

OPINION OF THE EUROPEAN CENTRAL BANK**of 16 April 2004****at the request of the Council of the European Union on a proposal for a Council regulation concerning medals and tokens similar to euro coins****(COM(2004) 39 final)****(CON/2004/13)****(2004/C 134/07)**

1. On 16 February 2004 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council regulation concerning medals and tokens similar to euro coins (hereinafter the 'proposed regulation').
2. The ECB's competence to deliver an opinion is based on Article 123(4) of the Treaty establishing the European Community. 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.

tion and sale, and the importation and distribution for sale or other commercial purposes of medal and tokens that have certain visual characteristics or are of a specified size similar to euro coins. The ECB supports the need for further action at Community level in this field and welcomes the fact that the Commission has chosen to regulate by means of a regulation. This approach will ensure the harmonised application of the protective rules laid down in the proposed regulation throughout the European Union and guarantee a sufficiently level playing field for all economic agents engaged in the activity of producing, distributing, importing or selling medals and tokens. Furthermore, the ECB considers that the adoption of the proposed regulation is an appropriate measure to ensure the integrity of euro coins as a means of payment.

General considerations

3. According to the Commission's explanatory memorandum the proposed regulation regulates the use of the terms 'euro' and 'euro cent' and of the euro symbol (€) on metallic objects having the appearance and/or technical properties of coins (medals and tokens) and defines the levels of similarity to euro coins that should be prohibited for medals and tokens. The purpose of the proposed regulation is to protect the general public against fraud and confusion relating to euro coins as the general public could believe that medals and tokens have legal tender status if the words 'euro' or 'euro cent' or the euro symbol appear on them, and medals and tokens could be fraudulently used in coin-operated machines, if their size and properties are similar to those of euro coins. At the same time the proposed regulation establishes a level playing field for producing such medals and tokens. The ECB agrees with the objectives underlying the proposed regulation and shares the concerns regarding the risks of confusion and/or fraud that medals and tokens similar to euro coins raise.
4. The ECB understands that the proposed regulation results from the Commission's assessment of the need for further action at Community level, as provided for in the final sentence of Article 3 of Commission Recommendation 2002/664/EC of 19 August 2002 concerning medals and tokens similar to euro coins (hereinafter the 'Recommendation')⁽¹⁾. The proposed regulation will prohibit the produc-

Detailed considerations

5. The proposed regulation starts by laying down a set of definitions. The ECB notes that the definition of 'medals and tokens' laid down in Article 1(c) of the proposed regulation improves upon the definition in Article 1(c) of the Recommendation. In particular, the new definition specifically excludes from its scope blanks intended for striking coins. Furthermore, it now includes medals and tokens that have the technical properties of coins and not just those which look like coins. In this respect, the ECB welcomes the accuracy and the broad scope of application of the new definition of 'medals and tokens' which provides legal certainty and will enable the effective application of the proposed regulation.
6. With reference to the list of designated authorities in Annex II although the ECB acknowledges that it is likely that the national designated authorities will be the Member States' authorities responsible for minting coins, the ECB considers that Member States might wish to designate different authorities for the purposes of the proposed regulation. The ECB therefore proposes that the Member States indicate their 'designated authorities' once the proposed regulation has been adopted.

⁽¹⁾ OJ L 225, 22.8.2002, p. 34.

7. The ECB welcomes the definition of 'reference band' included in Article 1(g) of the proposed regulation by reference to the meaning given in Section 1 of Annex III. Section 1(a) defines the reference band for the size of medals and tokens as the 'set of combinations between the values for diameter and values for edge height included in the reference range for diameter and the reference range for edge height respectively'. Section 1(b) and (c) provide the technical specifications of the 'reference range for diameter' and the 'reference range for edge height'. The ECB considers that including a definition of 'reference band' in the proposed regulation enhances legal certainty in the application of the proposed regulation as it lays down the technical specifications for determining prohibited medals and tokens and therefore enables the general public, in particular manufacturers and retailers, to be aware of their legal obligations when producing and/or selling medals and tokens.
8. The ECB welcomes the protective provisions laid down in Article 2 of the proposed regulation. They cover situations where, either because of their appearance or size, medals or tokens could be mistaken for authentic euro coins. In particular, the ECB notes that a clear distinction is made in Article 2(a) and (b) between medals and tokens bearing the terms 'euro', 'euro cent' or the euro symbol and those that simply fall within the reference band, regardless of whether they bear such terms or symbol. In this regard, the prohibition of production and sale and of importation and distribution for sale or other commercial purposes of both categories of medals and tokens appears sufficient to prevent any risk of confusion among the general public. These same considerations on preventing any risk of confusion apply to the prohibition in Article 2(c) of the proposed regulation regarding medals and tokens bearing any design on their surface that is 'similar to any of the national obverse designs or to the common reverse face of euro coins, or being identical or similar to the edge design of the 2-euro coin'. The ECB notes, however, that the reference to a 'symbol close to the euro symbol combined with an indication of nominal value', as established in Article 2(b) of the Recommendation, is not included in Article 2 of the proposed regulation. The ECB would recommend retaining this reference in the proposed regulation as the use of such symbols could also confuse the general public. The ECB believes that including this reference would broaden the scope and enhance the effectiveness of the protective provisions.
9. Article 3 of the proposed regulation establishes exemptions from the protective measures analysed above. The ECB notes that this provision covers medals and tokens which cannot be mistaken for euro coins either because their size is outside the reference band, even though they bear the terms 'euro' or 'euro cent' or the euro symbol without an associated nominal value, or where their size is inside the reference band, because of their shape or composition. The ECB understands that such medals and tokens are considered to raise only very marginal risks of confusion and should be permitted.
10. Article 4 of the proposed regulation provides for a derogation system by means of authorisations granted by the designated authorities in the Member State where a medal or token is produced or first imported, or the Commission in the case of requests from third countries. The ECB notes that the authorisations granted pursuant to Article 4(1) would allow the use of the terms 'euro' or 'euro cent' under controlled conditions of utilisation in cases where no risk of confusion exists. However, Article 4(1) does not provide for specific derogations to authorise the use of the euro symbol. The ECB sees no justifiable reason for differentiating between the use of the euro symbol and that of the terms 'euro' and 'euro cent'. Furthermore, in relation to Article 4(1) the Commission's explanatory memorandum expressly refers to specific derogations from Article 2(a) when, inter alia, the use of 'the...euro symbol is practical'. The ECB therefore recommends including a reference to the euro symbol in Article 4(1) of the proposed regulation. The ECB also understands that where such an authorisation is granted the economic agent concerned within a Member State must be clearly identifiable on the surface of the medal or token and the indication 'Not legal tender' must be stamped on the obverse or the reverse of the medal or token. In this regard, the ECB would recommend that Article 4(1) include a reference to the minimum size of the words 'Not legal tender', as in the absence of such a specification there is a risk that barely legible lettering could be used. Furthermore, the ECB notes that the authorisations to be awarded under Article 4(2) concern medals and tokens whose size is inside the reference band, provided that no risk of confusion exists and that conditions on the combinations of diameter and edge height and the combinations of diameter and metal properties are met. The ECB does not have any objections to the system of derogation established in Article 4 of the proposed regulation, as the medals and tokens authorised under it must abide by stringent visual or physical conditions so as to eliminate any possible risk of confusion.

11. The ECB notes that Article 4(3) of the proposed regulation gives the designated Member State authority or the Commission, as the case may be, the competence to declare whether a design is similar to any of the national obverse designs or to the common reverse face of euro coins, or to the edge design of the 2-euro coin. While welcoming the content of this provision, the ECB would like to draw the Council's attention to the fact that it does not constitute a derogation to the protective provisions laid down in Article 2 of the proposed regulation but rather a declaratory power attributed either to the Member States' authorities or the Commission. In the interests of legal coherence and certainty in the application of the proposed regulation, the ECB would recommend moving the third paragraph of Article 4 to Article 2.
12. The ECB notes that Article 5(2) of the proposed regulation contains a transitional provision allowing medals and tokens issued prior to the entry into force of the proposed regulation but not complying with its provisions to continue to be used until the end of 2012, at the latest.

The ECB understands this provision as being necessary to fulfil the legitimate expectations of the proprietors and/or holders of such medals and tokens.

13. The ECB notes that Article 6 of the proposed regulation obliges the Member States to lay down effective, proportionate and dissuasive laws, regulations and administrative provisions on the penalties applicable to infringements of the proposed regulation by 1 January 2005. The ECB welcomes this provision, as the adoption of a legal framework for sanctions at Member State level is indisputably necessary to guarantee the effective application of the provisions of the proposed regulation.

Done at Frankfurt am Main, 16 April 2004.

The President of the ECB
Jean-Claude TRICHET