



EUROPEAN CENTRAL BANK  
EUROSYSTEM

ECB-RESTRICTED

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### No-cash policy of Dutch municipalities

Dear Mr. Swank,

*Dear Job,*

I would like to thank you for your letter of 17 September 2018 in which you have requested the ECB's view on the compatibility of a 'no-cash policy' with Union law on the legal tender status of euro banknotes and coins. As you have rightly appreciated, such a policy would be of great concern for the European Central Bank (ECB) and the European System of Central Banks from a legal tender perspective, as I will explain in this letter.

I understand that a number of Dutch municipalities do not accept cash payments for certain services they provide to citizens. In particular, this applies to the issuance of certain documents, such as passports, driving licences or excerpts from the *Basisregistratie Personen* (Personal Records Database (BRP)). I furthermore understand that the *Vereniging van Nederlandse Gemeenten* (Association of Dutch Municipalities (VNG)) is in the process of preparing advice to its members and forming its opinion on the desirability of this approach (a 'no-cash policy').

In that regard, it should be noted that any cash payment limitations affecting the legal tender status of the euro banknotes and coins must comply with Union law. This would also apply to any cash payment limitations introduced by the Dutch municipalities.

Union law gives euro banknotes and coins the status of legal tender<sup>1</sup>. Paragraph 2 of Commission Recommendation 2010/191/EU<sup>2</sup> states that the acceptance of cash payments should be the rule, but

<sup>1</sup> See Article 128(1) of the Treaty on the Functioning of the European Union and Articles 10 and 11 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.98 p. 1).

<sup>2</sup> 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).

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acknowledges that cash payments 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 the Commission Recommendation explicitly addresses whether, nor to what extent, it may be permissible to introduce a more general limitation to the obligation to accept 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. So what are 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 introduced?

Council Regulation (EC) 974/98<sup>3</sup> clarifies 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'. Such other lawful means, uniformly acceptable for use within euro area, should be readily accessible to all citizens and economic agents, resident or non-resident, in the respective Member State.

The ECB acknowledged in the past a number of public reasons that may qualify, in general, as 'public reasons' justifying the establishment of limits on cash payments: combating money laundering<sup>4</sup>, limiting the share of the shadow economy and combating tax evasion<sup>5</sup>. However, any limitation should not otherwise affect in principle the legal tender status of euro banknotes<sup>6</sup>. Following the general principles of Union law, limitations on cash payments should therefore be effective and proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives<sup>7</sup>. Any negative impact of the no-cash policy 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 of the municipalities and have a less adverse impact.

In this context, it should be considered that the ability to make cash payments remains particularly important for certain groups in society that, for various legitimate reasons, prefer to make cash payments rather than use other payment instruments. A cash payment is generally also appreciated as a payment instrument because it is widely accepted, fast, secure and facilitates control over the payer's spending. Moreover, it is a means of payment that allows citizens or economic agents in general to instantly settle a transaction in central bank money and at face value, without the legal possibility to impose a fee for the use of this means of payment. 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.

It should be borne in mind that some of the services offered by the municipalities, such as issuance of a passport, driver's licence and BRP excerpt, are essential services for citizens. The municipalities which are public institutions act as monopolist in offering such essential services insofar as citizens cannot receive these services elsewhere. Consequently, the introduction of a no-cash policy would exclude citizens, who

<sup>3</sup> Recital 19 of the Council Regulation (EC) 974/98 of 3 May 1998 on the introduction of the euro.

<sup>4</sup> Paragraph 2.5 of Opinion CON/2017/40 and Paragraph 3.6 of Opinion CON/2017/20.

<sup>5</sup> Paragraph 2.6 of Opinion CON/2017/17 and Paragraph 2.4 of Opinion CON/2017/18.

<sup>6</sup> Paragraph 2.5 of Opinion CON/2017/40 and Paragraph 2.4 of Opinion CON/2017/18.

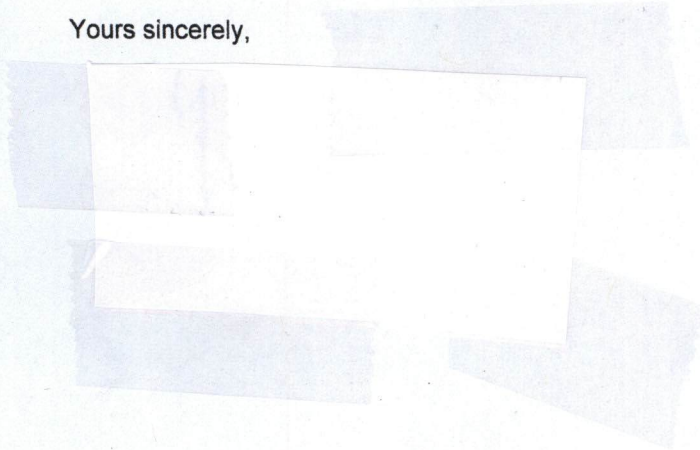
<sup>7</sup> Paragraph 3.3 of Opinion CON/2017/20, Paragraph 2.7 of Opinion CON/2017/27, Paragraph 2.5 of Opinion CON/2017/18 and Paragraph 2.6 of Opinion CON/2017/40.



use cash payments for legitimate reasons or do not have any other option than making a cash payment; they would not be able to receive these essential public services or would have to request special permission for using cash. Citizens should not have to justify using cash, certainly not for such essential services.

Against that background, the ECB considers that the Dutch municipalities' cash payment limitations in respect of the provision of essential services seem to be disproportionate and as such incompatible with Union law governing the legal tender status of the euro banknotes and coins.

Yours sincerely,

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