



EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 6 October 2017

on limitations to cash payments

(CON/2017/40)

### Introduction and legal basis

On 29 August 2017, the European Central Bank (ECB) received a request from the Cypriot Minister for Finance for an opinion on draft provisions (hereinafter the 'draft provisions') contained in a draft law amending the Law for the Prevention and Suppression of Money Laundering Activities Laws of 2007 to 2016 (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 provisions relate 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 and the draft provisions**

- 1.1. As stated in the explanatory note, the main aim of the draft law is to harmonise Cypriot legislation with Directive (EU) 2015/849 of the European Parliament and of the Council<sup>2</sup>. More specifically, the purpose of the draft provisions is to transpose point (e) of Article 2(1)(3) of Directive (EU) 2015/849 into Cypriot law. Pursuant to point (e) of Article 2(1)(3), natural or legal persons ('other persons') trading in goods in the exercise of their professional activities to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked, are deemed to be 'obliged entities'.
- 1.2. The draft provisions prohibit persons trading in goods, in the course of their business activities, from receiving in cash an amount equal to or greater than EUR 10 000, regardless of whether the transaction is carried out in a single operation or in several operations which appear to be linked. The draft provisions further provide that the infringement of the prohibition constitutes a criminal offence for the person trading in goods that is punishable with a fine not exceeding 10 % of the amount received in cash.

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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> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 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).

- 1.3. As stated in the explanatory note, the Cypriot authorities have examined policy options to satisfy point (e) of Article 2(1)(3) of Directive (EU) 2015/849, with a view to achieving this in an effective and efficient way, with as little cost as possible to businesses and society. The authorities have examined the option of establishing customer identification and due diligence procedures to be carried out by 'other persons' trading in goods, not already covered by the legislation in force. Such a policy option would necessitate the establishment of a supervisory authority empowered with the responsibility to monitor compliance. The other policy option examined was to curtail the use of cash payments to an amount of less than EUR 10.000 per transaction involving the trading of goods. As stated in the explanatory note the second option was deemed appropriate by the authorities, as it follows the threshold and scope of Directive (EU) 2015/849 in so far as persons trading in goods are impacted. Additionally, it seemed to the consulting authorities to be the most effective way to mitigate money laundering and terrorist financing risks in relation to cash transactions, relying on the analysis of the European Commission's Supranational Risk Assessment Report on Money Laundering and Terrorist Financing of 26 June 2017<sup>3</sup>. Moreover, such an approach seemed to the authorities to be the most cost effective option, as it avoids significant administrative burden to general trading businesses and the authorities, whilst not imposing any additional requirements or undue burden on the Central Bank of Cyprus in its capacity as a euro currency issuer. Finally, the payment systems' infrastructure in Cyprus was considered to be well developed, offering a wide range of payment channels and instruments which may be used by traders and businesses in general as an alternative to cash.
- 1.4. As noted in the explanatory note it seems that variants of the approach providing for limitation of cash payments have already been pursued by other Member States<sup>4</sup>.

## 2. General observations

- 2.1. This opinion does not address whether the draft provisions effectively transpose Directive (EU) 2015/849 into Cypriot law. The focus of this opinion is on the limitation of cash payments in relation to the legal tender status of euro notes and coins.
- 2.2. The Commission's Recommendation on the scope and effects of legal tender of euro banknotes and coins<sup>5</sup> (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 addresses 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

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<sup>3</sup> SWD/2017/0241 final, available on the Commission's website at [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>4</sup> Including eight euro area Member States: Belgium, Greece, Spain, France, Italy, Latvia, Slovenia and Slovakia.

<sup>5</sup> Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ L 83, 30.3.2010, p. 70)

- 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 introduced<sup>6</sup>.
- 2.3. Recital 19 of Council Regulation (EC) No 974/98<sup>7</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’, should be taken into account. Such other lawful means, uniformly acceptable for use within euro area, should be readily accessible to all citizens and economic agents, resident or non-resident, in the respective Member State.
  - 2.4. In this respect, the ECB notes that Directive 2014/92/EU of the European Parliament and of the Council<sup>8</sup> has made it easier for Union consumers to obtain payment accounts and related electronic payment services as alternatives to cash. In the Republic of Cyprus, Directive 2014/92/EU was transposed by the Comparability of Fees, Payment Account Switching and Access to Payment Accounts Law of 2017<sup>9</sup>, which establishes the legal framework for the creation of the conditions for making a minimum set of banking services accessible to all consumers.
  - 2.5. The ECB also acknowledges that the objective of combating money laundering may, in general, qualify as ‘public reasons’ justifying the establishment of limitations on cash payments, but any limitation should not otherwise affect in principle the legal tender status of euro banknotes<sup>10</sup>.
  - 2.6. Limitations on cash payments should, therefore, be effective and proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives. 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 impact<sup>11</sup>.
  - 2.7. 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 widely accepted, fast, secure and facilitates control over the payer’s spending. Moreover, it is a means of payment that allows citizens or economic agents in general 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<sup>12</sup>.

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<sup>6</sup> See, for example, paragraph 2.3 of Opinion CON/2017/27, paragraph 3.1 of Opinion CON/2017/20 and paragraph 2.1 of Opinion CON/2017/18. All ECB opinions are available on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>7</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>8</sup> 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).

<sup>9</sup> Law of 64(I)/2017.

<sup>10</sup> See, for example, paragraph 2.4 of Opinion CON/2017/18.

<sup>11</sup> See, for example, paragraph 2.7 of Opinion CON/2017/27, paragraph 3.3 of Opinion CON/2017/20, paragraph 2.5 of Opinion CON/2017/18, paragraphs 2.6 and 2.7 of Opinion CON/2017/8, paragraph 2.3 of Opinion CON/2014/37 and paragraph 2.3 of Opinion CON/2014/4.

<sup>12</sup> See, for example, paragraph 2.8 of Opinion CON/2017/27, paragraph 3.4 of Opinion CON/2017/20 and paragraph 2.6 of Opinion CON/2017/18.

2.8. The ECB considers that other lawful means for the settlement of monetary debts are generally available to consumers in the Republic of Cyprus for the purchase of goods, also above the foreseen threshold of EUR 10 000, with similar benefits as cash. Taking also into consideration the above general observations, the limitations on cash payments in the draft provisions may be deemed proportionate to the objectives pursued and do not go beyond what is necessary to achieve such objectives.

**3. Specific observation**

3.1. The ECB takes particular note of the approach adopted in the draft provisions, whereby the prohibition on the receipt of cash in an amount equal to or greater than EUR 10 000 is limited to transactions whereby the cash recipient is trading in goods in the course of business activities. The ECB understands that it is not therefore proposed to prohibit the receipt of EUR 10 000 or more where the cash recipient is not a person trading in goods in the course of his/her business. The ECB welcomes the approach taken by the Cypriot authorities not to establish any restrictions on cash payments between private users or consumers.

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

Done at Frankfurt am Main, 6 October 2017.

[signed]

*The President of the ECB*

Mario DRAGHI