

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 23 August 2011

on a proposal for a Regulation on the issuance of euro coins and on a proposal for a Regulation on denominations and technical specifications of euro coins intended for circulation**(CON/2011/65)**

(2011/C 273/02)

Introduction and legal basis

On 28 June 2011, the European Central Bank (ECB) received a request from the European Parliament for an opinion on a proposal for a Regulation of the European Parliament and of the Council on the issuance of euro coins ⁽¹⁾ (hereinafter the 'proposed regulation'). On 5 July 2011, the ECB received two further requests from the Council of the European Union for an opinion on: (a) the proposed regulation; and (b) a proposal for a Council Regulation amending Regulation (EC) No 975/98 of 3 May 1998 on denominations and technical specifications of euro coins intended for circulation ⁽²⁾ (hereinafter the 'proposed amending regulation').

The ECB's competence to deliver an opinion is based on Article 133 and Articles 127(4), 282(5) and 128(2) of the Treaty on the Functioning of the European Union (TFEU). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. The proposed regulation and legal basis

1.1. The proposed regulation lays down mandatory provisions for the issuance of euro circulation and collector coins. It also establishes certain volume limits for commemorative euro circulation coins and a consultation procedure prior to the destruction of fit euro circulation coins.

1.2. The ECB understands that the proposed regulation is intended to codify the current Union non-binding legal instruments and conclusions ⁽³⁾ regarding the issuance of euro coins ⁽⁴⁾. The ECB further

⁽¹⁾ COM(2011) 295 final.

⁽²⁾ COM(2011) 296 final.

⁽³⁾ Council conclusions of 23 November 1998 and of 5 November 2002 on euro coins intended for collection; Commission Recommendation 2009/23/EC of 19 December 2008 on common guidelines for the national sides and the issuance of euro coins intended for circulation (OJ L 9, 14.1.2009, p. 52); and Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ L 83, 30.3.2010, p. 70).

⁽⁴⁾ Regular euro circulation coins, commemorative euro circulation coins and euro collector coins.

understands that in laying down general provisions for the issuance of euro coins at Union level, the objective is to harmonise relevant practices among Member States⁽¹⁾ and ensure legal certainty and transparency.

- 1.3. The ECB notes that according to Article 128(2) of the TFEU, the issuance of euro coins is the responsibility of the participating Member States, whilst the Parliament and the Council have the competence to lay down the measures necessary for the use of the euro as the single currency pursuant to Article 133 of the TFEU. In addition, the Council may, according to Article 128(2) of the TFEU, adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union. Hence, the adoption of Union legislation on euro coin issuance must respect the participating Member States' competence to issue euro coins and their capacity as legal issuers of euro coins. In addition, while the ECB's tasks and responsibilities under the TFEU and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') are not affected in the context of the proposed regulation, the ECB recommends that any Member States' concerns on euro coin issuance competences should be addressed between the concerned Member States and the Union in accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union.
- 1.4. It is advisable to harmonise the terminology used throughout the proposed regulation. In particular, the terms 'issue' and 'put/bring into circulation' are not defined in the proposed regulation. This may result in questions on the legal difference between their meanings. The concept of issuance is generally understood as also covering putting into circulation of the relevant euro coins⁽²⁾. Therefore, it is preferable to only use the term 'issue' rather than using both terms which could be misleading. Nevertheless, in its drafting proposals, the ECB leaves it to the Commission to decide on this linguistic issue.
- 1.5. Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in Annex I accompanied by explanatory text to this effect.

2. The proposed amending regulation

- 2.1. The proposed amending regulation lays down new provisions establishing common principles for the designs used for the national sides of regular and commemorative euro circulation coins as well as for the Member States' mutual information and approval of those designs.
- 2.2. The ECB understands that the proposed amending regulation establishes a procedure for approval or rejection of draft designs of new national sides of euro circulation coins which mirrors the one already defined in Recommendation 2009/23/EC. The only difference is that under the proposed amending regulation the Commission's competence is extended, according to which it will take the final decision on whether to approve or reject the new draft designs instead of the Economic and Financial Committee's relevant subcommittee. The ECB notes that this change does not affect its tasks and responsibilities under the TFEU and the Statute of the ESCB and advises that any competence issue, be it national or inter-institutional, in the context of the abovementioned responsibility of the Commission, should be coordinated and addressed in accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union.

⁽¹⁾ In particular, the proposed regulation would contribute to avoiding Member States' developing different national practices regarding the issuance of euro coins, notably euro collector and commemorative coins, that may otherwise compromise the aims and principles of the single European coinage system established by the adoption of the euro. See the third paragraph of ECB Opinion CON/2002/12. All ECB opinions are published on the ECB's website at <http://www.ecb.europa.eu>

⁽²⁾ See Report of the Euro Legal Tender Expert Group (ELTEG) on the definition, scope and effects of legal tender of euro banknotes and coins, p. 5, available at <http://www.ec.europa.eu>

- 2.3. Finally, the ECB reiterates its previous recommendation ⁽¹⁾ on modifying the technical specifications set out in Annex I to Regulation (EC) No 975/98 of 3 May 1998 on denominations and technical specifications of euro coins intended for circulation ⁽²⁾. In particular, the indicative values relating to the thickness of euro coins should be replaced by the real thickness values of euro coins, which are well known and used as a reference by the mints to produce euro coins. In this regard, the ECB refers to the specific drafting proposals it set out in the Annex to Opinion CON/2011/18 and recommends their implementation in the context of Regulation (EC) No 975/98.
- 2.4. Where the ECB recommends that the proposed amending regulation is amended, specific drafting proposals are set out in the Annex II accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 23 August 2011.

The President of the ECB
Jean-Claude TRICHET

⁽¹⁾ See the second paragraph under 'General observations' and the two amendments proposed in the Annex to ECB Opinion CON/2011/18 of 4 March 2011 on a proposal for a Council Regulation on denominations and technical specifications of euro coins intended for circulation (codification) (OJ C 114, 12.4.2011, p. 1).

⁽²⁾ OJ L 139, 11.5.1998, p. 6.

ANNEX I

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
Proposed ECB amendments to the proposed Regulation of the European Parliament and of the Council on the issuance of euro coins	

Amendment 1

Recital 2 of the proposed regulation

'(2) The lack of mandatory provisions for issuance of euro coins may result in different practices among Member States and does not achieve a sufficiently integrated framework for the single currency. In the interest of legal transparency and certainty, it is therefore necessary to introduce binding rules for the issuance of euro coins.'	'(2) Without prejudice to Article 128(2) of the Treaty laying down the Member States' right to issue euro coins, the lack of general mandatory provisions for issuance of euro coins may result in different practices among Member States and does not achieve a sufficiently integrated framework for the single currency. In the interest of legal transparency and certainty, it is therefore necessary to introduce binding rules for the issuance of euro coins.'
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Explanation

These insertions are needed to: (a) confirm with sufficient legal certainty that the proposed regulation does not affect Member States' competence to issue euro coins under Article 128(2) of the TFEU; and (b) acknowledge the gap in relation to general binding provisions for the issuance of euro coins.

Amendment 2

Article 1 of the proposed regulation

'Article 1 Subject matter This Regulation lays down rules on the issuance of euro circulation coins, including commemorative circulation coins, on the issuance of euro collector coins, and on consultation prior to the destruction of fit euro circulation coins.'	'Article 1 Subject matter Without prejudice to Article 128(2) of the Treaty establishing the Member States' right to issue euro coins, This Regulation lays down general rules on the issuance of euro circulation coins, including commemorative circulation coins, on the issuance of euro collector coins, and on consultation prior to the destruction of fit euro circulation coins.'
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Explanation

These insertions are needed to: (a) confirm with sufficient legal certainty that the proposed regulation does not affect Member States' competence to issue euro coins under Article 128(2) of the TFEU; and (b) acknowledge the gap in relation to general binding provisions for issuance of euro coins. In addition, they add value by defining better the subject matter of the proposed regulation in relation to the relevant requirements under points 13.1 and 13.3 of the Joint Practical Guide of the European Parliament, the Council and the Commission ⁽²⁾. Since the amended definition of 'euro circulation coins' explicitly comprises the commemorative euro coins intended for circulation ⁽³⁾, there is no need to repeat this in the context of Article 1.

Amendment 3

Article 2 of the proposed regulation

'Article 2 Definitions For the purposes of this Regulation, the following definitions shall apply:	'Article 2 Definitions For the purposes of this Regulation, the following definitions shall apply:
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Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
<p>1. "Euro circulation coins" means euro coins intended for circulation, whose denominations and technical specifications are laid down in Council Regulation (EC) No 975/98 of 3 May 1998.</p> <p>2. "Commemorative euro circulation coins" means euro circulation coins, which are intended to commemorate a specific subject as specified in Article 1f of Council Regulation (EC) No 975/98.</p> <p>3. "Euro collector coins" means euro coins intended for collection that are not intended to enter into circulation.'</p>	<p>1. "Euro circulation coins" means regular and commemorative euro coins intended for circulation, whose denominations and technical specifications are laid down in Council Regulation (EC) No 975/98 of 3 May 1998.</p> <p>2. "Regular euro circulation coins" means euro coins intended for circulation excluding commemorative euro circulation coins.</p> <p>23. "Commemorative euro circulation coins" means euro circulation coins, which are intended to commemorate a specific subject as specified in Article 1f of Council Regulation (EC) No 975/98.</p> <p>34. "Euro collector coins" means euro coins intended for collection that are not intended to enter into circulation.'</p>

Explanation

The current definition of euro circulation coins should be clarified and a separate definition for regular euro circulation coins should be added to avoid any ambiguity in relation to this terminology.

Amendment 4

Article 3 of the proposed regulation

<p>'Article 3</p> <p>Types of euro coins</p> <p>Member States may issue two types of euro coins: euro circulation coins, which include commemorative euro circulation coins, and euro collector coins.'</p>	<p>'Article 3</p> <p>Types of euro coins</p> <p>Member States may issue two types of euro coins: euro circulation coins, which include commemorative euro circulation coins, and euro collector coins.'</p>
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Explanation

Since the amended definition of 'euro circulation coins' explicitly comprises the commemorative euro coins intended for circulation ⁽⁴⁾, there is no need to repeat this in the context of Article 3.

Amendment 5

Article 4 of the proposed regulation

<p>'Article 4</p> <p>Issuance of euro circulation coins</p> <p>1. Euro circulation coins shall be issued at face value.</p> <p>2. By derogation from paragraph 1, a minor proportion, not exceeding 5 % of the total value and volume of issued euro coins, may be issued above face value if justified by the special quality of the coin or a special packaging.'</p>	<p>'Article 4</p> <p>Issuance and selling of euro circulation coins</p> <p>1. Euro circulation coins shall be issued and put into circulation by the competent authorities of each Member State at face value.</p> <p>2. By derogation from paragraph 1, a A minor proportion, not exceeding 5 % of the total outstanding value and volume of issued euro coins, may be issued sold above face value if justified by the special quality of the coin or a special packaging.'</p>
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Explanation

The ECB advises aligning Article 4 of the proposed regulation to paragraph 1 of Recommendation 2009/23/EC and, thus, making this provision compliant with the Member States' relevant practices based on paragraph 1 of Recommendation 2009/23/EC.

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
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Amendment 6

Article 6(2)(b) of the proposed regulation

'b) they shall not use images which are similar to the common sides of euro circulation coins or to any national side of euro circulation coins.'	'b) they shall not use images which are similar to the common sides of euro circulation coins or to any national side of euro circulation coins, unless, in the latter case, the overall appearance can still be easily differentiated. '
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Explanation

This drafting proposal allows for maintaining the national traditions of the Member States in relation to euro collector coin issuance. The ECB welcomes in principle the issue of euro collector coins respecting the individual numismatic traditions and practices of the Member States ⁽²⁾. In addition, the drafting proposal would bring the above provision in line with the Ecofin Council conclusions of 5 November 2002, encouraging the Member States to use designs for their collector coins which are at least slightly different from those of the national sides of circulation coins.

Amendment 7

Article 6(3) of the proposed regulation

'3. Euro collector coins may be issued at or above face value.'	'3. Euro collector coins may be issued sold at or above face value.'
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Explanation

This drafting proposal would accurately reflect the agreement of the Member States reached at the Ecofin Council meeting on 5 November 2002, allowing the sale of euro collector coins above face value.

Amendment 8

Article 6(5) of the proposed regulation

'5. Member States shall take all appropriate measures to prevent euro collector coins from being used as means of payments, such as special packaging, certificate of authentication, previous announcement from the issuing authority or issuance above face value.'	'5. Member States shall take all appropriate measures to prevent discourage euro collector coins from being used as means of payments, such as special packaging, certificate of authentication, previous announcement from the issuing authority or issuance selling above face value.'
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Explanation

Member States do not have measures to prevent euro collector coins from being used as means of payments in the issuing Member State. Therefore, the ECB suggests replacing the word 'prevent' by 'discourage'. Also for consistency reasons, 'issue above face value' should be replaced with 'selling above face value', which would more accurately mirror the language used in the Ecofin Council conclusions of 5 November 2002.

⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

⁽²⁾ See the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions, available at: <http://eur-lex.europa.eu>

⁽³⁾ See Amendment 3.

⁽⁴⁾ See footnote 3.

⁽⁵⁾ See the third paragraph of Opinion CON/2002/12.

ANNEX II

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
Proposed ECB amendments to the proposed Council Regulation amending Regulation (EC) No 975/98 of 3 May 1998 on denominations and technical specifications of euro coins intended for circulation	

Amendment 1

Article 1f(4) of the proposed amending regulation (new)

No current text	'4. The design of commemorative euro circulation coins collectively issued by all participating Member States shall be without prejudice to their possible constitutional requirements.'
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Explanation

This drafting proposal caters to possible national law requirements and allows for maintaining the national traditions of the Member States in relation to the issuance of commemorative euro circulation coins. In this latter regard, the ECB welcomes in principle the issue of commemorative coins respecting the individual numismatic traditions and practices of the Member States ⁽²⁾.

Amendment 2

Article 1g(1) of the proposed amending regulation

'1. Member States shall inform each other on the draft designs of new national sides of euro circulation coins, including the edge letterings, and of the volume of issuance before they formally approve these designs.'	'1. Member States shall inform each other on the draft designs of new national sides of euro circulation coins, including the edge letterings, and of on the volume of issuance before they formally approve of these designs.'
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Explanation

For linguistic purposes it is recommended to clarify that Member States have an obligation to inform each other on the volume of issuance of euro circulation coins before such designs have been approved. Also, according to Article 1g(2) and (3), it is understood that the Commission verifies compliance with the provisions of the proposed amending regulation and 'takes the final decision on the approval or rejection of the design without delay'. Therefore, the ECB suggests amending the last part of Article 1g(1) implying that Member States play a role in the formal approval of draft designs of new national sides of euro circulation coins.

Amendment 3

Article 1h(a) of the proposed amending regulation

'a) shall not apply to euro circulation coins which have been issued prior to the entry into force of Council Regulation (EU) No ... [number of the present amending Regulation to be inserted when adopted];'	'a) shall not apply to euro circulation coins which have been issued produced prior to the entry into force of Council Regulation (EU) No ... [number of the present amending Regulation to be inserted when adopted];'
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Explanation

The ECB understands that Article 1h(a) covers euro circulation coins with legal tender status prior to the entry into force of the amending regulation, whereas Article 1h(b) sets a transitional period for changing the stamps for the designs on euro circulation coins in compliance with the new design requirements. In this respect, the ECB advises replacing the word 'issued' with the word 'produced' in Article 1h(a). This would extend the exclusion scope of this draft provision to also cover the stocks of euro circulation coins already minted by the competent authorities of the participating Member States but not having legal tender status at the time of entry into force of the proposed amending regulation. In that way, a legal safeguard would be established for all the costs that Eurosystem national central banks may have incurred in relation to the production of euro circulation coins that have not yet obtained the status of legal tender up to the moment of entry into force of the proposed amending regulation. The ECB also notes that euro circulation coins issued during the transition period under Article 1h(b) would keep their legal tender status even after the expiry of the transition period.

⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

⁽²⁾ See the third paragraph of Opinion CON/2002/12.