



OPINION OF THE EUROPEAN CENTRAL BANK

of 7 October 2011

on sanctions related to the protection of the euro against counterfeiting

(CON/2011/78)

Introduction and legal basis

On 8 September 2011 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft regulation on the implementation of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, amended by Council Regulation (EC) No 44/2009 of 18 December 2008 amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (hereinafter the ‘draft regulation’).

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 provisions¹, as the draft law relates to currency matters, means of payment and Banka Slovenije. 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 regulation

Pursuant to Council Regulation (EC) No 44/2009 of 18 December 2008 amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting², the draft regulation: (a) sets out the offences in breach of the first and second subparagraphs of Article 6(1) of Regulation (EC) No 1338/2001 in conjunction with Decision ECB/2010/14 of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes³; and (b) provides that Banka Slovenije is the competent authority to supervise compliance with Regulation (EC) No 1338/2001 and to take decisions on offences under the draft regulation. The draft regulation will enter into force on 31 December 2011.

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 17, 22.1.2009, p. 1.

³ OJ L 267, 9.10.2010, p. 1.

2. General observations

- 2.1 Even though national authorities are not required to consult the ECB on measures taken to ensure that breaches of Article 6(1) of Regulation (EC) No 1338/2001 are subject to effective, proportionate and deterrent sanctions, it is nonetheless beneficial to address this issue in order to encourage a harmonised approach across the Union to the extent possible, subject to national peculiarities⁴.
- 2.2 The ECB broadly welcomes the draft regulation which should provide for an effective system of deterrent sanctions in relation to the protection of the euro against counterfeiting and thus contribute to maintaining public confidence in euro banknotes in circulation.

3. Consistency with Union legislation

- 3.1 Articles 3 to 9 of the draft regulation describe cash handler obligations, the breach of which constitutes a serious or minor offence sanctioned by a fine under Articles 11 or 12 of the draft regulation. The ECB considers it essential for the draft regulation to only deviate from Decision ECB/2010/14 where the Decision has expressly allowed such deviations. To ensure consistency, the ECB recommends including direct references in the draft regulation to the relevant provisions of Decision ECB/2010/14, including its technical annexes. Alternatively, a full reproduction of the relevant provisions of Decision ECB/2010/14 without any alterations or additions is also acceptable.
- 3.2 Decision ECB/2010/14 applies to cash handlers by virtue of Article 6(1) of Regulation (EC) No 1338/2001, which refers to procedures defined by the ECB for checking euro banknotes. In this context, the ECB understands that the terms used in the draft regulation have the same meaning as in Decision ECB/2010/14. If necessary to ensure legal certainty, additional new terms should be defined⁵.

4. Sanctions regime

In accordance with Articles 11 and 12 of the draft regulation, a fine of EUR 75 000 will be imposed on cash handlers committing a serious breach of their obligations under the draft regulation and a fine of EUR 3 000 will be imposed on the responsible person of such cash handlers. For a minor breach, cash handlers will be fined EUR 30 000 and their respective responsible persons EUR 1 000. To ensure that specific circumstances are taken into account and that sanctions are proportionate, the ECB recommends that the Ministry consider whether the proposed system of fixed fines could be replaced by a system that sets a maximum ceiling or provides for a range of fines for each particular breach.

⁴ See paragraph 1.1 of Opinion CON/2010/87 and paragraph 2.4 of Opinion CON/2011/64. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁵ For instance, it could be useful to define 'euro banknote depot' to ensure clarity in granting the remote credit institution branch status under Article 7(2) of the draft regulation.

5. Tasks of Banka Slovenije under the draft regulation

In accordance with Article 2 of the draft regulation, Banka Slovenije acts as the competent authority to supervise compliance with Regulation (EC) No 1338/2001 and to take decisions regarding offences under the draft regulation. Banka Slovenije would have to commit additional human and financial resources to carry out these new tasks. In this context, the ECB has emphasised that ‘Member States may not put their [national central banks] in a position where they have insufficient financial resources to carry out their [European System of Central Banks] or Eurosystem related tasks, as applicable’⁶. 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 fulfil their European System of Central Banks or Eurosystem-related tasks is not affected⁷.

6. Name of the single currency

The title and Article 1 of the draft regulation refer to the full title of Regulation (EC) No 1338/2001 and thereby uses the incorrect spelling of the name of the single currency (‘evro’ instead of ‘euro’). The ECB would like to draw the Ministry’s attention to the corrigendum to the Slovenian language version of Regulation (EC) No 1338/2001⁸ replacing all instances of incorrect spelling of the name of the single currency with the correct spelling and thus making it compatible with Union law in this respect. The ECB expects that the abovementioned spelling mistakes in the draft regulation will be corrected.

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

Done at Frankfurt am Main, 7 October 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁶ See e.g. the ECB’s Convergence Report May 2010, p. 21, available on the ECB’s website at www.ecb.europa.eu.

⁷ In the context of consultations by Slovenian authorities, see e.g. paragraph 2.3 of Opinion CON/2007/38, paragraph 3.5 of Opinion CON/2011/25 and paragraph 3.1 of Opinion CON/2011/70.

⁸ OJ L 121, 6.5.2006, p. 56.