



OPINION OF THE EUROPEAN CENTRAL BANK

of 16 July 2014

on the competence for coin issuance

(CON/2014/56)

Introduction and legal basis

On 20 May 2014, the European Central Bank (ECB) received a request from the Minister of Finance of the Republic of Cyprus for an opinion on a draft law amending the Central Bank of Cyprus Laws of 2002 to 2014¹ (hereinafter the ‘draft law’).

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 and third indents of Article 2(1) of Council Decision 98/415/EC², as the draft law relates to currency matters and the Central Bank of Cyprus (CBC). 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 law

- 1.1 The draft law aims to transfer the competence to issue euro coins from the CBC to the Government of the Republic of Cyprus (hereinafter the ‘Government’). At present, the CBC has the competence to issue euro coins in the Republic of Cyprus, including the competence to issue euro commemorative and collector coins. This draft law will give the CBC the competence to issue euro coins on behalf of the Republic of Cyprus in its function as fiscal agent.
- 1.2 The draft law also provides that on the day following the entry into force of the draft law, the CBC will transfer the amount of the nominal value of euro coins in circulation to the General Government Account, to the credit of the Consolidated Fund of the Republic of Cyprus (hereinafter the ‘Consolidated Fund’). In addition, every six months, the amount of the nominal value of euro coins annually put in circulation by the CBC is to be transferred to the General Government Account, to the credit of the Consolidated Fund, after the amount of the nominal value of euro coins withdrawn from circulation during the same period is deducted.

¹ Law 138(I)/2002.

² Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

2. General observations

According to the Treaty, the right to issue euro coins rests with the Member States³, but the actual issuer of the euro coins is not specified. In fourteen euro area Member States issuance of euro coins is a state function⁴ and in five of those euro area Member States the national central banks (NCBs) act as agents for their treasuries with regard to minting euro coins and putting them into circulation⁵. In those Member States where the NCBs act as agents for their treasuries, the NCBs are reimbursed in full for the cost of minting and/or putting euro coins into circulation.

3. Central bank independence and prohibition on monetary financing

3.1 *Central bank independence*

3.1.1 Article 130 of the Treaty lays down that financial independence is a key aspect of the principle of central bank independence for the members of the European System of Central Banks. The ECB emphasises that any task undertaken by the CBC should be compatible with its institutional and financial independence, in order to safeguard the proper performance of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') as well as its national tasks. The principle of central bank independence also requires, inter alia, that Member States do not put their NCBs in a position where they have insufficient financial resources and inadequate net equity to carry out their tasks.

3.1.2 In this regard, the draft law provides that the CBC will transfer the competence to issue coins to the Government and is to simultaneously transfer the nominal value of euro coins in circulation⁶ to the General Government Account, which is kept with the CBC. The CBC will thus exchange its liability towards the holders of euro coins with a liability towards the Government. The effect of the proposed transaction on the CBC's balance sheet is neutral. However, the CBC will lose one of its operations that has generated revenue in the past⁷ thus it should take this factor into account in taking any decision on the allocation of its profits⁸ in order to safeguard its financial independence.

3.1.3 The ECB understands from the consulting authority that the CBC is to be compensated for the services it provides as the agent of the Government in relation to euro coin issuance. The annual fee to be received by the CBC is intended to cover the actual cost of issuing euro coins in the Republic of Cyprus and includes a service fee for the performance of the CBC's agency tasks. The ECB

³ See Article 128(2) of the Treaty.

⁴ In Cyprus, Estonia, Latvia and Slovakia coin issuance is a competence of the respective national central bank. In Austria, the issuing authority for coins is the Austrian Mint, which is a wholly owned subsidiary of the Oesterreichische Nationalbank.

⁵ Greece, Finland, Ireland, Luxembourg and Malta.

⁶ The nominal value of euro coins in circulation was EUR 99.1 million at 31 December 2013, compared with EUR 96.1 at 31 December 2012.

⁷ The seigniorage revenue from euro coins may be estimated as the nominal value of coins in circulation multiplied by an indicative rate of return, such as the ECB main refinancing operations rate.

⁸ In accordance with the Central Bank of Cyprus Laws of 2002 to 2014 (section 59), 80% of the net profit of the CBC is normally transferred into the Consolidated Fund of the General Government Account, unless the Board of the CBC decides an additional withholding of net profits due to exceptional circumstances.

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understands that in view of the current production needs of new euro coins in Cyprus and current production costs, according to estimates of the CBC, the provisionally agreed annual fee is expected to cover sufficiently, with a margin, the estimated annual cost, in the foreseeable future. As regards the actual cost of issuing commemorative and collector coins including issue, transfer, insurance, storage, management and offer of commemorative and collector coins, the CBC is to be reimbursed through the proceeds of sale of such coins. The price of the coins is to be exclusively determined by the CBC. Furthermore, the CBC is to benefit from the net profit or assume the net loss arising from the sale of such collector and commemorative coins.

3.1.4 The ECB encourages the consulting authority to ensure that the fee to be received by the CBC, when acting as agent of the Government in relation to euro coin issuance, will at all times be sufficient to compensate the CBC in full for all expenses it will incur in performing the relevant tasks (see also paragraph 3.2.6 below). The agreements and/or arrangements between the CBC and the Government should, therefore, clearly provide for the adjustment of the fee, if the need arises. In this respect, and with a view to safeguarding the CBC's ability to carry out its tasks in the future in line with the principle of financial independence, the ECB encourages the consulting authority to insert a provision in the draft law expressly stating that the CBC will be compensated in full and in a timely manner for all expenses it will incur in relation to euro coin issuance.

3.2 *Prohibition on monetary financing*

3.2.1 The monetary financing prohibition is laid down in Article 123(1) of the Treaty, replicated in Article 21.1 of the Statute of the ESCB, and prohibits overdraft facilities or any other type of credit facility with the ECB or the NCBs in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States. The monetary financing prohibition also prohibits the purchase of debt instruments directly from such public sector entities by the ECB or NCBs. The precise scope of application of the monetary financing prohibition is further clarified by Regulation (EC) No 3603/93.

3.2.2 Article 6 of Regulation (EC) 3603/93 provides that NCBs holding euro coins issued by the public sector and credited to the public sector are not regarded as a credit facility within the meaning of Article 123 of the Treaty where the amount of these assets remains at less than 10% of the coins in circulation. Functions performed by NCBs when acting as agents of the Government must be fully compliant with the monetary financing prohibition and such functions must not imply any form of overdraft facility to the public sector.

3.2.3 The ECB understands that under the draft law, the CBC will not hold coins issued and credited to the public sector, in a way that would be contrary to the provisions of Article 6 of Regulation (EC) No 3603/93. Pursuant to the provisions of the draft law, the amount of the nominal value of coins that are put into circulation during a calendar year will be transferred to the Government on 30 June and 31 December of that calendar year and this does not involve issuing any credit to the public sector.

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- 3.2.4 Furthermore, Article 123(1) of the Treaty, in conjunction with Article 1(1)(b)(ii) and (iii) of Council Regulation (EC) No 3603/93, also prohibits central banks from providing overdraft facilities or any other type of credit facility to the public sector, including any financing of the public sector's obligations with regard to third parties or any transaction with the public sector resulting or likely to result in a claim against that sector.
- 3.2.5 The effect of the provisions of the draft law is to transfer the assets and liabilities associated with the competence for coin issuance from the CBC to the Government. The ECB understands that the economic effect of the proposed transfer of the competence to issue coins to the Government will be that the Government will receive cash deposited in the General Government Account with the CBC that it can start to use immediately. At the same time, the Government will become liable to the holders of euro coins and such liability will materialise only when the coins are returned and to the extent they are returned, if ever⁹. As a result, the liquidity situation of the Government will be improved while its debt level will increase. As this transfer by the CBC does not appear to have the common characteristics of an overdraft facility or other type of credit facility, the ECB considers the draft law to be compliant on this point with the monetary financing prohibition from a legal perspective. The ECB will review any further transactions that might ensue from the transfer of the competence to issue coins from the CBC to the Government, in the context of its monitoring of the compliance of central banks with Articles 123 and 124 of the Treaty.
- 3.2.6. Functions of the NCBs performed outside the scope of the Statute of the ESCB comply with the prohibition on monetary financing provided that the NCBs act as agents and that such functions do not constitute central bank financing of public sector obligations with regard to third parties or central bank crediting of the public sector outside the narrowly defined exceptions specified in Regulation (EC) No 3603/93. National legislation should not require an NCB to finance the performance of tasks incumbent on the Government, without ensuring that the Government will compensate the NCB in full for the discharge of such tasks. In this respect, the ECB reiterates that, in order to comply with the monetary financing prohibition, it should be ensured that the fee to be received by the CBC will at all times be sufficient to compensate the CBC in full for all expenses it will incur in performing the relevant tasks (see also paragraph 3.1.4 above). From this perspective, on the basis of the current estimates of the CBC (referred to in paragraph 3.1.3 above), the ECB understands that the provisionally agreed annual fee is expected to be sufficient, with a margin, in the foreseeable future and therefore complies with the monetary financing prohibition. The ECB will review the adequacy of the fee on an annual basis, in the context of the monitoring of the compliance of central banks with Articles 123 and 124 of the Treaty.

3.3 *Commemorative and collector coins*

In accordance with section 2 of the draft law, the CBC will issue, as agent for the Government, coins to be circulated as legal tender in the Republic of Cyprus. The ECB understands that the CBC

⁹ In the future, the Government can write off all unreturned coins after a certain period once the coins cease to be legal tender and thereby make a profit equal to the unreturned cash coins that ceased to be legal tender.

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will also issue, as agent for the Government, commemorative coins intended for circulation and collector coins that are not intended for circulation. The ECB would, in this respect, invite the consulting authority to consider amending that specific section of the draft law in order to cater for the issuance by the CBC, as agent for the Government, of collector coins which, although having the status of legal tender in the Republic of Cyprus, are not intended for circulation.

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

Done at Frankfurt am Main, 16 July 2014.

[signed]

The President of the ECB

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