



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 31 May 2024

on requiring credit institutions to provide a minimum cash infrastructure

(CON/2024/19)

Introduction and legal basis

On 25 April 2024 the European Central Bank (ECB) received a request from the Ministry of Finance of the Republic of Latvia for an opinion on amendments to the Law on credit institutions (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 Article 2(1), first, second and third indents, of Council Decision 98/415/EC¹, as the draft law relates to currency matters, means of payment and Latvijas Banka. 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 is to ensure access to cash to the population throughout the territory of Latvia by setting minimum requirements for the provision of cash withdrawal services.
- 1.2 The requirement to ensure minimum access to cash withdrawal services is to apply to the major credit institutions, which have a significant role in providing access to cash in Latvia. These credit institutions are defined on the basis of the following elements: (1) the credit institution provides payment account-related services to consumers resident in the Union; (2) payment accounts opened with the credit institution on 31 December of the previous year constitute at least 5 % of the total number of payment accounts opened in Latvia; and (3) the holdings of domestic household deposits in the credit institution on 31 December of the previous year constitute at least 5 % of total domestic household deposits in Latvia². The requirement applies to credit institutions and branches of credit institutions registered in Latvia. It does not apply to credit institutions registered in other Member States which have started to provide financial services in Latvia without opening a branch. According to the explanatory memorandum accompanying the draft law these requirements apply to the four largest credit institutions in Latvia: AS Swedbank, AS SEB banka, AS Citadele banka and the Latvian branch of Luminor Bank AS.

¹ 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).

² See the proposed new Section 74.⁴ of the Law on credit institutions.

- 1.3 Access to cash withdrawal services is to be ensured by imposing requirements with regard to the geographical coverage, number and minimum up-time of automatic teller machines (ATMs), as well as setting a minimum threshold for free-of-charge cash withdrawals from ATMs. The draft law does not specify any requirements regarding in-person cash services at credit institutions. The draft law lays down the requirements for major credit institutions with regard to providing cash withdrawal services, while the decisions concerning the numerical values and permitted deviations are delegated to Latvijas Banka. When setting the numerical values for these requirements, Latvijas Banka must ensure that they are proportionate, including that they are appropriate to achieve their legitimate objective regarding access to cash, among other things, by setting the permitted deviations and conditions for their application. The draft law requires Latvijas Banka to consult with the Latvian Association of Local and Regional Governments and the Ministry of Economics before setting such requirements³.
- 1.4 The explanatory memorandum accompanying the draft law notes that the draft law has been developed in order to ensure that, despite the growing proportion of non-cash payments, Latvia's population continues to enjoy access to cash and freedom of payment choice. In this regard the explanatory memorandum refers to: (1) the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Retail Payments Strategy for the EU⁴, which states that access to cash should be preserved and that one means whereby Member States might achieve that could be to provide for minimum coverage of ATMs, or equivalent means of access; (2) the acknowledgement contained in Council conclusions on the Commission Communication on a 'Retail Payments Strategy for the European Union'⁵ that cash continues to play an essential role in retail payments, including for those who are financially or digitally excluded and, in certain cases, as a safeguard in the case of malfunctions in payment systems and infrastructures, and that both cash and digital payments should be broadly available and accepted, in response to user needs and preferences; and (3) the Eurosystem Cash Strategy⁶, which states that the Eurosystem has a fundamental responsibility to ensure the smooth supply of cash and facilitate the use of cash in payments as well as to safeguard the future of cash.
- 1.5 The explanatory memorandum accompanying the draft law identifies a number of risks that would become progressively higher if access to cash payment services continues to decline for Latvia's population: (1) the risk that the role of euro banknotes and coins as legal tender and the only means of payment that allows direct in-person payments, with immediate and final settlement of payment requirements, will be jeopardised; (2) the risk that in the event of extreme circumstances – such as major malfunctions, limitations or even disruptions in payment systems due to cyber-attacks, natural disasters or power outages – the capacity of the infrastructure available to credit institutions to provide access to cash payment services will be insufficient to satisfy the demand for cash; (3) the risk that population groups that do not know how to use or are unable to make full use of digital

³ See the proposed new Section 74.⁴ of the Law on credit institutions.

⁴ COM(2020) 592 final. See in particular, Pillar 1, Chapter III, paragraph 7, of the Communication.

⁵ Available on the Council's website at consilium.europa.eu.

⁶ Available on the ECB's website at www.ecb.europa.eu.

technologies, or prefer cash to non-cash payments for other legitimate reasons, will be at a higher risk of social exclusion; and (4) the risk that the population's opportunities to quickly exchange non-cash money (claims on credit institutions) for risk-free central bank money with legal tender status (euro banknotes and coins) will be undermined, thereby creating a risk that people might lose confidence in the general stability of the monetary system.

- 1.6 In addition, the draft law empowers Latvijas Banka to enforce the draft law by imposing administrative sanctions⁷. These sanctions include issuing a warning or imposing a fine up to EUR 50 000 on major credit institutions if they fail to ensure the accessibility of ATMs in terms of the requirements regarding distance, number or uptime of ATMs, or if they do not provide their customers (natural persons to whom they have issued a payment card) free-of-charge cash withdrawal services within the specified minimum requirements.
- 1.7 Finally, the explanatory memorandum accompanying the draft law states that the draft law does not concern the prudential supervision of credit institutions. It is thus without prejudice to the tasks conferred on the ECB in Council Regulation (EU) No 1024/2013⁸.

2. Observations

- 2.1 The ECB understands that electronic payment instruments are increasingly used as the preferred method of payment in Latvia, while the use of cash is declining. Despite the digitalisation of the Union economy and the increasing use of electronic means of payment, cash continues to play an important role in society⁹. As rightly pointed out in the explanatory memorandum accompanying the draft law, cash is a well-established and secure means of payment providing for immediate settlement of debts and direct control over the payer's spending. It is currently the only payment instrument that allows citizens to settle a transaction in central bank money which is also settled instantly, while, importantly, ensuring privacy¹⁰. 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, thus ensuring freedom of choice as to the method of payment for all citizens¹¹. The ECB concurs with the view expressed in the explanatory memorandum 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. The ECB fully agrees that the ability to pay in cash remains particularly important for certain groups in society that, for various

⁷ See the new paragraph 13 of Section 198 of the Law on credit institutions.

⁸ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63) (hereinafter the 'SSM Regulation').

⁹ See, for example, paragraphs 2.4 and 2.7 of Opinion CON/2019/46, paragraphs 2.1 and 2.2 of Opinion CON/2021/18, paragraph 4.7 of Opinion CON/2022/5 of the European Central Bank of 16 February 2022 on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ C 210, 25.5.2022, p. 15), paragraph 1.7 of Opinion CON/2023/31 of the European Central Bank of 13 October 2023 on a proposal for a regulation on the legal tender of euro banknotes and coins (OJ C, C/2023/1355, 1.12.2023) and paragraph 2.1 of Opinion CON/2024/8. The ECB has stated its neutrality regarding different means of payment, which means that it does not favour one instrument over another. See paragraph 2.1 of Opinion CON/2015/55. All ECB opinions are published on EUR-Lex.

¹⁰ See paragraph 2.1 of Opinion CON/2023/13, paragraph 2.3 of Opinion CON/2023/25, paragraph 2.1 of Opinion CON/2023/39, paragraph 2.2.1 of Opinion CON/2023/40, paragraph 2.1 of Opinion CON/2024/1, paragraph 2.1 of Opinion CON/2024/3 and paragraph 2.1 of Opinion CON/2024/8.

¹¹ See Opinions CON/2017/8, CON/2017/40, CON/2019/4, CON/2019/41, CON/2024/3 and CON/2024/8.

legitimate reasons, prefer to use cash rather than other means of payment, or who do not have access to bank services and electronic means of payments. These groups include disabled citizens, immigrants, socially vulnerable citizens, elderly people, minors and others with limited or no access to digital payment services¹².

- 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 to facilitate the continued use of cash in Latvian society by ensuring an adequate level of access to cash services throughout Latvia, including remote rural areas. The availability and accessibility of cash and its fallback function in case of disruptions contribute to trust in the financial system, which is important for the smooth functioning of monetary policy¹³.
- 2.3 The ECB considers it important that all Member States take appropriate measures to ensure that credit institutions and branches operating within their territories provide adequate access to cash services, in order to facilitate the continued use of cash¹⁴. Sufficient and effective access to cash is necessary to preserve the effectiveness of the legal tender status of cash. If citizens do not have easy access to cash, they will not be able to use it as a means of payment¹⁵.
- 2.4 In addition, the ECB wishes to note that a minimum level of in-person cash withdrawal services may be needed at credit institutions, especially for those groups in society that do not have access to electronic means of payment, and to be prepared for situations where ATMs are not available. Moreover, customers should have sufficient and effective access to cash deposit services at credit institutions. This would support the acceptance of cash by payees (e.g. merchants and public sector entities) by ensuring that they can conveniently convert euro cash into commercial bank money and manage their liquidity efficiently, for instance to pay their suppliers and employees.
- 2.5 The ECB welcomes the administrative sanctions, including warnings and financial fines, that may be imposed on credit institutions under the draft law, which should facilitate the enforcement of their requirements under the draft law¹⁶.
- 2.6 On 28 June 2023 the Commission published a proposal for a Regulation of the European Parliament and of the Council on the legal tender of euro banknotes and coins¹⁷, which includes an obligation for Member States to ensure sufficient and effective access to cash throughout their territory. The draft law seems aligned with the Commission proposal in this respect. The imposition in the draft law of new requirements on credit institutions will contribute to ensuring that cash remains widely available and accessible in Latvia.
- 2.7 The ECB understands that it will be consulted on the future regulation of Latvijas Banka to establish the specific numerical values regarding the ATM network in terms of the total number of ATMs

¹² See, paragraph 2.1 of Opinion CON/2023/39, paragraph 2.2.1 of Opinion CON/2023/40, paragraph 2.1 of Opinion CON/2024/1, paragraph 2.1 of Opinion CON/2024/3 and paragraph 2.1 of Opinion CON/2024/8.

¹³ See paragraph 2.2 of Opinion CON/2024/8.

¹⁴ See paragraph 2.2 of Opinion CON/2020/21, paragraph 3.3 of Opinion CON/2022/40 and paragraph 2.3 of Opinion CON/2024/3 and paragraph 2.3 of Opinion CON/2024/8.

¹⁵ See paragraph 2.2 of Opinion CON/2023/25, paragraph 1.2 of Opinion CON/2023/31 and paragraph 2.2 of Opinion CON/2024/3. See also Principle 6 of ELTEG III in the Final report of the Euro Legal Tender Expert Group (ELTEG) of 6 July 2022, available on the Commission's website at www.ec.europa.eu.

¹⁶ See paragraph 2.4 of Opinion CON/2024/8.

¹⁷ COM(2023) 364 final.

provided by credit institutions; the geographical distance between ATMs; the operating hours of ATMs; and the requirements related to the monthly minimum threshold of free-of-charge withdrawals of cash and the total number of free-of-charge withdrawals. Consistent with its previous stance¹⁸, the ECB would caution against low thresholds for free-of-charge withdrawals of cash from ATMs to the extent that these could make the use of euro banknotes more expensive than electronic means of payment, and would therefore recommend that the threshold is set at a level that does not discourage the use of cash. The ECB underlines its view that access to cash is necessary to preserve the effectiveness of its legal tender status. If citizens do not have access to cash, they will not be able to use it as a means of payment and store of value¹⁹.

- 2.8 Regarding the requirement contained in the draft law to consult with the Latvian Association of Local and Regional Governments and the Ministry of Economics before Latvijas Banka sets the minimum requirements, including the numerical values, in its regulation, the ECB understands that any views expressed in such consultation would not be binding on Latvijas Banka. In this respect, the explanatory memorandum accompanying the draft law states that this approach is designed to respect the principle of central bank independence enshrined in Article 130 of the Treaty.
- 2.9 Finally, in line with what is stated in the explanatory memorandum accompanying the draft law, the ECB understands that the new requirements do not relate to the prudential supervision of credit institutions. Based on Article 127(6) of the Treaty, the SSM Regulation confers tasks on the ECB concerning the prudential supervision of credit institutions. In this respect, the SSM Regulation clarifies that supervisory tasks not conferred on the ECB should remain with the national authorities²⁰. Therefore, the ECB understands that the draft law cannot include any role for the ECB in its prudential supervisory function²¹.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 31 May 2024.

[signed]

The President of the ECB

Christine LAGARDE

18 See paragraphs 2.3 and 2.4 of Opinion CON/2015/55.

19 See paragraph 1.2 of Opinion CON/2023/31.

20 See recital 28 of the SSM Regulation.

21 See paragraph 3.2 of Opinion CON/2023/25.