

THE PRINCIPLE OF PROPORTIONALITY AND CASH PAYMENT LIMITS: AN ANALYSIS OF EUROPEAN CENTRAL BANK OPINIONS

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Abstract: This paper examines the European Central Bank's evolving interpretation and application of the principle of proportionality regarding national legislation limiting cash payments within the EU. Through a comprehensive analysis of ECB opinions issued over the past decade, the study traces how the ECB's assessment framework has developed from general considerations of compatibility with legal tender status to a more nuanced evaluation encompassing the appropriateness, necessity, and proportionality *stricto sensu* of proposed measures. It contributes to the understanding of how the principle of proportionality operates as a crucial legal standard in balancing legitimate public policy objectives with the preservation of cash as legal tender in the European monetary system in the view of ECB.

Key words: EU Law; European Central Bank; Proportionality; Euro; Cash; Cash Limitations

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1. INTRODUCTION

The increasing propensity of Member States within the European Union to introduce national legislation imposing limitations on the use of cash for various transactions represents a significant development in the realm of payment systems and economic governance. This trend, often motivated by objectives such as combating tax evasion, money laundering, and the financing of terrorism, has invariably prompted scrutiny from the European Central Bank (hereinafter also referred to as "ECB"). The Treaty on the Functioning of the European Union "enshrines the ECB's independence and institutional position, so that any modification requires a unanimous decision of all EU Member States. This solidifies the quasi-constitutional status of the ECB. In contrast, a simple law could alter the competences and design of other central banks" (Egidy, 2021, p. 288), e.g., the National bank of Slovakia or any other rule regarding payments, currency matters or rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets in the member states, because they are not usually to be found on the constitutional level. The ECB, vested with the responsibility for safeguarding the euro and ensuring the smooth operation of payment systems within the Eurosystem, routinely issues opinions on such draft laws, offering critical assessments grounded in its legal mandate and economic expertise.

Central to the ECB's evaluation in the cases of cash limitations is the fundamental principle of proportionality, a cornerstone of EU law that dictates that any measures adopted by the Member States must be appropriate, necessary, and proportionate to the legitimate aims pursued. Why did we choose the principle of proportionality? Because when we look at the general principles of EU law and have to

choose one "which has most influenced the development of public law across Europe, it seems difficult – one might almost say manifestly disproportionate – to choose any principle other than proportionality" (Young and De Búrca, 2017, p. 133). It "allows all different rights and principles to be weighed against each other in the same dimension" (Sauter, 2013, p. 441). This article undertakes a comprehensive analysis of the ECB's evolving perspective on the principle of proportionality as articulated in its opinions concerning national cash payment limitations. By examining a range of ECB opinions issued over time, this analysis seeks to delineate the key factors considered by the ECB in its assessment and to illuminate the nuanced application of this crucial legal standard in the context of cash as a means of payment.

1.1 Research Hypothesis and Methodology

This article advances the thesis that the ECB's application of the principle of proportionality in opinions on national cash payment restrictions has undergone significant doctrinal development, moving from a mere formal compatibility check into a substantive analytical framework within ECB opinions on cash payment limitations, and that this evolution reflects the ECB's increasing sophistication in balancing Member State sovereignty with the protection of legal tender status of euro banknotes and coins.

This paper employs analytical legal research methodology, combining doctrinal analysis of legal sources with critical evaluation of their evolution and application. The research is based on qualitative analysis of ECB opinions between the years 2010 and 2025, specifically those addressing national cash payment restrictions and relevant case law of the Court of Justice of the European Union (hereinafter referred to as "**CJEU**") on proportionality and legal tender restrictions. It consists of systematic content analysis of ECB opinions to identify patterns in proportionality assessment to trace doctrinal evolution, and synthesis with CJEU jurisprudence to evaluate consistency with established EU law principles. The selection criterion for ECB opinions was their substantive focus on proportionality analysis of cash payment limitations.

2. ECB AND THE PRINCIPLE OF PROPORTIONALITY

We must admit that "*the principle of proportionality, which is one of the few principles expressed explicitly in the European Union acts, is widely applied in the EU legal order and is therefore one of the fundamental principles of the EU system*" (Dlugosz, 2017, p. 283). For the European Central Bank, the principle of proportionality serves as both a constraint on its authority and a framework through which it evaluates national legislation affecting monetary policy and payment systems. This part examines the intricate relationship between the ECB's institutional role and the application of proportionality in the context of financial regulations, particularly those concerning cash payment limitations. The ECB occupies a unique position within the EU's institutional architecture, wielding significant influence over monetary policy, while also serving in an advisory capacity on legislative matters falling within its competence. When evaluating draft legislation from Member States, the ECB must carefully assess whether proposed measures strike an appropriate balance between achieving legitimate public policy objectives and preserving the integrity of the euro as legal tender. This balancing act epitomises the essence of proportionality analysis.

2.1 The ECB's Power to Adopt Opinions

The obligation to consult the European Central Bank is an important element of legal cooperation between the Member States of the European Union and the European institutions, and not only in monetary policy. One of the essential features of any EU institution is its involvement in the legislative process, and in the case of the ECB this is an obligation arising from Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union (hereafter referred to as "TFEU"). Member States are obliged to submit such proposals to the ECB for consultation before adopting laws or other legal measures that fall within the ECB's competence.

Although Article 127 of the Treaty on the Functioning of the EU is itself among the provisions on monetary policy, we cannot conclude that the consultation obligation will apply exclusively to monetary policy. On the contrary, it is a general provision that provides for a duty to consult in the ECB's area of competence (the whole remit). While Article 127(4) TFEU provides that the ECB is to be consulted in the area of its competence, it also provides that it is to be consulted only within the limits and under the conditions laid down by the Council in accordance with the procedure under Article 129(4) TFEU. To this end, the Council has adopted a decision - Council Decision of 29 June 1998 on consultation of the European Central Bank by the national authorities on draft legislation (98/415/EC). Pursuant to Article 2(1) of that Decision, the authorities of the Member States shall consult the ECB on any draft legislation within their area of competence under the Treaty, e.g. currency matters or payment methods and more.

The legislator in Slovakia even submitted a draft law that would have introduced such a consultation obligation into the Rules of Procedure of the National Council of the Slovak Republic.¹ As the sponsors of this bill stated, its aim was to remedy the shortcomings of the Rules of Procedure of the National Council. These shortcomings consist in the absence of regulation of certain matters related to the Slovak Republic's membership of the European Union in the adoption of bills submitted by Members of the National Council or committees of the National Council, as confirmed by the European Central Bank in its opinion CON/2014/54 of 10 July 2014.² We learn from this ECB³ opinion that the ECB itself also took a positive view of the main objective, which was to ensure that the relevant provisions of national legislation were submitted for consultation in an orderly and timely manner.

The ECB also positively assessed the intention of the legislators, who also had in mind those draft amendments which, during the negotiations, would turn the initially submitted proposals not falling within the ECB's competence into rules which are already subject to the consultation obligation. Even in the case of last-minute amendments, the adoption of the proposed national legislation must be postponed until the ECB has delivered its opinion. This is to ensure that the National Council of the Slovak Republic

¹ See National Council of the Slovak Republic. (2014). Draft Act submitted by Members of the National Council of the Slovak Republic Jozef Viskupič and Jozef Kollár for the adoption of a law amending and supplementing Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic, as amended (Parliamentary Print No. 1197). Available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=5140> (accessed on 29.04.2025).

² See National Council of the Slovak Republic. (2014). Explanatory Report to the Draft Act submitted by Members of the National Council of the Slovak Republic Jozef Viskupič and Jozef Kollár for the adoption of a law amending and supplementing Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic, as amended (Parliamentary Print No. 1197). Available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=403231> (accessed on 29.04.2025).

³ Opinion of the European Central Bank of 10 July 2014 on rules governing consultation of the ECB (CON/2014/54).

could meaningfully consider the ECB's opinion before the final vote on the draft national legislation.

2.2 On the Possibility of Adopting Limits on Cash Payments in the EU

First of all, a legitimate question that arises when limiting cash payments at EU level is whether it is possible to introduce such limits at all. After all, one of the four fundamental freedoms on which the EU was built is the free movement of capital - Article 63 et seq. TFEU. Restricting cash payments could therefore be fundamentally incompatible with the right to free movement of capital. Art. 65 TFEU, however, legitimises such necessary measures which can be justified on grounds of public interest or public security. The former President of the German Federal Constitutional Court, prof. Papier, adds to this the possible interconnection and limitation of fundamental rights under the Charter of Fundamental Rights of the European Union, namely under Article 7 - respect for private and family life, Article 8 - protection of personal data and Article 17 - right to property (Papier, 2022, p. 86, 87). However, it also notes that these rights can also be restricted under Article 52(1), second sentence of the Charter - where it is necessary and genuinely consistent with objectives of general interest recognised by the EU, or where it is necessary to protect the rights and freedoms of others, in compliance with the principle of proportionality.

Thus, although a restriction in the form of a maximum limit on cash payments relates to several EU fundamental rights and freedoms, it may be legitimate if it is proportionate and pursues the general interest or the public interest.

The CJEU has also commented in its case law on the assessment of the national cash limit and its compatibility with EU law. In its judgment of 6 October 2021 in Case C-544/19 (ECOTEX BULGARIA), it stated that "*Article 63 TFEU, read in conjunction with Article 49(3) of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding legislation of a Member State which, in order to combat tax evasion and tax avoidance, prohibits, on the one hand, natural and legal persons from making a payment in cash in the domestic territory if the amount of that payment is equal to or greater than a specified threshold and which, for that purpose, requires a transfer or deposit to be made into a payment account ...*". The CJEU has previously stated "*national legislation may constitute an obstacle to one or more of the fundamental freedoms guaranteed by the TFEU and where the Member State concerned relies on the grounds set out in Article 65 TFEU or on overriding reasons of general interest recognised by EU law to justify such an obstacle.*"⁴ In its earlier case-law, the CJEU has already identified, for example, the objectives of combating tax fraud and evasion as being in the public interest in restricting the free movement of capital.⁵ Moreover, in restricting the free provision of services (a freedom analogous to the free movement of capital), the CJEU has also recognised the fight against money laundering as a legitimate objective.⁶

⁴ CJEU, judgement of 21 May 2019, European Commission v Hungary, C-235/17, ECLI:EU:C:2019:432, para. 64.

⁵ CJEU, judgement of 7 April 2011, European Commission v Portugal, C-20/09, ECLI:EU:C:2011:214, para. 60, and the case-law cited therein.

⁶ CJEU, judgement of 25 April 2013, Jyske Bank Gibraltar Ltd, v Administración del Estado, C-212/11, ECLI:EU:C:2013:270, para. 64.

3. THE PRINCIPLE OF PROPORTIONALITY IN EU LAW AND CASH PAYMENTS LIMITATIONS

The principle of proportionality, enshrined in Article 5(4) of the Treaty on European Union, dictates that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. *"This principle calls for a reasonable or appropriate balance between the authority that Member States may employ to avert possible abuse, evasion, or avoidance and the implementation of the values, rights, and duties..."* (Beshi and Susuri, 2023, p. 28).

This overarching principle encompasses three sub-principles: appropriateness (or suitability), meaning the measure must be apt to achieve the desired objective; necessity, implying that there should be no less restrictive means available to achieve the same end; and proportionality *stricto sensu*, which requires a balancing of the advantages and disadvantages of the measure, ensuring that the benefits outweigh the drawbacks.

In the context of cash payments, the legal tender status of euro banknotes and coins, as recognised by Article 128(1) of TFEU, provides a crucial backdrop. While euro banknotes and coins are legal tender throughout the euro area, meaning they must be accepted in payment of monetary debts, this status is not absolute. The CJEU⁷ has affirmed that Member States may, for reasons of public interest, introduce limitations on payments in cash, provided that other lawful means for the settlement of monetary debts are available. On the other hand, in a study commissioned by the European Commission, De Groen, Busse and Zarra (2017, p. 132, 133) concluded that cash restrictions do not have the desired result on terrorist financing or tax evasion. Based on their research, for some authors, such limit appears neither necessary nor proportionate (Schroth, Vyborny and Ziskovsky, 2022, p. 117).

The ECB, in its capacity to promote the smooth operation of payment systems within the Eurosystem - Article 127(2) TFEU, and to be consulted by national authorities on draft legislative provisions relating to means of payment has a vested interest in ensuring that national cash payment limitations are proportionate and do not unduly impede the efficiency and accessibility of payment systems or undermine the status and public trust in cash.

3.1 ECB on Proportionality

In general, the principle of proportionality is mostly used by courts "as an instrument to verify whether the choices of the Public Administration have been made properly" (Poto, 2007, p. 868), so it is an ex-post control. In the case of the ECB, however, it is an ex-ante control (at least it should be), i.e. it subjects legislation to control before it is adopted, also from the point of view of the principle of proportionality (not only in the case of introducing limits on cash payments). A review of the ECB's opinions reveals a consistent emphasis on the principle of proportionality from the outset, albeit with an increasing level of detail and a more granular consideration of the potential impacts of proposed limitations.

In its early opinion concerning a Bulgarian draft law on restrictions on cash payments in 2010 (CON/2010/79), the ECB noted that EU law only regulates restrictions on cash payments in euro. Bulgaria was one of the earlier Member States to seek the

⁷ CJEU, judgement of 26 January 2021, Johannes Dietrich and Norbert Häring v Hessischer Rundfunk, joined cases C-422/19 and C-423/19, ECLI:EU:C:2021:63.

ECB's opinion on restrictions on cash payments. In 2010, the Bulgarian Ministry of Finance requested an opinion on a draft law intended to limit cash payments within Bulgaria to BGN 5 000 (approximately EUR 2 557) or its foreign currency equivalent. The stated purpose of the Bulgarian draft law, according to its explanatory memorandum, was to address the widespread issue of unrecorded cash flows in accounting practices, which was identified as a major problem for the Bulgarian economy. The prevalence of cash payments for transactions involving legal entities and individuals, as well as for employment remuneration, was linked to tax evasion and reduced social insurance and pension contributions. Consequently, the draft law aimed to significantly increase national revenue and reduce the grey economy in Bulgaria. In its opinion, the ECB acknowledged the public benefits underpinning the draft law's objectives, including addressing national revenue shortages, shrinking the grey economy, and enforcing stricter anti-money laundering measures tailored to the Bulgarian context. The ECB considered the proposed limitations on cash payments in Bulgarian lev proportionate to these pursued objectives. This early opinion set a precedent for the ECB's analysis of cash payment restrictions, emphasising the balancing of public interest goals against the impact on cash as a means of payment.⁸

By 2012, the ECB's opinions began to articulate the proportionality principle more explicitly. In its opinion on Spanish (CON/2012/33) and Danish (CON/2012/37) draft laws, the ECB stated that the effects of provisions containing practical limitations on cash payments should be proportionate to the general objective pursued and should not go beyond what is necessary to achieve this objective. The ECB also emphasised the need to carefully weigh any impact against the public benefits expected.

The opinion on a Lithuanian draft law in 2014 (CON/2014/4) introduced the crucial element of access to alternative payment methods. Noting that a significant portion of the Lithuanian population did not have payment accounts, the ECB recommended ensuring access to such accounts to mitigate the impact of cash payment limitations. This highlights the ECB's consideration of the necessity aspect of proportionality, ensuring that less restrictive alternatives are genuinely available to all.

The ECB's assessment of a Romanian draft law in the same year (CON/2014/37) further refined the proportionality analysis by focusing on the impact on transactions between natural persons and the proportion of the population without bank accounts. The ECB underscored that any negative impact of proposed limitations on this segment of society should be carefully weighed against the anticipated public benefits.

Opinions concerning Danish draft laws in 2013 (CON/2013/11) and 2017 (CON/2017/8) demonstrated the ECB's increasing scrutiny of limitations affecting relatively low-value payments. The ECB reiterated that authorities should ensure that the effects of such measures do not exceed what is necessary to achieve the stated objectives, such as combating money laundering and terrorist financing. Furthermore, the ECB explicitly noted in its 2017 opinion that the limitation should be effective and proportionate to the objective pursued.

A significant development in the ECB's articulation of proportionality came with its opinion on a Spanish draft law in 2022 (CON/2022/9). Here, the ECB explicitly stated that the broader and more general a limitation is, the stricter should be the interpretation

⁸ Years later, in 2017, Bulgaria once again sought the ECB's opinion on a draft amendment to the law on the limitation of cash payments. This draft law proposed a gradual decrease in the maximum limit for cash payments to BGN 1 000 (approximately EUR 500) and the ECB in its opinion has had a different opinion in this case.

of the requirement for the limitation to be proportionate. The ECB also emphasised the need to consider alternative measures that would fulfil the relevant objective with a less adverse impact. Moreover, the ECB cautioned that cash payment limits should consider the advantages of having limits and the potential inconvenience for regular transactions, aiming to avoid a factual impact leading to the abolition of euro banknotes as a general means of payment. The ECB also raised concerns about potentially disproportionate fines for non-compliance.

More recently, in its opinion on Greek draft amendments in 2023 (CON/2023/39), the ECB questioned the proportionality of indirect limitations on cash use through tax disincentives, particularly in light of existing general prohibitions. This opinion reflects a more holistic assessment of the cumulative impact of various measures affecting cash payments. Similarly, in its 2024 opinion on Danish measures (CON/2024/2), the ECB expressed concerns about the proportionality of lowering the cash prohibition limit, questioning the substantiation provided and referencing its previous stance on a similar measure in Spain where a EUR 1,000 limit was considered disproportionate. Also in this opinion ECB noted that the effect of the current inflation rates throughout Europe on the purchasing power of money is something which should also be taken into account when assessing whether the cash prohibition limit proposed in the draft law is proportionate to the public interest objective pursued. Thus, another aspect that affects proportionality is inflation, i.e. the depreciation of money over time should also be taken into account when setting limits for cash payments.

We also see a certain shift in the ECB's opinions, or reference to other EU sources, insofar as they are relevant or considered relevant by the ECB in the proportionality assessment. These sources are the CJEU judgment in joined cases C-422/19 and C-423/19 of 26 January 2021 - Johannes Dietrich and Norbert Häring v Hessischer Rundfunk (hereinafter referred to as „**Joined Cases C-422/19 and C-423/19**“),⁹ the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (hereinafter referred to as “**Directive**”).¹⁰ The Directive is mentioned because of the limit of EUR 10 000. It is specifically this limit that has become something of a guideline and recommendation for the ECB in this context.

3.2 ECB Following the CJEU Judgment in Joined Cases C-422/19 and C-423/19

What is important in this case is not only the decision itself - the CJEU's judgment in Joined Cases C-422/19 and C-423/19, but also the Advocate General's submissions. In the present case, the absolute limitation of the possibility to pay in cash, i.e. its exclusion from the payment of certain services, was considered.

The principle of proportionality, as mentioned above, is a general principle of EU law, requiring that measures adopted by public authorities should be appropriate for attaining the legitimate objectives pursued and must not go beyond what is necessary to achieve them. In his Opinion concerning the Joined Cases C-422/19 and C-423/19,

⁹ For example – the ECB opinions CON/2022/5, CON/2022/9, CON/2022/43, CON/2023/7, CON/2023/13, CON/2023/39, CON/2024/2, CON/2025/4.

¹⁰ For example – the ECB opinions CON/2017/18, CON/2017/20, CON/2017/27, CON/2017/40, CON/2019/4, CON/2020/17, CON/2020/33, CON/2022/5, CON/2022/9, CON/2024/2.

Advocate General G. Pitruzzella dedicated specific attention to the principle of proportionality in the context of potential restrictions on the use of euro banknotes and coins, further elaborating on its significance.

The Advocate General argued that while the EU has exclusive competence in monetary policy, including defining legal tender, this does not preclude the Member states from adopting measures, in the exercise of their own competences, that may indirectly affect the use of cash. However, such measures, enacted for reasons of public interest (which extend beyond just public order), must be compatible with the concept of legal tender under EU law and adhere to the principle of proportionality.

The Advocate General explicitly stated that legal regulations restricting the use of cash as a means of payment, whether adopted by the EU or the Member states, must establish a limitation that is proportionate to the objective pursued. He reiterated the established understanding of the principle, emphasising that the measures should be suitable for ensuring the achievement of the legitimate aims of the regulation and must not exceed what is necessary for their attainment. Furthermore, if several suitable measures are available, the least restrictive one should be chosen.

In the specific context of the Joined Cases C-422/19 and C-423/19's exclusion of cash payments for broadcasting fees, the Advocate General considered the proportionality of such a measure. He noted that while the stated aim related to the efficiency of public administration and the collection of fees in "mass proceedings," the complete and unreserved exclusion of cash payments without apparent consideration for the social inclusion function of cash for vulnerable individuals raised questions regarding its proportionality.

The CJEU also explicitly addressed the principle of proportionality in its judgment in Joined Cases C-422/19 and C-423/19. The CJEU stated (para. 68) that restrictions on the use of euro banknotes and euro coins by the Member States for public interest reasons must be proportionate to the public interest objective pursued.

The CJEU further elaborated (para. 69) that when the Member States impose restrictions that limit the possibility of generally discharging a payment obligation in euro banknotes and euro coins, they must ensure that these measures comply with the principle of proportionality, which is one of the general principles of EU law. In paragraph 70, the CJEU reiterated the settled case-law definition of the principle of proportionality, stating that the measures concerned must be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary in order to achieve those objectives.

In this case the CJEU also emphasised a crucial point in paragraph 77, stating that it is for the referring court (the Bundesverwaltungsgericht) to ascertain whether such a limitation is proportionate to that objective, particularly considering whether the alternative means of payment are readily accessible to everyone liable to pay. If they are not, then provisions might need to be made for those without access to pay in cash.

The CJEU's judgment in Joined Cases C-422/19 and C-423/19 firmly embeds the principle of proportionality as a key criterion for assessing the legality of national restrictions on cash payments. While acknowledging that public interest objectives can justify such limitations, the Court emphasises that Member States must ensure that the measures are appropriate and necessary, and crucially, that they do not disproportionately affect individuals, particularly by ensuring the availability of alternative lawful means of payment. The ultimate assessment of proportionality in the specific case was left to the national court.

With this case, the principle of proportionality as regards the limits on cash payments has also taken on a different dimension and has been written down. However,

the views described in the CJEU judgment cannot be regarded as an absolute solution to the principle of proportionality in relation to cash payments. Despite the definition of a certain direction, the assessment of the proportionality of restrictions on cash payments remains in many respects an unwritten principle. It has to be assessed on a case-by-case basis. This case has been mentioned because the European Central Bank has also started to refer to it in its opinions on cash restrictions. Regarding the proportionality of a restriction of the legal tender status of euro banknotes, the CJEU 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.¹¹

3.3 Disproportionality Found by the ECB

As it turns out, the restriction of cash payments itself is possible and can be assessed as proportional. Even the CJEU has assessed that legal tender status implies only its acceptance in principle and therefore not absolute. Thus, some limitation of cash payments comes into consideration. However, not all limits will be in line with EU law, or so the European Central Bank's opinions tell us.

As mentioned earlier, the ECB found draft law from Bulgaria, that should lower the limit of cash payments to BGN 1000 as disproportionate. The ECB in its opinion (CON/2017/27) considered the lowering of the limit on cash payments to BGN 1000 (approximately EUR 500) by the 1 January 2019 as disproportionate, in the light of the potentially adverse impact on the cash payment system.

This opinion merely confirmed its earlier view, expressed on the Belgian draft legislation, that the ECB in its opinion (CON/2017/20) confirmed that the EUR 500 limit is too low and disproportionate. The ECB recommended raising the threshold of EUR 500 for purchases by nonconsumers of all types of old metals, copper cables or goods containing precious materials, as this threshold is disproportionately low, despite the intention of combatting money laundering and the handling of stolen goods, especially by travelling criminal groups. In the case of vendors selling jewels with dubious origins traders are, in any case, not supposed to enter into such transactions, irrespective of their amount, as this would give rise to a breach of criminal law on account of concealment.

The ECB also commented on the EUR 1000 cash limit, which also failed the proportionality test. In its opinion (CON/2022/9) ECB stated that the EUR 1 000 limit on cash payments set by the Law and to which the explanatory memorandum accompanying the Law refers as "the general limit for cash payments" should take into account the advantages of having limits on cash payments in place and the potential inconvenience thereof for regular transactions in certain market segments. Against this background, the ECB considered the lowering of the limit on cash payments in transactions where any of the parties acts in a professional or business capacity to EUR 1 000 to be disproportionate. It would have an adverse and undesired impact on the legal tender status of euro banknotes. In addition, this cash payment limit significantly reduces the ability of payers to use euro banknotes and the freedom of citizens to choose how to pay.

¹¹ E.g., point 7 of the ECB opinion - CON/2023/7.

3.4 Can an Absolute Restriction on Cash Payments Be Proportionate?

On the other hand – could the absolute limitation of cash payments be proportionate? It is a legitimate question whether a complete restriction on cash payments can be proportionate at all.

We can mention the ECB opinion on limitations on cash payments in the context of payment of wages (CON/2013/11) where the draft law provided that wages should, in general, be paid into a bank account designated by the employee. The aim is to reduce the use of cash, and thereby to make it more difficult for employers to make undocumented payment of wages. Payment of wages in cash was still permitted under "compelling reasons," such as when an employee does not have a bank account or when circumstances beyond the employer's control prevent timely access to wages. Employees without a bank account were not required to open one and can still receive wages in cash. The ECB concluded that the restrictions were proportionate to the objectives pursued, as they carefully balance the public benefits of combating tax evasion against any negative impacts, which were expected to be minimal. However, as the ECB has also noted, the restriction on cash payments had many exceptions. This was not actually an absolute restriction on cash payments. Thus, there is a significant difference between this regulation and the regulation prohibiting cash payments for insurance premiums in the Slovak Republic.

The ECB was somewhat more lenient in its opinion (CON/2022/43) in relation to the German legislation, which also introduced the complete impossibility of cash payments for the purchase of real estate. Regarding the condition that a cash restriction should be proportionate, ECB concluded that it was not specifically described in the explanatory memorandum to the draft law to what extent alternative and equally or more effective measures, other than the strict prohibition of cash payments in the real estate sector, could be adopted that would also fulfil the objective of the draft law. So, it was difficult for the ECB to assess whether the prohibition could be considered proportionate to the objective pursued.

The ECB's opinions do not give us a clear answer as to whether even an absolute cash restriction can be proportionate. However, the question is partly answered by the CJEU in the judgment in Joined Cases C-422/19 and C-423/19, in which it stated (para. 76) that the limitation at issue in the main proceedings appears to be both appropriate and necessary in order to achieve the objective of actually recovering the radio and television licence fee, in that it enables the administration to avoid having to bear an unreasonable financial burden given the cost that would be involved in the widespread establishment of a procedure that allows licence fee payers to pay the radio and television licence fee in cash. What is interesting, CJEU stated that it is for the referring court to ascertain whether such a limitation is proportionate to that objective, in particular in the light of the fact that the lawful alternative means of payment of the radio and television licence fee may not be readily accessible to everyone liable to pay it, which would entail providing for those without access to such means of payment to be able to pay in cash.

4. PROPORTIONALITY PRINCIPLE AND ECB OPINIONS IN RELATION TO CASH LIMITATION IN SLOVAKIA

First, it should be noted that the ECB in its opinion (CON/2012/83) has been very conservative about our limit on cash payments, which the Slovak Republic intended to introduce by the 2012 law. It did not specify whether it was proportional or disproportionate but only made a recommendation to our authorities that the limits on

settlements in cash should be proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives. Any impact of the proposed limits should be carefully weighed against the public benefits expected to be derived from the proposed restrictions on settlements in cash. In view of the fact that the measures affect relatively low-value payments, the competent authorities should ensure that the effects of these measures do not go beyond what is necessary for achieving the objective of combating tax fraud and evasion.

It is interesting to note then that when the cash limit was changed to EUR 15 000, i.e. increased, the ECB has already strongly addressed the proportionality of this limit. In its opinion (CON/2023/13) ECB stated that regarding the proportionality of the draft law, the threshold of EUR 15 000 introduced by the draft law does not seem to go beyond what is necessary in order to achieve the objective of combatting tax fraud and evasion.

Another case was the ECB's position – opinion (CON/2023/7) in relation to the limitation of cash payments for public social insurance contributions. The ECB considered that our authorities have not sufficiently assessed the proportionality of the new limitation on cash payments. As the explanatory memorandum phrases the public interest objectives only in a vague manner and as the legislator has not provided any concrete impact assessment, it is difficult for the ECB to assess whether or not the limitation of cash payments to the Social Insurance Agency could be considered proportionate in light of the public interest objectives pursued. Our authorities should ensure that restrictions on cash payments are appropriate and necessary to achieve the public interests pursued and do not call into question the possibility, as a general rule, of discharging a payment obligation in legal tender.

We can see that the cash limits introduced in the Slovak Republic appeared to the ECB to be proportionate, while the absolute limitation of cash payments for insurance premiums was evaluated by the ECB very critically, especially about the quality of the explanatory memorandum. In fact, the legislator only vaguely described the objective pursued and it was not even clear whether such a measure would contribute to its achievement. The ECB probably did not even want to say that such a restriction was disproportionate, but if it was not sufficiently justified, it had no choice either.

5. THE PRINCIPLE OF PROPORTIONALITY AND THE INTRODUCTION OF AN EU LIMIT ON CASH PAYMENTS BY THE ECB

From the Opinion 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 (CON/2022/5) 2022/C 210/06, several points can be inferred regarding the principle of proportionality, particularly in relation to the proposed limit to payments in cash outlined in Article 59 of the proposal (the provision was eventually adopted with several changes as Article 80).

First of all, the ECB explicitly addressed the principle of proportionality in the context of the proposed prohibition on cash payments exceeding EUR 10 000. It noted that while combating money laundering is in the public interest, any restrictions on the right to use legal tender (but also the property right according to Art. 17 of the Charter of Fundamental Rights of the European Union) must be evidence-based and comply with the principle of proportionality, meaning they must be appropriate for attaining the legitimate objective and not go beyond what is necessary.

The ECB also referred to the mentioned judgment of the CJEU, which established conditions for restrictions on the legal tender status of euro banknotes. It welcomes that

the threshold for the intended prohibition is set sufficiently high to avoid a factual impact leading to the abolition of euro banknotes.

However, the ECB raised concerns that the proposed prohibition is absolute and does not follow the risk-based approach applied so far in the AML/CFT framework, impacting all citizens and travellers to the EU. The ECB highlighted the importance of lawful alternative means of payment being readily accessible to everyone and noted the lack of proposed exceptions in the proposal for situations where alternative means of payment might not be available (e.g., power outages). The ECB encourages the inclusion of such amendments to enhance the proportionality of the intended measure and to provide necessary exceptions. This directly addresses the "necessary" aspect of the proportionality principle by pointing out a potential overreach of the prohibition in certain circumstances. In this context, i.e. for exceptions ECB also suggested considering notification obligation for transactions above a certain threshold. This again relates to the proportionality principle by advocating for the consideration of alternatives with a less adverse impact.

In summary, the ECB's opinion focused significantly on the principle of proportionality in the context of the proposed cash payment limit. While acknowledging the legitimate aim of combating money laundering, the ECB stressed the need for the measure to be appropriately tailored, to include necessary exceptions, and to avoid an undue impact on the legal tender status and usability of euro banknotes, particularly for those who rely on cash or lack access to alternatives. The ECB's analysis aligns with the principles established by the Court of Justice of the European Union regarding restrictions on cash payments. The adopted provision dealing with the cash limit already contains exceptions, thus the legislator complied with the ECB's comment.

6. CONCLUSION

In its opinions the ECB has provides additional guidance among other things on whether cash limitations are proportionate. 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.

In conclusion, the European Central Bank's opinions on national cash payment limitations consistently underscore the paramount importance of adhering to the principle of proportionality. The systematic doctrinal analysis of ECB opinions from 2010 – 2025 validates the hypothesis that the European Central Bank's approach to proportionality in evaluating national cash payment restrictions has undergone substantial doctrinal evolution. Also, thanks to the evolution in CJEU case law. The ECB's assessment has shifted from mere formal legality checks to deep, substantive proportionality analyses that balance Member States' policy autonomy with the protection of euro banknotes and coins as legal tender. The main conclusion is that the principle of proportionality has become a critical and nuanced legal standard in the ECB's view for assessing national cash payment limitations. The ECB now requires that such measures, to be compatible with EU law, must be evidence-based, appropriate, necessary, and proportional *stricto sensu* to their legitimate public policy objectives (like fighting money laundering, tax evasion, or financing terrorism). The ECB meticulously examines the public interest objectives, the level and scope of the limits, the accessibility of alternatives, the potential adverse impacts, and the justification provided by national authorities. The analysis of ECB opinions herein demonstrates the ECB's commitment to ensuring that while Member States may legitimately pursue public interest goals through cash payment limitations, they must do so in a manner that is carefully calibrated, avoids

disproportionate burdens, and respects the fundamental role of cash within the broader payment landscape of the European Union. The ECB's opinions serve as invaluable guidance for national legislators, promoting the implementation of proportionate and effective cash payment regulations that strike a judicious balance between public policy objectives and the principles underpinning the EU's legal and economic framework.

At the outset, it should be stressed that ECB opinions are not legally binding, but they are nonetheless an important source for understanding EU law in relation to national legislation. If the ECB expresses an opinion in an area under its jurisdiction, it is very likely that other EU institutions (e.g. the European Commission) can and will share its view.

It is the national courts and the CJEU on whose shoulders rests the assessment of the proportionality of a particular Member State's authorisation. The ECB's opinion can to some extent act as an initial guide, a non-binding but useful resource. Also, the CJEU stated that it may take the ECB opinions into consideration where they provide useful guidance for the interpretation of the relevant provisions of EU law (para. 48, CJEU judgment in joined cases C-422/19 and C-423/19).

The ECB's opinions are not binding, nor do we need them to be binding, but they represent a qualified technical and, ultimately, legal view (although ECB does not have the power to interpret EU law in a binding manner) on issues that have a broader impact (not only) on the stability of the euro, the payment system and the monetary system. Consultations should take place before the relevant legislative act is adopted, but as it turns out, this is not always the case, and this is also true in Slovakia. Therefore, the aim is not so much to make the ECB's opinions binding, but rather to give members of the National Council of the Slovak Republic the opportunity to obtain a fundamental opinion from a third party (ECB in this case) whose area of expertise covers the draft law to be discussed. This third party has the appropriate apparatus to assess the change in question and can point out shortcomings that the national legislator may not necessarily have noticed (or may not even have considered to be shortcomings). In conclusion, we can therefore propose an amendment to the Rules of procedure of the National Council of the Slovak Republic so that if the parliament is to adopt a law that should have been consulted with the ECB but has not been, it must contact the ECB in appropriate time, wait for its opinion to be adopted, consider this opinion, and only then vote on the act. Requesting the ECB's opinion before adopting a law and taking it into account should therefore be a mandatory condition, without which members of parliament would not be allowed to vote on the act.¹²

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¹² A similar proposal was already discussed in Slovakia in the past, and the ECB itself commented on this issue in the opinion of 10 July 2014 on rules governing consultation of the ECB (CON/2014/54).

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