



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 26 November 2019

on the requirement for certain credit institutions and branches to provide cash services

(CON/2019/41)

### Introduction and legal basis

On 26 September 2019, a draft legislative proposal from the Swedish Government on the obligations of certain credit institutions and branches to provide cash services<sup>1</sup> was introduced in the Swedish Parliament (hereinafter the 'draft law').

The ECB has decided to deliver an own initiative opinion on the draft law, since it has not been formally consulted by the Swedish authorities. The ECB's competence to deliver an opinion is based on the second paragraph of Article 127(4) of the Treaty in conjunction with the second indent of Article 2(1) of Council Decision 98/415/EC<sup>2</sup>, as the draft law relates to legislative provisions concerning 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 overall purpose of the draft law, which provides for an amendment to the Law on payment services<sup>3</sup>, is to facilitate the continued use of cash in Sweden, as well as to ensure an adequate level of access to cash services throughout Sweden by requiring certain Swedish credit institutions as well as certain Swedish branches of foreign credit institutions (hereinafter referred to as 'branches') to provide cash services to consumers and firms. The draft law applies to credit institutions and branches that hold deposits from the public exceeding SEK 70 billion, which, at the date of the draft law, includes a total of six institutions and branches. As these institutions and branches may fulfil their obligations by retaining other cash service operators, and as those operators are already established, limited associated costs are foreseen.
- 1.2 Directive 2014/92/EU of the European Parliament and of the Council<sup>4</sup> has been duly transposed into Swedish law<sup>5</sup> and implemented. The draft law applies to payment accounts within the meaning of Directive 2014/92/EU and Directive (EU) 2015/2366 of the European Parliament and of the

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1 Legislative proposal (2019/20:23) on the requirement for credit institutions to provide cash services (Sw. *Prop. 2019/20:23 om skyldighet för kreditinstitut att tillhandahålla kontanttjänster*).

2 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).

3 Law (2010:751) on payment services (Sw. *lagen (2010:751) om betaltjänster*).

4 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).

5 Law (2010:751) on payment services (Sw. *lagen (2010:751) om betaltjänster*).

Council<sup>6</sup>. Credit institutions that provide payment accounts within the meaning of Directive 2014/92/EU are already required to provide for the withdrawal of funds to consumers. The draft law seeks to further address the adequacy of the provision of cash withdrawal services to consumers as well as cash deposit services to non-consumers.

- 1.3 The draft law requires credit institutions and branches that provide payment accounts with basic functions to consumers in Sweden to provide adequate cash withdrawal services to all consumers holding such accounts throughout Sweden. Similarly, credit institutions and branches that provide payment accounts to firms are required to provide adequate daytime cash deposits services to all customers holding such accounts throughout Sweden. The draft law suggests that the obligation to provide adequate access to cash services should include both proximity and accessibility.
- 1.4 The draft law also provides that the Government of Sweden or an authority appointed by the Government may issue more detailed requirements and that *Post- och telestyrelsen* (the Swedish Post and Telecom Authority) be the competent supervisory authority. In the event of non-compliance by a credit institution, Post- och telestyrelsen is, subject to certain exemptions, required to transfer the matter to *Finansinspektionen* (FI, the Swedish Financial Supervisory Authority), which may decide to order remedial action against the relevant credit institution. If such order is not complied with, FI may impose an administrative penalty on the credit institution in question. If the non-compliance concerns a branch of a foreign credit institution domiciled outside the EEA, FI may intervene by way of a remedial injunction, prohibition, remark or warning or by revoking its license<sup>7</sup>. However, in the event of a breach by a branch of a foreign credit institution domiciled within the EEA, FI may only notify the competent supervisory authority of the foreign credit institution that the branch is in breach of its obligations under the draft law<sup>8</sup>. Thus, in the latter case, it is the supervisory authority in the home state that may intervene against Swedish branches of foreign credit institutions domiciled within the EEA. In this context, FI and Sveriges Riksbank have in their opinions concerning, inter alia, the provisions under the draft law stated that it is uncertain whether a home state supervisory authority may intervene against a branch of a foreign credit institution domiciled within the EEA following a breach of the proposed requirements<sup>9</sup>. Furthermore, Sveriges Riksbank has requested a clarification on what means of interventions and sanctions that supervisory authorities of other EEA states would have if a branch of a foreign EEA credit institution were in breach of its obligations under the draft law<sup>10</sup>.
- 1.5 According to the explanatory materials accompanying the draft law, the ability to make cash payments remains crucial for certain groups in society that are unable to use other means of

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6 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market.

7 Chapter 15, section 17, of the Swedish Banking and Financing Business Act (2004:297) (*Sw. Lag (2004:297) om bank- och finansieringsrörelse*). If FI imposes a remedial injunction or a prohibition, it may also impose a penalty of a fine, see chapter 15, section 20, of the Swedish Banking and Financing Business Act (2004:297) (*Sw. Lag (2004:297) om bank- och finansieringsrörelse*).

8 Chapter 15, section 15, of the Swedish Banking and Financing Business Act (2004:297) (*Sw. Lag (2004:297) om bank- och finansieringsrörelse*).

9 Legislative proposal (2019/20:23) on the requirement for credit institutions to provide cash services, p. 45 (*Sw. Prop. 2019/20:23 om skyldighet för kreditinstitut att tillhandahålla kontanttjänster*).

10 Consultation response of Sveriges Riksbank (2018-10-07) on the Swedish Government Official Report 2018:42 Safeguarded access to cash, p. 4.

payment. Such groups include the elderly, immigrants, the disabled, socially vulnerable citizens and others with limited access to digital services. These groups may have limited access to the technology required for digital payments and for such groups cash may be the only means of payment available. Further, if access to cash continues to decrease at the current pace<sup>11</sup>, the status of cash as a means of payment may be undermined. Such a development could have an exclusionary effect on certain parts of the population and a detrimental effect on the security, preparedness and efficiency of the payment market in the event of a major disruption in the payment system. Consequently, the draft law may contribute to enhancing preparedness for such contingencies by ensuring that cash is a functional alternative to electronic payments. Lastly, according to the explanatory materials accompanying the draft law, it is crucial from a socio-economic perspective that the payment system is efficient, accessible and robust in the event of malfunctions.

## 2. General observations

- 2.1 The ECB understands that electronic payment instruments are increasingly used as the preferred method of payment in Sweden, while the use of cash is declining. Nevertheless, cash is a well established means of payment providing for immediate settlement of debts and direct control over the payer's spending. Furthermore, 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 means of payment, or who are unable to use digital technology. 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 way<sup>12</sup>. Further, the number of SEK banknotes in circulation in Sweden has increased since 2017 and while the rate of identity theft and card fraud continues to rise, it is still among the lowest in Europe<sup>13</sup>. The ECB notes that cash could play an important role in the event of a disturbance in the payment systems, even though cash machines and other service points may also be affected as these are dependent on interaction with the account holding institutions.
- 2.2 Notwithstanding that the ECB holds a positive view of further innovation and development in the field of electronic payment instruments, the ECB also welcomes the core objectives of the draft law, namely to facilitate the continued use of cash in Swedish society by ensuring an adequate level of access to cash services throughout Sweden.
- 2.3 The ECB considers it important that all Member States, including non-euro area Member States, take appropriate measures to ensure that credit institutions and branches operating within their

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11 Cash withdrawals from cash machines reduced from SEK 270 billion in 2006 to SEK 130 billion in 2017. Cash payments at POS decreasing from 40% in 2010 to 15% in 2016.

12 Legislative proposal (2019/20:23) on the requirement for credit institutions to provide cash services, p. 45 (Sw. *Prop. 2019/20:23 om skyldighet för kreditinstitut att tillhandahålla kontantjänster*), p. 31. See Opinion CON/2017/8, Opinion CON 2017/40, and Opinion CON/2019/4. All ECB opinions are published on the ECB's website at [www.ecb.europa](http://www.ecb.europa).

13 See p. 24 of Sveriges Riksbank's report *Payments in Sweden* of 7 November 2019, available at <https://www.riksbank.se/payments-in-sweden-2019>, and Sveriges Riksbank's statistics on notes and coins, available at <https://www.riksbank.se/en-gb/statistics/payments-notes-and-coins/notes-and-coins/>.

territories provide adequate access to cash services, in order to facilitate the continued use of cash.

- 2.4 Finally, the ECB would welcome a clarification regarding the possibilities for interventions and sanctions that the home supervisory authority would have if a branch of a foreign EEA credit institution were in breach of the draft law.

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

Done at Frankfurt am Main, 26 November 2019.

[signed]

*The President of the ECB*

Christine LAGARDE