



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 August 2001

at the request of the Italian Ministry of Economy and Finance on a draft Decree Law introducing urgent provisions for the introduction and safeguard of the euro

(CON/2001/22)

1. On 10 August 2001 the European Central Bank (ECB) received an urgent request from the Italian Ministry of Economy and Finance for an opinion on a draft Decree Law containing urgent provisions for the introduction and safeguard of the euro (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, and on the first, fifth and sixth 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 provisions¹. In addition, 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 euro² provides the ECB with the possibility to contribute to the drafting of the provisions transposing the obligations imposed on Member States under the Framework Decision into national law. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank³, this opinion has been adopted by the Governing Council of the ECB.
3. The Draft Act is composed of two sections. Section I (*Disposizioni per il passaggio all'euro del sistema bancario e finanziario*) deals with the introduction of the euro and the smooth operation of banks and other providers of financial services, along the lines of the provisions of the Commission Recommendation of 11 October 2000 on measures to facilitate the preparation of economic operators for the changeover to the euro⁴. The Draft Act intends to ensure that all financial institutions concerned by the euro changeover are covered. Furthermore, this section contains provisions

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.

⁴ OJ C 303, 24.10.2000, p. 6.

regarding the closure of the Italian TARGET component BI-REL, on the basis of decisions of the Governing Council of the ECB on the TARGET operating days calendar.

4. Section II (*Disposizioni contro la falsificazione dell'euro*) focuses on the implementation of the Framework Decision, and of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting⁵.
5. Article 1(1) and (2) provides for the possibility for banks to convert accounts denominated in euro area currencies to euro with effect from the date of entry into force of the Decree Law. Any such conversion will be formally announced in the *Gazzetta Ufficiale della Repubblica Italiana*. Customers will be entitled to expressly request, within 15 days of publication, that their accounts continue to be denominated in lire. Moreover, Article 1(3) lays down several provisions concerning the denomination of cheques and other credit instruments from 1 January 2002. The ECB understands that the provisions on early conversion of accounts are fully in line with the principle of “no compulsion, no prohibition” and welcomes the legal clarification provided by Article 1(3).
6. The ECB understands that Article 3 of the Draft Act enables the Banca d'Italia to close, in compliance with the decisions taken within the European System of Central Banks, the Italian TARGET component BI-REL on national working days which are TARGET closing days, as determined by decisions of the Governing Council of the ECB. The ECB notes that, according to the Draft Act, any such closure of the BI-REL is subject to an announcement being made in the *Gazzetta Ufficiale della Repubblica Italiana* at least 15 days in advance of the scheduled closure day. Furthermore, this Article provides for the automatic extension of a maturity date for an obligation to be settled in the BI-REL system to the next business day, whenever the maturity date in question falls on a TARGET, and thus BI-REL, closing day, which is a national working day in Italy. The ECB welcomes the proposed Article, since it provides legal certainty as to when the obligations need to be settled if they fall due on a TARGET, and thus BI-REL, closing day, which is also an Italian national working day.
7. The ECB welcomes Article 5 of the Draft Act, which partially implements Article 3 of the Framework Decision. It provides that fraudulent conduct relating to holograms or other components of currency, which serve to protect against counterfeiting, are punishable. The ECB recalls that fraudulent making, receiving, obtaining or possession of computer programs adapted for the counterfeiting or altering of currency needs to be punishable to fully comply with Article 3(1)(d) of the Framework Decision.
8. The Draft Act does not implement Article 4 of the Framework Decision as regards making punishable the fraudulent use of legal facilities or materials. This Article cannot be interpreted narrowly, as though it referred only to State officials and employees directly involved in the process leading to the issuance of coins and banknotes. Rather, it should be seen as applying to all persons who may be

⁵ OJ L 181, 4.7.2001, p. 6.

involved in this process (e.g. suppliers of material needed for the issuance of coins and banknotes). The ECB takes note that the Italian authorities consider it unnecessary to provide a specific criminal sanction for illegal activities covered by Article 4. The explanatory memorandum to the Draft Act points out that in Italy no private companies are currently involved in manufacturing banknotes and coins. Italian authorities have informed the ECB that, for the time being, the violations considered in Article 4 of the Framework Decision could be committed by public officials only and are therefore already sanctioned by existing criminal law.

9. As regards the obligation set forth in Article 2(2) of the Framework Decision concerning the International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency and its Protocol (the Geneva Convention), the ECB recalls that the text of the provisions transposing the Geneva Convention into Italian Law should be transmitted to the ECB in accordance with Article 11(2) of the Framework Decision.
10. As far as compliance with Regulation (EC) No 1338/2001 is concerned, the ECB understands that the role conferred on the Ministry of Economy and Finance and the Banca d'Italia by Article 7(4) is that of the "competent national authority" as referred to in Article 2(b) of the above-mentioned Regulation. The ECB is aware that the Banca d'Italia has been designated as the National Analysis Centre for Italy (NAC), in a letter of 20 June 2001 sent to the President of the ECB by the Director General of the Ministry of Finance, Balance of Payments and Economic Programming. The ECB confirms its agreement with this designation by means of a separate letter.
11. This opinion shall be without prejudice to Italy's obligation to transmit to the ECB the text of the provisions transposing into Italian law the obligations imposed on it under the Framework Decision.
12. The ECB confirms that it has no objection to the publication of this opinion at the discretion of the competent national authority.

Done at Frankfurt am Main on 30 August 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG