

I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 October 2008

on a proposal for two Council Regulations concerning medals and tokens similar to euro coins

(CON/2008/45)

(2008/C 283/01)

Introduction and legal basis

On 25 September 2008, 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 amending Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins (hereinafter the 'first proposed regulation') and a proposal for a Council Regulation amending Regulation (EC) No 2183/2004 extending to the non-participating Member States the application of Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins (hereinafter the 'second proposed regulation') (hereinafter collectively referred to as the 'proposed regulations') ⁽¹⁾.

The ECB's competence to deliver an opinion is based on Article 123(4) of the Treaty establishing the European Community for the first proposed regulation and on Article 105(4) of the Treaty for the second proposed regulation, as it relates to currency matters. 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. General observations

By clarifying the specific elements of the designs on legal tender euro coins that should not be reproduced on medals and tokens that are similar to euro coins and establishing the criteria to be used by the Commission when preparing an opinion on compliance with Regulation (EC) No 2182/2004 ⁽²⁾, the first proposed regulation strengthens the protective provisions laid down in Regulation (EC) No 2182/2004 against confusion and fraud relating to medals and tokens that could be mistaken for euro coins. It also improves transparency in the Commission's decision-making process.

Since euro coins may circulate beyond the territories of the Member States that have adopted the euro, having a certain degree of protection of euro coins in Member States which have not yet adopted the euro is of importance with regards to activities, such as counterfeiting, that may impair their credibility as legal tender.

⁽¹⁾ COM(2008) 514 final, Vol. I and Vol. II.

⁽²⁾ OJL 373, 21.12.2004, p. 1.

2. Specific observations

2.1. Similarity of the design appearing on the surface of medals and tokens

Compared to Article 2(c) of Regulation (EC) No 2182/2004, the new Article 2(1)(c) of the first proposed regulation describes in more detail the designs or parts thereof appearing on the surface of euro coins which may not be reproduced on medals and tokens. To enhance the protective character of this provision, the ECB recommends including an express reference to the euro symbol and to the terms 'euro' and 'euro cent' in the new Article 2(1)(c)(i). The ECB acknowledges that as currently drafted, Article 2(1)(c)(i) does not exclude these terms or the euro symbol; however, expressly mentioning them would contribute to clarifying the Commission's proposal and strengthening the protective provisions. Indeed, the general public may be confused not only by a reproduction of the terms 'euro', 'euro cent' or the euro symbol on medals or tokens, which is prohibited according to the new Article 2(1)(a), but also by any design using elements that are similar to those terms and that symbol.

2.2. Transparency in the decision-making process

According to the explanatory memorandum to the first proposed regulation, the Commission has been working closely with the counterfeit coin experts referred to in the first paragraph of Article 4 of Commission Decision 2005/37/EC of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect euro coins against counterfeiting ⁽¹⁾ when considering compliance with Regulation (EC) No 2182/2004 and considers that this consultation should continue. However, the first proposed regulation only refers to 'consultation with the Member States' in the third recital. As a result, the ECB recommends that an express reference to the counterfeit coin experts be included in the new Article 2(2), in particular since one of the main purposes of the first proposed regulation is to make the decision-making process more transparent.

2.3. Derogations by authorisation

The new Article 4 concerning derogations by authorisation does not provide for any procedure by which economic operators may request such derogation from the protective provisions laid down in Article 2. The ECB considers that appropriate wording should be added in this respect.

In the same vein, the decision-making process would be even more transparent if the first proposed regulation included the conditions under which the Commission may authorise a derogation. More specifically, the new Article 4 is vague as regards the 'controlled conditions of utilisation' under which medals and tokens may bear the terms 'euro' or 'euro cent' or the euro symbol and when 'no risk of confusion exists'. In order to enhance transparency and improve legal certainty, the new Article 4 would benefit from more comprehensive and/or illustrative wording on the general criteria to be applied by the Commission when authorising a derogation.

2.4. Application of the first proposed regulation to Monaco, San Marino and the Vatican City

Monetary agreements are already in place (i) between France, on behalf of the European Community, and Monaco; and (ii) between Italy, on behalf of the European Community, and San Marino and the Vatican City. Under these agreements, Monaco, San Marino and the Vatican City are entitled to issue euro coins which have the status of legal tender and have specific artistic features on their national side. Because the visual characteristics of these euro coins are different from the visual characteristics of the euro coins issued by each of the Member States that have adopted the euro, the euro coins issued by Monaco, San Marino and the Vatican City should also benefit from the protective provisions laid down in the first proposed regulation. Consequently, the respective monetary agreements and/or the legislative provisions adopted pursuant to these monetary agreements should be amended so that the content of the first proposed regulation, once adopted, also applies to Monaco, San Marino and the Vatican City.

⁽¹⁾ OJL 19, 21.1.2005, p. 73.

2.5. *Consultation of the ECB on the second proposed regulation*

Unlike the first proposed regulation, the preamble to the second proposed regulation does not refer to the ECB's opinion. In view of the fact that both proposed regulations fall within the ECB's fields of competence, the preamble to the second proposed regulation should be amended to refer to the ECB's opinion.

3. **Drafting proposals**

Where the above advice would lead to changes in the proposed regulations, drafting proposals are set out in the Annex.

Done at Frankfurt am Main, 8 October 2008.

The President of the ECB

Jean-Claude TRICHET

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
Amendment 1 Article 2(1)(c)(i) mentioned in Article 1 of the first proposed regulation	
'(i) any design, or parts thereof, appearing on the surface of euro coins, including in particular the twelve stars of the European Union, the image of the geographical representation and the numerals, in the way depicted on euro coins, or'	'(i) any design, or parts thereof, appearing on the surface of euro coins, including in particular the terms "euro", "euro cent", the euro symbol , the twelve stars of the European Union, the image of the geographical representation and the numerals, in the way depicted on euro coins, or'
<i>Justification</i> — See paragraph 2.1 of the opinion	
Amendment 2 Article 2(2) mentioned in Article 1 of the first proposed regulation	
'2. The Commission shall be competent to deliver an opinion as to:'	'2. The Commission, after having consulted the counterfeit coin experts referred to in Article 4 of Commission Decision 2005/37/EC of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect euro coins against counterfeiting ⁽²⁾ , shall be competent to deliver an opinion as to:'
<i>Justification</i> — See paragraph 2.2 of the opinion	
Amendment 3 Preamble to the second proposed regulation	
'Having regard to the proposal from the Commission, Having regard to the opinion of the European Parliament, Whereas:'	'Having regard to the proposal from the Commission, Having regard to the opinion of the European Parliament, Having regard to the opinion of the European Central Bank, Whereas:'
<i>Justification</i> — See paragraph 2.5 of the opinion	
(1) Bold in the body of the text indicates where the ECB proposes inserting new text. (2) OJ L 19, 21.1.2005, p. 73.	