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(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 5 October 2010

on two proposals for regulations on the professional cross-border transportation of euro cash by road between euro-area Member States

(CON/2010/72)

(2010/C 278/01)

Introduction and legal basis

On 6 September 2010, 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 professional cross-border transportation of euro cash by road between euro-area Member States ⁽¹⁾ (hereinafter, the 'proposed regulation'). On 20 September 2010, the ECB also received a request from the Council of the European Union for an opinion on the proposed regulation. On 27 September 2010, the ECB received a request from the Council of the European Union for an opinion on a proposal for a Council regulation concerning the extension of the scope of Regulation (EU) No xx/yy of the European Parliament and of the Council on the professional cross-border transportation of euro cash by road between euro-area Member States ⁽²⁾ (hereinafter the 'proposed extending regulation') (hereinafter collectively referred to as the 'proposed regulations').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, since the proposed regulations contain provisions on the cross-border transportation of euro banknotes and it is the Governing Council of the ECB which has the exclusive right to authorise the issue of euro banknotes. 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.

General observations

The proposed regulations will maximise the benefits of remote access to national central bank cash services by making the circulation and transport of euro banknotes and coins between euro-area Member States as free as possible. This is important as only euro banknotes and coins have the status of legal tender within the euro area ⁽³⁾.

The notion of legal tender is also of particular importance with regard to the use of 'Intelligent Banknote Neutralisation Systems', as defined by the proposed regulation. As the authority having the exclusive right to authorise the issue of legal tender euro banknotes, the ECB notes that 'neutralised' euro banknotes retain their legal tender status and that this has already been accepted by the Commission ⁽⁴⁾.

⁽¹⁾ COM(2010) 377 final.

⁽²⁾ COM(2010) 376 final.

⁽³⁾ See the third sentence of Article 128(1) of the Treaty.

⁽⁴⁾ Commission Recommendation 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).

As regards the proposed extending regulation concerning non-euro area Member States, the ECB supports continuing the practice already established prior to the Treaty's entry into force ⁽¹⁾. More specifically, all provisions of the proposed regulation should be extended to such Member States. Non-euro area Member States cannot be 'Member States of origin' or 'host Member States' in the sense of the proposed regulation. They should, moreover, be eligible to become 'Member States crossed'; if this is not the case, euro-area Member States that can only be accessed by roads that cross through non-euro area Member States would be unduly discriminated against.

Where the ECB recommends that the proposed regulations are amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 5 October 2010.

The President of the ECB

Jean-Claude TRICHET

⁽¹⁾ See ECB Opinion CON/2006/35 of 5 July 2006 at the request of the Council of the European Union on two proposed Council Decisions on the exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles' programme) (OJ C 163, 14.7.2006, p. 7).

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
Amendment 1	
Article 1(f) of the proposed regulation	
<p>(f) “Member State crossed” means one or several participating Member State(s) other than the company’s Member State of origin which must be crossed by the cash-in-transit vehicle in order either to reach the host Member State(s) or to come back to the Member State of origin.’</p>	<p>(f) “Member State crossed” means one or several participating Member State(s) other than the company’s Member State of origin which must be crossed by the cash-in-transit vehicle in order either to reach the host Member State(s) or to come back to the Member State of origin.’</p>
Explanation	
<p>While it is clear that the Member State of origin and the host Member State have to be participating Member States, it is possible that a cash-in-transit vehicle may also have to cross the territory of a non-participating Member State in order to reach a host Member State. It cannot be the Commission’s intention to exclude participating Member States surrounded by non-participating Member States from the scope of application of the proposed regulation. The legislation of the Member State crossed must always be respected, as provided for in Article 6(1) of the proposed regulation.</p>	
Amendment 2	
Article 2(1) and (2) of the proposed regulation	
<p>1. Transports of euro banknotes and coins that are carried out on the account of and between Central Banks, banknote printing works and/or Mints of participating Member States and escorted by the military or the police shall be excluded from the scope of this Regulation.</p> <p>2. Transports of euro coins only that are carried out on the account of and between Central Banks or Mints of participating Member States and escorted by the military or the police or by private security staff in separate vehicles shall be excluded from the scope of this Regulation.’</p>	<p>1. Transports of euro banknotes and coins that are:</p> <p>(a) carried out on the account of and between Central Banks, NCBs, or between banknote printing works and/or Mints of participating Member States and the relevant NCBs; and</p> <p>(b) escorted by the military or the police shall be excluded from the scope of this Regulation.</p> <p>2. Transports of euro coins only that are:</p> <p>(a) carried out on the account of and between Central Banks NCBs, or between Mints of participating Member States and the relevant NCBs; and</p> <p>(b) escorted by the military or the police or by private security staff in separate vehicles shall be excluded from the scope of this Regulation.’</p>
Explanation	
<p>The term ‘NCB’ is defined in Recital 1 of the proposed regulation, but has not been employed here. Moreover, the transport of euro banknotes or coins between an NCB and a printing work/mint is always done on the account of the NCB that has ordered the relevant banknotes or coins.</p>	
Amendment 3	
Article 1 of the proposed extending regulation	
<p>‘Council Regulation (EC) xx/yy shall apply to the territory of a Member State that has not yet adopted the euro as from the date of the decision of the Council taken in accordance with Article 140(2) of the Treaty to abrogate its derogation from participating in the euro.’</p>	<p>‘The application of Council Regulation (EC) xx/yy shall be extended apply to the territory of a Member States whose currency is that has not yet adopted the euro.</p> <p>For the avoidance of doubt, as from the date of the decision of the Council taken in accordance with Article 140(2) of the Treaty to abrogate it’s a Member State’s derogation from participating in the euro, the relevant Member State may also be a “host Member State” as defined in Council Regulation (EC) xx/yy.’</p>

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
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Explanation

While it is clear that the Member State of origin and the host Member State have to be participating Member States, it is geographically possible that the cash-in-transit vehicle may also have to cross non-participating Member States in order to reach a host Member State. It cannot be in the Commission's intention to exclude participating Member States surrounded by non-participating Member States from the scope of application of the proposed regulation.

For the period between the abrogation of a Member State's derogation and the introduction of the euro in that Member State, such acceding Member State should be permitted to become a 'host Member State'.

⁽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.
