



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 16 March 2004**

**at the request of the French Ministry of Economic Affairs, Finance and Industry
on a draft decree concerning the legal framework for the recycling of euro banknotes and coins
(CON/2004/8)**

1. On 12 February 2004 the European Central Bank (ECB) received a request from the French Ministry of Economic Affairs, Finance and Industry for an opinion on a draft decree concerning the legal framework for the recycling of euro banknotes and coins (hereinafter the 'draft decree').
2. The ECB's competence to deliver an opinion is based on the first, second 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 draft decree deals with national central banks (NCBs), currency matters and means of payment. 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.

Preliminary considerations

3. The purpose of the draft decree is to supplement Article 6 of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting² and to provide for a specific legal framework for the recycling of euro coins and banknotes. In the context of the present consultation, it is understood that the expression 'recycling of euro coins and banknotes' is intended to cover rules and standards concerning the detection of counterfeits and sorting for fitness of euro banknotes and coins.
4. The draft decree is intended to reinforce the Banque de France's powers regarding the detection of counterfeits and sorting for fitness of euro banknotes and coins. In particular, the ECB notes that the adoption of the draft decree would enable the Banque de France to ensure the implementation

¹ OJ L 189, 3.7.1998, p. 42.

² According to Article 6, credit institutions engaged in the sorting and distribution to the public of banknotes and coins as a professional activity, including establishments whose activity consists in exchanging notes and coins of different currencies, such as bureaux de change, shall withdraw from circulation all euro banknotes and coins received by them which they know or have sufficient reason to believe to be counterfeit. The same Article also imposes an obligation on these institutions to immediately hand such notes over to the competent national authorities and for Member States to take the necessary measures to ensure that the establishments which fail to discharge their obligations are subject to effective, proportionate and deterrent sanctions.

in France of Eurosystem standards concerning counterfeit detection and sorting for fitness such as the ‘Terms of reference for the use of cash-recycling machines by credit institutions and other euro area institutions engaged in the sorting and distribution of banknotes to the public as a professional activity’ approved by the Governing Council on 18 April 2002. The ECB understands that the French authorities wish to make the principles contained in these terms of reference generally applicable.

5. Maintaining the quality of banknotes in circulation is a primary objective of the ECB and the NCBs of the Member States which have adopted the euro as issuing authorities of euro banknotes since only euro banknotes in good physical condition can be easily and reliably checked by the public for counterfeits. The ECB therefore welcomes the initiative taken by the French authorities in this field as one of the Banque de France’s statutory tasks as part of the Eurosystem is to maintain the quality of euro banknotes and coins and to manage their smooth circulation throughout the territory. Furthermore, it is acknowledged by the Eurosystem that credit institutions and other professional cash handlers can usefully contribute to the recycling of euro banknotes if they check them for authenticity and fitness against specific strict criteria before returning them to circulation.
6. The ECB would like to point out that the setting-up of a framework for the detection of counterfeits and sorting for fitness by credit institutions and other professional cash handlers is currently being considered at the Eurosystem level. The objective of this exercise is to provide such entities with assistance in complying with Article 6 of Regulation (EC) No 1338/2001 and to provide for common standards on banknote recycling throughout the euro area, as it is of the utmost importance that there is a level playing field throughout the participating Member States.
7. Regulation (EC) No 1338/2001 imposes an obligation on Member States to inform the ECB and the European Commission of the measures adopted for the implementation of its Article 6. The ECB notes in this respect that the draft decree deals with the detection of false or counterfeit euro coins as well as with sorting standards for them. Therefore the ECB would recommend that the French authorities liaise with the European Commission for further guidance on this matter and with a view to ensuring harmonized rules applicable to euro coins.

Specific comments

8. Articles 1 and 2 of the draft decree concern the obligations imposed under Article 6 of Regulation (EC) No 1338/2001 on credit institutions, La Poste and suppliers which carry out in their name and on their behalf processing of euro banknotes as a professional activity (in particular cash in transit companies). Article 1 provides that those entities shall comply with the obligations of Regulation (EC) No 1338/2001 when they withdraw from circulation euro banknotes received from the public in order to hand them over to the Banque de France. The ECB notes that the entities listed in Article 1 will have to respect any provisions laid down by the Banque de France, in particular any standards on packaging and transfer laid down by it in conformity with any rules

of the ECB. Article 2 concerns the obligations imposed on credit institutions, La Poste and bureaux de change prior to issuing to their counters any euro banknotes they have received from the public. The ECB notes that the entities listed in Article 2 have to carry out an inspection before any euro banknotes are issued to their counters. The ECB also notes that under Article 10 of the draft Decree, which applies both to banknotes and coins, credit institutions will have to establish written internal rules concerning the procedures for the handing over of euro banknotes and coins which they have sufficient reason to believe to be false.

9. As a derogation from the principle established in Article 3 of the draft decree, Article 4 of the draft decree provides that credit institutions or La Poste which wish to supply self-service cashpoint machines (hereinafter 'ATMs') with euro banknotes which do not come directly from a central bank of the Eurosystem or to use self-service cash-recycling machines, shall first make an agreement with the Banque de France. Article 7 of the draft decree provides that these agreements shall specify the means, in particular the equipment, to be used by credit institutions to prevent the circulation of counterfeit or unfit euro banknotes, as well as the conditions under which the Banque de France may verify the application of these agreements. The ECB assumes that these agreements will cover the applicable standards on counterfeit detection and sorting for fitness and welcomes this proposed arrangement which enables the extension to ATMs of the requirements defined in the abovementioned Eurosystem terms of reference. Furthermore, the ECB notes that similar obligations will be imposed on suppliers to which credit institutions delegate all or part of the operations of processing euro banknotes such as cash in transit companies. Lastly, the ECB understands that Article 5 of the draft decree specifies the conditions of use of self-service exchange machines by bureaux de change.
10. Article 6 of the draft decree refers to the standards to be adopted by the Banque de France concerning euro banknotes which may be returned to circulation and those whose physical condition makes them unsuitable for circulation. It provides that these standards should be adopted 'in conformity with, where appropriate, any rules of the European Central Bank'. As indicated above, the Eurosystem is currently preparing standards on sorting for fitness of euro banknotes. Therefore, the ECB would recommend deleting the expression 'where appropriate'. In addition, since the above standards will encompass the physical characteristics which make euro banknotes unsuitable for circulation, the ECB would suggest amending the third paragraph of Article 6 to take into account any guidance provided by the Eurosystem in this respect.
11. The ECB notes that the last sentence of Article 11(1) of the draft decree refers to information published by the Banque de France on security features of euro banknotes. As this information is highly confidential it is suggested that this sentence should be redrafted in such a way that it merely refers to information on euro banknotes published by the Banque de France in accordance with guidance provided by the ECB.
12. The ECB notes that several provisions of the draft decree deal with issues related to euro coins (for instance, Articles 8, 9, 10, 12 and 13). In particular, the draft decree deals with the obligations

imposed on credit institutions concerning the supply of euro coins to the public in terms of sorting and, in particular, the use of equipment capable of detecting false or counterfeit coins. As for euro banknotes, the ECB understands that the intention is for agreements concerning counterfeit detection and fitness standards to be concluded between the Banque de France and credit institutions. In addition, the ECB suggests that it could be specified that the abovementioned equipment has to be capable of detecting coins which are not legal tender in the whole euro area (instead of in France only).

13. Article 13 of the draft decree introduces criminal sanctions to punish failure to comply with the obligations that it introduces concerning euro banknotes and coins which there is sufficient reason to believe to be counterfeit within the meaning of Article 6 of regulation (EC) No 1338/2001. The ECB notes that this concerns both the employees of a credit institution, La Poste or a bureau de change and the persons responsible in any capacity for the management or administration of those institutions. Furthermore, legal persons may be declared criminally liable for the offences laid out in Article 13. The ECB notes that these provisions are intended to implement Article 6(2) of Regulation (EC) No 1338/2001 and enhance the existing criminal legal framework on counterfeit euro banknotes and coins.
14. 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 16 March 2004.

[signed]

The President of the ECB

Jean-Claude TRICHET