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COVER NOTE

from:	Mr Mario DRAGHI, President of the European Central Bank
date of receipt:	7 March 2012
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

Subject:	Opinion of the European Central Bank of 2 March 2012 on a proposal for a regulation of the European Parliament and of the Council establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the "Pericles 2020" programme) (CON/2012/17)
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Delegations will find attached ECB opinion CON/2012/17.

Encl.: CON/2012/17



OPINION OF THE EUROPEAN CENTRAL BANK

of 2 March 2012

on a proposal for a regulation of the European Parliament and of the Council establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the ‘Pericles 2020’ programme)

(CON/2012/17)

Introduction and legal basis

On 26 January 2012, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Regulation of the European Parliament and of the Council establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the ‘Pericles 2020’ programme)¹ (hereinafter the ‘proposed regulation’). On 6 February 2012, the ECB received a second request from the European Parliament for an opinion on the same proposed regulation.

The ECB’s competence to deliver an opinion is based on Article 133 and Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union. 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

- 1.1 The Pericles programme is an exchange, assistance and training programme for the protection of the euro against counterfeiting and related fraud. The proposed regulation will replace the legal basis of the Pericles programme which will expire at the end of 2013², thus extending it to the end of 2020. The ECB reiterates its view that the Pericles programme is a useful contribution to the activities already deployed by the ECB, Europol and national authorities in the fight against euro

¹ COM(2011) 913 final.

² Originally, the Pericles programme was put in place by Council Decision 2001/923/EC of 17 December 2001 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the ‘Pericles’ programme) (OJ L 339, 21.12.2001, p. 50). Decision 2001/923/EC was extended to the non-euro area Member States by Council Decision 2001/924/EC of 17 December 2001 extending the effects of the Decision establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (‘Pericles’ programme) to the Member States which have not adopted the euro as the single currency (OJ L 339, 21.12.2001, p. 55). Subsequent amendments to Council Decision 2001/923/EC extended the scope and duration of the Pericles programme until 31 December 2013.

counterfeiting³. The ECB is confident that the Pericles 2020 programme will continue to contribute to preserving the integrity of euro banknotes, including second series euro banknotes.

- 1.2 The ECB underlines its active involvement in the fight against euro banknote counterfeiting. In particular, the ECB develops banknote designs and advanced technical features for euro banknotes, which allow the general public and experts to distinguish genuine banknotes from counterfeits. It is a common practice to upgrade banknotes after they have been in circulation for a few years to keep ahead of counterfeiters. The Eurosystem is also taking this precautionary measure and will shortly initiate the production of second series euro banknotes. Moreover, the ECB analyses new counterfeit types at its Counterfeit Analysis Centre (CAC) and uses the knowledge gained to better advise law enforcement authorities. The CAC coordinates the dissemination of all known technical and statistical data on euro counterfeits to all relevant parties.

2. Specific observations

- 2.1 The second paragraph of Article 4 of the proposed regulation sets out a method to evaluate the achievement of the specific objective of the Pericles 2020 programme. In this respect, results not only depend on effective action under the Pericles 2020 programme, but also on a number of external factors, including the number of counterfeits in circulation, the availability of sufficient human, financial and technical resources at financial, technical, law enforcement and judicial authorities, and the implementation of other training programmes organised for these authorities. Accordingly, the programme should be evaluated against all the aspects that influence euro counterfeiting and fraud. Therefore, the ECB recommends full involvement of the ECB and Europol in evaluating the Pericles 2020 programme as provided for in Article 12(3) and (4) of the proposed regulation.
- 2.2 Under the Pericles 2020 programme, proposals presented by the participating Member States may include participants from third countries, if their presence is important for the protection of the euro. While acknowledging the benefits for euro counterfeit and fraud deterrence worldwide by including third countries in the Pericles 2020 programme, third country involvement should be sensible and proportionate.
- 2.3 The ECB notes that Article 8(4)(a) and (c)⁴ and Article 10(3) of the proposed regulation refer to the use of detection tools and provide for grants to purchase equipment. The ECB agrees with the proposal to make grants for the acquisition of general laboratory equipment, such as microscopes, infrared readers, callipers, densitometers, micrometers, readers of conductivity and magnetism, that aid the investigative process and are not specifically designed or marketed as counterfeit detecting equipment. The ECB considers that the only reliable counterfeit detection machines and devices

³ See paragraph 1 of ECB Opinion CON/2006/35 of 5 July 2006 at the request of the Council of the European Union on two proposed Council decisions on the exchange, assistance and training programme for the protection of the euro against counterfeiting (the Pericles programme) (OJ C 163, 14.7.2006, p. 7). All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁴ Article 8(1) and (2) are missing in the proposed regulation.

are those listed on its website as having performed satisfactorily in tests involving a batch of topical counterfeit types and genuine banknotes with a range of wear and tear characteristics. Such machines and devices are however aimed at the professional cash handling industry and are in general beyond the scope of the specialised anti-counterfeiting authorities defined as the target group in Article 8(4)(c) of the proposed regulation⁵. Therefore, the ECB is of the opinion that it is not appropriate to consider financing the purchase of counterfeit detectors with funds of the Pericles 2020 programme or using counterfeit detectors by specialised anti-counterfeiting authorities.

- 2.4 It would be beneficial for the Commission, the ECB and Europol to jointly examine initiatives to be funded under the Pericles 2020 programme⁶, thus avoiding duplication and overlap between the Pericles 2020 programme and other relevant programmes and activities and ensuring the development of a common strategy against euro counterfeiting and fraud. Therefore, recital (7) and Article 11 of the proposed regulation should be amended to provide for: (a) timely consultation of the principle parties involved by the Commission in relation to the annual work programme; and (b) obtaining the ECB's and Europol's agreement on the annual work programme for the purpose of its adoption⁷. In this regard, the ECB and Europol should be given sufficient time to examine the draft annual work programme and to submit their views prior to its discussion within the appropriate advisory committee.
- 2.5 The ECB welcomes Article 12(1) of the proposed regulation requiring the Commission to implement the Pericles 2020 programme in cooperation with the Member States, through consultations at different implementation stages, taking into account relevant measures undertaken by other competent entities, in particular the ECB and Europol. While Article 12(1) of the proposed regulation ensures a sufficient level of cooperation at Union level as well as consistency between the Pericles 2020 programme and other relevant programmes and activities, the ECB recommends to the Commission to allow for sufficient time for familiarisation with the documentation in relation to the annual work programme before consulting the ECB and Europol on it within the appropriate advisory committee.

⁵ Moreover, following the impact assessment (SEC(2011) 1615 final), it is clear that the possibility to finance the purchase of equipment refers to competent national (third country) anti-counterfeiting agencies for protecting the euro against counterfeiting with particular focus on specialised agencies operating in sensitive third countries having different priorities than fighting against euro counterfeiting.

⁶ See paragraph 8 of ECB Opinion CON/2005/22 of 21 June 2005 at the request of the Council of the European Union on two proposed Council decisions on the exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles' programme) (OJ C 161, 1.7.2005, p. 11), and paragraph 2.2 of ECB Opinion CON/2006/35 of 5 July 2006 at the request of the Council of the European Union on two proposed Council decisions on the exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles' programme) (OJ C 163, 14.7.2006, p. 7).

⁷ See paragraph 8 of Opinion CON/2005/22.

- 2.6 The ECB recommends amending proposed Article 12(3) and (4) to allow for the involvement of the ECB and Europol in the evaluation of the effectiveness and efficiency of the Pericles 2020 programme and of its possible renewal, modification or suspension.

Done at Frankfurt am Main, 2 March 2012.

The President of the ECB

Mario DRAGHI

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ¹
Amendment 1 Recital 7 of the proposed regulation	
‘(7) It should be ensured that this Union action programme is consistent with, and complementary to, other programmes and activities. The Commission should carry out all the necessary consultations with regard to evaluating needs for the protection of the euro with the principal parties involved (in particular the competent national authorities designated by the Member States, the ECB and Europol) within the appropriate advisory committee provided for in Regulation (EC) No 1338/2001, particularly as regards exchanges, assistance and training, for the purpose of implementing this programme.’	‘(7) It should be ensured that this Union action programme is consistent with, and complementary to, other programmes and activities. Within an appropriate time before adopting the annual work programme the Commission should carry out all the necessary consultations with regard to evaluating needs for the protection of the euro with the principal parties involved. (In particular, the Commission should consult the competent national authorities designated by the Member States; and seek the agreement of the ECB and Europol on the annual work programme) within the appropriate advisory committee provided for in Regulation (EC) No 1338/2001, particularly as regards exchanges, assistance and training, for the purpose of implementing this programme.’
<u>Explanation</u> <i>The Commission, the ECB and Europol will benefit if they jointly examine initiatives to be funded under the Pericles 2020 programme in the context of the annual work programme. Such joint examination would help avoid duplication and overlap between the Pericles 2020 programme and other relevant programmes and activities fostered by the ECB, Europol and the competent national authorities. In addition, this approach would ensure the development of a common strategy against euro counterfeiting and fraud. Therefore, the ECB suggests amending recital 7 of the proposed regulation to provide for: (a) timely consultation of the principle parties involved by the Commission in relation to the annual work programme; and (b) obtaining the ECB’s and Europol’ agreement on the annual work programme for the purpose of its adoption.</i>	

¹ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Amendment 2	
Article 11 of the proposed regulation	
‘Article 11 Annual Work Programme In order to implement the programme the Commission shall adopt annual work programmes. They shall set out the objectives pursued, the expected results, the method of implementation and their total amount. They shall also contain a description of the actions to be financed, an indication of the amount allocated to each action and an indicative implementation timetable.’	‘Article 11 Annual Work Programme In order to implement the programme The Commission shall adopt annual work programmes: after timely consultation of the principal parties involved on the draft annual work programmes and after obtaining the agreement of the ECB and Europol. The annual work programmes They shall set out the objectives pursued, the expected results, the method of implementation and their total amount. They shall also contain a description of the actions to be financed, an indication of the amount allocated to each action and an indicative implementation timetable.’
<u>Explanation</u> <i>The Commission, the ECB and Europol will benefit if they jointly examine initiatives to be funded under the Pericles 2020 programme. Such joint examination would help avoid duplication and overlap between the Pericles 2020 programme and other relevant programmes and activities fostered by the ECB, Europol and the competent national authorities. In addition, this approach would ensure the development of a common strategy against euro counterfeiting and fraud. Therefore, the ECB suggests amending Article 11 of the proposed regulation to provide for: (a) timely consultation of the principle parties involved by the Commission in relation to the annual work programme; and (b) obtaining the ECB’s and Europol’ agreement on the annual work programme for the purpose of its adoption.</i>	
Amendment 3	
Article 12(3) of the proposed regulation	
‘(3) An evaluation of the Programme shall be carried out by the Commission. No later than by 31 December 2017, [...]’	‘(3) An evaluation of the Programme shall be carried out by the Commission. The Commission shall disseminate a draft evaluation report to the competent national authorities designated by the Member States and seek the agreement of the ECB and Europol on the content of the

	evaluation report within the appropriate advisory committee provided for in Regulation (EC) No 1338/2001. No later than by 31 December 2017, [...]’
<u>Explanation</u> <i>The efficiency of the Pericles 2020 programme should be a priority so that it can achieve its general and specific objectives. The ECB considers that the proper coordination of the Pericles 2020 programme with existing Union and national programmes, as well as with projects of the ECB and Europol, is essential. In this regard, the ECB is of the view that the evaluation report should be consulted and agreed with all principle parties within the appropriate advisory committee provided for in Regulation (EC) No 1338/2001. To this end, the ECB makes the above drafting proposal, which also enhances the ECB’s and Europol’s role in the assessment of the effectiveness and efficiency of the Pericles 2020 programme and of its possible renewal, modification or suspension.</i>	
Amendment 4 Article 12(4) of the proposed regulation	
‘(4) In addition, by 31 December 2021, the Commission shall present to the European Parliament and to the Council a report on the achievement of the objectives of the Programme.’	‘(4) In addition, the Commission shall disseminate a draft report on the achievement of the Programme objectives to the competent national authorities designated by the Member States and seek the agreement of the ECB and Europol on the evaluation report within the appropriate advisory committee provided for in Regulation (EC) No 1338/2001. By By 31 December 2021, the Commission shall present to the European Parliament and to the Council a report on the achievement of the objectives of the Programme.’
<u>Explanation</u> <i>The successful application of the evaluation method in relation to the achievement of the specific objectives of the Pericles 2020 programme requires a wide range of expertise, knowledge and information. That conclusion follows Article 4, which lists a wide variety of results against which the achievement of these objectives will be assessed. In this respect, results not only depend on effective action under the Pericles 2020 programme, but also on a number of external factors, including the</i>	

number of counterfeits in circulation, the availability of sufficient human, financial and technical resources at financial, technical, law enforcement and judicial authorities, and the implementation of other training programmes organised for these authorities. Accordingly, the Pericles 2020 programme should be evaluated against all the aspects that influence euro counterfeiting and fraud. Therefore, the ECB, Europol and the competent national authorities, all of which have gained substantial relevant expertise and information, should be fully involved in the evaluation of the achievement of the Pericles 2020 programme's objectives. Moreover, the ECB's and Europol's agreement on the final evaluation report should be sought..