EUROPEAN CENTRAL BANK

EUROSYSTEM

EN **ECB-PUBLIC**

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 May 2023

on increasing a cash payment limit

(CON/2023/13)

Introduction and legal basis

On 19 April 2023 the European Central Bank (ECB) received a request from the Chairman of the Financial and Budgetary Committee of the National Council of the Slovak Republic, for an opinion on a draft law amending Law No 394/2012 on restricting cash payments[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[2], 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

Law No 394/2012 on restricting cash payments[3] prohibits: (a) cash payments in excess of EUR 5 000 by or from legal persons or natural persons who are entrepreneurs; and (b) cash payments in excess of EUR 15 000 between natural persons who are not entrepreneurs. The draft law amends Law No 394/2012 on restricting cash payments by applying a uniform restriction of EUR 15 000 for cash payments by or from all legal and natural persons, thus effectively increasing the amount permitted to be settled in cash from EUR 5 000 to EUR 15 000 for both legal persons and natural persons who are entrepreneurs.

2. General observations

2.1 Cash plays an important role in society. Cash is generally useful as a payment instrument because it is legal tender, widely accepted, fast and facilitates control over the payer's spending. Moreover, it is the only payment instrument that allows citizens to settle a transaction in central bank money, which is also settled instantly, while ensuring privacy[4]. In addition, 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, or do not have access to the banking system and electronic means of payments. These groups include not only elderly people, but also some disabled

1 Návrh zákona ktorým sa mení zákon č. 394/2012 Z. z. o obmedzení platieb v hotovosti.

2 Council Decision 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).

3 Zákon č. 394/2012 Z. z. z 29, novembra 2012 o obmedzení platieb v hotovosti.

4 See paragraph 2.4 of Opinion CON/2017/8; paragraph 2.1 of Opinion CON/2019/41; paragraph 9.2.1 of Opinion CON/2020/13; paragraph 2.3 of Opinion CON/2020/21; paragraph 7.2.1 of Opinion CON/2021/9; paragraph 2.1 of CON/2021/18 and paragraph 2.1 of CON/2023/7. All ECB opinions are published on EUR-Lex.

citizens, immigrants, socially vulnerable citizens, minors, and others with limited or no access to digital payment services[5]. Against this backdrop, the ECB closely monitors any national law developments that aim to limit cash payment possibilities for natural or legal persons and thereby interfere with citizens' right to pay in cash.

2.2 Under the Treaty, the European System of Central Banks has the basic task of promoting the smooth operation of payment systems[6], and the ECB has the exclusive right to authorise the issue of euro banknotes within the Union[7]. The euro banknotes issued by the ECB and the national central banks of the euro area are the only banknotes with legal tender status within the euro area[8].

2.3 The concept of 'legal tender' of a means of payment denominated in a currency unit has been considered by the Court of Justice of the European Union. In particular, the Court has clarified that the concept of 'legal tender' signifies that this specific means of payment cannot generally be refused in settlement of a debt, denominated in the same currency unit at its full face value, with the effect of discharging the debt. In clarifying the concept of 'legal tender' under Union law, the Court has taken into consideration Commission Recommendation 2010/191 of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins[9], which provides useful guidance for the interpretation of the relevant provisions of Union law. Point 1 of Recommendation 2010/191 states that, where a payment obligation exists, the legal tender of euro banknotes and coins should imply: (i) mandatory acceptance of those banknotes and coins; (ii) their acceptance at full face value; and (iii) their power to discharge from payment obligations. According to the Court, this shows that the concept of 'legal tender' encompasses, inter alia, an obligation in principle to accept banknotes and coins denominated in euro for payment purposes[10].

2.4 Insofar as it allows the Union legislature to lay down the measures necessary for the use of the euro as the single currency, the Court clarified that Article 133 of the Treaty empowers the Union legislature alone to specify the legal rules governing the status of legal tender accorded to banknotes and coins denominated in euro, insofar as that is necessary for the use of the euro as the single currency. Such exclusive competence precludes any competence on the part of the Member States in the matter, unless they have been empowered by the Union to do so or for the implementation of Union acts[11].

2.5 However, the Court further clarified that the status of legal tender calls only for acceptance in principle of banknotes and coins denominated in euro as a means of payment, not for absolute acceptance. The Union's exclusive competence in matters of monetary policy is without prejudice to the competence of the Member States whose currency is the euro to regulate the procedures for settling pecuniary obligations, which do not affect the principle that, as a general rule, it must be possible to

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5 See paragraph 1.5 of Opinion CON/2019/41; and paragraph 2.1 of CON/2023/7.

6 Article 127(2) of the Treaty and Article 3.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

7 First sentence of Article 128(1) of the Treaty and first sentence of Article 16 of the Statute of the ESCB.

8 Third sentence of Article 128(1) of the Treaty and third sentence of Article 16 of the Statute of the ESCB.

9 OJ L 83, 30.3.2010, p. 70.

10 See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, ECLI:EU:C:2021:63, paragraphs 46 to 49.

11 See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, ECLI:EU:C:2021:63, paragraphs 50 to 52.

discharge a payment obligation in cash. Thus, that exclusive competence does not prevent a Member State from adopting a measure falling within one of the Member State's competences; for instance, a Member State may, based on its competence to regulate administrative procedures, oblige the public administration to accept cash payments from citizens. Neither does it prevent a Member State, in the exercise of its own powers, from introducing, on legitimate public interest grounds, a derogation from that obligation for statutorily imposed payments, subject to compliance with certain conditions. In particular, the obligation to accept euro banknotes and coins may, in principle, be restricted by the Member States for reasons of public interest and subject to the principle of proportionality. This means that any such restrictions must be proportionate to the public interest objective pursued. When limiting the possibility, recognised by Union law, of generally discharging a payment obligation in banknotes and coins denominated in euro, Member States must ensure that any measures comply with the principle of proportionality, which requires in particular that they are appropriate for achieving the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives[12].

2.6 The Court has established that restrictions of the legal tender status of euro banknotes in particular require that the legislation: (i) does not have the object or effect of establishing legal rules governing the status of legal tender of euro banknotes; (ii) does not lead, in law or in fact, to abolition of those banknotes, in particular by calling into question the possibility, as a general rule, of discharging a payment obligation in cash; (iii) has been adopted for reasons of public interest; (iv) only entails a limitation on payments in cash that is appropriate for attaining the public interest objective pursued; and (v) only entails a limitation on payments in cash that does not go beyond what is necessary in order to achieve the public interest objective pursued[13].

2.7 Regarding the proportionality of a restriction of the legal tender status of euro banknotes, the Court requires not only that the measure is appropriate for attaining the public interest objective pursued, but also that it must not go beyond what is necessary in order to achieve that objective. The ECB has undertaken additional reflection in its opinions with respect to whether limitations may be considered proportionate[14]. In particular, the ECB has noted that the broader and more general a limitation is, the stricter should be the interpretation of the requirement for the limitation to be proportionate to the objective pursued. When considering whether a limitation is proportionate, the adverse impact of the limitation in question and whether alternative measures could be adopted that would fulfil the relevant objective with a less adverse impact should always be considered[15].

3. Specific observations

3.1 The draft law, similarly to Law No 394/2012 on restricting cash payments, has neither the objective nor the effect of amending the legal rules governing the status of legal tender of euro banknotes or

12 See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, ECLI:EU:C:2021:63, paragraphs 55 to 56 and 67 to 70.

13 See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, C-422/19 and C-423/19, ECLI:EU:C:2021:63, paragraph 78.

14 See paragraph 4 of Opinion CON/2022/5 of the European Central Bank of 16 February 2022 on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ, OJ C 210, 25.5.2022, p. 15).

15 See paragraph 2.7 of Opinion CON/2017/8.

coins. Given that the draft law materially broadens the legal use of cash, it does not, of course, lead, in law or in fact, to the abolition of euro banknotes in the Slovak Republic[16].

3.2 The draft law was adopted for reasons of public interest. Firstly, Law No 394/2012 on restricting cash payments aims at combating tax fraud and evasion[17]. Secondly, the explanatory memorandum to the draft law reflects on the effectiveness of Law No 394/2012 on restricting cash payments in achieving these aims, noting that these declared objectives were not achieved[18]. Thirdly, by increasing from EUR 5 000 to EUR 15 000 the permitted amount to be settled in cash by or from legal persons or natural persons who are entrepreneurs, the draft law aims at reflecting the increase in wage and price levels since 2013 and to set one uniform threshold[19].

3.3 Regarding the proportionality of the draft law, the threshold of EUR 15 000 introduced by the draft law does not seem to go beyond what is necessary in order to achieve the objective of combatting tax fraud and evasion. The increased limit seems to be more aligned with the fact that Law No 394/2012 on restricting cash payments imposes a general limitation on cash payments[20].

3.4 The ECB notes, however, that Article 11(c) of Directive (EU) 2015/849 of the European Parliament and of the Council[21] requires Member States to ensure that persons trading in goods apply customer due diligence measures when carrying out occasional transactions in cash amounting to EUR 10 000 or more. Furthermore, a Commission proposal for a regulation of the European Parliament and the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing[22] (hereinafter the 'proposed AML Regulation') proposes to introduce a prohibition on persons trading in goods and providing services who accept or make payments in cash exceeding EUR 10 000 or the equivalent amount in other currencies. The proposed AML Regulation also proposes to allow Member States to retain lower limits or, following a consultation of the ECB, adopt lower limits. It follows that, if the proposed AML Regulation is adopted in its current form, the Slovak authorities would have to either abolish the common limit or adjust the common limit proposed by the draft law so that it is below the limit imposed by the AML Regulation.

This opinion will be published on EUR-Lex.

16 See paragraph 4.6 of Opinion CON/2022/5.

17 See third paragraph of the general part of the explanatory memorandum to the draft law and paragraph 1.1 of Opinion CON/2012/83.

18 See fourth and fifth paragraphs of the general part of the explanatory memorandum to the draft law.

19 See sixth paragraph of the general part of the explanatory memorandum to the draft law.

20 See paragraph 4.8 of Opinion CON/2022/5 in which the ECB notes that the broader and more general the limitation, the stricter the interpretation of the requirement for the limitation to be proportionate to the objective pursued should be.

21 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).

22 COM(2021) 420 final.

Done at Frankfurt am Main, 30 May 2023.

[signed]

The President of the ECB

Christine LAGARDE