EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 18 March 2013

on the limitation of cash payments

(CON/2013/18)

Introduction and legal basis

On 21 February 2013, the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Ministry of Finance and the Belgian Ministry of Interior Affairs, for an opinion on a draft law providing for urgent measures to fight against fraud (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 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 Further to the revision of the recommendations of the Financial Action Task Force on Money Laundering (FATF) in February 2012[2], the draft law amends the criteria for identifying tax fraud, which triggers the application of the Law of 11 January 1993 on the prevention of the use of the financial system for money laundering and terrorist financing (hereinafter the 'Law on money laundering'). Article 5(3) and Article 28 of the Law on money laundering currently refer to 'serious and organised tax fraud, which sets in motion complex mechanisms or which uses processes with an international dimension'. Under the draft law, this is changed to 'serious tax fraud, organised or not'. This change will also be reflected in the provisions of the Penal Code on confiscation and concealment. The explanatory memorandum states that this would make it possible to prosecute the laundering of the proceeds from serious tax fraud which is not organised, but nonetheless may be classified as serious given the amounts at stake.

1 OJ L 189, 3.7.1998, p. 42.

2 International standards on combating money laundering and the financing of terrorism and proliferation, FATF Recommendations, February 2012.

1.2 The draft law also clarifies the scope of the prohibition of cash payments under Article 21 of the Law on money laundering. Currently, a merchant may receive up to 10% and not more than EUR 5 000 of the sales price for goods or services in cash, whether the sale takes place in one operation or in the form of separate operations which appear linked. Article X+1 of the draft law provides that a trader in precious metals may pay up to 10% and not more than EUR 5 000 in cash when purchasing precious metals, whether the purchase takes place in one operation or in the form of separate operations which appear linked. From 1 January 2014, the amount which may be settled in cash shall be lowered to EUR 3 000. Precious metals are currently defined in Article 69(2) of the Law of 29 December 2010 laying down various measures with reference to gold, silver or platinum, with the exclusion of coins.

1.2.1 The breach of the abovementioned limitations of payments is sanctioned by a fine from EUR 250 to EUR 225 000, whose effective amount may not exceed 10% of the price unduly paid in cash. Both the debtor and the creditor are jointly liable for any fine[3].

1.2.2 The King will identify in a Royal Decree the list of merchants and service providers (including those involved in precious metal transactions) who must inform the Financial Information Processing Unit of any case of breach of the cash limitation[4].

1.3 In order to curb the increased theft of copper wire, the Law of 29 December 2010 laying down various measures will also be amended in order to prohibit using cash to purchase copper cables that are recycled, used or offered as such, by natural or legal persons active in the recuperation, recycling and trade in precious metals. Natural and legal persons active in the recuperation, recycling and trade in old metals or precious metals are required to identify and register the natural or legal person who buys the metals if those purchases are paid for in cash for an amount of more than EUR 500.

2. General observations

2.1 As emphasised in ECB Opinions CON/2002/24 and CON/2003/25 in respect of previous versions of the Law on money laundering and recital 19 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[5], 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'. In addition, limitations on payments in cash should be proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives.

2.2 The European Commission is currently reviewing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial

3 Article 41 of the Law on money laundering.

4 Article 21(4) paragraph of the Law on money laundering.

5 OJ L 139, 11.5.1998, p. 1.

system for the purpose of money laundering and terrorist financing[6], which was implemented in Belgium by the Law on money laundering. This review may potentially lead to the lowering of thresholds triggering a declaration in respect of the underlying transactions.

3. Specific observations

3.1 The ECB was not consulted on the Law of 29 March 2012 amending the Law on money laundering, which lowered the upper threshold for settlement of payments in cash from EUR 15 000 to EUR 5 000 (and EUR 3 000 from 1 January 2014). The legislative framework as amended by the draft law results in limitations on payments in cash which would be quite extensive.

3.2 The ECB understands, however, that: (a) lawful means for the settlement of monetary debts, other than cash, are available in Belgium; and (b) the draft law's objectives of combating tax fraud and curbing of theft of copper qualify as public reasons outweighing the impact of the limitations on cash payments.

3.3 With a view to introducing some flexibility in the Law on money laundering, the ECB would recommend allowing payments in cash for compelling reasons or for reasons beyond the control of a customer[7].

3.4 The ECB would also recommend weighting the measures proposed in the draft law against the public benefits expected to be derived from them in order to ensure that the effects of those measures do not go beyond what is necessary for achieving the objective of combatting tax fraud and criminal activity in relation to precious metals. The ECB assumes that such weighting would be conducted by the King, when enacting the list of merchants and service providers who must pass to the Financial Information Processing Unit information on transactions carried out in breach of Article 21 of the Law on money laundering, following an opinion of the Financial Processing Unit and after consultation of the representatives of the sectors at stake[8].

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

Done at Frankfurt am Main, 18 March 2013.

[signed]

The President of the ECB

Mario DRAGHI

6 OJ L 309, 25.11.2005, p. 15.

7 See CON/2012/83 and CON/2013/11. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

8 See Article 21, paragraph 4 of the Law on money laundering.