



## OPINION OF THE EUROPEAN CENTRAL BANK

of 22 May 2014

on the limitation of cash payments and receipts

(CON/2014/37)

### Introduction and legal basis

On 15 April 2014, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft law on strengthening financial discipline in relation to cash payments and receipts and amending and supplementing a Government emergency ordinance on the introduction of modern payment systems (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<sup>1</sup>, 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 aims to combat tax evasion and tax fraud and to strengthen financial discipline. It replaces Government Ordinance No 15/1996 on strengthening financial and foreign currency discipline<sup>2</sup>, which limits cash payments and receipts between legal persons<sup>3</sup>, by introducing stricter limitations. In addition, the draft law amends Government Emergency Ordinance No 193/2002 on introducing modern payment systems<sup>4</sup> by placing certain ceilings on interchange fees.

#### *Limitation on cash payments and receipts*

1.2 The draft law limits cash payments and receipts in national and foreign currency between legal and natural persons as follows:

- (a) operations performed by legal persons are limited to a maximum amount per single transaction of RON 5 000 (around EUR 1 100) per day and a total amount of RON 10 000 (around EUR 2 200) per day;

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<sup>1</sup> 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).

<sup>2</sup> Published in *Monitorul Oficial al României*, Part I, No 24/31.1.1996.

<sup>3</sup> The maximum value of transactions with a single legal person is specified as RON 5 000 (around EUR 1 100) per day and the total value of transactions per day as RON 10 000 (around EUR 2 200) .

<sup>4</sup> Published in *Monitorul Oficial al României*, Part I, No 942/23.12.2002.

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- (b) the maximum amount in respect of operations performed by natural persons is RON 10 000 (around EUR 2 200) per transaction per day;
- (c) fragmented cash payments and receipts and incentives for cash operations are forbidden;
- (d) amounts exceeding the limits are to be split between cash up to the specified ceiling and cashless payment instruments in respect of the remainder.

These limitations do not apply to credit institutions, electronic money institutions, institutions that provide payment services, non-banking financial institutions and entities conducting foreign exchange operations.

- 1.3 The proposed limitations on operations performed by legal persons do not apply to: (a) cash deposits in accounts with credit institutions or institutions that provide payment services; (b) payment of travel expenses for business purposes; (c) cash payment of taxes, fees, contributions, fines and other obligations owed to the general consolidated state budget; (d) cash withdrawal from accounts with credit institutions or institutions that provide payment services for the purposes of paying wages and other employee entitlements; (e) ATM cash withdrawals; and (f) transfer of amounts through institutions that provide payment services.
- 1.4 The Ministry of Public Finance and the National Fiscal Administration Agency will assess compliance with the limitations and impose fines. Fines are to be set at 25 % of the amount received or paid in excess of the relevant ceiling.

### *Ceilings on interchange fees*

- 1.5 The draft law limits the interchange fees for card-based transactions to 0.2 % of the value of the transaction for debit cards and 0.3 % of the value of the transaction for credit cards. Commercial card operations, ATM cash withdrawals and operations with cards issued by three-party card payment systems are exempt from these limitations.
- 1.6 Failure to comply with the limitations is sanctioned with a fine.

## **2. General observations**

- 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 draft law complies with Union law and is in line with recital 19 of Council Regulation (EC) No 974/98<sup>5</sup>, 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'<sup>6</sup>. The ECB acknowledges that other lawful means for the settlement of monetary debts, ensuring similar benefits to those of cash, are generally available in Romania. The ECB also acknowledges that the

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<sup>5</sup> Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

<sup>6</sup> See, most recently, Opinion CON/2014/4. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

draft law's objectives of combating tax evasion and money laundering qualify as public reasons justifying the establishment of the abovementioned limitations on cash payments.

- 2.3 Limitations on cash payments should 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 contained in the draft law also affect transactions between natural persons and the fact that a proportion of the Romanian population do not have bank accounts. Any negative impact of the proposed limitations should therefore be carefully weighed against the anticipated public benefits.
- 2.4 In this respect, the ECB notes that the recently adopted Directive of the European Parliament and of the Council on the transparency and comparability of payment account fees, payment account switching and access to a basic payment account<sup>7</sup> could make it easier for Union citizens to obtain payment accounts and related electronic payment services as an alternative to cash.
- 2.5 The ECB also notes the recent Union legislative initiatives in this field, in particular the European Commission's proposal for a regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions<sup>8</sup>, which was published in July 2013 and is currently being discussed in the Council of the European Union. As the European Parliament has already agreed on a position, it is likely that the proposed regulation will be adopted before the end of 2014. Since certain provisions of the draft law address similar matters to those in the proposed regulation, the ECB recommends awaiting the adoption of the regulation prior to taking any further legislative action in this area at national level.

### **3. Specific observations**

- 3.1 The explanatory memorandum to the draft law does not mention the social impact of the limitation on cash payments and receipts contained in the draft law. Given that limitations are to be placed on transactions between natural persons and that a proportion of the Romanian population do not have bank accounts, a social impact assessment may be useful in weighing any negative impact of the proposed limitations against the anticipated public benefits.
- 3.2 The ECB recommends introducing a degree of flexibility into the draft law by, for example, allowing cash payments and receipts for compelling reasons or for reasons that are outside the customer's control<sup>9</sup>, such as where no payment service provider is available at the place or on the date of payment.
- 3.3 The ECB suggests that the definitions of 'fragmented receipt' and 'fragmented payment'<sup>10</sup> should be further elaborated to provide clear criteria for the identification of the envisaged fragmentation.
- 3.4 The ECB further recommends clarifying whether the limitations noted in paragraph 3.1 cover cash

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<sup>7</sup> Adopted on 15 April 2014. Not yet published in the Official Journal.

<sup>8</sup> COM (2013) 550 final.

<sup>9</sup> See CON/2013/18.

<sup>10</sup> Article 2(a) and (b) of the draft law.

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payment and receipt operations between natural persons for the transfer of ownership over goods or rights, the supply of services and the granting or reimbursement of loans.

- 3.5 With a view to enhancing legal certainty, the ECB also recommends clarifying to whom fines payable for failure to comply with the limitations on cash payments and receipts<sup>11</sup> are addressed.

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

Done at Frankfurt am Main, 22 May 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>11</sup> Article 12 of the draft law.