



OPINION OF THE EUROPEAN CENTRAL BANK

of 29 August 2014

on authenticity and fitness checking and recirculation of euro banknotes and coins

(CON/2014/65)

Introduction and legal basis

On 5 August 2014, the European Central Bank (ECB) received a request from Lietuvos bankas for an opinion on a draft resolution setting out procedures for authenticity and fitness checking and recirculation of euro banknotes and coins (hereinafter the ‘draft resolution’).

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/EC¹, as the draft resolution relates to currency matters, means of payment and Lietuvos bankas. 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 resolution

- 1.1 The main objective of the draft resolution is to implement the requirements of Regulation (EC) No 1338/2001², Regulation (EU) No 1210/2010³, and Decision ECB/2010/14⁴.
- 1.2 The draft resolution lays down an authorisation regime whereby the cash services department of Lietuvos bankas (hereinafter the ‘Cash Service’) will have administrative discretion to grant or deny cash handling service providers (hereinafter ‘cash handlers’) the right to verify the authenticity and fitness of euro banknotes and coins prior to their recirculation. If a cash handler is granted such a right, it will be included in the public register of cash handlers which is published on Lietuvos bankas’s website.
- 1.3 The draft resolution also sets out requirements for cash handlers permitted to check the authenticity and fitness of euro banknotes and coins and establishes procedures for monitoring the activities of cash handlers. Cash handlers will be obliged to report data concerning: (a) the machines used in cash handling activities; and (b) the volume of euro banknotes and coins processed, sorted as unfit,

¹ 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 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).

³ Regulation (EU) No 1210/2010 of the European Parliament and of 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).

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).

handed over as suspected counterfeit, recirculated and distributed via customer operated machines or cash dispensers.

2. General observations

- 2.1 The draft resolution imposes obligations on cash handlers and seeks to safeguard the integrity of euro banknotes and coins as a means of payment. The ECB generally welcomes the draft resolution and is confident that its provisions will support the protection of euro banknotes and coins in circulation and thereby maintain the general public's confidence in euro banknotes and coins.
- 2.2 The ECB considers it essential that any draft legislation should uphold the principle of the primacy and direct application of Union law on the authentication of euro banknotes and coins and the handling of euro banknotes and coins unfit for circulation. For consistency's sake, the ECB favours the use in national legislation of direct references to Regulation (EC) No 1338/2001, Regulation (EU) No 1210/2010 and Decision ECB/2010/14 or, alternatively, reproduction of their provisions without any alterations or additions⁵.
- 2.3 Finally, 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. Notwithstanding this, the ECB believes it is beneficial to harmonise the national measures implementing that obligation throughout the Union to the greatest extent possible, subject to specific national requirements⁶.

3. Concepts and definitions used in the draft resolution

- 3.1 The concepts and definitions used in the draft resolution should be fully consistent with existing Union legislation. The definition of 'legal persons' set out in the Lithuanian language version of Article 4(7)(3) of the draft resolution⁷ is narrower than the definition of 'economic agents' in Article 6(1) of Regulation (EC) No 1338/2001 and therefore is not in line with that Regulation. The draft resolution should be amended accordingly.
- 3.2 The description of entities eligible to be included in the public register of cash handlers⁸ further limits the scope of Article 6(1) of Regulation (EC) No 1338/2001 by providing that only legal persons whose core business activity is related to authenticity and fitness checking and recirculation of euro banknotes and coins are eligible to be included in the public register of cash handlers. The ECB notes that the processing and distribution to the public of banknotes via automated teller machines (cash dispensers) may be a secondary activity – and not core business –

⁵ See paragraph 2.2 of Opinion CON/2013/65. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁶ See paragraph 2.4 of Opinion CON/2011/105 and paragraph 2.3 of Opinion CON/2013/65.

⁷ See Article 4(7)(3) and other relevant provisions of the draft resolution.

⁸ Contained in the application form for inclusion in the public register of cash handlers (Annex 1 to the draft resolution).

of some entities falling within the definition of ‘economic agents’ in Article 6(1) of Regulation (EC) No 1338/2001; the draft resolution should therefore be amended accordingly.

4. Authorisation, the public register of cash handlers and powers of the Cash Service

- 4.1 Only cash handlers that are included in the public register have to carry out authenticity and fitness checking of euro banknotes and coins. The ECB understands that this public register may facilitate the monitoring and control of cash handlers’ activities in this area in Lithuania, foster transparency and increase consumer awareness of the rights and obligations of cash handlers. The authorisation regime under the draft resolution limits the scope of the obligation on cash handlers to carry out authenticity and fitness checking to those that have submitted an application to Lietuvos bankas, have been authorised by it for this purpose and have been included in the public register. The ECB notes that the authorisation regime deviates from Regulation (EC) No 1338/2001, which requires all cash handlers, irrespective of the need for registration, to perform authenticity and fitness checking of euro banknotes and coins prior to recirculation, and the draft resolution should be amended accordingly.
- 4.2 The draft resolution also exempts certain cash handlers from the authorisation regime and the reporting requirements⁹. Under certain conditions set out in Decision ECB/2010/14¹⁰, an NCB may exclude certain cash handlers from some reporting requirements. However, as noted above, Union acts, including ECB legal acts, require all cash handlers to perform authenticity and fitness checking of euro banknotes and coins prior to their recirculation. The exemption of certain entities from the authorisation regime ‘due to the specific character of their activities’¹¹ and the ‘limited cash handling operations they carry out’ is therefore not in line with Regulation (EC) No 1338/2001 and Decision ECB/2010/14 to the extent that the cash handlers will not be subject to the obligation to carry out authenticity and fitness checking of euro banknotes and coins. The draft resolution should be amended accordingly.
- 4.3. The ECB also notes that the power of the Cash Service to decide which cash handlers should be included in the public register is of a discretionary nature. It should be ensured that the Cash Service has the full range of necessary discretionary powers under Lithuanian law.

5. Handover and delivery of euro banknotes and coins

- 5.1 The draft resolution provides that cash handlers shall hand over to the national competent authorities immediately, but in any event within a maximum of 20 working days, not only euro banknotes and coins suspected to be counterfeit, but also euro banknotes and coins unfit for circulation¹². The ECB recommends that the consulting authority assess the proportionality of such

⁹ Article 44 of the draft resolution.

¹⁰ Paragraphs 3.8 and 3.13 of Annex IV to Decision ECB/2010/14.

¹¹ Article 44 of the draft resolution.

¹² Article 35(1) of the draft resolution.

a short period for handover to Lietuvos bankas of euro banknotes and coins unfit for circulation, as it may unnecessarily increase the administrative burden and costs for cash handlers affected.

- 5.2 Article 27 of the draft resolution provides that euro banknotes delivered directly to a cash handler by Lietuvos bankas do not require authenticity and fitness checks prior to recirculation. Article 3(4) of Decision ECB/2010/14 extends this exemption to euro banknotes that any national central bank has delivered directly to a cash handler. The draft provision thus limits the scope of the equivalent provisions of Decision ECB/2010/14 and the draft resolution should be amended accordingly¹³.

6. Sanctions and reporting

- 6.1 The ECB reiterates the importance of effective, proportionate and deterrent sanctions for breaches of the rules on the authenticity and fitness checking and recirculation of euro banknotes and coins.
- 6.2 Under the draft resolution, when non-compliance by a cash handler with relevant Union acts, including ECB legal acts, or the provisions of the draft resolution is detected, the Cash Service may, among other things, prohibit a cash handler from recirculating euro banknote denominations of the series concerned until such non-compliance is rectified¹⁴. The ECB highlights that when the Cash Service prohibits recirculation in such a situation, it does so on behalf of the ECB¹⁵.
- 6.3 The ECB understands that Lithuanian legislation provides for administrative penalties (fines) for failing to withdraw counterfeit euro banknotes and coins from circulation and for failing to take measures to detect counterfeit euro banknotes and coins¹⁶. Authorised employees and managers of cash handlers are personally liable for these penalties (fines). This regime does not fully reflect Regulation (EC) No 1338/2001 and Decision ECB/2010/14 as regards the range of sanctions that may be imposed for failing to carry out authenticity and fitness checking of euro banknotes and coins prior to recirculation. In addition, the ECB notes that national legislation does not provide for the imposition of administrative penalties (fines) on legal entities.

¹³ Paragraph 3.3 of Opinion CON/2010/90.

¹⁴ Articles 13(2), 19 and 41 of the draft resolution.

¹⁵ Article 10(3) of Decision ECB/2010/14.

¹⁶ Article 173(21) of the Lithuanian Code of Administrative Offences.

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- 6.4 As regards the data reporting deadlines set by Article 36 of the draft resolution, which are 31 July and 31 January of each year, the ECB recommends extending the reporting deadlines to end-August and end-February in line with Article 3.9 of Annex IV to Decision ECB/2010/14.

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

Done at Frankfurt am Main, 29 August 2014.

[signed]

The President of the ECB

Mario DRAGHI