Introduction and legal basis

On 9 March 2022 the European Central Bank (ECB) received a request from the Ministry of Finance of the Republic of Croatia for an opinion on a draft law on the introduction of the euro as the official currency in the Republic of Croatia (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 on the first, second and third indents of Article 2(1) of Council Decision 98/415/EC1, as the draft law relates to currency matters, means of payment and Hrvatska Narodna Banka (HNB). 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 main objective of the draft law is to facilitate the introduction of the euro in the Republic of Croatia, and to address issues relating to the euro’s introduction to the extent that relevant Union law2 does not address them and they do not fall within the Union’s exclusive competence in the area of monetary policy. In particular, the draft law lays down rules governing: (1) the basic principles governing the euro changeover; (2) rules on the conversion and rounding of monetary values from kuna to euro; (3) the supply and changeover from kuna cash to euro cash; (4) dual circulation and dual display issues; (5) the application of the principle of the continuity of legal instruments; (6) the conversion of funds and legal instruments, and adjustments of interest rates; (7) informing clients regarding these matters; (8) the conversion of the nominal values of debt securities, share capital, equity securities; (9) the conversion of salaries, pensions, social benefits and other compensation to citizens and households; (10) budgets, financial plans, financial records, financial reports and taxes in the process of the introduction of the euro; (11) supervision over the application of draft law; (12) misdemeanour provisions; and (13) transitional provisions.

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2. General observations

2.1 The ECB welcomes the draft law’s objective to facilitate a smooth changeover to the euro in the Republic of Croatia, as well as a timely implementation of the necessary measures in connection therewith.

2.2 The procedure of the changeover applies not only to banknotes and coins but also to (electronic) payment instruments. In this respect, any national legal provisions and/or market practices related to the electronic 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 Council3 and the Single Euro Payments Area payment schemes governed by it.

2.3 Certain provisions of the draft law reiterate relevant provisions of Union law using the same or slightly different language.4 The ECB understands that the intention of the Croatian authorities is to facilitate the application in the Republic of Croatia of such relevant provisions of Union law. In principle, however, such reiteration is to be avoided. In this context, the ECB recalls 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 of the applicable provisions and as to the date of their entry into force. This would not align with the uniform application and interpretation of Union law throughout the Union.5 Moreover, to the extent that a national provision uses wording different from the relevant Union provision for the introduction of the euro, it potentially creates regulatory content of its own, which would not be in line with the Union’s exclusive competence in matters of monetary policy for the Member States whose currency is the euro.6 The concept of monetary policy is not limited to its operational implementation, which, under the first indent of Article 127(2) of the Treaty, is one of the basic tasks of the Eurosystem7, but also entails a regulatory dimension intended to guarantee the status of the euro as the single currency.8 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, unless Member States are acting on the basis that they have been empowered to do so or for the implementation of Union acts.9

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4 See Article 4(1)(3), 4(1)(10), 4(1)(17), Article 13(1), Articles 14 and 33, and Article 54(1) and 54(3) of the draft law.
6 Article 3(1)(c) of the Treaty.
7 Article 139(2) of the Treaty.
8 Judgment of the Court of Justice of 26 January 2021, Hessischer Rundfunk, C-422/19 and C-423/19, EU:C:2021:63, paragraph 38.
2.4 In this light, the ECB generally invites the Croatian authorities to consider deleting the directly applicable provisions of Union law that have been reiterated in the draft law. It recalls, however, that 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 apply. Such exceptional circumstances do not exist, if the directly applicable provisions of Union law are sufficiently coherent and comprehensive making it unnecessary to repeat or reflect them in national law. If, in contrast, such exceptional circumstances do exist, the reproduction of elements of directly applicable provisions of Union law should be done precisely, either by incorporation or reference, without modifying their wording.

3. Specific observations

3.1 Definition of ‘legal instrument’

3.1.1 The draft law defines the term ‘legal instrument’ as a legal instrument as regulated by Regulation (EC) No 1103/97. However, in various instances, the draft law also makes reference to the term ‘contract and other legal instruments’. This slightly deviating reproduction of a term used in directly applicable Union law is to be avoided in order to safeguard the uniform application of Union law and to not produce national regulatory content that would encroach on the Union’s exclusive competence in matters of monetary policy by, in this case, risking to create a diverging definition of ‘legal instrument’. In the case of the definition in Regulation (EC) No 1103/97, no exceptional circumstances arise in which its reproduction would be warranted. The provision on the application of the reference to euro in legal instruments and the principle of continuity in that Regulation, in addition to being directly applicable, are clear and sufficiently comprehensive. The same must hold for the definition of ‘legal instrument’ on which this provision builds. Therefore, the ECB recommends replacing terms such as ‘contract and other legal instruments’ by the term ‘legal instrument’ throughout.

3.2 HNB’s role as legal issuer of euro coins

3.2.1 According to Article 128(2) of the Treaty, the right to issue euro coins rests with the Member States. Therefore, it is up to each euro area Member State to specify the legal issuer of euro coins. In most euro area Member States issuance of euro coins is undertaken by the State. In five of those States the national central banks (NCBs) act as agents for their treasuries with regard to minting euro coins and putting them into circulation. In five other Member States of the euro area coin issuance is a competence of the NCB. The ECB understands that HNB is currently the legal issuer of kuna coins and that it is intended that HNB will be the legal issuer of euro coins. In this respect, the draft
law stipulates that HNB shall ensure the supply of euro cash in the territory of the Republic of Croatia by ensuring the production or by procuring the appropriate quantity of euro coins. Moreover, the Law on HNB provides that HNB may issue euro coins subject to approval by the ECB of the volume of the issue. This last phrase partly reproduces Article 128(2) of the Treaty, which is problematic from the point of view of the uniform application of Union law (see above). The ECB understands the need to define who will be the legal issuer of euro coins in the Republic of Croatia. To clearly define HNB’s role without risking to reproduce directly applicable provisions of Union law, the ECB recommends clarifying that HNB shall be the legal issuer of euro coins while making a reference to the limits prescribed in Article 128(2) of the Treaty without altering its wording.

3.3 Status of euro as legal tender in the Republic of Croatia and dual circulation of euro and kuna

3.3.1 The draft law stipulates that the euro will be the official monetary unit and the legal tender in the Republic of Croatia and that the period of dual circulation of the kuna and the euro will last 14 days from the date of the introduction of the euro. First, the ECB observes that, from a technical point of view, the status of legal tender is not to be accorded to the euro or to another currency as such, but rather to forms of money in that currency, i.e. currently to banknotes denominated in euro as per Article 128(1) of the Treaty and to coins denominated in euro by Article 11 of Regulation (EC) No 974/98. To the extent that the draft law reproduces these directly applicable provisions of Union law, the Croatian authorities may wish to consider deleting them. Moreover, the ECB recalls that the concept of legal tender of a means of payment denominated in a currency unit signifies, in its ordinary sense, that that means of payment cannot generally be refused in settlement of a debt denominated in the same currency unit, at its full face value, with the effect of discharging the debt. The ECB notes that the kuna is treated de facto as legal tender during a transitional period of 14 days from the introduction of the euro. Article 15(1) of Regulation (EC) No 974/98 states that banknotes and coins denominated in a national currency unit remain legal tender within their territorial limits until six months from the respective cash changeover date at the latest and empowers Member States to shorten this period. Accordingly, the draft law, which is to be understood as referring to kuna banknotes and coins, does not encroach on the exclusive competence of the Union in matters of monetary policy.

3.4 Rounding rules and principle of neutrality

3.4.1 The draft law lays down the rules on the conversion and rounding of prices and other monetary values. The reference to ‘prices and other monetary values’ in the draft law seems to differ from Regulation (EC) No 1103/97, which refers to ‘monetary amounts to be paid or accounted for’. The difference in the wording may create some uncertainty as to the rounding rules’ scope of application. Care should be taken not to interpret the term ‘monetary amounts to be paid or accounted for’ broadly, since it can cover only monetary amounts that give rise to a payment on the consumer’s
part, namely all monetary debts, and, on the other hand, amounts entered in accounting documents or statements, whether they are commercial, accounting or financial, where practical reasons not only justify, but also require there to be rounding to the nearest cent\textsuperscript{25}. A broader definition or interpretation of the Union law term ‘monetary amounts to be paid or accounted for’ could create uncertainty about the uniform application of Union law. The ECB acknowledges that, exceptionally, there may be a need to reproduce Union law in national law for the sake of coherence and in order to make them comprehensible to the persons to whom they apply. However, the Croatian authorities may wish to consider aligning the wording of the draft law’s conversion and rounding rules with Union law by directly referencing the relevant Union law provisions\textsuperscript{26} without altering their wording.

3.4.2 The ECB understands that the Republic of Croatia seeks to reflect the settled case-law of the Court of Justice of the European Union on intermediate values\textsuperscript{27} in the draft law by introducing special rounding rules for unit prices of goods and services\textsuperscript{28}, as lex specialis to the general rounding rule contained in Article 14 of the draft law.

3.5 Exchange rate list for euro

3.5.1 The draft law provides that as of the euro introduction date (1) HNB shall publish HNB foreign exchange rate rates for the euro against other currencies\textsuperscript{29} and (2) the midpoint exchange rates of HNB for the euro against other currencies shall be applied for statistical, accounting and tax purposes and in all legal instruments in which, before the euro introduction date, the midpoint exchange rates of HNB for the kuna were applied in relation to currencies other than the euro, unless otherwise regulated by the relevant regulation\textsuperscript{30}. The ECB considers that if at all possible HNB should use an EU regulated benchmark rate for this purpose. Failing that HNB may explore additional alternative solutions, such as, for instance, to publish HNB 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), and to use such HNB exchange rates as a replacement for HNB's midpoint exchange rate. 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 does not advise that these ECBRR should be used for commercial transactions.

4. Consultation of ECB on implementing regulations adopted under draft law

4.1 The draft law envisages the adoption of several implementing regulations\textsuperscript{31}, including HNB decisions on (1) euro cash frontloading; (2) the exchange of kuna cash; (3) the exchange of unfit and suspicious kuna cash; (4) the supply of euro cash; (5) the reporting on cash operations data; (6) the conditions for the use of copyright work used on the national design of the euro coins and kuna cash; (7) the

\textsuperscript{25} Judgment of the Court of Justice of 14 September 2004, Verbraucher-Zentrale Hamburg, C-19/03, EU:C:2004:524, paragraphs 35 and 36.
\textsuperscript{26} See also paragraph 22 of the Opinion CON/2005/21.
\textsuperscript{27} Judgment of the Court of Justice of 14 September 2004, Verbraucher-Zentrale Hamburg, C-19/03, EU:C:2004:524.
\textsuperscript{28} See Article 15 of the draft law.
\textsuperscript{29} Article 17(1) of the draft law.
\textsuperscript{30} Article 17(2) of the draft law.
\textsuperscript{31} Articles 38(1) – 38(7) and Article 62(4) of the draft law.
control of the verification of the authenticity and fitness of euro coins and the procedure for testing the operation of the device for euro coins processing; and (8) the content and the structure of the notices on the relevant elements of the conversion. The national authorities should remain mindful of the obligation to consult ECB on draft implementing regulations falling within the ECB’s fields of competence concerning currency matters, means of payment and NCBs.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 14 April 2022.

[signed]

The President of the ECB

Christine LAGARDE