EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 31 October 2012

on restrictions on cash payments

(CON/2012/83)

Introduction and legal basis

On 2 October 2012, the European Central Bank (ECB) received a request from the Slovak Ministry of Finance for an opinion on a draft law on restrictions on cash payments (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 and third indents 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 and Národná banka Slovenska. 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 at combating tax fraud and evasion[2] by means of prohibiting cash payments in euro or in another currency, where such payments exceed certain limits. As a general rule, the draft law prohibits cash payments in excess of EUR 5 000[3]. Cash payments of up to EUR 15 000 will only be permitted between natural persons not registered as sole traders[4].

1.2 The prohibition will also apply to the transfer/receipt of cash abroad where it relates to an agreement implemented in Slovakia and where the transferring/receiving party has a permanent residence, temporary residence or tolerated stay, or a registered office, plant or place of business in Slovakia[5].

1.3 The draft law also contains a list of exemptions from the prohibition[6]. In principle, the above-mentioned limits will not apply where the party making the payment is the State or another public authority or where there is a compelling reason for the exemption[7].

1 OJ L 189, 3.7.1998, p. 42.

2 See the first and second paragraphs of the general part of the explanatory memorandum to the draft law.

3 Article I, Section 4(1) of the draft law.

4 Article I, Section 4(2) of the draft law.

5 Article I, Section 7 of the draft law.

6 Article I, Section 8 of the draft law.

7 See point (c) of the sixth paragraph of the general part of the explanatory memorandum to the draft law.

1.4 Infringement of the prohibition under the draft law will be without prejudice to the validity of the act of law underlying the cash payment[8]. However, infringement thereof will constitute an administrative offence for which a fine of up to EUR 150 000 will be imposed[9].

1.5 The draft law should enter into force on 1 January 2013[10].

2. Specific observations

2.1 The ECB notes that the draft law is in compliance with Union law, and in particular with recital 19 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[11], 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'[12]. The ECB acknowledges that: (i) such other lawful means for the settlement of monetary debts, other than cash, are available in Slovakia; and (ii) the draft law's objective of combating tax fraud and evasion qualifies as a public-interest objective outweighing the impact of the limits on cash payments.

2.2 In any event, limits on settlements in cash should be proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives. Any impact of the proposed limits should be carefully weighed against the public benefits expected to be derived from the proposed restrictions on settlements in cash. Also, in view of the fact that the measures affect relatively low-value payments, the competent authorities should ensure that the effects of these measures do not go beyond what is necessary for achieving the objective of combating tax fraud and evasion.

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

Done at Frankfurt am Main, 31 October 2012.

[signed]

The President of the ECB

Mario DRAGHI

8 Article I, Section 5 of the draft law.

9 EUR 10 000 in the case of offences committed by natural persons not registered as sole traders.

10 Article II of the draft law.

11 OJ L 139, 11.5.1998, p. 1.

12 Consistently confirmed by the ECB, most recently in Opinion CON/2012/36. All ECB Opinions are published on the ECB's website at www.ecb.europa.eu