



EUROPEAN CENTRAL BANK  
EUROSYSTEM

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## OPINION OF THE EUROPEAN CENTRAL BANK

of 6 December 2023

**on excluding the possibility of purchasing real estate with cash and expanding tax disincentives  
for the use of cash  
(CON/2023/39)**

### Introduction and legal basis

On 27 October 2023 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on certain draft amendments to existing tax legislation that (1) exclude the possibility of purchasing real estate property by paying in cash (hereinafter the ‘first draft amendment’); and (2) further expand already existing tax disincentives for the use of cash (hereinafter the ‘second draft amendment’), together referred to as the ‘draft amendments’.

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 second indent of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft amendments relate to means of payment. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.

### **1. Purpose of the draft amendments**

- 1.1 The first draft amendment amends certain provisions of the Law on restoring justice in taxation and combating tax evasion<sup>2</sup> and the Law on the tax applicable to the transfer of real estate property<sup>3</sup> to exclude the possibility of purchasing real estate property by paying in cash. The first draft amendment provides that for the drawing up of any notarial deed or document for transferring ownership of real estate property (including binding preliminary contracts and settlement deeds), the entire consideration is to be paid exclusively by means of bank payment. If a notarial deed or document records that the consideration for the transfer of ownership of real estate property has been paid, partly or fully, in cash, it is null and void *ipso jure*. Moreover, it cannot be registered in the relevant public registry and does not produce any legal effects in respect of the parties, the State or any third party. The first draft amendment also provides that notaries must record in the notarial deed the method of payment of the relevant consideration, namely the exclusive use of bank payment means, and that notaries are prohibited from registering a notarial deed which is in breach of that requirement

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<sup>1</sup> 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).

<sup>2</sup> Law 3842/2010 on restoring justice in taxation and combating tax evasion (Government Gazette A 58/23.4.2010); Νόμος υπ’ αριθμ. 3842 Αποκατάσταση φορολογικής δικαιοσύνης, αντιμετώπιση της φοροδιαφυγής και άλλες διατάξεις (ΦΕΚ Α’ 58/23.04.2010).

<sup>3</sup> Law 1521/1950 on the tax applicable to transfer of real estate property (as codified and amended by Law 1587/1950) (Government Gazette A 245/29.10.1950); Α.Ν. 1521 της 29<sup>ης</sup> Οκτωβρίου 1950 Περί φόρου μεταβιβάσεως ακινήτων (ΦΕΚ Α’ 245/29.10.1950).

in the public registry. Last, the first draft amendment provides that persons who do not comply with these obligations will be fined an amount equal to 10 % of the consideration recorded as having been paid in cash, but no less than EUR 10 000 for each breach.

- 1.2 The second draft amendment amends Article 23 of the Greek Income Tax Code<sup>4</sup> to further expand an already existing tax disincentive for the use of cash. In particular, the Greek Income Tax Code currently provides that certain business expenses may be deducted from the calculation of 'taxable profit arising from business activities' (as defined in the Greek Income Tax Code). The Greek Income Tax Code also lists all the business expenses that cannot be deducted from the taxable profit. One of these non-deductible expenses is any expenditure for the acquisition of goods or services with a value exceeding EUR 500 that has not been paid by means of bank payment. The second draft amendment proposes to reduce the EUR 500 threshold to EUR 300 and that the new threshold should apply from the fiscal year 2024 onwards.
- 1.3 According to the explanatory note accompanying the draft amendments and provided by the consulting authority, the overarching purpose of the draft amendments is to reduce tax evasion and combat money laundering by incentivising the use of electronic transactions, and to contribute to the increase of the revenues of the Greek State.

## 2. General observations

- 2.1 Cash continues to play an important role in society. Cash is generally appreciated as a payment instrument because it is widely accepted, fast and facilitates 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<sup>5</sup>, while, importantly, ensuring privacy, and does not carry the legal possibility of imposing a fee for the use thereof. Moreover, cash could play an important role in the event of a disturbance in the payment system<sup>6</sup> and it is robust against cyber-crime<sup>7</sup>, since cash payments do not require a functional technical infrastructure or related investment but are always available. Furthermore, cash payments are not subject to daily or weekly payment limits set by entities providing underlying payment services. In addition, cash payments also facilitate the inclusion of the entire population in the economy by allowing citizens to settle a wide range of payment transactions in this way, thus ensuring freedom of choice as to the method of payment for all citizens<sup>8</sup>. Last, 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, or do not have access to the banking system and electronic means of payments. These groups include

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<sup>4</sup> Law 4172/2013 on taxation of income, urgent measures for implementing laws 4046/2012, 4093/2012, 4127/2013 and other provisions (Government Gazette A 167/23.7.2013).

<sup>5</sup> See paragraph 2.4 of Opinion CON/2017/8, paragraph 2.1 of Opinion CON/2019/41, paragraph 9.2.1 of Opinion CON/2020/13, paragraph 2.3 of Opinion CON/2020/21, paragraph 7.2.1 of Opinion CON/2021/9, paragraph 2.1 of CON/2021/18, paragraph 2.1 of Opinion CON/2023/7, and paragraph 2.1 of Opinion CON/2023/13. All ECB opinions are published on EUR-Lex.

<sup>6</sup> See paragraph 2.1 of Opinion CON/2019/41, paragraph 9.2.1 of Opinion CON/2020/13, paragraph 7.2.1 of Opinion CON/2021/9, and paragraph 2.3 of Opinion CON/2021/18.

<sup>7</sup> See paragraph 2.2 of Opinion CON/2021/32 and paragraph 2.1.1 of Opinion CON/2023/33.

<sup>8</sup> See paragraphs 2.4 and 3.1 of Opinion CON/2017/8, paragraph 2.7 of Opinion CON/2017/40, paragraph 2.6 of Opinion CON/2019/4, paragraphs 2.1 to 2.3 of Opinion CON/2021/18, paragraph 7.2.1 of Opinion CON/2021/9, paragraph 2.3 of Opinion CON/2021/38, paragraph 2.1 of Opinion CON/2023/13, and paragraph 2.1 of Opinion CON/2023/13.

not only elderly people, but also some disabled citizens, immigrants, socially vulnerable citizens, minors and others with limited or no access to digital payment services<sup>9</sup>. Against this backdrop, the ECB closely monitors any national law developments that aim to limit cash payment possibilities and thereby interfere with citizens' right to pay in cash.

- 2.2 Under the Treaty, the European System of Central Banks (ESCB) has the basic task of promoting the smooth operation of payment systems<sup>10</sup>, and the ECB has the exclusive right to authorise the issue of euro banknotes within the Union<sup>11</sup>. The euro banknotes issued by the ECB and the national central banks of the euro area are the only banknotes with legal tender status within the euro area<sup>12</sup>.
- 2.3 The concept of 'legal tender' of a means of payment denominated in a currency unit has been considered by the Court of Justice of the European Union. In particular, the Court has clarified that the concept of 'legal tender' signifies that this specific means of payment cannot generally be refused in settlement of a debt, denominated in the same currency unit at its full face value, with the effect of discharging the debt. In clarifying the concept of 'legal tender' under Union law, the Court has taken into consideration Commission Recommendation 2010/191 of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins<sup>13</sup>, which provides useful guidance for the interpretation of the relevant provisions of Union law. Point 1 of Recommendation 2010/191 states that, where a payment obligation exists, the legal tender of euro banknotes and coins should imply (a) mandatory acceptance of those banknotes and coins; (b) their acceptance at full face value; and (c) their power to discharge from payment obligations. According to the Court, this shows that the concept of 'legal tender' encompasses, inter alia, an obligation in principle to accept banknotes and coins denominated in euro for payment purposes<sup>14</sup>.
- 2.4 The Court has clarified that the concept of 'legal tender' is a concept of Union law that must be given an autonomous and uniform interpretation throughout the European Union<sup>15</sup>. Insofar as it allows the Union legislature to lay down the measures necessary for the use of the euro as the single currency, the Court clarified that Article 133 of the Treaty empowers the Union legislature alone to specify the legal rules governing the status of legal tender accorded to banknotes and coins denominated in euro, insofar as that is necessary for the use of the euro as the single currency. In this respect, the ECB notes that, on 28 June 2023, the Commission published a proposal for a regulation on the legal tender of euro banknotes and coins, which would establish rules on the legal tender of euro banknotes and coins in binding Union secondary law<sup>16</sup>. The explanatory memorandum of the proposed regulation states that discussions within the Euro Legal Tender Expert Group (ELTEG) confirmed the existence of uncertainty and important differences regarding the practical application

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<sup>9</sup> See paragraph 1.5 of Opinion CON/2019/41.

<sup>10</sup> Article 127(2) of the Treaty and Article 3.1 of the Statute of the ESCB and the ECB.

<sup>11</sup> First sentence of Article 128(1) of the Treaty and first sentence of Article 16 of the Statute of the ESCB and the ECB.

<sup>12</sup> Third sentence of Article 128(1) of the Treaty and third sentence of Article 16 of the Statute of the ESCB and the ECB.

<sup>13</sup> OJ L 83, 30.3.2010, p. 70.

<sup>14</sup> See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, joined cases C-422/19 and C-423/19, EU:C:2021:63, paragraphs 46 to 49.

<sup>15</sup> See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, joined cases C-422/19 and C-423/19, EU:C:2021:63, paragraph 45.

<sup>16</sup> Proposal of the European Commission of 28 June 2023 for a regulation of the European Parliament and of the Council on the legal tender of euro banknotes and coins (COM(2023) 364 final).

of the concept of legal tender across the euro area<sup>17</sup>. These differences would justify establishing rules on the legal tender of euro cash in a regulation adopted under Article 133 of the Treaty.

- 2.5 The Union legislature's exclusive competence precludes any competence on the part of the Member States in the matter, unless they have been empowered by the Union to do so or for the implementation of Union acts<sup>18</sup>.
- 2.6 However, the Court further clarified that the status of legal tender calls only for acceptance in principle of banknotes and coins denominated in euro as a means of payment, not for absolute acceptance. The Union's exclusive competence in matters of monetary policy is without prejudice to the competence of the Member States whose currency is the euro to regulate the procedures for settling pecuniary obligations, which do not affect the principle that, as a general rule, it must be possible to discharge a payment obligation in cash. Thus, that exclusive competence does not prevent a Member State from adopting a measure falling within one of the Member State's competences; for instance, a Member State may, based on its competence to organise its public administration, oblige the public administration to accept cash payments from citizens. Neither does it prevent a Member State, in the exercise of its own powers, from introducing, on legitimate public interest grounds, a derogation from that obligation for statutorily imposed payments, subject to compliance with certain conditions. In particular, the obligation to accept euro banknotes and coins may, in principle, be restricted by the Member States for reasons of public interest and subject to the principle of proportionality. This means that any such restrictions must be proportionate to the public interest objective pursued. When limiting the possibility, recognised by Union law, of generally discharging a payment obligation in banknotes and coins denominated in euro, Member States must ensure that any measures comply with the principle of proportionality, which requires in particular that they are appropriate for achieving the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives<sup>19</sup>.
- 2.7 The Court has established that restrictions of the legal tender status of euro banknotes in particular require that the legislation (i) does not have the object or effect of establishing legal rules governing the status of legal tender of euro banknotes; (ii) does not lead, in law or in fact, to abolition of those banknotes, in particular by calling into question the possibility, as a general rule, of discharging a payment obligation in cash; (iii) has been adopted for reasons of public interest; (iv) only entails a limitation on payments in cash that is appropriate for attaining the public interest objective pursued; and (v) only entails a limitation on payments in cash that does not go beyond what is necessary in order to achieve the public interest objective<sup>20</sup>.
- 2.8 Regarding the proportionality of a restriction of the legal tender status of euro banknotes, the Court requires not only that the measure is appropriate for attaining the public interest objective pursued, but also that it must not go beyond what is necessary in order to achieve that objective. The ECB

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<sup>17</sup> See section 3, page 4 of the Explanatory memorandum of the proposed regulation on the legal tender of euro banknotes and coins, and the Final report of the Euro Legal Tender Expert Group (ELTEG) of 6 July 2022.

<sup>18</sup> See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, joined cases C-422/19 and C-423/19, EU:C:2021:63, paragraphs 50 to 52.

<sup>19</sup> See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, joined cases C-422/19 and C-423/19, EU:C:2021:63, paragraphs 55 to 56 and 67 to 70.

<sup>20</sup> See judgment of the Court of Justice of 26 January 2021, *Hessischer Rundfunk*, joined cases C-422/19 and C-423/19, EU:C:2021:63, paragraph 78.

has undertaken additional reflection in its opinions with respect to whether limitations may be considered proportionate<sup>21</sup>. In particular, the ECB has noted that the broader and more general a limitation is, the stricter should be the interpretation of the requirement for the limitation to be proportionate to the objective pursued<sup>22</sup>. When considering whether a limitation is proportionate, the adverse impact of the limitation in question and whether alternative measures could be adopted that would fulfil the relevant objective with a less adverse impact should always be considered<sup>23</sup>.

- 2.9 Finally, the ECB notes that it opined in 2019 on the tax disincentive for the use of cash which is the subject of the second draft amendment<sup>24</sup>.

### 3. Specific observations

- 3.1 The ECB considers that the draft amendments represent restrictions of the legal tender status of euro banknotes and that therefore they should be assessed against the criteria laid down by the Court.
- 3.2 The ECB further considers that neither of the draft amendments has the objective or the effect of amending the legal rules governing the status of legal tender of euro banknotes or coins. The draft amendments do not lead, in law or in fact, to the abolition of banknotes in Greece<sup>25</sup>.
- 3.3 The draft amendments are proposed to be adopted for reasons of public interest. Regarding the first draft amendment, the explanatory note explains that, based on currently available data, approximately one-quarter of all real estate property transfers in Greece have been recorded as partly or fully paid for in cash. The consulting authority considers the first draft amendment to remove the possibility of purchasing real estate property in cash necessary in order to tackle tax evasion, clean the real estate market and, at the same time, strengthen the banking system by channelling cash and activating anti-money laundering (AML) procedures for purchases of real estate property. The explanatory note also mentions that imposing the use of bank payments for these purchases would allow the competent audit authorities to immediately identify cases of tax evasion as well as cases falling within the competence of the Greek Anti-Money Laundering Authority, which under the current framework are almost impossible to detect and deal with, even if the competent services increase the number of audits performed.
- 3.4 According to the explanatory note, the aim of the second draft amendment is to further limit the use of cash in business transactions in order to enhance the transparency of these transactions and to combat tax evasion and the shadow economy. The explanatory note observes that the use of electronic means of payment is expected to be the first choice of an organised business and is in any case required for its proper management. The explanatory note states that despite the fact that the law already provides that any single cash payment for the acquisition of goods and services exceeding EUR 500 for consumer-to-business transactions is prohibited and that such payment may

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<sup>21</sup> See paragraph 4 of Opinion CON/2022/5.

<sup>22</sup> See paragraph 2.7 of Opinion CON/2017/8 and paragraph 2.11 of Opinion CON/2021/18.

<sup>23</sup> See paragraph 2.7 of Opinion CON/2017/8 and paragraph 2.7 of Opinion CON/2019/39.

<sup>24</sup> See Opinion CON/2019/39.

<sup>25</sup> See paragraph 4.6 of Opinion CON/2022/5.

only be made via electronic means<sup>26</sup>, and despite increased controls and audits carried out by the competent authorities, it has been established in practice that the rate of tax evasion remains high. The explanatory note also points out that the use of electronic means of payment remains low even after Greek law provided relevant tax incentives to businesses and cites the ECB survey on the use of cash by companies in the euro area of October 2022<sup>27</sup>, according to which 51 % of Greek retail trade, hotel, restaurant, entertainment and recreation businesses currently pay their suppliers in cash, compared with the euro area average of 20 %. The explanatory note also emphasises that, based on the corresponding annual calculations of the European Commission, Greece ranks third highest in terms of loss of VAT revenue<sup>28</sup>. However, the explanatory note provides an assessment that is not entirely consistent with the data presented in the ECB survey, where the 51 % figure refers merely to those companies regularly withdrawing cash, which accounted for 30 % of the surveyed companies. Hence, the assessment carried out by the Greek authorities might have overstated the share of companies paying their suppliers in cash<sup>29</sup>. On the other hand, it is accurate according to the survey that the prevalence of companies withdrawing cash to pay suppliers in Greece is roughly 2.5 times higher than in the euro area overall.

- 3.5 Expanding existing tax disincentives for the use of cash is also deemed appropriate, according to the explanatory note, because it is envisaged that it will become mandatory in 2024 for businesses to connect with the digital tax platform myDATA and report their revenues and expenses via that platform. The fines under the draft amendments are expected to be coupled with (a) increased fines for breaching the prohibition of using cash for all consumer-to-business transactions exceeding EUR 500 mentioned in paragraph 3.4 above; and (b) fines that are expected to be introduced for businesses not transmitting tax data to the digital tax platform myDATA, to produce a combined deterrent effect.
- 3.6 The ECB acknowledges that the draft law's objectives of combating tax evasion and money laundering may, in general, constitute 'public interest reasons' justifying the dis-incentivisation of, and the resulting limitation on, the use of cash payments<sup>30</sup>. Some studies indicate that tax evasion and money laundering might be facilitated by cash, in particular in the real estate market.<sup>31</sup> On 14 July 2023 and 21 November 2023, the Council and the Commission recommended that Greece

<sup>26</sup> Article 20, paragraph 3, of Law 3842/2010 as amended by Article 69 of Law 4446/2016. See paragraphs 1.3 and 2.10 of Opinion CON/2019/39.

<sup>27</sup> The report is available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>28</sup> European Commission, Directorate-General for Taxation and Customs Union, Poniatowski, G., Bonch-Osmolovskiy, M., Smietanka, A. and Sojka, A., *VAT gap in the EU – 2023 report*, Publications Office of the European Union, 2023, available on the European Commission's website at [www.ec.europa.eu](http://www.ec.europa.eu).

<sup>29</sup> The share of companies in Greece that regularly withdraw cash amounted to 30%, which corresponds to the euro area average of 28%.

<sup>30</sup> See, among others, paragraph 2.2 of Opinion CON/2014/37; paragraph 2.4 of Opinion CON/2017/18; paragraph 2.5 of Opinion CON/2017/40; paragraph 2.4 of Opinion CON/2019/4; paragraph 2.3 of Opinion CON/2019/46; paragraph 4 of Opinion CON/2022/5; paragraph 2.6 of Opinion CON/2022/9; paragraph 2.10 of Opinion CON/2022/43; and paragraphs 3.2 and 3.3 of Opinion CON/2023/7. See also paragraph 2.6 of Opinion CON/2019/39 assessing the second of the draft amendments, where the ECB also acknowledged that 'the draft amendments' objectives of (i) combating tax evasion and (ii) broadening the tax base, while maintaining fiscal balance after the decreases in corporate income tax and personal income tax may, in general, constitute "public reasons" justifying the dis-incentivisation through taxation of, and the resulting limitation on, the use of cash payments'.

<sup>31</sup> Remeur, C. (2019), "Understanding money laundering through real estate transactions", European Parliamentary Research Service; OECD (2007 and updated since), "Real estate sector: Tax fraud and money laundering vulnerabilities"; ECORYS & CEPS (2017), "Study on an EU initiative for a restriction on payments in cash", commissioned by the European Commission.

should, among others, strengthen tax compliance by extending the use of electronic payments<sup>32</sup>. Tax evasion in Greece seems to be higher than in other EU Member States. For 2021, the European Commission estimated Greece as having the third highest VAT gap (the difference between the VAT revenue that could in theory be collected with full compliance and the VAT that is in fact collected) in the EU, equal to 17.8% of potential VAT revenue.<sup>33</sup>

- 3.7 It is, however, difficult for the ECB to assess whether the measures contained in the draft amendments are appropriate for attaining the public interest objectives pursued, and whether they do not go beyond what is necessary in order to achieve those objectives, especially in view of the vague description of those objectives in the explanatory note to the draft amendments and the absence of concrete impact assessments of the expected effect of the draft amendments.
- 3.8 Regarding the first draft amendment more specifically, the explanatory note does not provide evidence that real estate purchases, regardless of their value, are being used for tax evasion and/or money laundering purposes, nor does it explain how imposing the use of bank payments for these purchases will be effective in (a) preventing shadow economy phenomena whereby part of the consideration for these purchases remains unrecorded in the notarial deeds and is paid in cash; or (b) facilitating the detection by competent authorities of cases of tax evasion and/or money laundering. It is not explained why cases of tax evasion and/or money laundering would be impossible to detect and deal with when the payment is made in cash, even if audit authorities increase the number of audits they perform. The explanatory note also does not specifically describe the extent to which alternative and equally or more effective (but less onerous) measures could be adopted which would also fulfil the objectives of the first draft amendment.
- 3.9 The ECB notes that the first draft amendment implies a full prohibition of using cash in Greece for real estate transactions. The ECB further notes that the purchase price of certain real estate properties may be very low depending on their size (e.g. parking spaces, storage rooms) or location and nature (e.g. plots of agricultural land, farmhouses in rural areas). The latter type of asset might have a strong presence in areas where citizens have limited access to bank offices or digital payment services. The explanatory note does not address the social impact and risk of financial exclusion that could potentially result from the first draft amendment. The envisaged prohibition of cash would mean that legitimate transactions of low value real estate assets could not be settled using cash as a means of payment. Moreover, as experience within the Union has shown, certain cashless payment instruments may be temporarily unavailable as they depend on the underlying technical infrastructure operated by payment service providers.
- 3.10 Regarding the second draft amendment, the explanatory note does not explain why the current threshold of EUR 500 paid in cash for the acquisition of goods or services that may not be deducted from taxable profit arising from business activities has not produced the expected results in combating tax evasion and the shadow economy and increasing VAT revenues. If such a measure

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<sup>32</sup> Council Recommendation of 14 July 2023 on the 2023 National Reform Programme of Greece and delivering a Council opinion on the 2023 Stability Programme of Greece (OJ C 312, 1.09.2023, p. 67) and Commission Opinion of 21 November 2023 on the Draft Budgetary Plan of Greece, C(2023) 9507 final, where the Commission also suggests that the full and timely implementation of the two draft amendments would be key to deliver on the recommendation.

<sup>33</sup> See speech of the Governor of the Bank of Greece of 31 October 2023, available on the website of the Bank of Greece at [www.bankofgreece.gr](http://www.bankofgreece.gr). See also Vasardani, M., "Tax Evasion in Greece: An overview", *Economic Bulletin*, Bank of Greece, Issue 35, Article 2, 2011.

has not produced the desired effects, it is hard to understand why lowering that threshold to EUR 300 would be considered more appropriate and more effective, or necessary also considering the envisaged mandatory connection of businesses with the Greek tax authorities through the digital tax platform myDATA, in which all revenues and all expenses of a business should be declared. The new proposed threshold of EUR 300 is in fact currently lower than when it was first proposed by the consulting authority in 2019, once inflation is accounted for. The explanatory note also does not explain why this indirect limitation on the use of cash through tax disincentives has not produced the expected results when combined with the general prohibition to use cash for the acquisition of goods and services exceeding EUR 500.

- 3.11 Against this background, it is therefore questionable whether or not the draft amendments could be considered proportionate to the objectives pursued.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 6 December 2023.

[signed]

*The President of the ECB*

Christine LAGARDE