



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 2 May 2024

on the introduction of the euro in Bulgaria

(CON/2024/12)

Introduction and legal basis

On 22 December 2023 and on 26 March 2024 the European Central Bank (ECB) received requests from Българска народна банка (Bulgarian National Bank (BNB)), acting on behalf of the Bulgarian Minister for Finance, for an opinion on a draft law on the introduction of the euro in the Republic of Bulgaria (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, second, third, fourth and fifth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to currency matters, means of payment, BNB, the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics, and payment and settlement systems. 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 draft law regulates the principles, rules and procedures for the introduction of the euro as the currency of Bulgaria. The purpose of the draft law is to ensure and to increase the transparency and awareness of the process of the euro introduction in Bulgaria. The draft law lays down, in particular, rules governing the: (1) basic principles governing the euro changeover; (2) general and specific rules on the conversion and rounding of monetary values from lev to euro; (3) dual display of prices; (4) supply of euro banknotes and euro coins; (5) dual circulation of lev and euro; (6) exchange of banknotes and coins; (7) adaptation of information systems; and (8) supervision of compliance with the rules, including administrative measures and penalties for breaches of the rules. The draft law also amends other laws, substituting monetary amounts expressed in lev with monetary amounts expressed in euro.

2. General observations

2.1 The ECB welcomes the draft law's objective of facilitating a smooth changeover to the euro in Bulgaria, as well as a timely implementation of the necessary measures in connection therewith.

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).

- 2.2 The procedure of the changeover applies not only to banknotes and coins, but also to payment instruments, including electronic payment instruments. In this respect, any national legal provisions and/or market practices related to the processing of credit transfers and direct debits will need to comply with the provisions of Regulation (EU) No 260/2012 of the European Parliament and of the Council² and the Single Euro Payments Area payment schemes governed by it³.
- 2.3 The ECB notes that certain provisions of the draft law touch upon the use of the euro, which may not be in line with the Union's exclusive competence for monetary policy for the Member States whose currency is the euro⁴. The concept of monetary policy is not limited to its operational implementation, which, under Article 127(2), first indent, of the Treaty is one of the basic tasks of the Eurosystem⁵, but also entails a regulatory dimension, which enables the Union to lay down the measures necessary for the use of the euro as the single currency⁶. In accordance with Article 2(1) of the Treaty, the Union's exclusive competence in matters of monetary policy precludes Member States from adopting a provision which, in the light of its objective and content, establishes legal rules governing the use of the euro as the single currency irrespective of any exercise by the Union of that competence, unless Member States have been empowered to do so under Council Regulation (EC) No 974/98⁷ or other provisions of Union law⁸.
- 2.4 At the same time, the Court of Justice of the European Union has indicated that the regulatory dimension of the Union's exclusive competence for monetary policy does not preclude a Member State from adopting, in the exercise of a competence that is the Member State's own, provisions touching upon the use of the euro⁹. In order to determine which provisions a Member State, in the exercise of a competence that is the Member State's own, is not precluded from adopting, the Court of Justice has relied on the objectives of the Union legal rules governing the use of the euro as the single currency, namely Council Regulation No 1103/97¹⁰ and Regulation (EC) No 974/98¹¹, and

2 Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

3 See paragraph 2.2 of Opinion CON/2022/15. All ECB Opinions are published on EUR-Lex.

4 Article 3(1), point (c), of the Treaty.

5 Article 139(2) of the Treaty.

6 Judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraphs 38 and 39.

7 Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 19.5.1998, p. 1).

8 Judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraphs 38 and 39; Judgment of the Court of Justice of 20 April 2023, *Brink's Lithuania*, C-772/21, EU:C:2023:305, paragraphs 56 and 57.

9 Judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraph 58.

10 Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.6.1997, p. 1).

11 Judgment of the Court of Justice of 14 September 2004, *Verbraucher-Zentrale Hamburg*, C-19/03, EU:C:2004:524, paragraphs 33 to 39 (noting that recital 11 of Regulation No 1103/97 states that the rules for rounding do not affect any rounding practice, convention or national provisions providing a higher degree of accuracy for intermediate computations); Judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraphs 63 to 67 (noting that recital 19 of Regulation No 974/98 states that limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available).

- whether those rules leave any room for manoeuvre to a Member State¹².
- 2.5 The ECB also notes that certain provisions of the draft law reiterate relevant provisions of Union law using the same or slightly different language. The ECB understands that the intention of the Bulgarian authorities is to facilitate the application in Bulgaria of such relevant provisions of Union law. In principle, however, such reiteration is to be avoided. In this respect, it should be noted that the reproduction in a national provision of a Union provision that is directly applicable in the legal order of the Member State may create uncertainty both as to the legal nature and origin of the applicable provisions and as to the date of their entry into force. This would not align with the principle of uniform application and interpretation of Union law throughout the Union¹³.
- 2.6 Moreover, if a national provision uses wording different from the relevant Union provision for the introduction of the euro, it creates regulatory content of its own, which is not in line with the Union's exclusive competence in matters of monetary policy for the Member States whose currency is the euro.
- 2.7 In this light, the ECB generally invites the Bulgarian authorities to consider ascertaining that the provisions of the draft law touching upon the use of the euro are in line with the objectives of Regulation No 1103/97 and Regulation (EC) No 974/98 and that those Regulations leave room for manoeuvre to a Member State to exercise a competence that is the Member State's own. In the same vein, the ECB generally invites the Bulgarian authorities to consider deleting the directly applicable provisions of Union law that have been reproduced in the draft law. The incorporation of some elements of directly applicable provisions of Union law into national law is warranted only in exceptional circumstances for the sake of coherence and in order to make them comprehensible to the persons to whom they apply¹⁴. If such exceptional circumstances do exist, the reproduction of elements of directly applicable provisions of Union law should be done precisely, without modifying their wording¹⁵ and only to the extent warranted by the exceptional circumstances. However, such exceptional circumstances do not exist if the directly applicable provisions of Union law are sufficiently coherent and comprehensive, making it unnecessary to repeat them in national law¹⁶.
- 2.8 Hence, to the extent that the draft law necessarily reproduces directly applicable provisions of Union law for the abovementioned reasons, it should do so in an explicit manner. The draft law clarifies that its provisions are either 'in accordance with' or 'in compliance with' the relevant provisions of Union law, where the latter are merely reproduced to put the draft law in the larger context, or 'without

¹² Judgment of the Court of Justice of 14 September 2004, *Verbraucher-Zentrale Hamburg*, C-19/03, EU:C:2004:524, paragraph 34.

¹³ Judgment of the Court of Justice of 7 February 1973, *Commission v Italy*, C-39/72, EU:C:1973:13, paragraphs 16 and 17; Judgment of the Court of Justice of 10 October 1973, *Variola*, C-34/73, EU:C:1973:101, paragraphs 9 to 11; Judgment of the Court of Justice of 2 February 1977, *Amsterdam Bulb*, C-50/76, EU:C:1977:13, paragraphs 5 to 8. See also paragraph 12 of Opinion CON/2005/21, paragraph 2.1 of Opinion CON/2006/10, paragraph 2.4 of Opinion CON/2006/29, paragraph 2.1 of Opinion CON/2007/1, paragraph 2.2 of Opinion CON/2007/43, paragraph 2.3 of Opinion CON/2022/15 and paragraph 2.3 of Opinion CON/2023/27.

¹⁴ See paragraph 12 of Opinion CON/2005/21 and paragraph 2.4 of Opinion CON/2022/15 with reference to Judgment of the Court of Justice of 28 March 1985, *Commission v Italian Republic*, C-272/83, EU:C:1985:147, and paragraph 2.6 of Opinion CON/2023/27. See also paragraph 2.2 of Opinion CON/2006/10.

¹⁵ See paragraph 2.2 (footnote 6) of Opinion CON/2007/43, paragraph 2.4 of Opinion CON/2022/15 and paragraph 2.6 of Opinion CON/2023/27.

¹⁶ See paragraph 13 of Opinion CON/2005/21, paragraphs 2.2 and 3.2 of Opinion CON/2006/10, paragraph 2.4 of Opinion CON/2022/15 and paragraph 2.6 of Opinion CON/2023/27.

prejudice to' the relevant provisions of Union law, where a national authority exercises residual competences that go beyond those exercised within the ESCB and the Eurosystem. However, in several instances the draft law does not reproduce precisely the wording of the relevant Union law, without any modification.

3. Specific observations

3.1 *General principles of the euro changeover*

3.1.1 Article 11 of the draft law establishes general principles on the continuity and automatic conversion of amounts from lev to euro in legal instruments. This provision partially reproduces Articles 6, 7, 8 and 9a of Regulation (EC) No 974/98, while also using slightly different language. The provisions of Regulation (EC) No 974/98 constitute provisions of directly applicable Union law and an explicit reference should be made to them as being either 'in accordance with' or 'in compliance with' the relevant provisions of Union law, if their partial reproduction is maintained in the draft law for the sake of coherence. Moreover, if Article 11(1), (2) and (4) of the draft law are maintained, the wording of the relevant Union law that they partially reproduce should be reproduced precisely, without any modification. Finally, the reference in Article 11(4) to Article 2(1) of Regulation (EC) No 1103/97 in the context of references in a legal instrument to the lev being presumed to be references to the euro appears erroneous, since Article 2(1) of Regulation (EC) No 1103/97 concerns references in a legal instrument to the former European currency unit (ECU), whereas the substance of the provision of Article 11(4) of the draft law seems to refer to Article 6 of Regulation (EC) No 974/98. The provision of Article 11(4) of the draft law should therefore be rectified.

3.2 *Exchange of lev banknotes and coins*

3.2.1 Article 26(1) of the draft law provides that BNB exchanges banknotes and coins from lev into euro free of charge, in an unlimited quantity and without a time limit, at the official exchange rate. In addition, Article 26 of the draft law obliges credit institutions to exchange an unlimited amount of banknotes and coins from lev into euro by applying the official conversion rate, subject to certain conditions. This obligation applies to credit institutions for twelve months after the date of the introduction of the euro in Bulgaria. For the first six months after the date of the introduction of the euro in Bulgaria, credit institutions are required to exchange banknotes and coins for free, while for the second six months, credit institutions may introduce a fee for this service. Twelve months after the date of the introduction of the euro in Bulgaria, credit institutions may suspend the service of exchanging banknotes and coins from lev to euro. Similar rules apply to Bulgarian Posts EAD.

3.2.2 The ECB welcomes the provision in the draft law concerning the exchange by BNB of unlimited amounts of lev banknotes and coins into euro, free of charge, for an unlimited period of time¹⁷.

3.3 *Conversion and rounding rules*

3.3.1 Articles 12, 13 and 27 of the draft law set out the general rules for conversion and rounding of monetary amounts, while Articles 28 to 45 of the draft law set out the specific rules for conversion and rounding. Article 13(1) of the draft law provides in particular that after conversion according to

¹⁷ See paragraph 18 of Opinion CON/2005/21.

Article 12, the resulting amount is rounded to the second decimal place based on the third decimal place in accordance with the following mathematical rounding rule: (1) when the third decimal is less than five, the second decimal remains unchanged; (2) when the third decimal is equal to or more than five, the second decimal is increased by one.

3.3.2 The draft law establishes several derogations from the general rule for rounding under Article 13 of the draft law, in particular by establishing specific rules for rounding of the values of: (1) units in supplementary pension insurance funds¹⁸, (2) units of collective investment schemes¹⁹ and (3) remunerations, benefits, social benefits and pensions²⁰. With regard to (1) and (2), the ECB understands that Bulgaria seeks to introduce special rounding rules for unit prices of goods and services²¹, as *lex specialis* to the general rounding rule contained in Article 13 of the draft law²². According to the Court of Justice, it is clear from the objective of Regulation (EC) No 1103/97, namely that of ensuring a neutral changeover to the euro, and, in particular, from the reference made by recital 11 to national rounding rules for monetary amounts, that that Regulation sets only minimum rules in relation to the rounding of certain amounts and leaves it to national authorities to maintain or adopt rules which are more conducive to achieving a neutral changeover to the single currency²³. With regard to (3), the objective of ensuring a neutral changeover to the euro does not prevent a Member State either from exercising a competence that is the Member State's own, when expressing monetary amounts such as fines, fees, minimum capital, taxes, allowances, salaries etc. in legislative provisions²⁴. Accordingly, a Member State remains free to legislate on the increase or decrease of any monetary amounts when addressing euro changeover matters. In doing so, however, it is bound to act in accordance with the principles of legal certainty and transparency, i.e. it must ensure that economic agents are able to make a clear distinction between a decision of the Bulgarian authorities to increase or decrease any amount and the process of converting an amount into euro and rounding it²⁵.

3.3.3 The draft law provides that for cash deposit contracts, as on the date of the introduction of the euro in Bulgaria, the amount of the interest rate on the deposit may not be lower than the amount of the interest rate valid before that date²⁶. The draft law also provides that as of the date of the introduction of the euro in Bulgaria, the new interest rate applicable to credit agreements with a variable interest rate cannot be higher than the level of the interest rate on them before the date of the introduction of the euro, while in the case of a loan agreement with a fixed interest rate, as of the date of the introduction of the euro in Bulgaria, the interest rate remains as it was agreed before the date of the introduction of the euro²⁷. The ECB understands that these provisions of the draft law are motivated

18 See Article 35 of the draft law.

19 See Article 36 of the draft law.

20 See Article 45 of the draft law.

21 See Article 15 of the draft law.

22 See also paragraph 3.4.2 of Opinion CON/2022/15.

23 Judgment of the Court of Justice of 14 September 2004, *Verbraucher-Zentrale Hamburg*, C-19/03, EU:C:2004:524, paragraph 34.

24 See paragraph 3.2 of Opinion CON/2012/97 and paragraph 4.2 of Opinion CON/2014/14.

25 See paragraph 4.2 of Opinion CON/2014/14.

26 See Article 28(2) of the draft law.

27 See Article 44(2) and (3) of the draft law.

by reasons of consumer protection in view of the difference in interest rates as between the lev and the euro. In this regard, Article 3 of Regulation (EC) No 1103/97 provides that while the introduction of the euro must not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right to unilaterally alter or terminate such an instrument, that provision is subject to anything which parties may have agreed. However, it follows from recital 7 of Regulation No 1103/97 that the objective of Article 3 is to provide legal certainty and clarity for economic agents, in particular for consumers, by restating both the generally accepted principle of law that the continuity of contracts and other legal instruments is not affected by the introduction of a new currency and the principle of freedom of contract. This does not seem to exclude that these principles can be balanced by a Member State, in the exercise of a competence that is the Member State's own, against other interests, such as consumer protection, and thus limit the principle of freedom of contract, as long as this is done in a proportionate manner²⁸. Article 28(2) and Article 44(2) of the draft law should nevertheless be amended, as they incorrectly state that they are 'in accordance with' Article 3 of Regulation (EC) No 1103/97, thus implying that they reproduce that provision.

3.3.4 In the context of the conversion of government debt securities issued in lev, Article 39 of the draft law provides that, from the date of the introduction of the euro in Bulgaria, the clauses for collective action are to apply as provided for in Article 12(3) of the Treaty establishing the European Stability Mechanism, after its ratification by the National Assembly and entry into force for Bulgaria. The ECB understands that Article 39 of the draft law seeks to implement Article 12(3) of the ESM Treaty by means of a cross-reference. However, that latter provision requires that collective action clauses are to be included, as of 1 January 2013, in all new euro area government securities, with maturity above one year, in a way which ensures that their legal impact is identical. In this regard, the ECB invites the consulting authority to consider the actions necessary to implement the provision of Article 12(3) of the ESM Treaty.

3.4 *Amendments to other national laws*

3.4.1 The draft law amends other national laws, substituting monetary amounts expressed in lev with monetary amounts expressed in euro, generally at a rate of two lev for one euro.

3.4.2 Upon the abrogation of Bulgaria's derogation, in accordance with Article 140(2) of the Treaty, Article 5 of Regulation (EC) No 1103/97 provides that monetary amounts to be paid or accounted for when a rounding takes place after a conversion into the euro unit must be rounded up or down to the nearest cent. It is acknowledged that some of the amendments to other national laws contained in the draft law, rather than rounding monetary amounts after a possible future conversion to euro, aim to fully transpose the relevant amounts as specified in Union directives or regulations²⁹, which are expressed in euro. However, other amendments relate to national law provisions that do not transpose Union directives or regulations. With regard to the latter amendments, as set out in paragraph 3.3.2, the objective of ensuring a neutral changeover to the euro does not prevent a

²⁸ Judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraphs 68 to 70.

²⁹ See, for example, the amendment to the Law on consumer credit, linking to Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

Member State from exercising a competence that is the Member State's own when expressing monetary amounts such as fines, fees, minimum capital, taxes, allowances, salaries etc. in legislative provisions³⁰. Accordingly, a Member State remains free to legislate on the increase or decrease of any monetary amounts when addressing euro changeover matters. In doing so, however, it is bound to act in accordance with the principles of legal certainty and transparency, i.e., it must ensure that economic agents are able to make a clear distinction between a decision of the Bulgarian authorities to increase or decrease any amount and the process of converting an amount into euro and rounding it³¹.

3.4.3 Several provisions of the draft law replace provisions of other laws mandating the transformation of monetary amounts denominated in a foreign currency into lev, utilising the exchange rate of BNB, with provisions mandating the transformation of monetary amounts denominated in a foreign currency into euro, utilising the exchange rate of the ECB³². The ECB considers that the draft law should, if possible, use a Union regulated benchmark rate for this purpose³³. Failing that, the consulting authority may explore additional alternative solutions, such as, for instance, empowering BNB to publish exchange rates for euro against other currencies, inspired by the ECB's daily euro foreign exchange reference rates (ECBRR) and by other central banks' foreign exchange rates or market foreign exchange rates (i.e. a blended rate), so that references are maintained to the BNB's exchange rates. Furthermore, it should be recalled that the ECB currently publishes daily euro foreign ECBRR but these are meant only for public information and the ECB discourages the use of these ECBRR for commercial transactions³⁴.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 2 May 2024.

[signed]

The President of the ECB

Christine LAGARDE

30 See paragraph 3.2 of Opinion CON/2012/97 and paragraph 4.2 of Opinion CON/2014/14.

31 See paragraph 4.2 of Opinion CON/2014/14.

32 See, in particular, paragraphs 12, 20, 22, 28, 29, 46 and 56 of the transitional and final provisions to the draft law.

33 See paragraph 3.5.1 of Opinion CON/2022/15.

34 See paragraph 3.5.1 of Opinion CON/2022/15.