



OPINION OF THE EUROPEAN CENTRAL BANK

of 10 November 2010

on restrictions on cash payments

(CON/2010/79)

Introduction and legal basis

On 4 October 2010 the European Central Bank (ECB) received a request from the Bulgarian Ministry of Finance for an opinion on a draft law on restrictions on 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 and fifth indents 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 to means of payment and payment and settlement systems. 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 is intended to limit cash payments within Bulgaria to BGN 5 000 (around EUR 2 557) or its foreign currency equivalent. Payments amounting to or exceeding BGN 5 000 are to be made either via a transfer or a deposit in a payment account. Also, in order to avoid circumvention of this restriction, the draft law provides that separate cash instalments on a single contractual monetary obligation must also be made via a transfer or a deposit in a payment account, if such contractual monetary obligation amounts to or exceeds BGN 5 000². This prohibition applies equally to individuals and legal entities with the only distinction being the difference in the amount of the fine to be imposed in the case of non-compliance³. In addition, the draft law amends Bulgaria’s Labour Code, providing for payment of any employment remuneration only to the payment account specified by an employee or a worker if payment services providers operate at the place of residence or work of that employee or worker⁴.

1 OJ L 189, 3.7.1998, p. 42.

2 See Article 1 of the draft law.

3 See Article 2 of the draft law.

4 See §3 of the Transitional and Final Provisions of the draft law.

- 1.2 According to the explanatory memorandum, the widespread practice of not recording cash flows for accounting purposes constitutes a major problem for the Bulgarian economy. Cash payments are currently used to settle transactions involving legal entities and individuals and to pay employment remuneration. This has resulted in tax evasion and lower social insurance and pension contribution payments. Therefore, the adoption of the draft law aims at significantly increasing national revenue and helping to shrink the grey economy in Bulgaria.
- 1.3 In addition, the introduction of restrictions on cash payments is intended to provide for a stricter measure tailored to the specific situation in Bulgaria, to properly address the risk involved with large cash payments, as described in recital 18 of Directive 2005/60/EC⁵.
- 1.4 The explanatory memorandum further points out that the banking sector in Bulgaria has built up a widespread bank branch network, which will be able to process the increased volume of non-cash payments, following the adoption of the draft law.

2. Specific observations

- 2.1 The ECB notes that Union law only regulates restrictions on cash payments in euro⁶. However, for consistency reasons, the ECB considers it appropriate to assess the draft law's provisions against the relevant Eurosystem practices.
- 2.2 In this context, the ECB notes that the draft law is in compliance with Union law⁷, and in particular with recital 19 of Council Regulation (EC) No 974/98, 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'. The ECB acknowledges that such other lawful means are available in Bulgaria. The ECB further notes that the draft law's prohibition of cash payments of and above BGN 5 000 does not affect the legal tender status of lev banknotes⁸.
- 2.3 Finally, the ECB acknowledges that the draft law's objectives of: (i) addressing national revenue shortages, especially at times when Member States are urged to implement necessary fiscal consolidation measures; (ii) shrinking the grey economy in Bulgaria; and (iii) enforcing stricter anti-money-laundering measures tailored to the Bulgarian situation, qualify as public benefits outweighing the impact of the draft law's restrictions on cash payments. Therefore, the ECB

⁵ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

⁶ See recital 19 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

⁷ See paragraph 5 of Opinion CON/2002/24, reiterated in paragraph 2.3.2 of Opinion CON/2010/36.

⁸ The legal tender status of lev is laid down in Article 24 and Article 25(2) of the Law on the Bulgarian National Bank, published in *Darjaven vestnik*, issue 46 of 10 June 1997.

considers the draft law's limitations on cash payments in lev banknotes and coins proportionate to the objectives pursued.

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

Done at Frankfurt am Main, 10 November 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET