



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 9 December 2011**

**on the authentication of euro coins and handling of euro coins unfit for circulation and the imposition of administrative measures and penalties**

**(CON/2011/105)**

### **Introduction and legal basis**

On 16 November 2011, the European Central Bank (ECB) received a request from the Central Bank of Malta (CBM) for an opinion on its draft Directive No 11 on the authentication of euro coins and the handling of euro coins unfit for circulation (hereinafter the ‘draft Coins Directive’) and Directive No 12 on the administrative measures and penalties for offences and infringements under the Central Bank of Malta Act<sup>1</sup> (hereinafter the ‘draft Administrative Penalties Directive’; the draft Coins Directive and the draft Administrative Penalties Directive are hereinafter collectively referred to as the ‘draft CBM directives’).

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 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 ECB by national authorities regarding draft legislative provisions<sup>2</sup> as the draft amendments concern currency matters, means of payment and the CBM. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.

### **1. Purpose of the draft CBM directives**

- 1.1 Article 5(3) of the Central Bank of Malta Act (hereinafter the ‘CBM Act’) empowers the CBM to issue directives to implement the CBM Act. The draft CBM directives will be published before the end of 2011 and are expected to enter into force on 1 January 2012.
- 1.2 The draft Coins Directive aligns national law with Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation<sup>3</sup>. It introduces specific obligations for the CBM with regard to the authentication procedures and controls. Furthermore, it contains provisions on the

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<sup>1</sup> Cap. 204 of the Laws of Malta.

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

<sup>3</sup> OJ L 339, 22.12.2010, p. 1.

handling of coins which are unfit for circulation as a result of use, accident or damage. The new procedures relating to euro coins are complementary to those in CBM Directive No 10 on the authenticity, fitness checking and recirculation of euro banknotes<sup>4</sup>.

- 1.3 The draft Administrative Penalties Directive introduces specific penalties for breaches of the CBM Act, the draft CBM directives and Regulation (EC) No 924/2009 on cross-border payments<sup>5</sup>. Annex I sets out the administrative penalties which may be imposed by the CBM without recourse to a court hearing. Annex II lays down the administrative measures and penalties for failure to comply with CBM Directive No 10. Administrative measures and penalties applicable for failure to comply with the draft Coins Directive are listed separately in Annex III.

## 2. General observations

- 2.1 The draft Coins Directive establishes obligations on cash handlers and seeks to safeguard the integrity of euro coins as a means of payment. The ECB generally welcomes the draft Coins Directive and is confident that its provisions will ensure the preservation of euro coins in circulation and will therefore maintain the general public's confidence in euro coins.
- 2.2 The ECB considers it essential that any draft legislation should clarify the primacy and direct application of Union law on the authentication of euro coins and the handling of euro coins unfit for circulation. For consistency reasons, the ECB favours the use of direct references to Regulation (EU) No 1210/2010 or, alternatively, reproduction of its provisions without any alterations or additions.
- 2.3 With regard to the draft Administrative Penalties Directive, the ECB notes that most of the offences provided for are already set out in Subsidiary Legislation 204.05<sup>6</sup>.
- 2.4 In addition, although national authorities are not formally obliged to consult the ECB on the implementation of the Member States' obligation to take the necessary measures to ensure that breaches of Article 6(1) of Regulation (EC) No 1338/2001 are subject to effective, proportionate and deterrent sanctions, the ECB believes it is beneficial to harmonise throughout the Union the national measures implementing the abovementioned obligation to the extent possible, subject to national peculiarities<sup>7</sup>.

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<sup>4</sup> CBM Directive No 10 was the subject of CON/2010/90. All opinions are available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>5</sup> Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

<sup>6</sup> Central Bank of Malta (Penalties for Offences and Infringements) Regulations, Legal Notice 75 of 2003.

<sup>7</sup> Paragraph 1.1 of Opinion CON/2010/87.

### 3. The draft Coins Directive

- 3.1 The definition of 'euro coins unfit for circulation' in paragraph 3 of the draft Coins Directive should be amended to reflect the definition in Regulation (EU) No 1210/2010 which refers to euro coins that have been rejected during the authentication process or euro coins the appearance of which has been significantly altered. The definition should cover both euro coins unfit for circulation on the basis of their visual appearance and those unfit for circulation on the basis of their technical appearance.
- 3.2 With regard to the delivery to the CBM of counterfeits following detection, the ECB notes that paragraph 4 of the draft Coins Directive only requires immediate delivery to the CBM (as the designated national authority) in the case of counterfeits, thereby appearing to limit the scope of Article 3(2) of Regulation (EU) No 1210/2010, which also refers to suspected counterfeit coins and euro coins unfit for circulation. Paragraph 4 should be amended accordingly.
- 3.3 When dealing with the withdrawal and reimbursement of euro coins unfit for circulation, the draft Coins Directive does not include a provision ensuring that after withdrawal euro coins unfit for circulation are destroyed by physical and permanent deformation, thereby reflecting the obligation set out in Article 8(3) of Regulation (EU) No 1210/2010. A paragraph to this effect should be included in the draft Coins Directive.
- 3.4 The ECB notes that paragraph 5 of the draft Coins Directive is not fully consistent with Article 6(3) of Regulation (EU) No 1210/2010. In particular, it should provide that the number of coin-processing machines checked on an annual basis, represent, in terms of the volume of euro coins processed by those machines during a particular year, at least 25% of the total cumulated net volume of coins issued by Malta from the introduction of euro coins in 2008 until the end of the previous year. The current wording of paragraph 5 limits that period to the end of 2010, thereby excluding any developments in the euro coin issuance volume of Malta after 2010. Therefore, the ECB recommends aligning paragraph 5 of the draft Coins Directive with Article 6(3) of Regulation (EU) No 1210/2010.
- 3.5 As regards the composition of the standardised bags or boxes for the packing of euro coins unfit for circulation, the ECB notes that paragraph 18(a) of the draft Coins Directive is not consistent with Article 10(1)(a) of Regulation (EU) No 1210/2010 for any denominations except EUR 2 and 0,01. The draft Coins Directive should be aligned accordingly.
- 3.6 The CBM is the competent authority to supervise compliance with Regulation (EC) No 1210/2010 and to take decisions regarding offences under the draft Coins Directive. In view of the human and financial resources required for the performance of these tasks, the ECB has consistently expressed its concern that, when allocating additional tasks to national central banks, it must be ensured that they have sufficient human and financial resources, both in terms of quantity and quality, for all of their tasks, and in particular that their capacity to perform their European System of Central Banks or Eurosystem-related tasks is not affected.

#### 4 The draft Administrative Penalties Directive

- 4.1 By virtue of recent amendments to Article 56 of the CBM Act, the power to issue regulations providing for administrative penalties, formerly vested in the Minister for Finance, has been transferred to the CBM. Furthermore, the CBM has been empowered<sup>8</sup> to issue directives in order to impose administrative measures for breach of the rules on the authenticity, fitness checking and recirculation of euro banknotes and coins.
- 4.2 The ECB reiterates the importance of effective, proportionate and deterrent sanctions. To ensure the deterrent effect of administrative fines, the maximum amount should allow setting the fine at an amount which effectively deters cash handlers from breaching their obligations. While defining the particular amounts of the administrative fines is a national competence, the national legislator should aim at achieving a certain degree of harmonisation across the Member States to contribute to the establishment of a level playing field among cash handlers within the euro area without prejudice to: (a) the particularities of the cash cycle and the organisation of cash handlers at a national level; and (b) the consistency of the levels of financial sanctions available in their legal orders<sup>9</sup>. In this context, the ECB welcomes the introduction of the separate draft Administrative Penalties Directive dealing specifically with administrative measures and penalties in a structured manner.

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

Done at Frankfurt am Main, 9 December 2011.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>8</sup> By virtue of Article 50A of the CBM Act.

<sup>9</sup> Paragraph 3.4 of Opinion CON/2010/87.