



EUROPEAN CENTRAL BANK  
EUROSYSTEM

## OPINION OF THE EUROPEAN CENTRAL BANK

of 18 November 2011

on protection against counterfeiting and on the preservation of the quality of cash circulation

(CON/2011/94)

### Introduction and legal basis

On 20 October 2011, the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance for an opinion on draft legislative provisions amending Decree-Law No 350 of 25 September 2001, converted into law by Law No 409 of 23 November 2001, as well as Decree-Law No 262 of 3 October 2006, converted by Law No 286 of 24 November 2006 (hereinafter the ‘draft legislative provisions’). On the same day, the ECB received a request from the Banca d’Italia for an opinion on a set of draft Banca d’Italia acts laying down: (a) secondary provisions on cash handling activities (hereinafter the ‘draft secondary provisions’), and (b) a guide for cash handlers on statistical reporting obligations (hereinafter the ‘draft guide’).

The ECB’s competence to deliver an opinion is based on Article 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 legislation concerns currency matters, means of payment and the Banca d’Italia. 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 legislation**

- 1.1 The draft legislation aims at aligning the Italian legal framework for protection against counterfeiting with recent Union legislation in this area<sup>2</sup>.
- 1.2 The draft legislative provisions, *inter alia*, increase the number of institutions subject to duties regarding the detection and prevention of use of counterfeit banknotes in order to comply with Regulation (EC) No 1338/2001. In that context, Article 8 of Decree-Law No 350/2001 has been

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

<sup>2</sup> Notably, with: (a) Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6) (b) Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (OJ L 267, 9.10.2010, p. 1); and (c) Regulation (EU) No 1210/2010 of the European Parliament and the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (OJ L 339, 22.12.2010, p. 1).

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replaced. Article 8(1) to (5), as amended by the draft legislative provisions, aim at implementing Article 6(1) of Regulation (EC) No 1338/2001 and Article 3 of Regulation (EU) No 1210/2010. In particular, Article 8(1), as amended by the draft legislative provisions, obliges cash handlers to check and detect counterfeit and unfit euro banknotes and coins whereas paragraphs 4 and 5, as amended by the draft legislative provisions, impose on cash handlers the obligation to remove counterfeit and unfit banknotes and coins from circulation and hand them over to the Italian authorities.

- 1.3 Article 8(6), as amended by the draft legislative provisions, appoints the Italian National Centre for the Analysis of Coins (CNAC) to perform the tasks set out in Regulation (EU) No 1210/2010. Article 8(7), as amended by the draft legislative provisions, empowers the Banca d'Italia to conduct inspections at the premises of cash handlers to monitor compliance with Decision ECB/2010/14, Article 8 of Decree-Law No 350/2001, as amended by the draft legislative provisions, and the secondary provisions with reference to euro banknotes. In this context, the Banca d'Italia may receive assistance from the tax police, subject to the same limits applying to investigations against tax evasion.
- 1.4 Article 8(8), as amended by the draft legislative provisions, concerns agreements between the Banca d'Italia, the Ministry and the CNAC, as well as other relevant authorities, on increasing cooperation in this area. Article 8(9), as amended by the draft legislative provisions, empowers the Banca d'Italia and the Ministry to adopt implementing provisions, such as the abovementioned secondary provisions. Article 8(10) to (12), as amended by the draft legislative provisions, set out financial sanctions and consequences in case of breach of Article 8 itself, Decision ECB/2010/14, Regulation (EC) No 1338/2001 and Regulation (EU) No 1210/2010.
- 1.5 Article 8-bis, as introduced by the draft legislative provisions, aims at implementing Article 4 of Regulation (EC) No 1338/2001. Article 8-ter, as introduced by the draft legislative provisions concerns professional secrecy. The draft legislative provisions also amend and insert in Article 2 of Decree-Law No 262/2006 paragraphs 152 to 153-bis, which refer to reporting obligations to the Ministry and related sanctions.
- 1.6 The draft secondary provisions further clarify Decision ECB/2010/4 for the benefit of addressees. The draft guide explains in detail reporting obligations for cash handlers.

## 2. General observations

- 2.1 The ECB is confident that the draft provisions will ensure the authenticity and integrity of euro banknotes and coins in circulation, resulting in continued public confidence in the euro.
- 2.2 As 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, there is no strict need to implement Decision ECB/2010/14 in Italian law. Nevertheless, the ECB notes that the draft secondary provisions will contribute to the adequate implementation of this Decision.

- 2.3 The ECB considers it essential that any draft legislation implementing Decision ECB/2010/14 does not deviate from its common provisions, unless this is explicitly provided for in Decision ECB/2010/14. Any national implementing measures should clarify the primacy and direct application of Union law on the authenticity and fitness checking and recirculation of euro banknotes with which cash handlers must comply. In this context, and for consistency reasons, including ensuring a level-playing field for cash handlers across Member States, the ECB favours the use of direct references to Decision ECB/2010/14 or, alternatively, reproduction of its provisions without any alterations or additions<sup>3</sup>. In this regard, the ECB notes that the draft secondary provisions contain rules further detailing the outsourcing requirements of Article 3(2) of Decision ECB/2010/14. The ECB understands that the purpose of the draft secondary provisions is to limit any risks associated with such outsourcing and that they will supplement Decision ECB/2010/14.
- 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 this obligation to the extent possible, subject to national peculiarities<sup>4</sup>.

### 3. Sanctions

- 3.1 According to Article 8(10) of Decree-Law No 350/2001, as amended by the draft legislative provisions, where cash handlers breach the obligations set out in Article 8 itself, the implementing provisions or the Union legislation to which the draft legislative provision refers, this would result in the imposition of an administrative fine between EUR 5 000 and 50 000. In addition, Article 8(11) to (13), as amended by the draft legislative provisions, introduces the possibility for the Banca d'Italia or the Ministry to require a non-compliant cash handler to take additional corrective measures, with a possible impact on the conduct of supervision and oversight by the relevant authorities.
- 3.2 The ECB notes the importance of effective, proportionate and deterrent sanctions<sup>5</sup>. The maximum amount of administrative fines should effectively deter cash handlers from breaching their obligations. While it is up to the national legislator to determine the levels, they should aim for 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

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<sup>3</sup> Paragraphs 2.1 and 2.3 of Opinion CON/2011/19. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>4</sup> Paragraph 1.1 of Opinion CON/2010/87.

<sup>5</sup> Article 6(2) of Regulation (EC) No 1338/2001.

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particularities of the cash cycle and the organisation of cash handlers at national level; and (b) the consistency of the levels of financial sanctions available in their legal orders<sup>6</sup>.

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

Done at Frankfurt am Main, 18 November 2011.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>6</sup> Paragraph 3.4 of Opinion CON/2010/87.