

# EUROPEAN INVESTMENT BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 20 December 2000

**at the request of the Council of the European Union pursuant to Article 105(4) of the Treaty establishing the European Community on a proposal for a Council Regulation on the protection of the euro against counterfeiting**

(CON/00/20)

(2001/C 19/09)

1. On 11 September 2000 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on Commission proposal COM(2000) 492 final of 26 July 2000 for a Council Regulation on the protection of the euro against counterfeiting (hereinafter referred to as the 'Commission proposal'). This opinion is based both on the text of the Commission proposal and on the text of the draft Regulation as it stands following the discussions in the Council working group on the fight against fraud (hereinafter referred to as the 'draft Regulation').
2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty'). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, this opinion has been adopted by the Governing Council of the ECB.
3. In general, the ECB welcomes the Commission proposal. There is a need within the Community to ensure an homogeneous and transparent regime to deal with matters relating to euro counterfeiting and to impose certain obligations on concerned authorities of the Member States as well as on credit institutions and entities professionally dealing with cash. The Commission proposal is particularly welcome because it endeavours to achieve a sufficient degree of harmonisation, to provide for public awareness and to be of general application in all Member States. The Commission proposal will facilitate the processing of certain data with regard to euro counterfeiting and foster cooperation within the European Union as well as with third countries.
4. The ECB supports the view presented in the explanatory memorandum of the Commission proposal that as regards the strategic and operational aspects of the combat against euro counterfeiting, the legal framework of Europol should be amplified.
5. The ECB leaves it to the Council to decide on the appropriate legal basis for the draft Regulation. In this context, however, the ECB can support the approach of the Council Presidency of dividing the text of this initiative into two different legal acts, which are to be adopted one within the Community legal framework (first pillar) and the other within the framework of Title VI of the Treaty on European Union (third pillar).

This opinion focuses on the text to be adopted within the Community legal framework.

6. The ECB welcomes the fact that the measures stipulated in the draft Regulation will apply also in relation to the future euro banknotes and coins which have not yet been issued for circulation as legal tender in line with Article 5 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 euro <sup>(1)</sup>.

<sup>(1)</sup> OJ L 140, 14.6.2000, p. 1.

7. The ECB takes note of the fact that certain provisions of the draft Regulation will also apply to unauthorised banknotes, which are defined as: (i) notes produced with the use of lawful facilities or equipment, but in violation of the provisions in accordance with which the relevant authorities may issue currency; or (ii) notes which have been put into circulation in violation of the conditions in accordance with which the relevant authorities may issue currency. According to the view of the ECB, such banknotes, even though produced or put into circulation in an illegal way, are not counterfeits and cannot be distinguished from genuine ones. Since the draft Regulation is intended to facilitate the prevention of counterfeiting, its provisions can apply to unauthorised banknotes only to a limited extent.
8. The draft Regulation foresees access for relevant national authorities, Europol and the Commission to the technical and statistical information held by the ECB. This information, in particular technical information, will be highly confidential. The ECB organises access to such information under its own legal framework. The framework obliges the ECB to communicate without delay the establishment of new counterfeit classes to national authorities, to Europol and to the Commission, in order for them to exercise their tasks. Given the highly confidential nature of the detailed technical information, by means of which genuine banknotes can be distinguished from counterfeits, the ECB needs to be able to condition or require certain confidentiality arrangements for such access, which in any case can only be granted subject to the respective competencies of parties in need of such information.
9. The draft Regulation should ensure that the National Analysis Centres (NACs) have the possibility to examine and analyse all suspected counterfeits. As a rule, all counterfeits should be sent to the NACs; only in the case of specific circumstances (e.g. major amounts of seized counterfeits), examination by the NACs on the spot could be foreseen. This would ensure that the analysis of specific defects of counterfeits can be performed, with the specialised equipment and in relation to the widest possible number of samples.
10. The explanatory memorandum of the Commission proposal foresees the establishment of coordination procedures between the ECB, Europol and the Commission for the implementation of the draft Regulation. The ECB welcomes this initiative.
11. The ECB understands that the issue of compulsory installation of technical devices impeding the reproduction of banknotes in colour copiers and machinery capable of graphic reproduction is still under consideration. The ECB reiterates its concern regarding this issue as expressed in its Recommendation of 7 July 1998 regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins <sup>(1)</sup>.
12. This opinion shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main on 20 December 2000.

*The President of the ECB*

Willem F. DUISENBERG

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<sup>(1)</sup> OJ C 11, 15.1.1999, p. 13.