



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 September 1999

at the request of the German Federal Ministry of Finance on a bill amending currency-related provisions with respect to the introduction of the euro (*Drittes Euro-Einführungsgesetz – Drittes EuroEG* (Third Act on the introduction of the euro))
(CON/99/10)

1. On 19 July 1999 the European Central Bank (ECB) received a request from the German Federal Ministry of Finance for an ECB Opinion concerning a legislative proposal entitled “Bill amending currency-related provisions with respect to the introduction of the euro (*Drittes Euro-Einführungsgesetz – Drittes EuroEG*)”.
2. The ECB’s competence to deliver an opinion is based on Article 105 (4) of the Treaty and Article 2 (1), first and second indents, of Council Decision (EC) No. 98/415 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, as the legislative proposal deals with currency matters and means of payment. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, this opinion has been adopted by the Governing Council of the ECB. The legislative proposal and an explanatory memorandum were submitted to the ECB in the German language only. The present opinion is based on an unofficial English translation of the official German bill.

The legislative proposal is intended to amend German currency-related provisions in view of the physical introduction of euro banknotes and coins on 1 January 2002, as stipulated by Council Regulation EC/974/98 of 3 May 1998 on the introduction of the euro. The bill complements the First Act on the introduction of the euro (*Erstes Euro-Einführungsgesetz*), which dealt with the necessary adaptations to German legislation with a view to the national implementation of the regulatory framework for the introduction of the euro on 1 January 1999, on which the EMI rendered its opinion CON/97/24. The ECB welcomes the submission of this legislative proposal at a relatively early stage, thus allowing for transparency and legal certainty for the general

public and other parties with regard to the physical introduction of euro banknotes and coins on 1 January 2002.

3. The draft law consists of eight articles, replacing or amending the existing currency legislation.

Article 1 consists of a draft “Act abolishing the legal tender status of banknotes denominated in Deutsche Mark (DM) and Federal coins denominated in DM or pfennig” (*DM-Beendigungsgesetz*). It deals with the termination of the status of DM banknotes and coins as legal tender as well as with the obligation of the Bundesbank to exchange DM cash against euro cash without fees in accordance with Article 16 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro. In addition, there are some provisions specifying the extent of that obligation. The final provisions of this article deal with the prolongation of penal law protection against counterfeits and forgeries of DM banknotes and coins after 31 December 2001. These provisions are complemented by an agreement dated 22 October 1998 between associations representing various economic sectors such as credit and finance, trade and similar services including vending machines, which are the most important catalysts for exchange of monetary tokens, on the one hand, and the Federal Ministry of Finance and the Deutsche Bundesbank, on the other. By means of this agreement, the aforementioned associations undertake to use their influence with their member companies to ensure a so-called “modified deadline for the introduction of euro banknotes and coins”. According to this “modified deadline”, the members of the associations are expected, on a voluntary basis, to accept DM banknotes and coins until 28 February 2002, while at the same time allowing for some flexibility in their dealings beyond that date.

Article 2 contains a new Coinage Act (*Münzgesetz*), replacing the previous law on coins. By reference to Council Regulation (EC) No. 975/98 of 3 May 1998 on the denomination and technical specification of euro coins, it contains provisions on the legal protection of coins, on the allocation of responsibilities for the design of the national side of the German euro coins, on the distribution of the numbers to be minted with respect to the various denominations and on the production as well as, without prejudice to Article 106 (2), first sentence, of the Treaty, the issuance and withdrawal of the German euro coins. In addition, a number of provisions deal with the protection of special edition German euro coins and commemorative euro coins.

Article 3 contains an amendment to Article 14 of the Bundesbank Act, by which the Deutsche Bundesbank is endowed, without prejudice to Article 106 (1) of the Treaty, with the exclusive right to issue banknotes in Germany. At the same time the Deutsche Bundesbank is obliged to

publish the denominations and the different characteristics of euro banknotes. It also contains provisions on the right of the Deutsche Bundesbank to withdraw banknotes.

Article 4 amends the existing regulation on the production and the sale of medals and badges.

Articles 5 to 8 contain a number of provisions which are intended to harmonise and consolidate other laws which may have a bearing on banknotes and coins (mainly provisions on the German monetary union as well as special provisions relating to the special status of Berlin and the Saar region, which have meanwhile been abolished).

4. As regards Article 1, the ECB notes that Section 1 of the bill establishes a “legal big bang”, by which the legal tender status of DM banknotes and coins is abolished with effect from 1 January 2002. Article 15 of Council Regulation (EC) No. 974/98 of 3 May 1998 on the introduction of the euro stipulates that banknotes and coins denominated in a national currency unit shall remain legal tender within their territorial limits until six months after the end of the transitional period (i.e. 31 December 2001), which period may be shortened by national law, and each participating Member State may, for a period of up to six months after the end of the transitional period, lay down rules for the use of the banknotes and coins denominated in its currency unit and take any measure to facilitate their withdrawal. In order to not prejudice the discussion of the informal meeting of the Ecofin to be held in Turku on 10-12 September 1999, inter alia on a possible need to “working towards closer intentions among Member States on the length of the dual circulation period”, the ECB abstains from commenting on the approach taken by the German Government in this respect..

Article 1, Section 4, in conjunction with Article 8 (3), stipulates that the penal provisions applying to counterfeiting of legal tender banknotes and coins will be extended to apply to DM banknotes and coins for a period of one year after the termination of their legal tender status on 1 January 2002. The ECB notes that this extension of penal protection would not apply to other national denominations of the euro, which would only benefit from penal protection under German laws against counterfeiting up to the moment of the termination of their legal tender status.

5. With regard to Article 2, Section 3 (1) regulates the obligation of the German public to accept German commemorative euro coins that have been given legal tender status in Germany up to an amount of EUR 100 for a single payment. This reflects Article 11 of Council Regulation (EC) No. 974/98 of 3 May 1998, according to which nobody is under an obligation to accept more than 50 euro coins (whereby the maximum possible amount payable with euro coins is

EUR 100). Nevertheless, Section 3 (1), second sentence, refers to single payments made both in euro coins and in German commemorative euro coins, stipulating that “no one is obliged to accept more than 50 coins amounting to more than EUR 100”. This wording might lead to uncertainties on whether there would be an obligation to accept a payment of up to 50 coins, for instance, even if the accumulated value were to amount to more than EUR 100, due to the inclusion of German commemorative euro coins of a value higher than EUR 2 or to accept payments of more than 50 coins, if the accumulated value will fall short of EUR 100. The ECB suggests to consider that this ambiguity be clarified.

The ECB also notes with regard to the possible holding of coins by the Deutsche Bundesbank that, through the insertion of the words “notwithstanding Article 101 Sub-section 1” in Section 3 (2), it is ensured that the 10% limit of Article 6 of Council Regulation (EC) No. 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty is respected.

Section 8 deals with the acceptance of coins which have decreased in weight or have become unidentifiable due to extensive circulation or wear. In this context, it might be useful also to specify the conditions under which the Federal Cash Offices and the Bundesbank will have to accept bicolour coins, where the inner and outer sections have been separated.

6. Article 3, which will enter into force on 1 January 2002, will amend Section 14 of the Bundesbank Act. The compliance of this article with the Treaty requirement of legal integration of the NCBs into the ESCB has already been approved in the EMI convergence report dated March 1998. By replacing the second, third and fourth sentence of section 14 (1) (“Its notes are denominated in Deutsche Mark. They alone are unrestricted legal tender. Notes in denominations smaller than ten Deutsche Mark may be issued only by agreement with the Federal Cabinet”) by a new second sentence (“Banknotes denominated in euro are the only unrestricted legal tender.”) and by deleting section 14 (3), the final adaptations which are necessary to reflect the end of the transitional period are implemented. However, it is reminded that Article 106 of the Treaty states that the ECB shall have the exclusive right to authorise the issue of banknotes within the Community and that (both) the ECB and the national central banks - in this case the Bundesbank as the national central bank of Germany (in accordance with the Bundesbank Act) – may issue such notes. It is an exclusive competence of the ECB to decide on the application and protection of this Treaty based prerogative. Therefore, in order to properly reflect the wording and meaning of Article 106 of the Treaty, the ECB recommends to redraft the explanatory memorandum on Article 3, especially the passage presently reading as “*Article 106 subsection 1 EU Treaty stipulates that the ECB has a sole right to approve the*

issue of banknotes, and that the national central banks are authorised to issue banknotes.”, accordingly.

In relation to Section 14 (2), which relates to the withdrawal of banknotes for collection by the Deutsche Bundesbank, the ECB acknowledges that the wording has remained unchanged. Yet, to avoid misinterpretations when comparing Section 14 (1) (containing a reference to Article 106 (1) of the Treaty) and Section 14 (2) (which does not include that reference), the ECB recommends either that both sub-sections of Section 14 of the Bundesbank Act be merged or that an explicit reference to Article 106 (1) of the Treaty be made in Section 14 (2) so as to mirror the wording of Section 14 (1).

7. In relation to Article 4, regulating the production and the sale of medals and badges, the ECB notes that the scope of application of the regulation, as amended by this law, will apply to euro coins and German commemorative euro coins. In view of a harmonised protection, it might be worthwhile to consider extending the application to elements of non-German commemorative euro coins which have legal tender status in another Member State of the euro area.
8. The ECB confirms that it has no objections to this ECB Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 3 September 1999.

The Vice-President of the ECB

[signed]

C. Noyer