EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 10 May 2012

on restrictions of settlements in cash

(CON/2012/36)

Introduction and legal basis

On 18 April 2012 the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft law amending the Law on Tax Administration (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 is intended to limit potential non-fulfilment of tax obligations by certain taxpayers and, more particularly, to reduce the risks of: (i) concealing income, (ii) attributing acquired assets to fictitious sources of income, and (iii) non-payment of taxes, which arise when settlements are made in cash.

1.2 The draft law grants the tax administrator the authority to restrict a taxpayer's right to settle in cash where there is an established risk that a taxpayer, by settling in cash, may be concealing his income or avoiding tax in any other way.

1.2.1 In particular, the tax administrator may give an instruction to a specific taxpayer that for a limited period of time, up to one year, all his/her settlements with legal or natural persons engaged in commercial activities are to be made as non-cash settlements.

1.2.2 Such an instruction may be given if a taxpayer, or the manager of a taxpayer legal entity, has been found guilty of or has had an administrative penalty imposed on him/her for one of the following violations of law: (i) fraudulent or negligent keeping of accounts, (ii) legalisation of proceeds from crime and criminal assets, (iii) illegal employment, (iv) violating the procedure for paying a salary, (v) violating the rules on cash fund accounting, (vi) providing incorrect data on income, profits or

1 OJ L 189, 3.7.1998, p. 42.

assets, and (vii) violating tax laws. The instruction may also be given if there is an established risk that a taxpayer, in making settlements in cash, may conceal income or avoid paying taxes in any other way.

2. Specific observations

2.1 The ECB notes that Union law only regulates restrictions on cash payments in euro[2]. However, for consistency reasons, the ECB considers it appropriate to assess the draft law's provisions against the relevant Eurosystem practices.

2.2 The ECB notes that the draft law is in compliance with Union law[3], and in particular with recital 19 of Council Regulation (EC) No 974/98, 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'. The ECB acknowledges that: (i) such other lawful means for the settlement of monetary debts, other than cash, are available in Lithuania; and (ii) the draft law's objective of combating tax evasion qualifies as a public reason outweighing the impact of the limitations on cash payments.

2.3 However, limitations 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 limitations 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 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 evasion.

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

Done at Frankfurt am Main, 10 May 2012.

[signed]

The President of the ECB

Mario DRAGHI

2 See recital 19 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

3 See paragraph 5 of Opinion CON/2002/24, reiterated in paragraph 2.3.2 of Opinion CON/2010/36 and paragraph 2.2 of Opinion CON/2010/79. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.