



OPINION OF THE EUROPEAN CENTRAL BANK

of 8 May 2012

on limitations on cash payments

(CON/2012/33)

Introduction and legal basis

On 26 April 2012 the European Central Bank (ECB) received a request from the Spanish Ministry of Finance and Public Administrations for an opinion on a proposal for a draft Law on the amendment and adjustment of tax and fiscal regulations to strengthen actions for preventing and fighting tax fraud (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 provisions, 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 implements a number of measures aimed at combating tax evasion. One such measure is a limitation on the amounts that can be paid in cash for transactions where at least one of the parties is acting in a professional or business capacity.
- 1.2 The limit is set at an amount of EUR 2 500, with a higher limit of EUR 15 000 if the payer is an individual who, (i) can demonstrate that he/she is not a tax resident in Spain, and (ii) does not act in a professional or business capacity. In addition, these limitations shall not be applied to payments and deposits made with credit institutions.

2. General observations

- 2.1 The ECB notes that the draft law is in compliance with Union law¹, 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

¹ See paragraph 5 of Opinion CON/2002/24, reiterated in paragraph 2.3.2 of Opinion CON/2010/36 and paragraph 2.2 of Opinion CON/2010/79. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

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monetary debts are available'. The ECB acknowledges that: (i) such other lawful means for the settlement of monetary debts, other than cash, are available in Spain; and (ii) the draft law's objective of combatting tax evasion qualifies as a public reason outweighing the impact of the limitations on cash payments.

- 2.2 However, limitations on payments in cash should be proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives. Any impact of the proposed limitations should be carefully weighed against the public benefits expected to be derived from the proposed restrictions on payments in cash. The competent authorities should ensure that the effects of these measures do not go beyond what is necessary for achieving the objective of combating tax evasion.

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

Done at Frankfurt am Main, 8 May 2012.

[signed]

The President of the ECB

Mario DRAGHI