

OPINION OF THE EUROPEAN CENTRAL BANK
of 28 August 2015
on the circulation of banknotes and coins
(CON/2015/29)

Introduction and legal basis

The European Central Bank (ECB) received a request from the Czech Ministry of Finance ('MoF' or 'consulting authority') for an opinion on Part I of a draft law amending certain laws concerning the circulation of banknotes and coins and the foreign exchange market and repealing the Foreign Exchange Law No. 219/1995 (hereinafter the 'draft law'). Part I deals with technical amendments to the Law on the circulation of banknotes and coins¹ (hereinafter the 'Law'). As the Government is shortly to adopt the draft law the consulting authority has asked to receive the ECB's opinion on an urgent basis.

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 (hereinafter 'the Treaty') and the first, second and third indents of Article 2(1) of Council Decision 98/415/EC², as the draft law relates to currency matters, means of payment and the national central bank. 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

The principal amendments to the Law introduced by Part I of the draft law are as follows.

- a) Banknotes that have been written on, drawn on or printed on/over and coins that have holes through them are removed from the list of what constitutes excessive (non-standard) damage to domestic banknotes and coins. Such damaged domestic banknotes and coins shall be subject to the less onerous administrative regime that applies to lightly damaged domestic tender.
- b) The operational requirements imposed on certain self-service devices³ (e.g. ATMs) are relaxed by no longer requiring such devices to retain suspicious coins. In view of the fact that such devices do not have technology that allows them to recognise a specific transaction with a suspicious coin, they will only be required to reject such coins and return them to the person using the device,

¹ Law No 136/2011 Coll. on the circulation of banknotes and coins and amending Law No 6/1993 Coll. on Česká národní banka.

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).

³ Article 11(2) of the draft law refers to self-service devices (e.g. ATMs or automatic cash telling systems) that facilitate the handling of funds held on an account with a payment service provider, in terms of the receipt, exchange or payout of domestic or foreign banknotes or coins as 'non-anonymous devices'. (It should be noted that Article 11 also regulates the handling of banknotes and coins by self-service devices that are used for providing services or paying out funds, without a connection to an account; however the operational requirements for this latter type of self-service device (referred to in Article 11(1)) are not being amended by the draft law.)

whereas currently retention is required for banknotes introduced into ATMs and automatic telling systems.

- c) Provisions are included detailing how Česká národní banka (ČNB) shall handle: (i) domestic and foreign bank notes and coins which have been seized on suspicion of being forgeries, and (ii) claims for compensation should such banknotes prove to be genuine. It also stipulates that ČNB will seize suspicious banknotes and coins that are damaged in a non-standard manner, even if they later prove to be genuine, without paying compensation to the person from whom they were seized.
- d) Individual administrative offences relating to the making of reproductions of banknotes and coins (or of articles resembling them) and administrative offences against the monetary circulation regime and other related offences are specified.
- e) A stipulation is added that anyone who accepts domestic banknotes or coins in fulfilment of his own claim shall not require any fee in relation to this acceptance.

For the sake of completeness, it should be noted that Part II of the draft law repeals the Foreign Exchange Law⁴, transferring, in an adapted form, the part of that law dealing with a 'state of emergency in the foreign exchange market' to the Law on Crisis Management⁵, and thereby also amending the Law on ČNB No. 6/1993. Finally, Part III of the draft law introduces a new criminal offence of 'endangering the foreign exchange market' into the Criminal Code. The ECB does not have any specific comments on Parts II and III.

2. General observations

- 2.1 The Czech Republic is a Member State with a derogation within the meaning of Article 139 of the Treaty. Therefore, the requirements under Union law regarding the handling and protection of euro banknotes and coins are currently not fully applicable to ČNB and other entities in the Czech Republic. Article 1 of Council Regulation (EC) No 1339/2001 extends certain measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their currency⁶. Hence, such Union law is directly applicable in the Czech Republic and must be complied with by the Czech legislator. The reproduction rules for euro banknotes contained in Article 2 of Decision ECB/2013/10⁷ currently do not apply in a Member State with a derogation. All requirements will fully apply once the Czech Republic adopts the euro and ČNB becomes a fully integrated member of the Eurosystem. In this context, while taking into account the sovereign powers of the Czech legislator, keeping the Czech legal framework in line with the rules applicable in the euro area will facilitate the Czech Republic's future participation in the economic and monetary union.

⁴ Law 219/1995 Coll., as amended.

⁵ Law 240/2000 Coll., as amended.

⁶ Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency (OJ L 181, 4.7.2001, p. 11).

⁷ Decision ECB/2013/10 of 19 April 2013 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (OJ L 118, 30.4.2013, p. 37).

- 2.2 The ECB generally welcomes the proposed technical amendments, which aim to improve the quality of the Law and to reflect the experience of ČNB as the authority responsible for overseeing the monetary circulation regime under the Law. However, certain provisions of Part I of the draft law contain terminology and/or provide for concepts which differ from those established within directly applicable Union law and from procedures applied in the Eurosystem.

3. Specific observations

- 3.1 As regards Part I of the draft law the ECB has the following comments.
- 3.1.1 The proposed amendments to the provisions on the handling of banknotes and coins with self-service technical devices⁸ do not take into account that Regulation (EC) No 1339/2001 requires a specific regime for the protection of the euro against counterfeiting. Article 6(1a) of Council Regulation (EC) No 1338/2001⁹ grants a derogation to Member States that do not have the euro as their single currency from the obligation, established by the second subparagraph of Article 6(1) of that Regulation, to carry out authenticity checks for euro banknotes in line with the procedures defined by the ECB. However, this derogation only permits that, in deviation from the procedures defined by the ECB, checks on the authenticity of euro banknotes shall be carried out either by trained personnel or by a machine for handling banknotes that is on the list published by the ECB¹⁰. In accordance with the derogation under Article 6(1a) of Regulation (EC) No 1338/2001, either the list of banknote handling machines published by the ECB should be referenced or, alternatively, authenticity checks by trained personnel should be provided for in the draft law. The remaining requirements of Article 6 of Regulation (EC) No 1338/2001 continue to be fully applicable and need to be complied with by the Czech Republic. In particular, the concept of 'anonymous and non-anonymous equipment' in the amended Article 11(1) and (2) of the draft law does not appear to be in line with Article 6(1) of Regulation (EC) No 1338/2001, which is also directly applicable in the Czech Republic pursuant to Regulation (EC) No 1339/2001. The institutions and economic agents subjected to the authenticity check for euro banknotes by the first subparagraph of Article 6(1) of Regulation (EC) No 1338/2001 are required by the third subparagraph of the same provision to withdraw from circulation all euro notes and coins which they know or have sufficient reason to believe to be counterfeit. Article 11 of the draft law, by contrast, allows such euro banknotes and coins to be recirculated when certain devices are used for the authenticity check.
- 3.1.2 The ECB further invites the consulting authority to consider aligning the terminology and concepts referred to in paragraph 2.2 above with the approaches applied in the euro area. In particular, the concept of 'a [domestic] excessively [non-standard] damaged banknote' in Article 2(4)(d) of the draft law is not used within the euro area, as highlighted in earlier ECB opinions¹¹ on a previous draft decree and draft law amending the Law. The ECB would moreover urge that the requirements

⁸ Article 11 of the draft law. See also footnote 3.

⁹ Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L181, 4.7.2001, p. 6).

¹⁰ See <https://www.ecb.europa.eu/euro/cashprof/cashhand/recycling/html/tested.en.html>

¹¹ See ECB Opinions CON/2011/51 and CON/2009/52. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

introduced in the Czech Republic should fully reflect the relevant ECB legal acts¹² as regards the authenticity, fitness checking and recirculation of euro banknotes.

- 3.1.3 As regards the reproduction of banknotes and coins, which is dealt with in the amended Articles 14, 28 and Article 28a of the draft law, the ECB would welcome that these provisions also differentiate between euro banknotes and coins and other foreign banknotes and coins. In particular, the terminology referring to euro banknotes should be aligned with the relevant ECB legal acts in this field¹³. The respective provisions of the draft law could moreover refer to the ECB's competence under Article 2(5) (c) of Guideline ECB/2003/5¹⁴ if approved by the Czech legislator.
- 3.1.4 Similarly, as regards the provisions on offences and administrative offences relating to the making and handling of reproductions of banknotes and coins and articles resembling them¹⁵, reference is only made to breaching 'the directly applicable European Union regulations concerning medals and tokens similar to euro coins'¹⁶. The ECB would welcome that these provisions also include an explicit reference to Decision ECB/2013/10.
- 3.1.5 Furthermore, as regards Article 13 of the draft law entitled 'verification of the authenticity of banknotes and coins by ČNB', it should be clearly stated that this article does not apply to euro banknotes. The rules on authenticity checks of euro banknotes, as laid down in Article 1 of Regulation (EC) No 1339/2001, in conjunction with Article 6 of Regulation (EC) No 1338/2001, apply directly in the Czech Republic within the mentioned limits of Article 6(1a) of Regulation (EC) No 1338/2001. In particular, this derogation remains limited to the means by which the authenticity check for euro banknotes is carried out and does not affect the rules on compensation. Therefore, the rules on compensation for damaged euro banknotes should preferably be aligned with the procedures defined by the ECB. In order to avoid any legal uncertainty, Article 13 of the draft law should differentiate between domestic currency, the euro and other foreign currency.
- 3.1.6 Finally, the ECB notes the new Article 5(4) in Part I of the draft law, pursuant to which nobody that accepts domestic banknotes or coins in fulfilment of his own claim shall be allowed to charge a fee in relation to this acceptance. The new provision is in line with the notion of legal tender, which, it should be noted, includes the mandatory acceptance of payments at full value for the discharge of

¹² See principally 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).

¹³ In particular, Article 2 of Decision ECB/2013/10.

¹⁴ Guideline ECB/2003/5 of the European Central Bank of 20 March 2003 on the enforcement of measures to counter non-compliant reproductions of euro banknotes and on the exchange and withdrawal of euro banknotes (OJ L 78, 25.3.2003, p. 20).

¹⁵ Articles 28 and 28a of the draft law.

¹⁶ See Articles 28(1)(a) and 28a(1)(a) of the draft law.

monetary debts¹⁷.

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

Done at Frankfurt am Main, 28 August 2015.

[signed]

The President of the ECB

Mario DRAGHI

¹⁷ See paragraph 3.2 of ECB Opinion CON/2009/52.