



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 11 July 2017

on limitation of cash payments

(CON/2017/27)

Introduction and legal basis

On 27 June 2017 the European Central Bank (ECB) received a request from the Bulgarian Ministry of Finance for an opinion on a draft amendment to the law on limitation of 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/EC¹, 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 seeks to gradually decrease the maximum limit for cash payments in Bulgaria from the current limit of BGN 10 000 to BGN 1 000 by 2019. The same maximum limit would apply to the payment of instalments in performance of a contractual obligation where the total amount is above the maximum limit.
- 1.2 As in the currently applicable law, the maximum limit would apply both to payments in BGN, as well as payments in foreign currencies which are of equivalent amounts.
- 1.3 In the explanatory memorandum accompanying the draft law the consulting authority explains that the draft law is in line with the Government's objectives to reduce the shadow economy and perceives that this is in conformity with the current practice in other Member States. The consulting authority also explains that the draft law will help reduce the possibility of concealing accounting information concerning revenue generated by the sale of goods and services, and paid salaries and wages for which no taxes and social security contributions are deducted.

2. Observations

- 2.1 The ECB notes that Bulgaria is a Member State with a derogation pursuant to Article 139 of the Treaty, and has obligations regarding the achievement of economic and monetary union pursuant to Article 140 of the Treaty. Against this backdrop, the ECB has prepared an assessment of the

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).

- draft law's provisions against relevant practices in the euro area, in particular the legal requirements for the euro and the legal tender status of euro banknotes².
- 2.2 Under the Treaty, the European System of Central Banks (ESCB) is required to act, inter alia, in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources³. The ESCB has the basic task of promoting the smooth operation of payment systems⁴, and the ECB has the exclusive right to authorise the issue of euro banknotes within the Union⁵. The euro banknotes issued by the ECB and the national central banks of the euro area shall be the only banknotes to have the status of legal tender status within the euro area⁶.
- 2.3 The Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins⁷ (hereinafter the 'Commission Recommendation') 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 the Commission Recommendation explicitly address whether, nor 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 notes and coins should fulfil, including the conditions that should be fulfilled to comply with the legal tender status of euro banknotes and coins when general limitations to the obligation to accept cash payments are introduced⁸.
- 2.4 Recital 19 of Council Regulation (EC) No 974/98⁹, 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'¹⁰, has been taken into account in previous ECB opinions considering the introduction of cash limitations under draft national laws. While other lawful means for the settlement of monetary debts, which ensure similar benefits to those of cash, are available in Bulgaria for business involving transactions with consumers, their general availability to all parts of society, at comparable costs as cash, should be closely verified by the consulting authority.
- 2.5 In this respect, Directive 2014/92/EU of the European Parliament and of the Council¹¹ has made it easier for Union citizens to obtain payment accounts and related electronic payment services as

² See paragraph 2.1 of Opinion CON/2017/8 and paragraph 2.1 of Opinion CON/2010/79. All ECB opinions are published on the ECB's website at www.ecb.europa.eu

³ See Article 127(1) of the Treaty and Article 2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

⁴ Article 127(2) of the Treaty and Article 3.1 of the Statute of the ESCB.

⁵ Article 128(1), first sentence of the Treaty and Article 16, first sentence of the Statute of the ESCB.

⁶ Article 128(1), third sentence of the Treaty and Article 16, third sentence of the Statute of the ESCB.

⁷ OJ L 83, 30.3.2010, p. 70.

⁸ See paragraph 2.1 of Opinion CON/2017/18 and paragraph 3.1 of Opinion CON/2017/20.

⁹ Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

¹⁰ See, for example, Opinions CON/2013/18, CON/2014/4 and CON/2014/37.

¹¹ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

alternatives to cash¹². In Bulgaria the law on payment services and payment systems aims to create the conditions for making a minimum set of banking services accessible to all citizens. However, such banking services and electronic payment services offered by commercial entities may be subject to charges.

- 2.6 The ECB acknowledges that the draft law's objectives of limiting the share of the shadow economy and combating tax evasion might, in general, constitute 'public reasons' justifying the establishment of limitations on cash payments. However, any limitation needs to comply with the legal tender status of euro banknotes. Therefore, it would need to be demonstrated that the proposed cash payment limitations affecting the legal tender status of euro banknotes would be effective as regards the achievement of the public objectives that are being legitimately pursued by the limitations. Hence, there should be clear evidence that such limitations are likely, in fact, to achieve the stated public goal of reducing the size of the shadow economy and combating tax evasion.
- 2.7 Limitations on cash payments should also be proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives, especially in view of the fact that the measures set out in the draft law affect transactions between natural persons and involve payments for relatively small amounts. 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 alternative measures could be adopted that would fulfil the relevant objective and have a less adverse impact¹³. Cashless means of payments that provide similar advantages as payments in cash are currently not available for transactions between private persons.
- 2.8 Furthermore, it should be borne in mind that 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 instruments. Cash is generally also appreciated as a payment instrument because it is, as legal tender, widely accepted, fast and facilitates control over the payer's spending. Moreover, it is still 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. Additionally, cash payments facilitate the inclusion of the entire population in the economy by allowing it to settle any kind of financial transaction in this way.
- 2.9 Establishing a cash limit for all transactions between private individuals (as opposed to only sector-specific cash limitations over taxable transactions) does not mitigate the risk of tax evasion as in many circumstances such transactions are not taxable. Instead, it only makes it more difficult to settle legitimate private transactions using cash as a means of payment, thus endangering the concept of legal tender enshrined in the Treaty.

12 Within the framework previously created by Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1), which introduced the legal basis for the creation of an internal market for payments within the Union and allowed for the creation of the Single Euro Payments Area (SEPA).

13 See, for example, paragraph 2.3 of Opinion CON/2014/4, paragraph 2.3 of Opinion CON/2014/37 and paragraphs 2.6 and 2.7 of Opinion CON/2017/8.

- 2.10 In particular, the decreasing limits on cash payments proposed by the draft law need to take into account the advantages of having limits on cash payments in place and the potential inconvenience thereof for citizens' regular transactions in certain market segments. Setting the limitation at these levels may make it difficult to implement the limit in practice. In this regard, it should be noted that Directive (EU) 2015/849 of the European Parliament and of the Council¹⁴, whilst confirming the vulnerability of large cash payments to money laundering and terrorist financing, nevertheless applied customer due diligence measures to cash payments of EUR 10 000 or more. This implies that the draft law should establish a proportionate threshold for limits to cash payments, taking into account the objectives of such limits.
- 2.11 Against this background, the ECB considers the lowering of the limit on cash payments to BGN 1000 (approximately EUR 500) by the 1st of January 2019 as disproportionate, in the light of the potentially adverse impact on the cash payment system. In case the legislator wishes to pursue the proposed cash payment limitations a higher threshold should be chosen and a degree of flexibility should be introduced in the draft laws by, for example, allowing the delivery and receipt of cash payments for compelling reasons or for reasons that are outside the individual's control¹⁵, such as where no payment service provider is available at the place or time of the payment. It might also be advisable to allow cash transactions above the defined thresholds as long as the parties are able to ensure that the payment is traceable by identifying the amount, the reason for the transaction and the parties involved.

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

Done at Frankfurt am Main, 11 July 2017.

[signed]

The President of the ECB

Mario DRAGHI

¹⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 29 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

¹⁵ See Opinions CON/2013/18 and CON/2014/37.