



EUROPEAN CENTRAL BANK
EUROSYSTEM

COURTESY TRANSLATION

Mario DRAGHI
President

Mr Miguel Urbán Crespo
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt, 19 May 2015

L/MD/15/329

Re: Your letter (QZ-63 and QZ-64)

Honourable Member of the European Parliament, dear Mr Urbán Crespo,

Thank you for your letters, which were passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 7 April 2015.

Please allow me to clarify the legal framework for the production and procurement of euro banknotes within the European Union.

Article 128(1) of the Treaty on the Functioning of the European Union (TFEU) and Article 16 of the Statute of the European System of Central Banks and of the European Central Bank grant the ECB the exclusive right to authorise the issue of euro banknotes within the European Union. The ECB has assigned the responsibility for producing the euro banknotes to the national central banks (NCBs) of the Eurosystem.

Under current arrangements within the Eurosystem, the NCBs either tender the production of their shares of banknotes in a competitive procedure or produce the banknotes themselves at an 'in-house printing works'. I already discussed this aspect of the production of banknotes in a letter of reply which I sent to your colleague Ms Paloma López Bermejo, MEP on 8 December 2014.¹

Having regard to the TFEU and to the Statute of the ESCB, Guideline ECB/2014/44 lays down the legal framework for the production and procurement of euro banknotes within the Eurosystem. This Guideline respects the principles of European Union procurement rules and the requirements for public procurement

¹ The letter is available on ECB's website: http://www.ecb.europa.eu/pub/pdf/other/141208letter_bermejo.en.pdf

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developed in the case law of the Court of Justice of the European Union. Please note that according to Article 10 of Guideline ECB/2014/44, the NCBs of the Member States whose currency is the euro shall comply with this framework from 1 January 2015 onwards.

NCB or NCBs can produce banknotes at 'in-house printing works', and thus be exempted from carrying out a procurement procedure, provided that certain requirements as laid down in Article 1(2) of Guideline ECB/2014/44 are fulfilled. According to these requirements, an 'in-house printing works' can be a separate legal entity if the following cumulative conditions are fulfilled:

- i. the NCB or NCBs exercise over the legal person concerned control which is similar to that which it exercises over its own departments; this means that it should exercise a decisive influence over both the strategic objectives and significant decisions of the controlled legal person;
- ii. more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling NCB or NCBs;
- iii. there is no direct private participation in the controlled legal person.

NCBs shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating NCBs; individual representatives may represent several or all of the participating NCBs; (b) those NCBs are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and (c) the controlled legal person does not pursue any interests which are contrary to those of the controlling NCBs.

On the basis of this legal framework, please allow me to answer your questions.

First, any possible amendment to Guideline ECB/2014/44 allowing for a model in which an NCB can issue direct orders for the production of euro banknotes to a separate legal entity with representatives of the NCB on its board of directors would have to comply with European Union procurement rules. In particular, the envisaged structure for such an operation would have to comply with the criteria for public procurement developed in the case law of the Court of Justice of the European Union.² Please note that these criteria are also contained in Article 12(1) of Directive 2014/24/EU³, which has to be transposed by the Member States by April 2016, and that they are identical to the criteria of Article 1(2) of Guideline ECB/2014/44 mentioned above (except for the use of the generic term "contracting authority" instead of "NCB or NCBs").

Second, the creation of a company for the production of banknotes which is jointly owned and jointly managed by an NCB and a separate public legal entity has to be in compliance with Article 1(2) of Guideline ECB/2014/44. The definition of an 'in-house printing works' in Article 1(2) only covers printing works that are

² Case C-107/98 Teckal [1999] ECR I-08121, para. 50; Case C-26/03 Stadt Halle [2005] ECR I-00001, paras. 48 et seq. and Case C-324/07 Coditel Brabant [2008] ECR I-08457, para. 26; Case C-573/07 Sea [2009] ECR I-08127, paras. 37 and 40.

³ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

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controlled by one NCB or jointly by several NCBs. It does not cover printing works that are controlled jointly by an NCB and another public authority. Therefore, in order to fall within the definition of an ‘in-house printing works’, the new legal entity created for the production of euro banknotes in the cases mentioned in your letter must be controlled by one NCB alone, with no direct private capital participation in the new legal entity. Furthermore, it must be ensured that the NCB exercises a decisive influence over the new legal entity’s strategic objectives and significant decisions. Please note that it is for the relevant national legislator to determine how to ensure that a new legal entity will be solely controlled by the relevant NCB while another public legal entity holds an ownership interest in that new legal entity.⁴

Finally, please note that the same legal requirements would need to be fulfilled if a new company for the production of euro banknotes were to be created which was either (i) owned by the NCB alone, (ii) jointly owned and jointly managed by the NCB and a public legal entity as a shared business unit, or (iii) owned by the NCB and subcontracting the production of banknotes to a public legal entity. All scenarios mentioned in your letter will require a detailed assessment by the responsible NCB on the basis of the relevant facts in the individual case in order to comply with the applicable legal requirements stipulated in Guideline ECB/2014/44.

Yours sincerely,

[signed]

Mario Draghi

⁴ See Opinion of the European Central Bank of 19 November 2014 on euro banknote production by a special-purpose entity, section 3.3 (CON/2014/82).

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