



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 18 December 2003****on a draft decree-law amending the Organic Law of the Banco de Portugal****(CON/2003/29)**

1. On 5 December 2003 the European Central Bank (ECB) received a request from the Portuguese Ministry of Finance for an opinion on a draft decree-law (the 'draft decree-law') amending Articles 8 to 11, 53 and 55 of the Organic Law of the Banco de Portugal (the 'Organic Law'). Chapter III (Currency Issue) of the Organic Law contains Articles 8 to 11, whereas Chapter VII (Budget and Accounts) contains Articles 53 and 55.
2. The ECB's competence to deliver an opinion is based on the first and third 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, as the legislative proposal contains provisions concerning currency matters and a national central bank (NCB). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.
3. The draft decree-law rewords Article 8 of the Organic Law, which now provides that credit institutions or financial companies have, within the scope of their respective activities and particularly in the ambit of foreign exchange operations, the obligation to retain banknotes or coins which are legal tender in Portugal or abroad if they know or have sufficient reason to believe them to be counterfeits. The draft decree-law further establishes a duty on those establishments to send the retained banknotes and coins to the authorities indicated in instructions issued by the Banco de Portugal, in compliance with the terms laid down in them. These provisions are also extended to other entities authorised to carry out manual foreign exchange operations. In the case of breach of draft Article 8, draft Article 10(1)(a) provides for a penalty of EUR 8 000 to 30 000 for credit institutions and financial companies and EUR 3 000 to 15 000 for other entities authorised to carry out manual foreign exchange operations.
4. The ECB welcomes the new Article 8 together with the abovementioned infringement regime. These provisions implement Article 6(2) of Council Regulation (EC) No 1338/2001 of

¹ OJ L 189, 3.7.1998, p. 42.

28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting², which provides that Member States must take all necessary measures to ensure that credit institutions and any other institutions engaged in the sorting and distribution to the public of notes and coins as a professional activity comply with the obligations laid down in its Article 6(1).

5. The ECB notes however that draft Article 8 refers to banknotes and coins with legal tender status in Portugal and abroad. Given that euro banknotes and coins were introduced on 1 January 2002 in the territories of the Member States that adopted the euro, and that they have been legal tender since that date, the ECB would propose making a distinction in draft Article 8 between banknotes and coins denominated in euro and in a foreign currency instead of between banknotes and coins with legal tender status in Portugal and abroad.
6. The draft decree-law also rewords Article 9(1) of the Organic Law, which now provides that the reproduction or imitation, in whole or part, by any technical means, of banknotes denominated in euro, as well as the distribution of such reproductions or imitations, even if to a limited group of people, can only be done in the cases and under the terms and conditions expressly laid down by the ECB. The draft decree-law further provides in a reworded Article 10(1)(b) of the Organic Law that the breach of Article 9(1) will be subject to a penalty ranging from EUR 4 000 to 20 000.
7. The ECB welcomes the new Article 9(1). It notes that the Portuguese authorities have chosen the very appropriate legislative technique of referring in general terms to the rules adopted by the ECB on the reproduction of euro banknotes – which are currently laid down in Article 2 of Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes³. As such, members of the general public will know that they will have to comply with the rules on reproducing euro banknotes in force at the time they make or issue a concrete reproduction. The ECB would however recommend deleting the word ‘imitations’ from the proposed Article 9(1). The ECB has consistently used the term ‘reproduction’ in the various rules on reproduction of banknotes it has adopted since 1998⁴. Moreover, Article 2(1) of Decision ECB/2003/4 provides a definition of ‘reproduction’. The use of the term ‘imitation’ might jeopardise legal certainty in the application of both this ECB provision and the relevant provisions of the Organic Law.
8. As mentioned above, draft Article 10(1)(b) of the Organic Law lays down penalties for the infringement of the rules on reproduction of euro banknotes as provided in draft Article 9(1). The ECB understands that the penalties provided for in Article 10(1)(b) are of a criminal law nature and therefore do not conflict with Council Regulation (EC) No 2532/98 of 23 November 1998

² OJ L 181, 4.7.2001, p. 6.

³ OJ L 78, 25.3.2003, p. 16.

⁴ See Decision ECB/1998/6 of 7 July 1998 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes, OJ L 8, 14.1.1999, p. 36; Decision ECB/2001/7 of 30 August 2001 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes, OJ L 233, 31.8.2001, p. 55; and Decision ECB/2003/4.

concerning the powers of the ECB to impose sanctions⁵, which allows for criminal law of Member States to be applicable.

9. The draft decree-law further amends Article 53(1)(b) of the Organic Law so as to provide a legal basis for a special reserve relative to gains from gold sale operations. The ECB does not object to this amendment, since the creation of legal reserves is in accordance with Annex IV to Guideline ECB/2002/10 of 5 December 2002 on the legal framework for accounting and financial reporting in the European System of Central Banks⁶.
10. Finally, the draft decree-law amends Article 55 of the Organic Law on the frequency of publication of the Banco de Portugal's synopsis of its assets and liabilities, so that publication will be monthly rather than weekly. The ECB welcomes this amendment as it would mean that the frequency of publication would coincide with the frequency of the allocation of the issue of euro banknotes among Eurosystem NCBs.
11. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB's website six months after the date of its adoption.

Done at Frankfurt am Main on 18 December 2003.

The President of the ECB

[signed]

Jean-Claude TRICHET

⁵ OJ L 318, 27.11.1998, p. 4.

⁶ OJ L 58, 3.3.2003, p. 1.