



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 June 2024

on access to cash

(CON/2024/22)

Introduction and legal basis

On 30 May 2024 the European Central Bank (ECB) received a request from the Irish Minister for Finance (hereinafter the ‘Minister’) for an opinion on the Financial Services (Provisions of Access to Cash Services) Bill 2024 (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 first, second and third indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to currency matters, means of payment and the Central Bank of Ireland (CBI). 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 main purpose of the draft law is to ensure continued sufficient and effective access to the cash infrastructure in Ireland. An additional purpose of the draft law is to bring automatic teller machine (ATM) operators, including ATM deployers, and cash-in-transit (CIT) companies within the regulatory perimeter of the CBI. In the draft law, the term ‘cash infrastructure’ is defined as ATMs and cash service points². A ‘cash service point’ is defined as a location at which cash services, such as lodgements, withdrawals and in-person assistance with regard to those services, are provided during normal business hours³.
- 1.2 As noted in the consultation request, cash plays an important role for persons of all ages, particularly as a crucial budgeting tool for those on fixed and lower incomes, and it allows individuals to control their finances and to maintain their financial independence. In addition to ensuring individuals have sufficient and effective access to cash, another purpose of the draft law is to ensure that small and medium enterprises (SMEs) have sufficient access to cash service points, where banknotes and coins can be deposited and withdrawn, thereby ensuring that retailers will be able to accept cash.
- 1.3 The draft law requires the Minister, in consultation with the CBI, to specify criteria to ensure sufficient and effective access to cash in respect of each NUTS 3 region in Ireland (hereinafter the ‘access to

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 Section 2 of the draft law.

³ Section 2 of the draft law.

cash criteria'). The NUTS 3 regions are those regions which have been established for statistical purposes⁴. There are eight NUTS 3 regions in Ireland⁵. The Minister is required to specify the access to cash criteria with regard to the following: (i) the percentage of the population in a NUTS 3 region that should be within a specified radius of between 5 km and 10 km of an ATM and, separately, of a cash service point⁶; (ii) the minimum number of ATMs per 100 000 people in each NUTS 3 region; and (iii) the minimum number of ATMs available outside of normal business hours per 100 000 people in each NUTS 3 region⁷. In setting the access to cash criteria the Minister must take into account (a) the need to ensure the continued provision of sufficient and effective access to cash for individuals and SMEs⁸, and (b) in the case of the first ministerial order, the level of access to the cash infrastructure available to individuals and SMEs as at 31 December 2022, adjusting for the exit of two banks from the Irish market: Ulster Bank Ireland DAC and KBC Bank Ireland plc⁹.

- 1.4 The Minister is required to consult the CBI prior to setting the access to cash criteria. With regard to the consultation of the CBI specifically concerning criterion (iii), the content of that consultation is set out in the draft law¹⁰. In addition, the CBI is obliged, not later than nine months following certain specified events as set out in the draft law, to conduct a review of the access to cash criteria and to submit a report to the Minister of its findings, conclusions and any recommendations for the amendment of the access to cash criteria¹¹.
- 1.5 The access to cash criteria, which are set by the Minister in respect of each NUTS 3 region, must be fulfilled by designated entities under the draft law. Designated entities are credit institutions which meet certain conditions as outlined in the draft law. These conditions are met where, for two consecutive quarters, a credit institution holds (i) a percentage share of current accounts in Ireland of the total number of such accounts held by credit institutions in Ireland (hereinafter the 'current account prescribed share'), and (ii) a percentage share of household deposits in Ireland of the total value of such deposits held by credit institutions in Ireland (hereinafter the 'household deposit prescribed share')¹².
- 1.6 In this regard, the Minister is empowered to set the percentage of prescribed shares above which a credit institution¹³ becomes a designated entity, following consultation of the CBI. Both the current account prescribed share and the household deposit prescribed share must be set between 5 % and 15 % respectively¹⁴. The CBI is responsible for notifying a credit institution that the credit institution is a designated entity for the purposes of the draft law where it fulfils the relevant criteria. Where two or more credit institutions form part of the same group of companies and each company does not

4 As set out in Annex I to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154 21.6.2003, p. 1).

5 Border, West, Mid-West, South-East, South-West, Dublin, Mid-East, Midlands.

6 As defined in section 2 of the draft law.

7 Section 6(1) of the draft law.

8 As defined in section 2 of the draft law.

9 Section 6(1)(a) and 6(1)(b) of the draft law.

10 Section 6(2) of the draft law.

11 Section 6(3) to (7) of the draft law.

12 Section 11(1), 11(2), 11(3), and 11(5) of the draft law.

13 As defined in section 2 of the draft law.

14 Section 11(5) of the draft law.

exceed either of the prescribed shares individually, their respective prescribed shares are considered in aggregate. Where these aggregate amounts exceed the prescribed amounts as set by the Minister, the credit institution with the larger or largest percentage share of household deposits will be the designated entity¹⁵. As noted in the consultation request, it is expected that the three main retail banks operating in Ireland will initially satisfy these criteria and therefore be responsible for maintaining the access to cash criteria in each NUTS 3 region.

- 1.7 The draft law brings ATM operators¹⁶, which include ATM deployers¹⁷, and CIT providers, within the regulatory perimeter of the CBI.
- 1.8 First, under the draft law, ATM deployers and CIT providers must register with the CBI, which will then maintain separate registers of ATM deployers and CIT providers, which can be accessed by the public¹⁸. The CBI has the power to grant or refuse applications for registration, impose conditions on CIT providers at the time of granting an application for registration, amend or revoke such registrations, or direct the holder of a registration not to carry out business other than as directed¹⁹. It is an offence under the draft law to carry out the business of an ATM deployer or CIT provider without being registered, or to hold oneself out as such, and it is an offence to fail to comply with any condition of registration²⁰.
- 1.9 Second, the CBI may draft regulations prescribing requirements for ATM operators. It must consult the Minister on these regulations prior to adoption²¹. The requirements which the CBI may prescribe relate to (i) notification requirements related to (a) changes in the ATM operators' business which materially alter the scope of the service being provided, (b) change of ownership, (c) closure of any ATMs in circumstances beyond the ATM operator's control, and (ii) the appropriate service standards that should be achieved²². It is an offence for an ATM operator to fail to comply with the prescribed requirements²³. With regard to ATM access fees, the draft law empowers the Minister to draft regulations concerning ATM access fees, on ATMs used by individuals and SMEs, which are charged by an ATM operator who is not the provider of the relevant account from which the cash is withdrawn²⁴. The Minister may, in consultation with the CBI, make regulations which either prohibit the charging of access fees, or which prescribe the maximum access fee that can be charged²⁵. Normal bank charges are regulated separately²⁶ and are not affected by such regulations.

15 Section 11(4).

16 Section 2 of the draft law defines an ATM operator as (a) an ATM deployer, or (b) a payment service provider which owns and operates one or more than one ATM.

17 Section 2 of the draft law defines an ATM deployer as a person who (a) provides cash withdrawal services from one or more than one ATM (i) operated by the person, or (ii) provided to other persons who stock the ATM or ATMs so provided with banknotes; (b) does not hold payment accounts; and (c) does not provide certain payment services specified by the draft law.

18 Sections 15 and 16 of the draft law.

19 Sections 19, 20, 22, 25, 26, and 27 of the draft law.

20 Sections 15(4) and 24 of the draft law.

21 Section 32 of the draft law.

22 Section 32(1) of the draft law.

23 Section 33 of the draft law.

24 Section 12(2) of the draft law.

25 Section 12(1) and 12(2).

26 Section 149 of the Consumer Credit Act 1995.

- 1.10 The draft law lays down various obligations, responsibilities and powers on the CBI. On foot of a request from the Minister, the CBI is required to collect and publish information relating to the cash infrastructure²⁷. The CBI may make a determination that there is, or is reasonably likely to be, a deficiency in the access to cash infrastructure in a NUTS 3 region for individuals or SMEs, regardless of whether or not the access to cash criteria in that NUTS 3 region is fulfilled²⁸. Individuals may also notify the CBI of local deficiencies²⁹. Where such a determination is made by the CBI, the CBI must make a further determination as to the appropriate steps to be taken by the designated entities, which must be appropriate and proportionate, to remedy the local deficiency³⁰.
- 1.11 The draft law provides that the CBI may draft regulations prescribing levies to be paid by ATM operators and CIT providers and fees to be paid in the circumstances outlined in the draft law, in order for the costs associated with the CBI performing their tasks under the draft law to be financed³¹. The CBI is not required to use its own funds, apart from the fees and levies which it may collect under the draft law, to perform its tasks under the draft law³². The draft law also provides that, where such fees and levies are insufficient, the Minister must, at the CBI's request, provide additional funds which the Minister believes to be proper to enable the CBI to perform its tasks under the draft law³³.
- 1.12 In order to ensure compliance with access to cash criteria, the draft law confers powers and responsibilities on the CBI related to monitoring, enforcement and prosecution. The CBI is charged with monitoring and enforcing the fulfilment of the access to cash criteria. Where there is non-compliance or where a determination with respect to a local deficiency has been made, the CBI must notify the designated entities of the details of the non-compliance or local deficiency. The designated entity must then rectify the non-compliance or local deficiency³⁴. The CBI may also issue directions to designated entities identifying the steps to be taken to rectify the non-compliance or remedy the local deficiency. The draft law also provides scope for the use of administrative sanctions by the CBI where necessary³⁵. The CBI also has the power to give a direction to an ATM operator or CIT provider to comply with conditions or requirements as specified in that direction where failures to comply with their obligations under the draft law, including in respect of registration requirements and regulations made by the CBI, may arise³⁶. Where any such ATM operator or CIT provider fails to comply with a direction by the CBI issued under the specified sections of the draft law, the CBI is permitted to apply to the Irish High Court for an order to enforce the direction³⁷. The CBI may appoint authorised officers for the purposes of monitoring compliance with the requirements under the draft law as they apply to

27 Section 7 of the draft law.

28 Section 8(1) of the draft law.

29 Section 8(2) of the draft law.

30 Section 8(4) of the draft law.

31 Sections 41 and 42 of the draft law.

32 Section 3(2) of the draft law.

33 Sections 3(3) of the draft law.

34 Sections 10(3) and 10(5) of the draft law.

35 Section 48 of the draft law, amending the Central Bank Act 1942.

36 Section 35(1) of the draft law.

37 Section 36 of the draft law.

ATM operators and CIT providers³⁸. The CBI may also bring and prosecute summary proceedings for an offence committed under the draft law³⁹.

2. Observations

- 2.1 The ECB understands that while electronic payments have experienced an increase in use in Ireland, which was accelerated by the COVID 19 pandemic, cash still plays an important role in the Irish economy. This was reflected in the November 2022 review of 'Retail Banking in Ireland' prepared by the Department of Finance⁴⁰. Despite the digitalisation of the Union economy and the increasing use of electronic means of payment, cash continues to play an important role in society⁴¹. As pointed out in the consultation request, cash plays an important role in ensuring financial independence and inclusion. It is currently the only payment instrument that allows citizens to settle a transaction in central bank money which is also settled instantly, while ensuring privacy⁴². 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 citizens⁴³. The ECB fully agrees that the ability to pay in cash remains particularly important for certain groups in society that, 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 services⁴⁴.
- 2.2 While 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 Irish society by ensuring sufficient and effective access to cash. The availability and accessibility of cash and its fallback function in case of disruptions also contributes to trust in the financial system, which is important for the smooth functioning of monetary policy⁴⁵.
- 2.3 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 coins⁴⁶, which includes an obligation for Member States to ensure sufficient and effective access to cash throughout their territory. The

38 Sections 37(2) and 38 of the draft law.

39 Section 39 of the draft law.

40 Section 7 of the Retail Banking Review - November 2022, available at <https://www.gov.ie/en/publication/28cf9-retail-banking-review-november-2022/>

41 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, paragraph 1.7 of Opinion CON/2023/31 and paragraph 2.1 of Opinion CON/2024/8 and paragraph 2.1 of Opinion CON/2024/19,. 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.

42 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, paragraph 2.1 of Opinion CON/2024/8 and paragraph 2.1 of Opinion CON/2024/19.

43 See paragraph 2.1 of Opinion CON/2024/8 and generally Opinions CON/2017/8, CON/2017/40, CON/2019/4, CON/2019/41, CON/2024/3 and CON/2024/8.

44 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, paragraph 2.1 of Opinion CON/2024/8 and paragraph 2.1 of Opinion CON/2024/19.

45 See paragraph 2.2 of Opinion CON/2024/8 and paragraph 2.2 of Opinion CON/2024/19.

46 COM(2023) 364 final.

ECB agrees with the consulting authority that the draft law aligns with the Commission proposal in this respect. The imposition in the draft law of the requirements on designated entities will contribute to ensuring that cash remains widely available and accessible in Ireland⁴⁷.

- 2.4 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 cash⁴⁸. 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 payment⁴⁹. The ECB understands from the draft law that the first order made by the Minister should preserve the cash infrastructure at approximately its 31 December 2022 level⁵⁰. For any future assessments of the access to cash criteria the costs of implementation of obligations for credit institutions related to the cash infrastructure would need to be adequately accounted for⁵¹. The ECB takes note that the draft law requires the CBI to take into account the operating costs related to cash infrastructure when compiling its periodic reports concerning its review of the access to cash criteria⁵².
- 2.5 The ECB considers it important that the draft law also provides effective access to both ATMs and cash service points where cash withdrawals and lodgements can be made in addition to receiving in person assistance in relation to those services. The ECB also welcomes the more granular provisions of the draft law and the powers conferred on the Minister and the CBI to ensure that where ATMs and cash service points are provided, there are, inter alia, minimum service standards that must be adhered to. The ECB notes that for cash to function effectively as a means of payment, which is essential to its legal tender status, access to various cash services, including cash deposits on payment accounts of credit institutions, should be ensured. Access to cash deposit facilities of credit institutions is a prerequisite for cash to circulate between the different actors in society, as also set out in the Commission's impact assessment for the above proposal.
- 2.6 The ECB welcomes that, in addition to ensuring the adequacy of access to cash through the fulfilment of the quantitative criteria set in the draft law, the draft law also introduces the possibility to remedy local deficiencies for individuals and SMEs. The draft law facilitates the deployment of additional ATMs or cash service points in areas that are underserved with cash services and areas with specific conditions that would otherwise not be considered as falling within the quantitative criteria set out in the draft law.
- 2.7 Moreover, the ECB welcomes that the Minister, following consultation with the CBI, may draft regulations to prohibit the charging of access fees imposed by ATM operators which are not the provider of the relevant account from which the cash is withdrawn, or to prescribe the maximum

⁴⁷ See paragraph 2.6 of Opinion CON/2024/8..

⁴⁸ See paragraph 2.2 of Opinion CON/2020/21, paragraph 3.3 of Opinion CON/2022/40, paragraph 2.3 of Opinion CON/2024/3, paragraph 2.3 of Opinion CON/2024/8 and paragraph 2.3 of Opinion CON/2024/19.

⁴⁹ See paragraph 2.2 of Opinion CON/2023/25, paragraph 1.2 of Opinion CON/2023/31, paragraph 2.2 of Opinion CON/2024/3 and paragraph 2.3 of Opinion CON/2024/19. 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.

⁵⁰ Section 6(1)(b) of the draft law.

⁵¹ See paragraph 2.7 of Opinion CON/2023/25.

⁵² Sections 6(3) and 6(4)(d) of the draft law.

access fees that can be charged by these ATM operators. Such fees can hinder citizens from accessing their money, and SMEs, for instance, from withdrawing coins and smaller banknote denominations which are necessary to keep sufficient stocks of change.

- 2.8 The ECB welcomes the monitoring, enforcement, and prosecution powers that may be exercised by the CBI under the draft law in relation to designated entities, ATM deployers and CIT providers. These powers should facilitate the enforcement of the obligations under the draft law⁵³.
- 2.9 The ECB understands that it will be consulted on certain future regulations adopted under the draft law, in particular those related to the setting of the access to cash criteria set for ATMs and cash service points⁵⁴ in each of the NUTS 3 regions.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 27 June 2024.

[signed]

The President of the ECB

Christine LAGARDE

⁵³ See paragraph 2.4 of Opinion CON/2024/8 and paragraph 2.5 of Opinion CON/2024/19.

⁵⁴ See section 6(1) of the draft law.