



EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB-PUBLIC

Yves Mersch
Member of the Executive Board

[COURTESY TRANSLATION¹]

President Maria Elisabetta Alberti Casellati
Senate of the Republic
Piazza Madama
00186 Rome
Italy

President Roberto Fico
Chamber of Deputies
Piazza Montecitorio
00186 Rome
Italy

Mr Roberto Gualtieri
Minister for Economy and Finance
Cabinet of the Minister
Via XX Settembre,
00100 Rome
Italy

13 December 2019

Dear Presidents,

Dear Minister,

By this letter the European Central Bank (ECB) requests to be consulted on the Italian Law about to be adopted, converting the Decree Law No 124 of 26 October 2019 on urgent fiscal matters and other urgent needs (hereinafter, the 'Decree Law'), that was published in the Italian Official Gazette No 252 dated 26 October 2019 and entered into force on 27 October 2019². In particular, Article 18 of the Decree Law sets out a new threshold for cash payments (currently EUR 3 000), setting the limit at EUR 2 000 from 1 July 2020 until 31 December 2021, reduced further to EUR 1 000 starting from 1 January 2022.

In this context, the minimum penalty for money transfers exceeding the legal limit (equal to EUR 3 000 before the changes introduced by the Decree Law) is now equal to the new maximum amount allowed by the law (i.e. EUR 2 000 for breaches committed and challenged from 1 July 2020 to 31 December 2021 and EUR 1 000 for breaches committed and challenged from 1 January 2022).

In accordance with Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, Recital 19 of Council Regulation (EC) No 974/98³ and the second indent of Article 2(1) of Council

¹ The official ECB letter is addressed in the official language of the Member State concerned.

² Decreto-Legge 26 ottobre 2019, n. 124.

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

Decision 98/415/EC⁴, national authorities are required to consult the ECB on draft legislative provisions in its fields of competence, including, in particular, on means of payment.

Moreover, in relation to the limitation on cash payments, the ECB would like to draw attention to the letter sent to the Italian Minister for Economy and Finance in November 2012 on Law No 214 of 22 December 2011, converting into Law the Decree Law No 210 of 6 December 2011, and Law No 44 of 26 April 2012, converting into Law the Decree Law No 16 of 2 March 2012, which entered into force on 28 December 2011 and 29 April 2012 respectively, which asserted the ECB's advisory competence pursuant to Article 2(1) of Decision 98/415/EC in relation to the introduction of limitations on cash payments above EUR 1 000 (Article 12 of Decree Law No 210 of 6 December 2011) and certain derogations to such limitations (Article 3 of Decree Law No 16 of 2 March 2012), and also invited the Italian authorities to consult the ECB in the future, in particular in the event of further legislative work initiated in relation to the issues regulated by the above-specified decree laws.

The ECB understands that the legislative process for the conversion into law of the Decree Law is at an advanced stage. Nevertheless, the ECB requests to be consulted in light of its competence to be consulted under the Treaty.

In this respect, the ECB wishes to draw your attention to a number of opinions adopted by the ECB on cash limitations in other Member States, including, in particular, Greece and Spain, as further described below⁵. In these opinions the ECB set out the following considerations with regards to limitations on cash payments.

First, Commission Recommendation 2010/191/EU⁶ states that the acceptance of payments in cash should be the rule, but acknowledges that cash may be refused for reasons related to the 'good faith principle', without this constituting a breach of the legal tender status of cash. Neither Union law nor Commission Recommendation 2010/191/EU explicitly addresses whether, nor to what extent, it may be permissible to introduce a more general limitation to the obligation to accept euro cash payments. Therefore, Union law must be interpreted in order to ascertain the conditions that a limitation on payments in euro notes and coins should fulfil, including the conditions that should be fulfilled to comply with the legal tender status of euro banknotes and coins when general limitations to the obligation to accept cash payments are introduced⁷.

Second, any limitation on cash payments needs to comply with the legal tender status of euro banknotes⁸. In this context, recital 19 of Regulation (EC) No 974/98⁹, 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

⁴ 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).

⁵ See Opinion CON/2019/39 and Opinion CON/2019/4. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

⁶ Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ L 83, 30.3.2010, p 70).

⁷ See paragraph 2.1 of Opinion CON/2017/18, paragraph 3.1 of Opinion CON/2017/20, paragraph 2.3 of Opinion CON/2017/27, paragraph 2.2 of Opinion CON/2017/40, paragraph 2.2 of Opinion CON/2019/04.

⁸ See also paragraph 2.4 of Opinion CON/2017/18, paragraph 2.5 of Opinion CON/2017/40 and paragraph 2.3 of Opinion CON/2019/04.

⁹ Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

settlement of monetary debts are available¹⁰, has been taken into account in previous ECB opinions considering the introduction of cash limitations under draft national laws.

Third, while lawful means for the settlement of monetary debts other than cash payments may be generally available in a Member State¹¹, their availability across all parts of society, at comparable costs to cash payments, should be closely verified by the relevant national authorities. This is because these other means may have different characteristics compared to cash payments and hence may not be fully equivalent alternatives. In this respect, the ECB notes that Directive 2014/92/EU of the European Parliament and of the Council¹² has made it easier for Union consumers to obtain payment accounts and related electronic payment services as alternatives to cash¹³.

Fourth, limitations on cash payments need to comply with the legal tender status of euro banknotes enshrined in Articles 128(1) and 282(3) of the Treaty. Therefore, it would need to be demonstrated that the proposed cash payment limitations affecting the legal tender status of euro banknotes would be effective as regards the achievement of the public objectives that are being legitimately pursued by the limitations. Hence, there should be clear evidence that such limitations are likely, in fact, to achieve the stated public goal of combating tax evasion.

Fifth, direct or indirect limitations on cash payments should also be proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives. Any adverse impact of the proposed limitations should therefore be carefully weighed against the anticipated public benefits. When considering whether a limitation is proportionate, the adverse impact of the limitation in question should always be considered, as well as whether alternative measures could be adopted that would fulfil the relevant objective and have a less adverse impact¹⁴.

Sixth, 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. Cash is generally also appreciated as a payment instrument because it is, as legal tender, widely accepted, fast and facilitates control over the payer's spending. Moreover, it is a means of payment that allows citizens to instantly settle a transaction and is the only method of settlement in central bank money and at face value which does not carry the legal possibility of imposing a fee for the use thereof. Also, cash payments do not require a functional technical infrastructure and related investment, and are always available; this is of

¹⁰ See, for example, Opinions CON/2013/18, CON/2014/4 and CON/2014/37.

¹¹ See paragraph 2.1 of Opinion CON/2012/33 and paragraph 3.1 of Opinion CON/2010/36.

¹² Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

¹³ Within the framework previously created by Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1), which introduced the legal basis for the creation of an internal market for payments within the Union and allowed for the creation of the Single Euro Payments Area (SEPA) (the Payment Services Directive 1). The Payment Services Directive 1 has been since replaced by Directive 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35) (the Payment Services Directive 2).

¹⁴ See, for example, paragraph 2.3 of Opinion CON/2014/4, paragraph 2.3 of Opinion CON/2014/37, paragraphs 2.6 and 2.7 of Opinion CON/2017/8, paragraphs 2.5 and 2.6 of Opinion CON/2017/18, paragraph 3.3 of Opinion CON/2017/20, paragraph 2.7 of Opinion CON/2017/27, paragraph 2.6 of Opinion CON/2017/40 and paragraph 2.5 of Opinion CON/2019/04.

particular relevance in the case of outage of electronic payments. Additionally, cash payments facilitate the inclusion of the entire population in the economy by allowing it to settle any kind of financial transaction in this way¹⁵.

Seventh, Directive (EU) 2015/849 of the European Parliament and of the Council¹⁶, while confirming the vulnerability of large cash payments to money laundering and terrorist financing, requires that persons trading in goods, who are otherwise not obliged entities under that Directive, be classified as obliged entities and apply customer due diligence measures only to the extent that payments are made or received in cash in amounts of EUR 10 000 or more. This implies that the draft law should establish a proportionate threshold for limits on cash payments, taking into account the objectives of such limits¹⁷.

With regard to the threshold of cash payments, the ECB has, in particular, advised the Greek and Spanish authorities as follows:

Greece: the ECB considered that the existing limit on cash payments of EUR 500 for consumer-to-business transactions is disproportionate in the light of the potentially adverse impact on the cash payment system. Accordingly, the ECB advised that where the legislator wishes to preserve cash payment limitations, higher thresholds should be chosen and a degree of flexibility should be introduced in the draft amendments¹⁸.

Spain: the ECB considered the lowering of the limit on cash payments in transactions where the payer is acting in a professional or business capacity to EUR 1 000 to be disproportionate, in the light of the potentially adverse impact on the cash payment system. The ECB further stated that the proposed limit makes it more difficult to settle legitimate transactions using cash as a means of payment, thus endangering the concept of legal tender enshrined in the Treaty¹⁹.

In addition to the above, please note that on 5 December 2019 the ECB was consulted by the Minister of Finance of the Netherlands on a draft law containing a ban on cash payments upwards of EUR 3 000 for persons trading in goods. The main elements of the draft law are as follows:

- (a) The draft law prohibits anyone who buys or sells goods in a professional or corporate capacity from making or accepting a cash payment of EUR 3 000 or more.
- (b) The draft law is part of an action plan to prevent money laundering. According to the Explanatory Memorandum accompanying the draft law, cash plays a major part in money laundering since its origins are hard to trace.
- (c) The draft law does not apply to consumers.

¹⁵ See paragraph 2.6 of Opinion CON/2017/18, paragraph 3.4 of Opinion CON/2017/20, paragraph 2.8 of Opinion CON/2017/27, paragraph 2.7 of Opinion CON/2017/40, paragraph 2.6 of Opinion CON/2019/04.

¹⁶ Directive (EU) 2015/849 of the European Parliament and of the Council of 29 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).

¹⁷ See, for example, paragraph 3.2 of Opinion CON/2017/18, paragraph 2.10 of Opinion CON/2017/27 and paragraph 3.2 of Opinion CON/2019/04.

¹⁸ See paragraph 2.10 of Opinion CON/2019/39.

¹⁹ See paragraph 3.2 of Opinion CON/2019/4.

The ECB would appreciate the Italian authorities giving due consideration to the above observations by consulting the ECB, before the Decree Law is converted.

Yours sincerely,

[signed]

Cc: Mr Ignazio Visco, Banca d'Italia

Mr P. Gentiloni, Commissioner for Economic and Financial Affairs

Mr L. Romero Requena, Director-General Legal Service, European Commission

Encl. Guide to consultation of the ECB by national authorities regarding draft legislative provisions