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OPINION OF THE EUROPEAN CENTRAL BANK

of 23 February 2010

on preparations for the introduction of the euro

(CON/2010/16)

Introduction and legal basis

On 5 January 2010 the European Central Bank (ECB) received a request from Estonia's Ministry of Finance for an opinion on the draft law on introduction of the euro, the draft law on State fees and the draft amendments to the Commercial Code and other laws (hereinafter the 'draft laws').

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 (TFEU) and the first and second 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 provisions[1], as the draft laws relate to 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 has adopted this opinion.

The ECB will also comment on the Law on the salaries of higher State officials[2] adopted by the Riigikogu (Parliament) on 16 December 2009 that will enter into force on the date of commencement of authority of the composition No 12 of the Riigikogu, expected in March 2011.

1. Purpose of the draft laws

1.1 The draft laws replace amounts in kroons with amounts in euro, specify the rounding rules and enter into force on the date that the derogation will be abrogated; some of the Commercial Code draft provisions will enter into force on 1 July 2010.

1.2 The draft amendments to the Commercial Code accommodate the need to express amounts in euro on the one hand and the need to express amounts in evenly divisible integer numbers on the other hand. The draft amendments also specify that before the derogation is abrogated, amounts expressed in euro will be calculated in kroons based on the Eesti Pank rate and thereafter based on the rate established by the EU Council. To allow time for undertakings to make the necessary adjustments, monetary indicators that are important from the point of view of undertakings' activities may be expressed in euro from 1 July 2010. The general obligation to express all amounts only in euro enters into force one year after introduction of the euro. An additional aspect of the

1 OJ L 189, 3.7.1998, p. 42.

2 *Riigi Teataja* I, 7.1.2010, 1, 2.

amendments to the Commercial Code is the introduction of no par value shares in line with the Communication from the Commission of 2 July 1997 on the impact of the introduction of the euro on capital markets[3].

2. General observations

2.1 The draft laws should refer to the TFEU which entered into force on 1 December 2009, instead of to the Treaty establishing the European Community.

2.2 The draft laws comply with the principles of the introduction of the euro, according to which the EU Council decides when to abrogate the derogation of a Member State according to Article 140(2) of the TFEU and the conversion rate will be set amending Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro[4] on the basis of Article 140(3) TFEU.

2.3 The ECB has already noted that the official redenomination should only take place on the basis of the conversion rate fixed according to Article 140(3) of the TFEU[5]. However, the ECB has accepted that national legal provisions containing amounts in euro may enter into force before that if the Law refers to an amount in national currency equivalent to EUR [X][6]. In the case of the draft amendments to the Commercial Code, the possibility of expressing amounts in euro before the abrogation of the derogation is in line with this approach.

2.4 The ECB notes that the draft amendments to the Commercial Code allow for the continued limited use of the legacy currency after the euro adoption date. This would, however, require the application of a ‘phasing-out’ period under Article 9a of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[7]. If this Regulation is amended with a view to the introduction of the euro in Estonia, its annex will need to provide that Estonia is a Member State with a phasing-out period.

2.5 The draft law on State fees expresses all fees in euro and rounds the amounts to the nearest complete cent. This is intended to cover the costs underlying the services and is based on the current exchange rate of the central bank. The eventual balance between the costs underlying the services and the fees to be paid will depend on the final conversion rate that will be set amending Regulation (EC) No 2866/98.

2.6 Rounding rules for the euro introduction preparations are set out in Articles 4 and 5 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro[8]. The draft laws further specify these rules while staying within the scope of these articles.

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3 COM(97) 337 final, not published in the Official Journal.

4 OJ L 359, 31.12.1998, p. 1.

5 Paragraph 3.3 of ECB Opinion CON/2006/28. All ECB opinions and reports are available on the ECB’s website at www.ecb.europa.eu.

6 Paragraph 5.1 of ECB Opinion CON/2007/83.

7 OJ L 139, 11.5.1998, p. 1.

8 OJ L 162, 19.6.1997, p. 1.

2.7 The ECB welcomes timely preparations for the introduction of the euro. The ECB also welcomes the repeal of the Law on currency and the Law on the security of kroons which did not comply with the requirements for legal integration into the Eurosystem[9].

3. Draft law on the introduction of the euro

3.1 The draft law on the introduction of the euro specifies the methodology for converting kroons to euro. According to Article 4(3) of Regulation (EC) No 1103/97, inverse rates must not be used. However, the conversion rates must be used for conversions either way between the euro unit and the national currency units. To avoid any misunderstanding concerning the conversion methodology, it might be useful to follow in Article 224 of the draft law on the introduction of the euro the order of the wording of Article 4(3); that is conversion rates will be used 'between the euro unit and the national currency units'[10].

3.2 As explained by the consulting authority, the obligation set out in Article 222 of the draft law on the introduction of the euro is relevant for persons not specified in Article 2. As another point, the ECB notes that Article 223(2) should specify a period rather than a point in time for removal of the national currency from circulation.

4. The Law on the salaries of higher State officials

4.1 The Law on the salaries of higher State officials sets in euro the highest rate of salary and specifies coefficients applicable to the salaries for different posts. The Law also specifies that these rates in euro will be calculated in kroons based on the central rate of Eesti Pank and that the Law enters into force with the next composition of Riigikogu, which can be expected in March 2011.

4.2 National authorities have the obligation to consult the ECB on draft legislative provisions concerning matters that fall within its competence. Currency matters are expressly listed among the areas of the ECB's competence[11]. According to Article 4 of Decision 98/415/EC, each Member State must ensure that the ECB is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance. This obligation was not fulfilled in respect of the Law on the salaries of higher State officials.

4.3 The currency of a Member State with a derogation is its national currency until the entry into force of the Council decision abrogating the derogation under Article 140(2) TFEU. National provisions may only contain amounts in euro either when the euro is referred to as a foreign currency or where it is necessary due to the transposition of Union law provisions expressed in euro[12]. Neither of these conditions are present here, and the Law does not comply with the principles of the introduction of

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9 Convergence Report May 2008, p. 40.

10 A similar comment applies also in respect of the draft Article 5253(1) of the Commercial Code.

11 First indent of Article 2(1) of Decision 98/415/EC.

12 Paragraph 5.1 of ECB Opinion CON/2007/43.

the euro. Therefore, the ECB recommends amending this Law in line with the techniques applied to the draft laws as described above.

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

Done at Frankfurt am Main, 23 February 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET