EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 December 2019

on limitations to cash payments

(CON/2019/46)

Introduction and legal basis

On 3 December 2019 the European Central Bank (ECB) received a request from the Netherlands Minister for Finance for an opinion on a draft law on an anti-money laundering action plan containing limitations to cash payments (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 the second indent of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to means of payment. 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

1.1 The draft law intends to reinforce the measures taken to prevent money laundering by limiting the use of large amounts of cash.

1.2 The draft law prohibits natural or legal persons trading in goods, in the course of their business or professional activities, from receiving or making a payment in cash in an amount equal to or greater than EUR 3 000, regardless of whether the transaction is carried out in a single operation or in several operations which appear to be linked. The ECB understands that the draft law is addressed to professional parties and will only affect consumers if they buy or sell goods from such a professional party. Transactions between consumers are not covered by the draft law.

2. Observations

2.1 Commission Recommendation 2010/191/EU[2] states that the acceptance of payments in cash should be the rule, but acknowledges that cash may be refused for reasons related to the 'good faith principle', without this constituting a breach of the legal tender status of cash. Neither Union law nor Recommendation 2010/191/EU explicitly addresses whether, or to what extent, it may be permissible to introduce a more general limitation to the obligation to accept euro cash payments. Therefore, Union law must be interpreted in order to ascertain the conditions that a limitation on payments in euro banknotes and coins should fulfil, including the conditions that should be fulfilled

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 Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ L 83, 30.3.2010, p. 70).

to comply with the legal tender status of euro banknotes and coins when general limitations to the obligation to accept cash payments are introduced[3].

2.2 Recital 19 of Council Regulation (EC) No 974/98[4] states that 'limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available[5]. Additionally, these limitations should also be effective and proportionate to the objectives pursued and not go beyond what is necessary to achieve such objectives in order to comply with the legal tender status of euro banknotes. Any limitation should not otherwise affect in principle the legal tender status of euro banknotes. Any negative impact of the proposed limitations should therefore be carefully weighed against the anticipated public benefits. When considering whether a limitation is proportionate, the adverse impact of the limitation in question should always be considered, as well as whether any alternative measures could be adopted that would fulfil the relevant objective and have less adverse impact[6].

2.3 The ECB acknowledges that the draft law's objective of reinforcing measures taken to prevent money laundering may, in general, constitute a 'public reason' justifying the establishment of limitations on cash payments[7].

2.4 Furthermore, the ability to pay in cash remains particularly important for certain groups in society that, for various legitimate reasons, prefer to use cash rather than other payment methods. Cash is generally also appreciated as a payment instrument because it is widely accepted, fast, and facilitates control over the payer's spending. Moreover, it is the only means of payment that allows citizens to instantly settle a transaction in central bank money and at face value, without the legal possibility to impose a fee for the use of this means of payment[8].

2.5 Other lawful means for the settlement of monetary debts with similar benefits as cash are generally available in the Netherlands for the purchase of goods, also above the foreseen threshold of EUR 3 000. Taking this into consideration, in addition to the above general observations, the limitations on cash payments set out in the draft provisions could be deemed proportionate to the objectives pursued. They could also be deemed to not go beyond what is necessary to achieve such objectives. However, the ECB cannot elaborate on the effectiveness of the draft law since no substantiation thereof has been provided together with the draft law.

2.6 The ECB takes particular note of the approach adopted in the draft law, whereby the prohibition on the receipt or payment of cash in an amount equal to or greater than EUR 3 000 is limited to transactions whereby at least one of the parties is trading in goods in the course of their business or professional activities. The ECB welcomes the approach taken by the Netherlands authorities not to restrict cash payments between private users or consumers.

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3 See paragraph 2.1 of Opinion CON/2017/18, paragraph 3.1 of Opinion CON/2017/20, paragraph 2.3 of Opinion CON/2017/27, paragraph 2.2 of Opinion CON/2017/40 and paragraph 2.2 of Opinion CON/2019/4. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

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

5 See, for example, Opinions CON/2013/18, CON/2014/4 and CON/2014/37.

6 See, for example, paragraph 3.3 of Opinion CON/2017/20, paragraph 2.7 of Opinion CON/2017/27, paragraph 2.6 of Opinion CON/2017/40 and paragraph 2.5 of Opinion CON/2019/4.

7 See, for example, paragraph 2.5 of Opinion CON/2017/40.

8 See paragraph 2.6 of Opinion CON/2017/18, paragraph 3.4 of Opinion CON/2017/20, paragraph 2.8 of Opinion CON/2017/27, paragraph 2.7 of Opinion CON/2017/40 and paragraph 2.6 of Opinion CON/2019/4.

2.7 The ECB understands that electronic payment instruments are increasingly used as the method of payment in the Netherlands, while the use of cash is declining. Nevertheless, as indicated above, cash is a well-established means of payment providing for immediate settlement of debts and direct control over the payer's spending, and also facilitates the inclusion of the entire population in the economy by allowing it to settle any kind of financial transaction in this way[9]. The ECB notes that cash could play an important role in the event of a disturbance in the payment systems, even though cash machines and other service points may also be affected as these are dependent on interaction with the account holding institutions. The ECB considers it important that all Member States take appropriate measures to ensure that credit institutions and branches operating within their territories provide adequate access to cash services, in order to facilitate the continued use of cash[10].

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

Done at Frankfurt am Main, 30 December 2019.



The President of the ECB

Christine LAGARDE

9 See, Opinion CON/2017/8, Opinion CON/2017/40, Opinion CON/2019/4, and paragraph 2.1 of Opinion CON/2019/41.

10 See paragraphs 2.1 and 2.3 of Opinion CON/2019/41.