



OPINION OF THE EUROPEAN CENTRAL BANK

of 30 October 2012

on the checking of cash

(CON/2012/82)

Introduction and legal basis

On 4 October 2012, the European Central Bank (ECB) received a request from the Deutsche Bundesbank for an opinion on a draft regulation on the checking of cash (hereinafter the 'draft regulation').

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 provisions¹, as the draft legislation concerns currency matters, means of payment and the Deutsche Bundesbank. 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. Legal basis und purpose of the draft regulation

- 1.1 The draft regulation is based on Section 36a of the Law on the Deutsche Bundesbank in conjunction with Section 1 of the Regulation on the delegation of power to the Bundesbank to adopt regulations pursuant to Section 36a of the Law on the Deutsche Bundesbank². According to these provisions, the Deutsche Bundesbank's Executive Board is empowered to adopt regulations relating to cash checking which are subject to the approval of the Ministry of Finance.
- 1.2 The purpose of the draft regulation is to implement requirements provided for in Article 6 of Regulation (EC) No 1338/2001³ and in Decision ECB/2010/14⁴. The draft regulation establishes detailed rules concerning the taking of samples during on-site inspections of entities subject to the obligations laid down in Article 6 of Regulation (EC) No 1338/2001, and relating to the scope and manner of the reporting obligations of those entities in the context of euro banknote authentication and fitness checking. Furthermore, the draft regulation lays down the minimum information to be

¹ OJ L 189, 3.7.1998, p. 42.

² BGBl. I p. 1507.

³ 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).

⁴ 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).

included in reports which must be submitted under Section 36 of the Law on the Deutsche Bundesbank and which concern counterfeit euro banknotes and coins, or euro banknotes and coins suspected of being counterfeit, and other items specified in Section 35 of the Law on the Deutsche Bundesbank.

2. General observations

- 2.1 The ECB welcomes the draft regulation and the fact that the Deutsche Bundesbank exercises its delegated power, in accordance with Sections 36a and 37a of the Law on the Deutsche Bundesbank, to adopt detailed provisions concerning the checking of cash and related reporting obligations. It is important that the Deutsche Bundesbank is in a position to monitor the authentication and fitness checking of euro banknotes pursuant to Decision ECB/2010/14. In general, the ECB is confident that the provisions of the draft regulation will help to protect the integrity of euro banknotes in circulation, resulting in continued public confidence in euro banknotes⁵.
- 2.2 In particular, the draft regulation provides in Section 1 that, in the course of its inspections of staff-operated banknote processing systems pursuant to Section 37(a)(2) of the Law of the Deutsche Bundesbank, the Deutsche Bundesbank may take samples of euro banknotes that have been processed and are deemed fit for recirculation. It also provides that the party obliged to take measures shall deposit the sample with a branch of the Deutsche Bundesbank within five business days. The ECB notes that the draft regulation refers to, and even goes beyond, Article 10(2) of Decision ECB/2010/14 by providing for an obligation to deposit samples of processed euro banknotes at the Deutsche Bundesbank. Article 10(2) of Decision ECB/2010/14 stipulates that, subject to national law requirements, NCBs are authorised to take samples of processed euro banknotes to check them at their own premises. The ECB welcomes the fact that the Deutsche Bundesbank has made use of its competence to adopt a specific national rule which is in accordance with Article 10(2) of Decision ECB/2010/14. The provisions of Section 1 enable the entities involved to check whether euro banknotes were processed in accordance with Decision ECB/2010/14. The ECB also welcomes the fact that the objective of Section 1 is to maintain the high quality of euro banknotes in circulation and to enable the entities referred to in Article 6 of Regulation (EC) No 1338/2001 to detect counterfeits as quickly as possible.
- 2.3 Section 2 of the draft regulation is aimed at improving and harmonising the transmission of data concerning counterfeit money. The ECB welcomes the fact that under this provision more detailed information is required for the reports accompanying the submission of counterfeit money, in order to enable judicial authorities to take measures to prosecute offenders and to issue warnings to groups likely to be targeted by distributors of counterfeit money.

⁵ Paragraph 2.1 of Opinion CON/2010/90. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

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

Done at Frankfurt am Main, 30 October 2012.

[signed]

The President of the ECB

Mario DRAGHI