



OPINION OF THE EUROPEAN CENTRAL BANK

of 5 December 2016

on the transfer of public tasks concerning coins to De Nederlandsche Bank

(CON/2016/58)

Introduction and legal basis

On 8 November 2016, the European Central Bank (ECB) received a request from the Minister of Finance of the Netherlands for an opinion on a draft ministerial regulation (hereinafter the 'draft ministerial regulation') and a draft royal order (hereinafter the 'draft royal order' and, together with the draft ministerial regulation, the 'draft laws') relating to the transfer of public tasks concerning coins to De Nederlandsche Bank (DNB).

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 laws concern currency matters, means of payment and DNB. 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 laws

- 1.1 The draft ministerial regulation amends the ministerial regulation concerning the establishment of the Coin National Analysis Centre (CNAC)². It provides that DNB, instead of the Royal Dutch Mint N.V. (the 'Mint'), shall be designated as the CNAC under Article 5 of Council Regulation (EC) No 1338/2001³ and shall be responsible for the examination by the CNAC of suspected counterfeit coins. The draft royal order appoints DNB to carry out the tasks of the CNAC.
- 1.2 Article 2(a) of the draft royal order reconfirms, for the sake of clarity, DNB's existing task of putting into circulation and recirculation euro coins. The draft royal order also authorises DNB to carry out three specific coin-related tasks currently carried out by the Mint, as part of DNB's responsibility for the circulation of coins, namely (b) the withdrawal from circulation of euro coins and 'special coins that hold the status of legal tender' that are unfit for circulation⁴; (c) the demonetisation and sale of euro coins, special coins and excess euro coins at the request of the Minister of Finance⁵; and (d)

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 Regulation of the State Secretary for Finance of 3 December 2001 for the Creation of the National Analysis Centre for Coins, *Staatscourant* 2001/247.

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 See Article 2(b) of the draft royal order.

⁵ See Article 2(c) of the draft royal order.

the management of the State's euro coin stocks and the stamps and models not necessary for the production of Dutch euro coins and 'coins not holding the status of legal tender'⁶.

- 1.3 As noted in the explanatory memorandum accompanying the draft law, the main reasons for the transfer to DNB of the abovementioned public coin tasks are related to the new strategic direction for the State's shareholding in the Mint. On 22 November 2016 the State's shares in the Mint were sold to Groep Heylen, which means that the Mint will have a private shareholder and it will no longer be appropriate for it to carry out public coin-related tasks. DNB already has a similar responsibility concerning euro banknotes as well as some public tasks in respect of coins, and is therefore well positioned to perform these additional tasks relating to coins.
- 1.4 As noted in the Minister of Finance's request for an opinion, to ensure compliance with the prohibition of monetary financing an agreement will be concluded between the Ministry of Finance and DNB that will provide for sufficient funds to be paid in a timely manner, on the first working day of the year, from the State Treasury to DNB. The amount to be paid to DNB will fully cover the costs of the new tasks expected in that year.

2. General observations

- 2.1 The draft laws complement DNB's existing tasks in the field of protection against counterfeiting and, hence, do not confer genuinely new tasks in this area. DNB has already been appointed to carry out the tasks of the National Analysis Centre (NAC), which concern suspect counterfeit euro banknotes⁷.

The ECB notes that the protection of the euro against counterfeiting of both banknotes and coins will be henceforth in the hands of one single authority, DNB. While DNB acts within the Eurosystem framework with regard to the protection of euro banknotes, its new euro coin-related tasks are conferred upon it as a function other than those specified in the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), which shall be performed in accordance with Article 14.4 of the Statute of the ESCB and shall not be regarded as forming part of the functions of the Eurosystem.

- 2.2 The draft royal order further complements DNB's existing tasks with respect to the circulation and recirculation of euro circulation coins and, hence, does not confer genuinely new tasks.

3. Specific observations

3.1 *Coin terminology*

- 3.1.1 The ECB notes that the draft royal order makes use of the coin-related terminology used in certain existing provisions of Dutch coinage legislation, which refer to euro coins, special coins that hold the status of legal tender and coins for investment purposes⁸. This terminology is not consistent

⁶ See Article 2(d) of the draft royal order.

⁷ Royal Order of 6 December 2001 for creation of a National Analysis Centre against counterfeiting, *Staatscourant* 2001/244.

⁸ See Dutch Coin Act 2002, *Staatsblad* 2001/631; Royal Order on Special Coins of 7 January 2002, *Staatsblad* 2002/24.

with the terminology established by the relevant Union legislation for euro coins, namely (1) Council Regulation (EU) No 729/2014⁹, and (2) Regulation (EU) No 651/2012 of the European Parliament and of the Council¹⁰. In particular, Article 2 of Regulation (EU) No 729/2014 contains a definition of ‘circulation coins’, which includes both ‘regular coins’ and ‘commemorative coins’; and Article 1(3) of Regulation (EU) No 651/2012 contains a definition of ‘collector coins’, meaning euro coins intended for collection that are not issued with a view to their entry into circulation. The ECB understands that, where the draft royal order uses the term ‘euro coins’, it intends to refer to circulation coins, including both regular coins and commemorative coins. The ECB further understands that where the draft royal order uses the terms ‘special coins that hold the status of legal tender’ and ‘coins for investment purposes’, it intends to refer to two specific kinds of collector coins, both of which, consistent with Article 5(1) of Regulation (EU) No 651/2012, have the status of legal tender only in the Netherlands. The ‘special coins that hold the status of legal tender’ refer to collector coins issued in denominations of five, ten, twenty and fifty euro. The ‘coins for investment purposes’ refer to collector coins which may be issued pursuant to a 2015 amendment to the Dutch Coin Act¹¹. This amendment to the Dutch Coin Act was made to meet a possible demand on a part of the general public at that time to convert their savings into pure and standardised precious metal products. The quality of the metals contained in these collector coins exceeds even the quality of the other collector coins. For the sake of consistency and legal certainty, it would be helpful if the terminology used in Dutch law for these different kinds of coins could be better aligned with the terminology used in Union law.

3.1.2 In accordance with Article 1(3) of Regulation (EU) No 651/2012, euro collector coins are not issued with a view to their entry into circulation. Consistent with this, the draft royal order could usefully be amended so as to make reference to the sale, rather than the circulation, of collector coins.

3.2 *Prohibition on monetary financing*

3.2.1 The monetary financing prohibition is laid down in Article 123(1) of the Treaty and 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 national central banks (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 precise scope of application of the monetary financing prohibition is further clarified by Council Regulation (EC) No 3603/93¹².

3.2.2 Article 128(2) of the Treaty provides that the right to issue euro coins rests with the Member States. Consequently, it is up to each Member State to specify the legal issuer of the euro coins¹³. In view of the fact that the tasks conferred on DNB by the draft laws complement existing tasks of DNB but do not constitute genuinely new tasks in the field of protection against counterfeiting and circulation

⁹ Council Regulation (EU) No 729/2014 of 24 June 2014 on denominations and technical specifications of euro coins intended for circulation (OJ L 194, 2.7.2014, p. 1).

¹⁰ Regulation (EU) No 651/2012 of the European Parliament and of the Council of 4 July 2012 on the issuance of euro coins (OJ L 201, 27.7.2012, p. 135).

¹¹ See Article 4a of the Dutch Coin Act 2002, which followed from the Amendment Law on financial markets 2015, *Staatsblad* 2014/472.

¹² Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ L 332, 31.12.1993, p. 1). See also paragraph 3.2.1 of Opinion CON/2014/56. All ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

¹³ See paragraph 2.1 of Opinion CON/2016/4 and paragraph 2 of Opinion CON/2014/56.

of coins, the ECB welcomes the Minister of Finance's clarification that an agreement will be concluded between the Ministry of Finance and DNB. This agreement will provide for full remuneration, to be paid by the State to DNB in a timely manner at the beginning of each year from funds held by the State Treasury, of the costs to be incurred by DNB in carrying out the tasks expected in the coming year¹⁴.

3.2.3 For the time being, the ECB is not in a position to assess the way in which the abovementioned reimbursement will be agreed upon. The ECB would therefore appreciate receiving a copy of the draft agreement between the Ministry of Finance and DNB prior to its execution and entry into effect¹⁵.

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

Done at Frankfurt am Main, 5 December 2016.

[signed]

The President of the ECB

Mario DRAGHI

14 See paragraph 3.2.2 of Opinion CON/2016/4 and paragraph 3.1.9 of Opinion CON/2016/6.

15 See paragraph 2.2 of Opinion CON/2016/14.