



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 November 2015

on protection against counterfeiting and the preservation of the quality of cash in circulation

(CON/2015/50)

Introduction and legal basis

On 28 October 2015, the European Central Bank (ECB) received a request from the Governor of the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Minister of Finance, for an opinion on a draft Royal Decree implementing the Law of 17 July 2013 on protection against counterfeiting and the preservation of the quality of cash in circulation (hereinafter the 'draft Royal Decree'). The ECB was requested to deliver an opinion within one month in order to enable the Belgian government to take the ECB's opinion into consideration before submitting the draft Royal Decree to Parliament.

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, since the draft Royal Decree concerns currency matters, means of payment and the NBB. 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 Royal Decree

- 1.1 The draft Royal Decree implements the Law of 17 July 2013 on protection against counterfeiting and the preservation of the quality of cash in circulation. That law aims to go beyond the mere implementation of the Union legislation imposing requirements on cash handlers, stipulated in Article 6 of Council Regulation (EC) No 1338/2001² and Decision ECB/2010/14³, and to impose additional requirements on cash handlers with regard to 'presumably neutralised banknotes', i.e. banknotes presumed to have been neutralised by an anti-theft device.
- 1.2 For this purpose, the draft Royal Decree codifies and replaces the Royal Decree of 5 April 2006 implementing the Law of 12 May 2004 relating to the protection against counterfeiting. In particular, it imposes on cash handlers the following additional duties, which are derived from the existing

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 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).

³ Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (OJ L 267, 9.10.2010, p. 1).

obligations imposed upon them in connection with counterfeited banknotes or banknotes unfit for circulation: (a) in respect of their staff handling banknotes, drawing up instructions and procedures, raising awareness and organising training, subject to suitable internal control measures, to facilitate the detection of presumably neutralised banknotes; (b) in respect of their banknote handling machines, ensuring that these machines are capable of detecting presumably neutralised banknotes, retaining and processing such banknotes and recording the account number of the person to whose account those banknotes were credited; (c) in respect of banknotes received during transactions made by hand, ensuring that such banknotes are not presumably neutralised; (d) in respect of banknotes identified as presumably neutralised, withdrawing such banknotes from circulation and handing them over to the NBB, restricting their physical manipulation, and identifying the details of account holders, account numbers, digital data, photographic images and other information which may be useful to identify the persons seeking to carry out a transaction using such notes.

- 1.3 Furthermore, the draft Royal Decree empowers the NBB to determine the standards with which cash handling machines must comply, such standards being confidential and only divulged to the institutions and third parties who need to have knowledge of them with a view to their implementation.
- 1.4 In accordance with Article 6 of the Law of 17 July 2013 on protection against counterfeiting and the preservation of the quality of cash in circulation, any breach of the new obligations imposed upon cash handlers may give rise to an administrative fine imposed by the Ministry of Finance upon a proposal of the NBB, amounting to between EUR 250 and EUR 50,000, as well as corrective actions, the NBB being entrusted with the task of investigating any breach of the new requirements.

2. General observations

- 2.1 The ECB notes that it has been consulted on two previous occasions by the NBB on draft laws on protection against counterfeiting and on the preservation of the quality of cash in circulation⁴. The ECB, while reiterating the remarks previously expressed in response to those consultations, shall restrict its comments to the new provisions added by the draft Royal Decree to the existing legal framework.
- 2.2 The ECB welcomes the draft Royal Decree, which aims to enhance the security of the money supply and reduce the risk of criminals being able to recirculate neutralised euro banknotes.

3. Specific observations

- 3.1 As presumably neutralised banknotes retain their legal tender status in accordance with Council Regulation (EC) No 974/98⁵, any restriction on the use or circulation of such banknotes has to be

⁴ See Opinions CON/2011/64 and CON/2013/43. All ECB opinions are published on the ECB's website: www.ecb.europa.eu.

⁵ Council Regulation (EC) No. 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

compatible with Union law. In particular, such limitations need to be proportionate to the general objective pursued by the restriction. The ECB considers that the rules stipulated in the draft Royal Decree to identify and prevent the circulation, at the earliest stage possible, of neutralised euro banknotes are proportionate to the objective pursued by such rules, namely to curb the possibility for thieves to recycle or obtain reimbursement for genuine euro banknotes that have been neutralised following the activation of an anti-theft device. The ECB understands that the draft Royal Decree does not affect the NBB's competence with regard to the exchange and crediting of value of damaged euro banknotes, which will be dealt with by the NBB in accordance with applicable Union law, in particular Decision ECB/2013/10⁶.

- 3.2 The ECB also welcomes the fact that the draft Royal Decree empowers the NBB to adopt standards which the cash handling machines must comply with in order to identify and block the circulation of presumably neutralised banknotes. The ECB understands from the explanatory memorandum accompanying the draft Royal Decree that the NBB will take into account the rules to be adopted in this area by the ECB⁷.

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

Done at Frankfurt am Main, 20 November 2015.

[signed]

The President of the ECB

Mario DRAGHI

⁶ Decision ECB/2013/10 of the European Central Bank of 19 April 2013 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (OJ L 118, 30.4.2013, p. 37).

⁷ See page 5 of the explanatory memorandum.