



OPINION OF THE EUROPEAN CENTRAL BANK

of 25 September 2007

at the request of the President of Narodowy Bank Polski
on a draft ordinance on the method and procedure for counting, sorting, packaging and labelling
packaging units of banknotes and coins, and in conducting activities related to the supply of
banknotes and coins to banks

(CON/2007/28)

Introduction and legal basis

On 24 July 2007 the European Central Bank (ECB) received a request from the President of Narodowy Bank Polski (NBP) for an opinion on a draft ordinance of the NBP's President on the method and procedure for counting, sorting, packaging and labelling packaging units of banknotes and coins, and in conducting activities related to the supply of banknotes and coins to banks (hereinafter the 'draft ordinance').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and 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 ordinance relates to currency matters, means of payment and to the NBP. 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. Purpose of the draft ordinance

The draft ordinance is intended to replace the current NBP rules concerning commercial banks' obligations with respect to counting, sorting and packaging of banknotes and coins². Particularly in view of the need to adjust the existing legal requirements to the increased automation of cash handling procedures³, the draft ordinance introduces the following key modifications: (i) streamlining regulatory

¹ OJ L 189, 3.7.1998, p. 42.

² Ordinance No 8/2001 of NBP's President of 27 June 2001 on the method and procedure for counting, sorting, packaging and labelling packaging units of banknotes and coins, and in conducting activities related to the supply of banknotes and coins to banks (Dz.Urz. NBP of 17 July 2001 No 10, Item 22, as amended). The statutory basis for the adoption of the draft ordinance is contained in Article 68(2) of the Law of 29 August 1997 on banking (consolidated text: Dz.U. of 13 May 2002 No 72, Item 665, as amended; hereinafter: 'Law on banking').

³ See the first paragraph of the explanatory memorandum accompanying the draft ordinance, and the second paragraph of the letter from NBP's President of 18 July 2007 requesting the ECB's opinion.

obligations as regards the manual counting and sorting of banknotes⁴; (ii) modifying relevant technical standards, such as those related to packaging banknotes in packets (100 pieces), half-bundles (500 pieces) and bundles (1000 pieces)⁵; and (iii) facilitating a decrease in stocks of banknotes held by commercial banks, *inter alia* by allowing packaged banknotes of certain denominations to be lodged with NBP's regional branches in half-bundles⁶.

2. General observations

- 2.1 While Poland is a Member State with a derogation and the ECB requirements regarding the organisation of national cash cycles in Member States that have adopted the euro currently do not apply to NBP, these requirements will become applicable to NBP once Poland adopts the euro and NBP becomes a fully integrated part of the Eurosystem. As a general comment, the ECB notes that the NBP's provisions on the handling of banknotes differ to some extent from Eurosystem practices and that these provisions will have to be aligned with the Eurosystem standards before Poland adopts the euro. The ECB understands that the main intention of the draft ordinance is to adapt the NBP's legislation to the growing automatised of the cash handling operations. The ECB assumes that the draft ordinance may be an adequate legislative instrument to achieve this specific purpose. However, the ECB would have welcomed at the same time a more consistent approach to achieve a high level of harmonisation with the Eurosystem standards. The ECB also considers that the explanatory memorandum to the draft NBP ordinance could include an appropriate reference to the necessary further evolution of NBP's regulatory framework in view of the future adoption of euro.
- 2.2 The ECB furthermore notes that the draft ordinance forms part of a wider body of the regulatory framework containing also NBP's legislative instruments covering: (i) rules on withdrawal from circulation of worn or damaged banknotes and coins⁷; and (ii) rules on seizure of suspected counterfeits⁸. Legal certainty and clarity could be enhanced by consolidating all such Polish cash handling rules, in a single administrative instrument. The ECB notes that this is currently difficult to achieve due to the existence of separate statutory bases for the regulation of the various elements of NBP's cash handling regulation. While greater legal coherence may currently be achieved by way of introducing clear cross-references between the various existing provisions, a uniform cash

⁴ Paragraph 2(3) and paragraphs 6 to 9 of the draft ordinance.

⁵ Paragraphs 10 to 16 of the draft ordinance.

⁶ Paragraph 29(3) of the draft ordinance.

⁷ Ordinance No 1/2003 of NBP's President of 15 January 2003 laying down the detailed rules of exchange of currency items that due to their use or damage have ceased to be legal tender on the territory of the Republic of Poland (Dz.Urz. NBP of 17 January 2003 No 1, Item 1, as amended). The statutory basis for the adoption of this ordinance is contained in Article 34(2) of the Law on Narodowy Bank Polski of 29 August 1997 (consolidated text: Dz.U. of 1 April 2005 No 1, Item 2, as amended; hereinafter, the 'NBP Statute').

⁸ Ordinance of NBP's President of 31 August 1989 on the seizure of counterfeit currency (M.P. of 27 September 1989 No 32, Item 255, as amended). The statutory basis for the adoption of this ordinance is currently contained in Article 35(3) of the NBP Statute. Cf. resolution No 19/2004 of the NBP Management Board of 22 April 2004 amending the resolution on the introduction of the Organisational By-laws of Narodowy Bank Polski (as regards creation of the National Analysis Centre, the Coin National Analysis Centre and the National Counterfeit Centre within NBP's Head Office. The penal sanctions for currency counterfeiting are contained in the Chapter XXXVII of the Penal Code of 6 June 1997 (Dz.U. of 2 August 1997 No 88, Item 553, as amended).

handling regulation should be introduced in view of the future adoption of euro, on the basis of a single statutory delegation. Moreover, as regards the euro banknotes and coins such framework needs to comply with the directly applicable provisions of Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency (this ECB opinion does not assess such compliance)⁹.

2.3 Under Article 106 of the EC Treaty, the ECB has the exclusive right to authorise the issue of banknotes within the Community, whereas the coins are issued by the Member States subject to approval by the ECB of the volume of the issue. Consequently, as a general principle, the Eurosystem's regulatory competence concerns only banknotes. Hence, in view of the accession of national central banks (NCBs) to the Eurosystem, the ECB supports a clear and consistent separation between national rules relating to banknotes and rules relating to coins. Also the draft ordinance, and more generally the NBP's overall cash handling framework, would benefit from introducing such consistent internal separation between rules concerning banknotes and coins, respectively¹⁰. This would in time facilitate the legal convergence of the Polish legislative framework, necessary to become a full participant in economic and monetary union.

3. Alignment with the Eurosystem's Banknote Recycling Framework

3.1 The draft ordinance regulates, among others, the detection of counterfeits and fitness sorting of banknotes ensuring that worn or defective banknotes that are unfit for circulation, and banknotes where there is sufficient reason to believe that they are counterfeit, are duly withdrawn from circulation¹¹. In the view of Poland's future adoption of euro and the related general obligation to align Polish law with the law of the Eurosystem¹², the ECB would welcome already establishing in the draft ordinance a legal framework at the national level that is consistent with the ECB's 'Framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers' (hereinafter the 'Banknote Recycling Framework' or the 'Framework')¹³.

3.2 The Banknote Recycling Framework aims to implement a common policy for the recycling of banknotes by credit institutions and other professional cash handlers, so as to contribute to

9 OJ L 181, 4.7.2001, p. 11. The provisions of Regulation (EC) No 1339/2001 are currently reflected in the Polish law provisions specified in footnote 8 above.

10 Currently the draft ordinance separates banknote and coin rules only to a certain extent. As an example, in Section II ('Polish currency') of the draft ordinance separate chapters cover packaging and labelling in relation to banknotes (Chapters 2-3) and in relation to coins (Chapters 4-5), while the provisions relating to counting and sorting, as well as to cash lodging and cash discrepancies cover, for the most part, both banknotes and coins (see Chapter 1 and 6 to 7).

11 Paragraphs 2, 6 to 9 and 35 to 39 of the draft ordinance. The draft ordinance provides in the case of detecting a banknote in relation to which there is sufficient reason to believe that it is counterfeit that the relevant organisational unit of a commercial bank is obliged to act in accordance with the principles set in the draft ordinance and in separate provisions, i.e. the Ordinance on the seizure of counterfeit currency (see footnote 8 above).

12 See Article 121(1) of the Treaty.

13 Document available on the ECB's website. The equivalent rules for euro coins are contained in the Commission's Recommendation of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation (C(2005)1540 final).

maintaining the quality and authenticity of euro banknotes in circulation. As issuing authorities, the ECB and the NCBs of the Member States that have adopted the euro consider it to be of utmost importance for euro banknotes in circulation to be in good physical condition so that the general public, as well as professional cash handlers, can check their authenticity in a reliable and proper manner and separate authentic banknotes from counterfeits or suspected counterfeits.

- 3.3 Under the Banknote Recycling Framework¹⁴, credit institutions and other professional cash handlers may re-issue euro banknotes to customers only if these banknotes are duly checked for authenticity and fitness. As a general rule, the authenticity and fitness checks of the banknotes to be recycled can be performed either by banknote handling machines successfully tested by NCBs, or by trained staff members. However, the banknotes may only be returned to circulation via automated teller machines (ATM) or other customer-operated devices if they have been checked for both authenticity and fitness by banknote handling machines successfully tested by an NCB. Banknotes which have been checked for authenticity by trained staff members of a cash handler without the use of successfully tested banknote handling equipment, e.g. manually, may not be returned to circulation via ATMs or other customer-operated devices, but may only be re-issued over the counter after being checked for fitness.
- 3.4 Under the draft ordinance the definition of ‘counting of banknotes’ includes verification of their authenticity, and ‘sorting of banknotes’ consists in separating banknotes fit for circulation from those unfit for circulation due to wear or tear damage¹⁵. Both counting and sorting of banknotes can be effected manually or with the use of sorting machines¹⁶. The draft ordinance does not, however, include any provisions corresponding to the Framework’s requirements that would provide that only the banknotes checked by banknote handling machines for both authenticity and fitness may be returned to circulation via ATMs or other customer-operated devices.
- 3.5 Moreover, the ECB notes that the draft ordinance contains a definition of ‘banknotes unfit for circulation’, which covers, among others, banknotes which are tattered, torn partially or entirely, backed with an adhesive, excessively soiled, stained or damaged in any other way¹⁷. The above description does not correspond with the Eurosystem’s minimum standards for manual and automated fitness sorting of euro banknotes by credit institutions and other professional cash handlers that are contained in the Annex to the Banknote Recycling Framework¹⁸. Further, the ECB notes that the draft ordinance’s criteria for qualifying banknotes as unfit for circulation are without prejudice to the separate NBP’s provisions relating to the exchange of worn or damaged banknotes¹⁹. In view of preparations for the future adoption of the euro by Poland, the ECB invites

14 See points 2.1.2. and 2.1.3. of the Banknote Recycling Framework.

15 Paragraph 6(1) to (2) of the draft ordinance.

16 Paragraph 7 of the draft ordinance.

17 Paragraph 6(4) of the draft ordinance.

18 See Annex to the Banknote Recycling Framework ‘Minimum standards for fitness sorting of euro banknotes by credit institutions and other professional cash handlers’, available on request from the ECB.

19 See Ordinance No 1/2003 referred to in footnote 7 above.

the NBP to already consider the overall alignment of such NBP's standards for fitness sorting with the Banknote Recycling Framework and its Annex.

- 3.6 The ECB notes that the draft ordinance applies only to domestic banks, branches of European Union credit institutions and branches of foreign (i.e. non-EU) banks²⁰ as well as to NBP itself²¹, whereas the Banknote Recycling Framework applies to all professional cash handlers, i.e. both credit institutions and other professional cash handlers. The ECB understands that under Polish law the NBP has no powers to regulate non-bank entities²², such as non-bank cash handlers. Taking into account the potentially increasing role of non-bank cash handlers²³ in the Polish cash cycle, the ECB therefore recommends taking appropriate steps to ensure uniform application of Eurosystem standards contained in the Banknote Recycling Framework to all relevant categories of cash handling entities. Hence, in addition to fully aligning with the Framework of the NBP's own legislative instruments directed to banks, which would be an important first step, other appropriate legislative or contractual instruments may need to be introduced for the remaining categories of cash handlers.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 25 September 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

²⁰ The term 'credit institutions' under Polish law only relates to EU credit institutions from outside Poland. Polish credit institutions are legally referred to as 'banks' (this definition does not cover the Polish variety of credit unions, operating on the basis of the Law of 14 December 1995 on cooperative savings and loan associations (Dz.U. of 4 January 1996 No 1, Item 2, as amended)). Non-EU banks are referred to as 'foreign banks' (Article 2 and Article 4(1)(17) to (20) of the Law on banking).

²¹ Paragraph 1(2) of the draft ordinance.

²² See Article 68(2) of the Law on banking in conjunction with Article 92 of the Constitution of the Republic of Poland of 2 April 1997 (Dz.U. of 16 July 1997 No 78, Item 483, as amended); cf. judgment of the Constitutional Tribunal of 28 June 2000 in Case K25/99 (Dz.U. of 7 July 2000 No 53, Item 648).

²³ Including, among others, specialised cash handling service providers, bureaux de change, retailers, etc. Operations in the area of banknotes counting, sorting and packaging may be outsourced by banks to other entities, subject to supervisory clearance under Article 6a(1)(2) in conjunction with Article 6d of the Law on banking; cf. point II of the NBP's explanatory note NB-BPN-I-022-70/04 of 3 August 2004 on the application of certain provisions related to outsourcing.