, other words of similar

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participating Member States the application of Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins (OJ L 373, 21.12.2004, p. 7).

5 OJ L 78, 25.3.2003, p. 16.

meaning may be used instead of the word 'SPECIMEN'. The ECB welcomes this provision as it makes the concept easily understandable to the general public.

2.5 Finally, the ECB notes that under Article 2(1)(d) of the draft decree it is permissible to produce reproductions of visually distorted banknotes[6]. While this criterion is not explicitly provided for in Decision ECB/2003/4, the ECB considers that reproductions meeting the criteria specified in Article 2(1)(d) of the draft decree can be considered as sufficiently distorted to eliminate the risk of the general public mistaking them for genuine banknotes. Such distorted reproductions would accordingly also be considered lawful under the ECB banknote reproduction rules in application of Article 2(4) of Decision ECB/2003/4.

3. Other comments

3.1 *Exclusion of euro coins from the scope of the draft decree*

Article 1 of the draft decree defines the scope of application of the draft decree 'with reference to directly applicable Community legislation'. The ECB understands that this reference relates to the application of Council Regulation (EC) No 2182/2004 and Council Regulation (EC) No 2183/2004. The ECB considers that Article 1 could be further clarified to explicitly provide that euro coins are excluded from the scope of the decree.

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

Done at Frankfurt am Main, 28 August 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

6 Article 2(1)(d) of the draft decree allows 'one-sided reproductions and imitations of banknotes on which the longer and shorter sides form an angle differing from a right angle by at least 20 degrees'.