



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 12 February 2019

on banning the use of euro 500 denomination banknotes and on certain amendments to anti-money laundering legislation

(CON/2019/5)

### Introduction and legal basis

On 18 December 2018, the European Central Bank (ECB) received a request from *Finanstilsynet* (the Danish Financial Supervisory Authority) for an opinion on a draft law amending the Law on measures to prevent money laundering and financing of terrorism<sup>1</sup> and the Law on financial business<sup>2</sup> (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 (TFEU) and the second indent of Article 2(1) of Council Decision 98/415/EC<sup>3</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 three main purposes of the draft law are to: (i) implement certain provisions of Directive (EU) 2018/843 of the European Parliament and of the Council<sup>4</sup>, which amended Directive (EU) 2015/849 of the European Parliament and of the Council<sup>5</sup>, into Danish law; (ii) implement certain parts of a political agreement made on 19 September 2018 between the majority of the Danish political parties, including the parties of the Danish government, to further strengthen initiatives against money laundering and terrorist financing (hereinafter the 'Political Agreement') into Danish law<sup>6</sup>; and (iii) ensure further alignment of Danish legislation with Directive (EU) 2015/849.
- 1.2 As part of the implementation of the Political Agreement, the draft law proposes to ban the use of

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<sup>1</sup> Lov om forebyggende foranstaltninger mod hvidvask og finansiering af terrorisme.

<sup>2</sup> Lov om finansiel virksomhed.

<sup>3</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>4</sup> Directive 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

<sup>5</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).

<sup>6</sup> Aftale mellem regeringen (Venstre, Liberal Alliance og Det Konservative Folkeparti) og Socialdemokratiet, Dansk Folkeparti, Radikale Venstre og Socialistisk Folkeparti om yderligere initiativer til styrkelse af indsatsen mod hvidvask og terrorfinansiering, af 19. september 2018.

euro 500 denomination banknotes (hereinafter ‘€500 banknotes’) in Denmark<sup>7</sup>. The proposed provision provides that €500 banknotes must not be ‘used’. A list of means of use in the provision includes, but is not limited, to dispensing, depositing, exchanging, using as a means of payment or transferring, in Denmark. According to the explanatory notes to the draft law, simple possession of €500 banknotes is permitted, which includes bringing €500 banknotes into and out of Denmark. Furthermore, the ban only applies in Denmark and does not limit the use of €500 banknotes outside of Denmark. The explanatory notes also state that the ban is worded as broadly as possible to ensure that it cannot be circumvented, e.g. by transferring €500 banknotes as a gift. Intentional or grossly negligent violation of the ban will be punishable by a fine, except in such cases where a higher punishment applies pursuant to the Danish Penal Code<sup>8</sup>. The ban is proposed on the basis of the Political Agreement and is also included in the Danish strategy for the combatting of money laundering and terrorist financing from 2018 to 2021<sup>9</sup>.

- 1.3 The explanatory notes further state that reports<sup>10</sup> show that €500 banknotes are primarily used by criminals and that a number of specific cases in Denmark and abroad in recent years have shown that €500 banknotes have been used for criminal activities to a great extent. The explanatory notes also refer to the fact that on 4 May 2016, the ECB Governing Council announced that the ECB would stop producing €500 banknotes<sup>11</sup> and that the Financial Action Task Force has recommended that producing the 500-euro banknotes be stopped.
- 1.4 The explanatory notes also consider the proposed ban in relation to Union law<sup>12</sup>. These notes mention that the ban constitutes a restriction on the movement of capital and payments between Member States and also between Member States and third countries which, as a main rule, is prohibited under Article 63(1) TFEU. However, the notes also state that the ban is justified as it is introduced for compelling public interest, namely for public order and safety in order to prevent €500 banknotes being used for criminal activity<sup>13</sup>. The ban is also found to be proportionate to the interest it is seeking to protect<sup>14</sup>.
- 1.5 The draft law does not propose to ban high denomination banknotes issued in currencies other than the euro.
- 1.6 As part of the implementation of Directive (EU) 2015/849, as amended, the draft law also proposes to introduce a new exemption from the confidentiality obligation imposed on *Finanstilsynet* whereby exchange of information between *Finanstilsynet* and the ECB will not constitute a violation of that obligation<sup>15</sup>. This provision implements Article 57a(2) of Directive (EU) 2015/849, pursuant to which the obligation of professional secrecy shall not prevent the exchange of

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<sup>7</sup> See Section 1, no. 11 of the draft law.

<sup>8</sup> See Section 1, no. 75 of the draft law, which amends the second sentence of Section 78(1) of the Law on measures to prevent money laundering and financing of terrorism.

<sup>9</sup> See page 2 of the Political Agreement. See also page 20 of Annex 1 to the Political Agreement.

<sup>10</sup> See *Anklagemyndigheden, Statsadvokaten, Hvidvasksekretariatet og Spøringsgruppen, Årsberetning 2010*. See also Europol, ‘Why is cash still king?’, European Police Office, 2015.

<sup>11</sup> See the ECB press release of 4 May 2016, available on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>12</sup> See pages 39-40 of the explanatory notes to the draft law.

<sup>13</sup> See the second paragraph on page 40 of the explanatory notes to the draft law.

<sup>14</sup> See the second paragraph on page 40 of the explanatory notes to the draft law.

<sup>15</sup> See section 1, no. 59 of the draft law, which amends section 56(3) of the Law on measures to prevent money laundering and financing of terrorism.

information between competent authorities supervising credit and financial institutions in different Member States in accordance with this Directive or other legislative acts relating to the supervision of credit and financial institutions, including the ECB acting in accordance with Council Regulation (EU) No 1024/2013<sup>16</sup>.

## 2. Scope of the opinion

This opinion focuses on the provisions of the draft law concerning: (a) the proposed ban on the use of €500 banknotes in Denmark; and (b) *Finanstilsynet's* sharing of confidential information with the ECB. The ECB stresses that it does not opine on whether the draft law effectively implements Directive (EU) 2015/849 or the amendments introduced by Directive (EU) 2018/843 into Danish law.

## 3. Proposed ban on use of €500 banknotes in Denmark

- 3.1 In May 2016, the ECB Governing Council concluded a review of the denominational structure of the Europa series of the euro banknotes. It has decided to permanently stop producing the €500 banknote and to exclude it from the Europa series, which is the second series of euro banknotes, taking into account the concerns that this banknote could facilitate illicit activities. In view of the important circulation of this denomination, also at international level, and to safeguard the trust in euro banknotes, the €500 will remain legal tender and can therefore continue to be used as a means of payment and store of value. The €500 banknote, like the other denominations of euro banknotes, will always retain its value and can be exchanged at the national central banks of the Eurosystem for an unlimited period of time. Credit institutions, bureaux de change and other professional cash handlers may recirculate €500 banknotes.
- 3.2 Under Article 3(4) of the Treaty on European Union, the 'Union shall establish an economic and monetary union whose currency is the euro'. Denmark has an exemption from participating in the third stage of the economic and monetary union, pursuant to the Protocol (No. 16) of the TFEU on certain provisions relating to Denmark. The effect of the exemption for Denmark is that all articles and provisions of the Treaties and the Statute of the ESCB referring to a derogation shall be applicable to Denmark<sup>17</sup>. Therefore, in accordance with Protocol (No 16) and Article 139(2)(d) TFEU, Article 128 TFEU, which states that the euro banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Union, is not applicable to Denmark.
- 3.3 Under the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union, Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives. The recognition of the monetary law (*lex monetae*) of a State is a universally recognised principle of customary international law<sup>18</sup>.

<sup>16</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

<sup>17</sup> See paragraph 1 of Protocol (No. 16) of the TFEU on certain provisions relating to Denmark.

<sup>18</sup> See, for example, Recital 8 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.06.1997, p. 1); see also the European Commission's Communication on 'The impact of the introduction of the euro on capital markets' (COM(97)0337 final) (Euro Papers 3. July 1997).

The law of the country issuing a currency determines, inter alia, the questions concerning the identity of the currency and the currency's status as legal tender, including which banknotes and coins constitute legal tender. The principle of *lex monetae* generally applies regardless of the place of payment or the governing law of a contract setting out a payment obligation.

- 3.4 Against this backdrop, the Danish authorities are respectfully invited to refrain from introducing a ban on the use of the €500 banknote in Denmark. No such ban has been introduced at Union level. On the contrary, and as noted above, while the ECB has decided to permanently stop producing the €500 banknote, the €500 banknote will remain legal tender and can therefore continue to be used as a means of payment and store of value. Insofar as Danish parties have entered into commercial transactions denominated in euro, often with counterparties in the euro area, the ECB respectfully suggests that the Danish authorities should, in line with the principle of sincere cooperation and the monetary law of the Union, acknowledge that, notwithstanding the fact that production of the €500 banknote will cease, it is still legal tender for the discharge of debts denominated in euro and may continue to be used as a means of payment and exchange.
- 3.5 Data on the flows of €500 banknotes between the banking sector and the non-banking sector within and outside the euro area suggest that there are legitimate reasons for using €500 banknotes including, among others, the instant settlement of common high-value payments or to temporarily hold assets in central bank money. The legitimate use of €500 banknotes is supported by results from an ECB survey on the use of cash in the euro area, which indicate that a distinctly larger-than-expected share of the population possessed high-denomination banknotes and received and/or spent them for legitimate purposes<sup>19</sup>. Although €500 banknotes may be used for money-laundering activities, so may any other denomination as well as non-cash means of payment. Therefore, the assumption that €500 banknotes are *predominantly* used by criminals is unsubstantiated. No evidence has been provided by authorities that €500 banknotes are used for illegal activities in Denmark to a larger extent than the national currency, other euro banknote denominations or electronic means of payment.
- 3.6 Furthermore, the ECB considers that the draft law treats high-value banknote denominations unequally as it does not extend the proposed measures to other high-value banknote denominations, such as the 1000 Swiss francs banknote which has higher purchasing power.

#### 4. **Finanstilsynet's sharing of confidential information**

- 4.1 The ECB welcomes section 1, number 59 of the draft law which, in accordance with Article 57a of Directive (EU) 2015/849, as amended, contains explicit permission for *Finanstilsynet* to share confidential information acquired within its supervisory tasks under the existing law on measures to prevent money laundering and financing of terrorism with the ECB. The task of supervising credit institutions in relation to the prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism has not been conferred upon the ECB. However, the

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Brussels. Tab. Ann. Free.), p. 63.

<sup>19</sup> See Esselink, H., Hernández, L., 'The use of cash by households in the euro area', ECB Occasional Paper Series No 201, November 2017, European Central Bank, 2017. Available at: <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op201.en.pdf>.

outcomes of the anti-money laundering and counter-terrorism financing (AML/CFT) supervision are important to consider for the discharge of the specific tasks conferred upon the ECB concerning the prudential supervision of credit institutions under Article 127(6) TFEU and Regulation (EU) No 1024/2013. It is therefore of utmost importance that the ECB, as well as other prudential supervisors, receive timely and reliable information about money laundering and financing of terrorism risks and breaches of AML/CFT requirements by supervised entities from AML/CFT supervisors<sup>20</sup>. In order to facilitate the exchange of information between the ECB and the AML/CFT supervisors within the European Economic Area, including *Finanstilsynet*, an agreement on practical modalities of exchange of information was prepared in line with Article 57a(2) of Directive (EU) 2015/849, as amended, with the support of the European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority, and subsequently signed by the ECB on 10 January 2019.<sup>21</sup>

- 4.2 As regards the implementation of Article 57a of Directive (EU) 2015/849, as amended, it is not entirely clear how the remaining parts of that Article are to be implemented into Danish law. In particular, it is unclear whether *Finanstilsynet* is permitted to disclose confidential information received within its AML/CFT supervision only to the ECB or whether it may disclose such information to other competent authorities supervising credit and financial institutions in different Member States in accordance with legislative acts other than Directive (EU) 2015/849 as well. This would include disclosure to competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council<sup>22</sup>. Current Danish legislation on disclosing confidential information to Union/European Economic Area-based authorities appears to be limited to authorities that are responsible for ensuring compliance with AML/CFT legislation and does not cover disclosure to authorities responsible for supervising compliance with other legislative acts relating to the supervision of credit and financial institutions<sup>23</sup>. As the Single Supervisory Mechanism consists of the ECB and national competent authorities, it is important to ensure that the national competent authorities can receive confidential information acquired by *Finanstilsynet* in its AML/CFT supervision, as envisaged in Article 57a of Directive (EU) 2015/849. The ECB therefore recommends that the draft law should be amended to ensure that disclosure of confidential information by *Finanstilsynet* to authorities responsible for the supervision of credit and financial institutions is permitted where such authorities are not responsible for the AML/CFT supervision.
- 4.3 Currently, the Union legislative framework on the exchange of AML/CFT-related information is currently undergoing revision by the legislators to facilitate the flow of information between relevant authorities. The Danish legislators may therefore consider authorising the Danish Financial

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<sup>20</sup> See paragraph 1.2 of Opinion CON/2018/55. All ECB opinions are published on the ECB website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>21</sup> See Multilateral agreement on the practical modalities for exchange of information pursuant to Article 57a(2) of Directive (EU) 2015/849 concluded between the European Central Bank and the undersigned Competent Authorities.

<sup>22</sup> See Article 56 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>23</sup> See Section 56(3) number 18 of the Law on measures to prevent money laundering and financing of terrorism.

Intelligence Unit, *Statsadvokaten for særlig økonomisk kriminalitet* (the Danish State Prosecutor for Serious Economic and International Crime), to share confidential information with the competent authorities supervising credit and financial institutions under other legislative acts in other Member States, including the ECB, where such information is relevant to the performance of their tasks. The European Commission noted that divergent national transposition of Directive (EU) 2015/849 leads to important differences in access to AML/CFT-related information<sup>24</sup>.

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

Done at Frankfurt am Main, 12 February 2019.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>24</sup> See paragraph 2b of the European Commission's Communication on 'Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions' (COM(2018) 645 final) (12 September 2018, Brussels), p. 4.