



OPINION OF THE EUROPEAN CENTRAL BANK

of 1 February 2013

on limitations on cash payments

(CON/2013/9)

Introduction and legal basis

On 10 January 2013, the European Central Bank (ECB) received a request from the Danish Ministry of Justice for an opinion on a draft law amending the Criminal Code, the Law on the administration of justice, the Law on measures to prevent money laundering and financing of terrorism and various other laws (strengthened measures against economic crime) (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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law relates, *inter alia*, 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 aims at providing the best possible conditions for the prevention, investigation and prosecution of economic crime in the wake of the financial crisis. One of the measures will limit to DKK 50 000 cash payments to economic operators to prevent money laundering and financing of terrorism². Currently retailers and auctioneers may receive cash payments of up to DKK 100 000³. The scope is extended to cover all economic operators⁴ and the amount of cash they may accept is thus reduced to DKK 50 000⁵. This new limit takes into consideration the need for citizens to retain access to cash payments and the risk of money laundering associated with large cash payments⁶.
- 1.2 Finally, cash payments of DKK 50 000 or more to economic operators in breach of the prohibition will still be considered legal tender⁷.

¹ OJ L 189, 3.7.1998, p. 42.

² § 12 of the draft law which amends § 1(2) and § 2 of the Law on measures to prevent money laundering and financing of terrorism.

³ § 2 of the Law on measures to prevent money laundering and financing of terrorism.

⁴ § 1(2) of the Law on measures to prevent money laundering and financing of terrorism. The scope is extended to all economic operators not covered by the investigation and information obligations in the law.

⁵ § 12 of the draft law.

⁶ Point 12.2.2 of the Explanatory Memorandum of the draft law.

⁷ § 8(2) of the Law on Danmarks Nationalbank.

2. Compatibility with Union law

- 2.1 Although Union law only regulates restrictions on cash payments in euro, the ECB considers it appropriate to assess the draft law's provisions against the relevant Eurosystem practices.
- 2.2 The ECB notes that the draft law is in compliance with Union law, and in particular with recital 19 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁸, which 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'⁹. The ECB acknowledges that: (i) such other lawful means for the settlement of monetary debts, other than cash, are available in Denmark; and (ii) the draft law's objective of preventing money laundering and financing of terrorism qualifies as a public reason outweighing the impact of the limitations on cash payments.
- 2.3 However, limitations on cash payments should be proportionate to the general objective of preventing money laundering and financing of terrorism and should not go beyond what is necessary to achieve this objective. Any impact of the proposed provisions should be carefully weighed against the public benefits expected to be derived from them. Also in view of the fact that the measures affect relatively low value payments, the competent authorities should ensure that the effects of these measures do not go beyond what is necessary for achieving the objective of combating money laundering and financing of terrorism.

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

Done at Frankfurt am Main, 1 February 2013.

[signed]

The President of the ECB

Mario DRAGHI

⁸ OJ L 139, 11.5.1998, p. 1.

⁹ See most recently Opinion CON/2012/83. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.