



EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 7 June 2005

**at the request of Magyar Nemzeti Bank on a draft regulation on technical tasks and other duties related to the protection of Hungarian and foreign legal tender against counterfeiting**

(CON/2005/19)

1. On 13 April 2005, the European Central Bank (ECB) received a request from Magyar Nemzeti Bank (MNB) for an opinion on a draft regulation on technical tasks and other duties related to the protection of Hungarian and foreign legal tender against counterfeiting (hereinafter the 'draft regulation').
2. The ECB's competence to deliver an opinion is based on the first and third indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>1</sup>, as the draft regulation concerns the fight against national and foreign currency counterfeits and a national central bank's tasks. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.
3. The draft regulation intends to implement 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 that have not adopted the euro as their single currency<sup>2</sup>. It also intends to implement in Hungary Decision ECB/2001/11 of 8 November 2001 on certain conditions regarding access to the Counterfeit Monitoring System (CMS)<sup>3</sup>. The draft regulation introduces the rules applicable to credit institutions, institutions entitled to carry out cash processing activities, institutions carrying out cash transfer services, institutions providing postal cash services, bureaux de change, MNB itself and natural persons, other legal entities and bodies that are not legal entities, when handling both the domestic and foreign banknotes and coins concerning the fight against counterfeiting. It also lays down rules for the authenticity check concerning suspicious, forfeited or genuine banknotes and coins.
4. The ECB welcomes Article 2 of the draft regulation which introduces a unified protective regime for Hungarian and foreign legal tender. It observes, however, that Article 4(1)(b), which qualifies

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> OJ L 181, 4.7.2001, p. 11.

<sup>3</sup> OJ L 337, 20.12.2001, p. 49.

as genuine all foreign banknotes and coins complying with a mere description in the relevant legal act or notice, may not hold true in all circumstances, and would recommend deleting it. Article 4(3) of the draft regulation, setting the standards for the authenticity check of foreign banknotes and coins, would suffice.

5. The ECB suggests ATM operators also to be covered by the scope of the draft regulation in Article 1, in accordance with the framework adopted by the Governing Council on 16 December 2004 for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers. The importance of ATM transactions vis-à-vis over-the-counter transactions is expected to increase in the future, hence the required change.
6. In accordance with Article 3(1) of Regulation (EC) No 1338/2001 technical and statistical data relating to counterfeit notes and coins are gathered and indexed by the competent national authorities. The ECB presumes that the National Counterfeit Centre (NCC) will play this role, but an express reference in Article 10(1) of the draft regulation to Article 3(1) of Regulation (EC) No 1338/2001 would be useful.
7. The ECB notes that the draft regulation goes beyond the scope of Article 6(1) of Regulation (EC) No 1338/2001 as it will oblige natural or legal persons or even unincorporated entities to send or hand over suspected banknotes or coins to MNB, in the event of the slightest doubt as to their authenticity. The ECB welcomes this approach. The ECB equally welcomes Article 8(3) of the draft regulation's expressly attributing to MNB the general responsibility of keeping and handling all counterfeit banknotes.
8. Article 6(1) of Regulation (EC) No 1338/2001 obliges credit institutions and any other institutions engaged in cash handling to withdraw from circulation all counterfeit or presumably counterfeit euro banknotes and coins received by them and to hand them over to the competent national authorities. In order to reinforce this rule, Article 6(2) of Regulation (EC) No 1338/2001 also requires a sanctions regime to be established. The ECB understands that the draft regulation itself cannot provide either for criminal sanctions, since Acts of Parliament establish these, or for administrative sanctions, which fall outside of MNB's field of competence. Thus, the competent authorities will need to establish the effective, proportionate and deterrent sanctions required by Regulation (EC) No 1338/2001.
9. The draft regulation also remains silent on the national authority designated by Hungary as the national central office within the meaning of the fourth indent of Article 2(b) of Regulation (EC) No 1338/2001. According to Article 8 of Regulation (EC) No 1338/2001 information on any detected counterfeits is communicated to the abovementioned national central office with a view to its being forwarded to Europol through the Europol national unit. In addition, Member States are obliged to ensure the exchange of information between the national central office and the Europol national unit. The ECB recommends mentioning in the draft regulation the body acting as the national central office.

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

Done at Frankfurt am Main, 7 June 2005.

[signed]

*The President of the ECB*

Jean-Claude TRICHET