



OPINION OF THE EUROPEAN CENTRAL BANK

of 10 May 2012

on limitations on cash payments

(CON/2012/37)

Introduction and legal basis

On 17 April 2012 the European Central Bank (ECB) received a request from the Danish Ministry for Economic Affairs and the Interior on behalf of the Ministry of Taxation for an opinion on a Law amending the Law on tax assessment and various other laws (measures aimed at tax evasion)¹ (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 provisions², 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 of the measures is the tightening of the rules on cash payments in order to ensure greater traceability of payments. The draft law proposes the following two requirements on which the ECB is consulted.
- 1.2 The first requirement proposed is that any purchase of services or goods in connection with services above an amount of DKK 10 000³ by an individual is to be made by electronic payment. The individual may be held jointly and severally liable with the provider of the services for any tax and/or VAT which the provider has evaded⁴ if the individual chooses to make a cash payment. The aim of the requirement to make electronic payments is to create a transaction trail of the payments

¹ The Law on tax assessment, see Consolidated law No 1017 of 28 October 2011 with later amendments, Law no 1333 of 19 December 2008 on the recovery of public debt with later amendments, Law No 403 of 8 May 2006 on an income register, Law on taxation according to source of income, see Consolidated law no 1403 of 7 December 2010 with later amendments, Law on the collection of tax and charges, see Consolidated law No. 1402 of 7 December 2010 with later amendments, Law on the registry of vehicles, see Consolidated law No 580 of 7 June 2011, Law on controlling taxes, see Consolidated law No 819 of 27 June 2011 with later amendments, the Law on value added tax, see Consolidated law No 287 of 28 March 2011 with later amendments and Law No 521 of 12 June 2009 amending the Law on taxation according to source of income.

² OJ L 189, 3.7.1998, p. 42.

³ Approximately EUR 1 330.

⁴ The proposal gives rise to liability for the purchaser only if the provider fails to declare the payment for tax purposes or fails to report the VAT on the payment. See p. 12 of the Explanatory Memorandum.

in order to identify the payer and the payee. The proposal also attempts to reduce the turnover of cash in order to reduce the black market for purchases of goods and services.

The draft law also proposes that individuals who, in particular instances, are not able to pay electronically have the option to avoid liability for the failure of the provider to declare taxes and VAT. This option is conditional upon the individual notifying SKAT, the Danish tax authority, about the purchase made and the payment thereof via SKAT's website.

- 1.3 The second requirement proposed is that any transaction between companies above an amount of DKK 10 000⁵ shall be made electronically. If such payments are not made electronically, the companies will be denied any relevant tax deductions which they may be entitled to and they will be held jointly and severally liable⁶ under the VAT rules⁷.

The direct joint and several liability in the area of VAT means that the tax authority, when recovering an outstanding tax and VAT balance, may seek to have the sum paid either by the purchaser or the provider in the order that the tax authority chooses. Whether the tax authority chooses to collect the sum due from the provider or the purchaser has no effect on the liability. The liability, in such cases, will follow the general rules governing joint and several liability.

The introduction of joint and several liability in relation to VAT payments mentioned above aims to combat tax evasion and make it easier to detect transactions which have the evasion of VAT and other taxes as their purpose. Given that a transaction trail is created, it is anticipated that this will have a positive and crime-preventing effect on unreported employment, chain fraud and fictitious invoices used for the purposes of tax and VAT evasion. Furthermore, it is anticipated that unregistered firms will have trading difficulties, as purchasers will need to obtain documentation for incurred expenditure.

- 1.4 The two legislative requirements set out above under paragraphs 1.2 and 1.3 introduce joint and several liability for any individual purchasing services and for business-to-business transactions. Although this does not constitute a legal prohibition on cash payments, it will, in practice, limit the practical opportunity for a customer or a company to make cash payments above DKK 10 000.

2. Specific observations

- 2.1 The ECB notes that Union law only regulates restrictions on cash payments in euro⁸. However, for consistency reasons, the ECB considers it appropriate to assess the draft law's provisions against the relevant Eurosystem practices.

⁵ The proposed threshold of DKK 10 000 mirrors the limit for the individual who chooses to pay cash when purchasing a service.

⁶ The proposal gives rise to liability for companies only if the provider fails to report the VAT on the purchase. See page 13 of the Explanatory Memorandum.

⁷ Article 205 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, (OJ L 347, 11.12.2006, p. 1) sets out the legal basis for joint and several liability for the purchaser. Under page 25 of the Explanatory Memorandum, the joint and several liability is thus in accordance with the Directive.

⁸ 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).

ECB-PUBLIC

- 2.2 The ECB notes that the draft law is in compliance with Union law⁹, 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: (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 combating tax evasion qualifies as a public reason outweighing the impact of the limitations on cash payments.
- 2.3 The ECB further notes that the draft law’s provisions on joint and several liability in relation to cash payments exceeding DKK 10 000 do not affect the legal tender status of Danish krone banknotes¹⁰.
- 2.4 However, the effects of these provisions containing practical limitations on the possibility for a customer or an undertaking to make cash payments above DKK 10 000 should be proportionate to the general objective of combating tax evasion 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 may 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 tax evasion.

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

Done at Frankfurt am Main, 10 May 2012.

[signed]

The President of the ECB

Mario DRAGHI

⁹ 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.

¹⁰ The legal tender status of Danish kroner is set out in Article 8 of the Law on Danmarks Nationalbank (Law No 116 of 7 April 1936 with later amendments).