EUROPEAN CENTRAL BANK

EUROSYSTEM

# OPINION OF THE EUROPEAN CENTRAL BANK

**of 17 January 2014**

**on limitations on cash payments**

**(CON/2014/4)**

## Introduction and legal basis

On 11 December 2013, the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft law amending the Civil Code of Lithuania (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[1], 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 the shadow economy by means of providing that transactions between any persons can only be settled or paid in cash if their amount is not higher than LTL 10 000 (around EUR 2 900) or the foreign currency equivalent. The draft law also allows other laws to establish lower limits for such settlements and other payments, and cases where only non-cash settlement is possible.

1.2 The draft law also expands the list of intermediaries through which non-cash settlements or other payments can be made. In addition to banks, such settlements can be effected through any other payment service providers.

1.3 The proposed limitations are subject to several exceptions. First, the limitations apply to settlements and other payments to be made on the basis of transactions, while any other payments are not affected, e.g. dividends and bonuses paid by companies, other payments to shareholders, compensation for damages[2]. Second, the amount of cash is not limited if a person is settling or paying for a transaction by paying or withdrawing cash through a payment service provider; in this case the persons need to prove their identity. Third, the limitations are not applicable if immediate

1 OJ L 189, 3.7.1998, p. 42.

2 Examples of such exceptions are provided for in the explanatory memorandum.

non-cash settlement is not possible due to (a) the fact that no payment service provider operates at a location where a settlement or payment is taking place (e.g. in remote rural locations), or (b) other 'objective reasons', e.g. a transaction is made on a day when payment service providers and/or payment and settlement systems are not operating. Such cases should be reported to the competent national authority.

## 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 is in compliance with Union law, and in particular with recital 19 of Council Regulation (EC) No 974/98[3], 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'[4]. The ECB acknowledges that: (a) other lawful means for the settlement of monetary debts, ensuring similar benefits to those of cash, are indeed available in Lithuania; and (b) the draft law's objectives of combating tax evasion and the shadow economy qualify as public reasons outweighing the impact of the limitations on cash payments.

2.3 In any case, 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 draft law's measures may also affect relatively low value payments. Any negative impact of the proposed limitations should be carefully weighed against the public benefits expected to be derived from them.

## 3. Specific observations

3.1 The draft law provides that non-cash settlements are to be made through the payment service providers with which the relevant accounts are opened, if other laws do not provide otherwise.

However, as stated in the explanatory memorandum, 6.5 % of the Lithuanian population currently does not have a payment account. The ECB recommends that payment accounts, as other lawful means for the settlement of monetary debts other than cash, should be more easily accessible to the whole population. In this regard, the ECB notes the recent Union legislative initiatives in this field, in particular the proposal for a directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features[5].

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

4 See most recently Opinion CON/2013/18. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

5 COM(2013) 266 final. See also Opinion CON/2013/77, in particular paragraphs 2 and 3.3.

3.2 The ECB understands that the draft law is one of the first national legislative steps concerning general limitations[6] on cash payments in combating tax evasion and the shadow economy[7]. Therefore, the proposed limitations are subject to several exceptions, as described in paragraph 1.3 above. The ECB invites the consulting authority to consider whether the proposed limitations can achieve the objectives pursued in view of the number and open-ended nature of the exceptions.

In one case, no limitations apply due to the fact that no payment service provider operates at a location where a settlement or payment is taking place or due to other ‘objective reasons’; such cases have to be reported to the competent national authority. However, the draft law is not clear as to what information (e.g. the transaction, the payment in cash or the objective reasons) should be reported to the competent national authority, or by whom it should be reported. The ECB understands that these matters will be specified in other legislation.

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

Done at Frankfurt am Main, 17 January 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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6 Certain limitation on settlements in cash are already applicable for the purpose of combating tax evasion, as provided for in the recent amendment to the Law on tax administration, on which the ECB was consulted (see Opinion CON/2012/36).

7 As stated in the explanatory memorandum.