



EUROPEAN CENTRAL BANK  
EUROSYSTEM

## OPINION OF THE EUROPEAN CENTRAL BANK

of 7 March 2011

on the recirculation of euro banknotes

(CON/2011/19)

### **Introduction and legal basis**

On 31 January 2011, the European Central Bank (ECB) received a request from the Governor of the Banque de France for an opinion on a draft decree amending Articles R.122-7 to R.122-11, R.123-3 and R.162-5 of the French Monetary and Financial Code (hereinafter the ‘draft Decree’) and on a draft decision of the Governor of the Banque de France on the legal framework for the recycling of euro banknotes (hereinafter the ‘draft Decision’). On 16 February 2011, the ECB received a revised version of the draft Decision, which cancels and replaces the former one.

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 European Central Bank by national authorities regarding draft legislative provisions<sup>1</sup>, as the draft Decree and the draft Decision concern currency matters, means of payment and the Banque de France. 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 Decree and draft Decision**

1.1 The draft Decree will adapt the provisions of the French Monetary and Financial Code on the recirculation of euro banknotes<sup>2</sup> to the new harmonised legal framework applying in the Member States whose currency is the euro. This framework is established by Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes<sup>3</sup>. The draft Decree will transfer full responsibility for the implementation of agreements to be signed between cash handlers and the Banque de France in the context of this new legal framework to the Banque de France. It therefore deletes most of the provisions concerning standard agreements to be signed between cash handlers and the Banque de France, including the requirement for the standard

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> Articles R.122-7 to R.122-11, R.123-3 and R.162-5 of the French Monetary and Financial Code.

<sup>3</sup> OJ L 267, 9.10.2010, p. 1.

agreements to be approved by a decree of the Minister for Economic Affairs, Finance and Industry<sup>4</sup>, while maintaining the requirement for cash handlers to sign agreements with the Banque de France as a prior condition to the recirculation of euro banknotes. In this respect, the draft Decree provides that, where credit institutions, La Poste and payment institutions plan to supply automated teller machines with euro banknotes that have not been directly obtained from a Eurosystem central bank, they must first enter into an agreement with the Banque de France and respect the rules enacted by the Banque de France in accordance with those laid down by the European Central Bank<sup>5</sup>.

- 1.2 In this context, the draft Decision<sup>6</sup> mainly specifies the standard agreements<sup>7</sup> to be signed between cash handlers and the Banque de France, updating currently existing standard agreements<sup>8</sup>.

## 2. General observations

- 2.1 As Decision ECB/2010/14 applies to cash handlers by virtue of Article 6(1) of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting<sup>9</sup>, which refers to procedures defined by the ECB for checking euro banknotes, there is no strict need to implement Decision ECB/2010/14 into French law. However, the ECB understands that the binding legal framework for the recirculation of euro banknotes already existing in France<sup>10</sup> has to be aligned with Decision ECB/2010/14.
- 2.2 The ECB welcomes in this context the amendments introduced by the draft Decree leading to the implementation of the standard agreements between cash handlers and the Banque de France under the sole responsibility of the Banque de France. The requirement for cash handlers to sign these agreements with the Banque de France as a prior condition to the recirculation of euro banknotes<sup>11</sup> is maintained, despite the direct imposition by Decision ECB/2010/14 of obligations on cash handlers. The ECB acknowledges that this aims at fostering compliance of cash handlers in France with the rules and procedures laid down in Decision ECB/2010/14. In this respect, the ECB welcomes the draft Decree and the draft Decision and is confident that this updated national legal

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4 Under the current provisions, and in particular Article R122-11 of the French Monetary and Financial Code, which the draft Decree will delete.

5 Article R122-9 of the French Monetary and Financial Code as proposed by the draft Decree.

6 The draft Decision is to be adopted on the basis of Article L.142-8 of the French Monetary and Financial Code, as recently amended, which now entitles the Governor of the Banque de France not only to transpose ECB Guidelines, but also to implement ECB decisions and other ECB legal acts.

7 Standard agreement regarding the distribution through automated teller machines of banknotes not directly obtained from one of the Eurosystem's central banks, standard agreement regarding the handling operations of euro banknotes by credit institutions or payment institutions with a view to their issue to the public through automated teller machines, standard agreement regarding the handling operations of euro banknotes by the service providers of credit institutions or payment institutions with a view to their issue to the public through automated teller machines.

8 See Ministerial Order of 20 June 2005 approving the current version of the template agreements, *Journal Officiel de la République française*, 16.7.2005.

9 OJ L 181, 4.7.2001, p. 6. Article 6(1) was amended on 18 December 2008 (OJ L 17, 22.1.2009, p. 1).

10 The ECB had been consulted in 2004 on the legal framework for the recycling of euro banknotes in France and adopted Opinion CON/2004/8.

11 Article R122-9 of the French Monetary and Financial Code as proposed by the draft Decree.

framework will contribute to the preservation of euro banknotes in circulation and to the maintenance of public confidence in euro banknotes.

- 2.3 In addition, the ECB underlines the importance of harmonised standards on euro banknote recirculation across the Member States whose currency is the euro. The ECB considers it essential for any national implementing measures to implement Decision ECB/2010/14 strictly and to not deviate from the common rules established under this Decision, except when expressly provided for in the Decision. Moreover, national implementing measures should clarify the primacy and direct applicability of the Union legislation on the authenticity and fitness checking and recirculation of euro banknotes to be complied with by cash handlers. In this context, in order to ensure the consistency of national implementing measures with Decision ECB/2010/14, the ECB favours the use of direct references to Decision ECB/2010/14, including its technical annexes. Alternatively, reproduction of the relevant provisions of Decision ECB/2010/14 without additions is also acceptable. The ECB notes that while the draft Decision contains the necessary references to Decision ECB/2010/14 and generally reproduces the relevant provisions of Decision ECB/2010/14, subject to the specific observations in Section 3 below, the draft Decree could clarify further<sup>12</sup> the direct applicability of ECB rules to cash handlers, such rules applying by virtue of Article 6(1) of Council Regulation (EC) No 1338/2001, which makes implementation of these rules into national law not strictly necessary from a legal point of view.

### **3. Specific observations**

- 3.1 Pursuant to Article 6 of the standard agreement set out in Annex I and Article 10 of the standard agreement set out in Annex II to the draft Decision (sanctions), the Banque de France may take measures with immediate effect against cash handlers that do not comply with the rules laid down in the respective standard agreement where there is a risk that category A or category 2 banknotes are put back into circulation. First, there should be a clear definition of these categories A and 2; a reference to Annexes IIa and IIb of Decision ECB/2010/14 would provide clarity in this respect. Second, euro banknotes not clearly authenticated (category 3), which, according to ECB rules, have to be withdrawn from circulation and handed over to the competent national authorities, should also be mentioned in Article 6, and respectively Article 10, of the standard agreements set out in Annexes I and II of the draft Decision, together with category A and 2 banknotes, as they present a risk that counterfeit banknotes are put back into circulation<sup>13</sup>.
- 3.2 Article 7.4 of the standard agreement set out in Annex II to the draft Decision requires particular cash handlers to report statistical data to the Banque de France on a monthly basis. Pursuant to Annex IV to Decision ECB/2010/14, such data should be reported to a national central bank (NCB) on a six-monthly basis. NCBs may ask for monthly reporting for a transitional period only, where

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<sup>12</sup> In Article R122-9 of the French Monetary and Financial Code resulting from the draft Decree.

<sup>13</sup> Banknotes not clearly authenticated are already part of category A referred to in Annex IIb of Decision ECB/2010/14.

this was the practice of such NCB prior to Decision ECB/2010/14 entering into force. The current wording of Article 7.4 may however be interpreted as meaning that the monthly reporting is of a permanent nature for the cash handlers concerned, which is not in line with Decision ECB/2010/14. The temporary nature of such monthly reporting should be clarified.

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

Done at Frankfurt am Main, 7 March 2011.

[signed]

*The President of the ECB*

Jean-Claude TRICHET