Ensuring Cash Remains King—For Those That Want to Use it … ECB Publishes Three Legal Opinions on National Laws Concerning Cash Acceptance and Payments

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Abstract

The article examines three legal opinions recently issued by the ECB on national laws concerning cash acceptance and payments in the euro area. It analyses how the ECB ensures the Eurosystem Cash Strategy and the legal tender status of cash are respected and applied across the Member States in a uniform manner. It also discusses the implications of the opinions for consumers, merchants and financial services firms in the context of the EU's Single Currency Package and other developments.

The European Central Bank (ECB) and the national central banks (NCBs)—collectively the Eurosystem remain very much "committed to cash" certainly for those wishing to use it. This includes ensuring: (i) the availability of the euro cash; (ii) supporting access to cash services for everyone; and (iii) making sure that (physical) cash is accepted everywhere where it is legal tender. These principles are set out in the Eurosystem Cash Strategy[1] and are also reflected at the overall EU level as part of the legislative proposal referred to as the EU's Single Currency Package (SCP) which was published 28 June 2023.[2]

Equally, recent judgments of the Court of Justice of the EU (CJEU) have helped shape the definition of "legal tender" and its acceptance as well as how the commitments in the Eurosystem Cash Strategy should be applied and when not. In particular, the CJEU and the ECB's own legal opinions have helped shape when cash limits may be introduced and on what grounds. Typically, such limits must be proportionate and applied to further legitimate "public interest grounds", such as preventing tax evasion and financial crime.[3] Despite these repeated assurances and rulemaking, 2023 saw a rise in concerns amongst European consumers about the future of their ease of access to and use of cash. These concerns carried over into 2024.

The ECB, acting in its role at the head of the Eurosystem and as the gatekeeper of the euro, is frequently requested to provide legal opinions on national laws assessing their conformity with EU law including on topics related to cash. On 6, 8 and 12 December 2023, the ECB published the following legal opinions concerning the use of and access to cash as well as cash rounding:

- ECB Opinion on excluding the possibility of purchasing real estate with cash and expanding tax disincentives for the use of cash published 6 December 2023—the Greek Opinion;[4]
- ECB Opinion on the obligation for enterprises to accept payment in cash from consumers published 8 December 2023—the Belgian Opinion;[5] and
- ECB Opinion on the rounding of cash payments in Lithuania published 12 December 2023—the Lithuanian Opinion.[6]

As explored in this article, while the ECB's legal opinions primarily consider aspects of individual national laws, the conclusions reached in each of the aforementioned opinions set the tone for the ECB's actions in ensuring the Eurosystem Cash Strategy continues to be delivered comprehensively and uniformly across the euro area while respecting market convention in individual Member States. The ECB's legal opinions

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[1] Eurosystem Cash Strategy, *https://www.ecb.europa.eu/euro/cash_strategy/html/index.en.html*, which should be read in conjunction with the following, *https://www.ecb.europa.eu/euro/cash_strategy/html/cash-faq.en.html* (as well as documents linked therein) and equally the following studies on the use of cash by companies in the euro area: *https://www.ecb.europa.eu/pub/pubbydate/2022/html/ecb.use_of_cash_companies_euro_area.06102022~2c3e7fba18.en.html—from 2022*; and a study on the payment attitudes of consumers in the euro area; *https://www.ecb.europa.eu/pub/pdf/other/ecb.spacereport202012~bb2038bbb6.en.pdf*—from 2020 as well as a host of other publications available from the ECB's and individual Eurosystem NCBs' websites.

[2] See PwC Legal's Client Alert from July 2023 "The euro goes digital—introducing the Single Currency Package and what to expect", *https://legal.pwc.de/en/news/articles/the-euro-goes-digital-introducing-the-single-currency-package-and-what-to-expect*.

[3] The European Commission is proposing to consolidate and harmonise the rules on cash limits beyond the common €10,000 financial crime prevention driven threshold set by EU's financial crime legislation. That threshold is also being proposed to be lowered. See further details at: *https://www.evz.de/en/shopping-internet/cash-payment-limitations.html#:~:text=There%20is%20no%20legal%20limit,coins%20or%20a%20large%20banknote*.

[4] Greek Opinion, *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023AB0039*.

[5] Belgian Opinion, *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023AB0040*.

[6] Lithuanian Opinion, *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023AB0043*.

also make for interesting reading in the context of the SCP's proposals to strengthen rights for use and acceptance of physical cash.

The ECB's conclusions in each of the aforementioned opinions are of relevance certainly to consumers but also across the wider real economy. Specifically, they should be of interest to merchants notably as the opinions clarify expectations on what payment instruments merchants must accept, when and how including how merchants should be communicating such information clearly and understandably to consumers. These expectations equally apply well beyond the relevant jurisdictions, i.e. Greece, Belgium and Lithuania that the legal opinions cover but also to financial services firms for whom a "Cash Strategy" may be relevant to their regulated activities across the EU. Such financial services firms may also want to take note of principles emerging from ex-EU Member States, such as the UK (a relatively cashless society[7]), which are going a step further in introducing binding compliance requirements for supervised firms and cash strategies, and whether there are any lessons that may be translatable to the EU context.

Common concerns on cash and ECB's commitment to its importance

While an analysis of the recent debates continuing across the EU-27 Member States on the rights to use and accept physical cash go well beyond the space constraints of this article, the willingness to use and accept cash differs (widely) across EU Member States. So too does the perceived threat(s) of what it really means to "go completely cashless". As an example, Sweden, being an EU but a non-euro area Member State, is one of the most cashless societies in the world. In the euro area, estimates for the Netherlands claim that only 11% of transactions were cash based. Compare this to Germany and Austria where cash remains king[8] and where, since the euro was introduced 25 years ago, Germany's Bundesbank has issued more cash than any other Eurosystem member, including for other euro area Member States.

Across the EU, traditional channels affording (reasonable) access to cash withdrawals and deposits, by means such as an ATM or at a bank branch, have, according to the ECB,[9] been declining in both urban and rural areas. This decline has been accelerating as commercial banks continue to downsize their branch networks as well as optimising costs regarding support of their ATM networks. This shift speeded up during the COVID-19 pandemic, which also acted as a catalyst for greater acceptance (including amongst merchants) of cashless payments. Such a move, however, may have left some consumers, in particular those that are deemed vulnerable, behind. It also poses a greater issue for those merchants, notably small to medium-sized enterprises (SMEs), in particular in the retail sector, where a (reasonable) access to deposit services is vital. SMEs that accept cash payments need to be able to deposit their cash takings and withdraw cash (banknotes and coins) so that they have a cash float available to provide change for customers.

The closure of branches and/or removals of ATMs are, in some cases, also coupled with the remaining ATM operators generally increasing their costs for cash withdrawals causing these to become prohibitively expensive. Moreover, those remaining ATMs in operation may generally not have the ability for consumers to deposit cash or to conduct balance enquiries as they may not be interoperable with systems of where a client (business or consumer) holds their respective linked account.[10]

The loss of reasonable access to and fair fees for cash access and deposit services to local communities and economies can have significant impacts. Keeping more physical cash in person and/or in private household or business premises may mean increased security concerns both when stationary and/or in transit to and from points of deposit and/or withdrawal. SMEs may be required to increase spending on insurance and security measures which may be viewed as prohibitive and may not be fully solved by SMEs accepting greater electronic means of payment.

While alternative channels to banks and ATMs have emerged, including those that pre-date the COVID-19 pandemic, they again are subject to differing degrees of reasonable access across individual EU Member States. These alternative channels and can range from post offices to merchants such as supermarkets and select retailers. However, particularly in supermarkets, there is typically no ability to deposit cash at an on-premises ATM, instead cash withdrawals are made at the checkout till, on a cashback basis, i.e. a purchase of a qualifying item or amount is a precondition to being able to receive cash at the till—which is also limited to the amount of physical

[7] The UK's Financial Conduct Authority notes in its Consultation Paper, *Access to Cash* (CP 23-29), *https://www.fca.org.uk/publication/consultation/cp23-29.pdf*, that "The volume of payments that do not involve cash in the UK has risen from around 46% a decade ago, to 86% as of 2022" and cross-references to the UK Payment Markets Summary 2023, *https://www.ukfinance.org.uk/system/files/2023-09/UK%20Finance%20Payment%20Markets%20Report%202023%20Summary.pdf*.

[8] Often very much to the frustration of the author of this article, an Austrian-American long-residing in Germany. It should also be noted that an analysis of whether the EU/Eurosystem should introduce a right for consumers to be able to pay merchants (in particular those that insist exclusively, much to this author's frustration, on cash-only payments) by electronic means such as cards and/or virtual cards on mobile devices or QR codes equally go well beyond the space constraints of this current article.

[9] See, inter alia, commentary from 2020, *https://www.ecb.europa.eu/paym/groups/erpb/shared/pdf/14th-ERPB-meeting/Access_to_cash.pdf?231a8172d862b30727d69269ddc07abe* and in 2022, *https://www.ecb.europa.eu/pub/economic-bulletin/articles/2022/html/ecb.ebart202205_02~74b1fc0841.en.html*.

[10] ATMs are agnostic to which accounts are debited in cash withdrawals because they only need to verify the identity and authorisation of the cardholder and the availability of funds in the linked account or network. The ATM does not need to know the specific type or details of the account, as long as it can communicate with the issuing bank or network and deduct the requested amount from the available balance. The ATM also does not need to store or track the cash it dispenses, as it is replenished by the bank or service provider. Most ATMs (except for those that participate in an interlink and intrabank format such as Germany's Cash Group) cannot credit cash deposits to accounts other than those linked to the operator of that ATM such as a bank because they need to verify the authenticity and validity of the cash, as well as the specific account number and type of the depositor. The ATM needs to know the exact amount and denomination of the cash, as well as the account information, to update the balance and record the transaction in the account linked to that card. The ATM also needs to store and track the cash it receives, as it is subject to audit and security measures. Therefore, ATMs typically need more information and functionality to process cash deposits than cash withdrawals, and are generally not agnostic to the accounts involved.

cash that may be withdrawn and/or dependent on the cash available. There may be significant variations between retailers that are also dependent on the day and/or time of request. Moreover, in some instances, contrary to an ATM, only certain types of payment instruments are accepted by the merchant (often with additional charges) so as to be able to withdraw cash. Other alternatives in certain Member States include money remittance services, which while operated by regulated firms, often pose logistical issues for consumers and businesses alike, as they rely on agent networks, and many do not have mobile branch services to deliver cash to rural areas.

Given the above, consumers' concerns are arguably justified, in particular where they relate to real-life practical problems, in particular for consumers in more rural areas faced with difficulty of having readily accessible means to withdraw but equally deposit cash both through traditional means (branch/ATM) or alternative means (post offices (equally being scaled back) or at merchants). More populist fuelled criticisms of this shift and consumer detriment focus on the perceived threat of the digital euro and central bank digital currencies prohibiting a right to access and use cash.

Fortunately, the ECB in its legal analysis when touching on a number of these topics does not seem to be deaf to these concerns. Notably in the Greek and Belgian Opinions, the ECB reminds the reader (and by extension the public as well as EU legislative policymakers) that, as a payment method, cash is generally regarded favourably due to its broad acceptance, promptness and ability to enable the payer to exercise control over their expenditures. The ECB also notes that at present cash is the sole payment method that enables individuals to conduct transactions in central bank money. Moreover, these transactions are settled instantly,[11] safeguarding privacy. Furthermore, there is no legal potential to levy a fee for the utilisation of this payment method given its legal tender status.

The ECB also notes that physical cash may serve as a crucial contingency measure in the event of a disruption in the payment system[12] and is impervious to cybercrime[13] due to the fact that it does not necessitate an operational technological infrastructure or associated capital outlay and is readily accessible at all times. Additionally, the ECB states that (obviously in normal operating as opposed to crisis conditions and currency controls) "daily or weekly payment limits imposed by entities providing the underlying payment services do not apply to cash payments".

The ECB further argues that cash payments promote economic inclusivity by enabling citizens to conduct a diverse array of payment transactions in this manner; thus, they guarantee all citizens the freedom to select their preferred method of payment.[14] The ECB also reiterates that specific groups, for a variety of reasons, continue to value the ability to pay in cash. Such groups, for example, may not have access to the banking system and electronic payment systems. This may include the elderly, certain disabled citizens, socially vulnerable individuals, minors and others with restricted or non-existent access to digital payment services.[15]

In light of the above, the ECB closely monitors any developments in national laws that seek to restrict cash payment options and thus infringe on the right of citizens to pay in cash and its use of legal tender. Notably on the definition of the concept of legal tender, the ECB, in its Greek and Belgian Opinions, restates the conclusions reached by the CJEU, including as most recently clarified in its judgment of 26 January 2021.[16] In that ruling, the CJEU held that the term "legal tender" denotes that this specific form of payment, denominated in the same currency unit, cannot be generally rejected in satisfaction of a debt at its complete face value; doing so would result in the debt being discharged.

The CJEU's clarification of the notion of "legal tender", as it pertains to EU law, was informed by Commission Recommendation 2010/191 of 22 March 2010 (the Recommendation) concerning the effects and scope of legal tender for euro banknotes and coins. The Recommendation offers valuable interpretative guidance on pertinent provisions of EU law. According to point 1 of the Recommendation, in cases where a payment obligation is present, the legal tender status of euro banknotes and coins should signify the following: (a) obligatory acceptance of the legal tender; (b) acceptance at its full face value; and (c) the ability to discharge payment obligations.

Moreover, as stated by the CJEU, the notion of legal tender includes, among other things, a fundamental obligation to accept euro-denominated banknotes and coins for the purpose of making payments. The CJEU reaffirmed that legal tender status merely requires acceptance of euro banknotes and coins as a payment method, not total acceptance. The CJEU's conclusion in the *Hessischer Rundfunk* case also clarifies the requirement to accept euro banknotes and coins might be limited by Member States for public interest grounds provided such limits are proportional to the public interest

[11] The ECB's Greek Opinion makes this point and further cross-refers to: para.2.4 of Opinion CON/2017/8, para.2.1 of Opinion CON/2019/41, para.9.2.1 of Opinion CON/2020/13, para.2.3 of Opinion CON/2020/21, para.7.2.1 of Opinion CON/2021/9, para.2.1 of CON/2021/18, para.2.1 of Opinion CON/2023/7 and para.2.1 of Opinion CON/2023/13.
[12] The ECB's Greek Opinion makes this point and further cross-refers to: para.2.1 of Opinion CON/2019/41, para.9.2.1 of Opinion CON/2020/13, para.7.2.1 of Opinion CON/2021/9 and para.2.3 of Opinion CON/2021/18.
[13] The ECB's Greek Opinion makes this point and further cross-refers to: para.2.2 of Opinion CON/2021/32 and para.2.1.1 of Opinion CON/2023/33.
[14] The ECB's Greek Opinion makes this point and further cross-refers to: paras 2.4 and 3.1 of Opinion CON/2017/8, para.2.7 of Opinion CON/2017/40, para.2.6 of Opinion CON/2019/4, paras 2.1–2.3 of Opinion CON/2021/18, para.7.2.1 of Opinion CON/2021/9, para.2.3 of Opinion CON/2021/38, para.2.1 of Opinion CON/2023/13 and para.2.1 of Opinion CON/2023/13.
[15] The ECB makes this point in the Greek Opinion and cross refers to para.1.5 of Opinion CON/2019/41.
[16] *Dietrich v Hessischer Rundfunk* (C-422/19 and C-423/19) EU:C:2021:63; [2021] 2 C.M.L.R. 23.

purpose. The latter is important for the arguments advanced in each of the ECB's opinions as discussed below.

The Greek Opinion

The Greek Opinion relates to a request the ECB received on 27 October 2023 from the Greek Ministry of Finance. That request concerned draft amendments to domestic tax legislation, which aim to (1) exclude the possibility of purchasing real estate property by paying in cash; and (2) further expand already existing tax disincentives for the use of cash.

The Greek Opinion refers to the explanatory note accompanying the draft amendments sent to the ECB for its review, which stated that the "… overarching aims of both of these 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". In July and November 2023, the Council of the EU and the European Commission indeed recommended that Greece should strengthen tax compliance by extending the use of electronic payments.[17]

While the ECB in its conclusions contained in the Greek Opinion state that both proposed amendments are incompatible and put impermissible restrictions on the euro and physical cash, the reasoning in each instance is different.

In the first question, the ECB acknowledges that many Member States have, in furtherance of pan-EU rules, adhered to limiting or prohibiting real estate transactions using cash above certain thresholds, but that an outright ban would be disproportionate.

The second question concerns a draft amendment to the Greek Income Tax Code to further expand an already existing tax disincentive for the use of cash. At present, the Greek Income Tax Code provides that certain business expenses may be deducted from the calculation of "taxable profit arising from business activities" (as defined in the code). The code also lists all the business expenses which are non-deductible from taxable profits. This includes "any expenditure for the acquisition of goods or services with a value exceeding €500 that has not been paid by means of a bank payment". The proposed amendment would reduce that threshold to €300 and such reduced threshold was planned to apply from the fiscal year 2024 onwards.

The ECB in the Greek Opinion assessed that both of the proposed amendments highlighted above represent restrictions of the legal tender status of euro cash. Consequently, they should each be assessed against the criteria set by the CJEU in *Hessischer Rundfunk*. Accordingly, the ECB reached the conclusion in the Greek Opinion that:

- in the case of the first draft amendment, an implied full prohibition of using cash in Greece for real estate transactions, in particular given 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)" would be prohibitive as "The latter type of asset might have a strong presence in areas where citizens have limited access to bank offices or digital payment services". Moreover, the adverse impact on the social impact and risk of financial exclusion that such a prohibition would entail (i.e. not having a de minimis threshold) was not sufficiently considered in the view of the ECB as "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"; and
- in the case of the second draft amendment, there were insufficient grounds to suggest that the current €500 threshold was ineffective in delivering the expected results in combatting tax evasion, the shadow economy and increasing VAT revenues and why a reduction of such threshold to €300 would be more appropriate and more effective. Moreover, the ECB also highlighted that the new lower threshold is in fact less, when accounting for inflation, than what it was when it was first proposed for the ECB's consideration in 2019.

The Belgian Opinion

The Belgian Opinion relates to a request received 9 November 2023 from the Belgian Vice Prime Minister and Minister of Economy and Labour. The request concerned a draft programme law amending the Belgian Code of Economic Law by introducing an obligation to accept payments in cash. The suggested amendments propose that enterprises must accept cash payments from consumers when made in person. The draft law allows enterprises to temporarily refuse cash payments for security reasons and limit banknote denominations if the face value is disproportionate to consumer payments.

[17] As detailed in 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.

The ECB in the Belgian Opinion refers to its earlier opinion of 23 October 2023 on the obligation for enterprises to accept cash from consumers.[18] That opinion agreed with the Belgian change being consulted on to introduce a mandatory obligation for enterprises to accept cash payments from consumers as well as a pecuniary sanction for breach of such obligations. The present Belgian Opinion builds on the conclusions reached in the October 2023 opinion, which ultimately reinforces the acceptance of cash and sanctions for breaching that obligation in Belgium.

The explanatory memorandum to the draft law states that on the one hand merchants, i.e. businesses, should be entitled to temporarily deny cash payments for security concerns (e.g. if a company has been the victim of multiple burglaries or acts of aggression in a short period of time, or if time is required to temporarily replace broken security systems). Denying cash payments for security reasons should be temporary since, as without such a time limit, the security motive could be utilised to avoid the duty to accept cash payments. A merchant, on the other hand, should be able to limit the face value of the denomination of banknotes it accepts in transactions when such denomination is clearly disproportionate to the "average" amount of purchases normally paid for at the merchant, or in relation to the goods and services it proposes such as (but not stated as such in the explanatory memorandum) paying a €1 invoice using a €200 banknote (or indeed a €500 banknote, which despite not being produced anymore due to ease of facilitating financial crime remains legal tender in the EU).

Under the draft law, merchants must clearly affix warnings at the entrance to the premises and at the point of sale (cash register) in both circumstances in a clearly and understandable manner. The draft law imposes criminal fines from €26 to €5,000 (multiplied by decimals) or 4% of the total annual turnover for the last closed financial year, whichever is higher, for breaching the cash acceptance obligation. Officials can only impose sanctions if the Code of Economic Law has been breached at least twice and no action has been taken after a warning to the offender to stop the offence.

The analysis in the Belgian Opinion follows much of what is set out in the Greek Opinion in terms of applicable law. In particular, the ECB applies the principles in the *Hessischer Rundfunk* case as well as other principles established as a matter of EU law and/or approaches of the Eurosystem including in furtherance of the Eurosystem Cash Strategy. However, the ECB in the Belgian Opinion disagrees with the proposal permitting merchants to limit the acceptance of cash where the face value of the denomination of banknotes that are accepted are disproportionate to the "average" amount "usually" paid by consumers.

The grounds for this refusal are that, contrary to the approach in point 3 of the Recommendation, which established a "good faith principle" in the context of a banknote's face value being disproportionate compared to the amount owing to the creditor, the Belgian draft law does not link the possibility to refuse certain banknote denominations on a case-by-case assessment. Notably, the proposed amendments to Belgian law do not, in the ECB's assessment, consider whether "… the value of the banknote tendered and the actual amount to be settled are manifestly disproportionate to each other. Rather, the draft law provides that high denominations may be refused ex ante and for all cases based on a calculation of the 'average' amount which is 'usually' paid to the enterprise concerned". While this may be a technicality that the Belgian legislator is likely to rectify in its drafting, the point is of relevance to how this good faith principle operates across the EU-27 and certainly the euro area.

Where the Belgian legislator may have more difficulty in drafting is around the ECB's concerns that refusal of cash due to security grounds. The ECB's assessment and objection to the proposed amendment's compatibility with EU law focuses on how to ensure that such refusal is "truly temporary, duly justified for security reasons" and that the merchant exercising that refusal clearly communicates this to the consumer in a clear, understandable and visible manner at the entrance to its commercial premises and at the cash register and do so where the enterprise does not have an unfettered discretion. Such discretion is problematic where the draft law, as the ECB points out, allows merchants to determine what temporary means, for how long and what a duly justified security reason is. Again, the ECB's well-reasoned considerations are of value to similar situations across the EU-27.

Lastly, the ECB also welcomed the monetary sanctions and, as assessed by the ECB previously, the introduction of a criminal fine for breach by merchants with a physical location to accept cash payments from consumers. The ECB concludes that "such sanction will facilitate enforcement of this obligation of Union law".

The Lithuanian Opinion

The Lithuanian Opinion (which is the shortest of the three) relates to a request received on 9 November 2023 from the Chair of the Budget and Finance Committee of the Lithuanian Parliament. This request concerned a draft law on the rounding of cash payments. The purpose of this draft law is used to minimise the need to use 1 and 2 euro cent coins and regardless of the quantity of products and services acquired with a single cash payment, the proposed law suggests rounding only the total final cash payment, not the price of individual items. Total cash payments should be rounded down or up to the nearest 5 cents. No rounding is applied if the final due amount is less than 5 cents. This process is known as "cash rounding" and is used in a number of countries globally as well as those in the EU, including prior to such Member States adopting the euro.

[18] Belgian Opinion, *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023AB0033*.

It should be noted that the 1 and 2 euro cent coins were originally introduced to prevent merchants from rounding up prices during the euro transition. Belgium, Finland, Ireland, Italy, the Netherlands and Slovakia cash round prices to the closest five cents due to the cost of sustaining low-value currency circulation by businesses and mints, in particular since they may be more expensive to produce and distribute than their face value.

The explanatory memorandum sent to the ECB explaining the purpose of Lithuania's draft law states that adopting cash rounding would: (a) reduce costs for the public, businesses and the state in relation to cash administration and the payment settlement time; (b) simplify the issuance of coins for cash payments insofar as the need to continually mint or procure these coins will decrease; and (c) reduce the use of resources and packaging materials, thus having a positive environmental effect on pollution, waste, CO_2 emissions and the accumulation of lost coins in the environment. While these are applaudable justifications, it should be noted that not all Member States participating in the euro area, including notably Germany, do not adopt cash rounding—for a number of reasons. The ECB reiterates its view that regardless of whether cash rounding is applied or not, all eight denominations of the euro coins i.e., 1, 2, 5, 10, 20 and 50 euro cent as well as 1 and 2 euro coins are currently legal tender.

What the ECB omits to state in its Lithuanian Opinion is that the European Commission was, in July 2023, considering introducing common cash rounding rules that would apply to all EU Member States, so that consumers could pay without using 1 or 2 euro cent coins. Common cash rounding would be a first step before outright withdrawal of such low denomination coins (whose minting has declined) as it would encourage their falling out of use. It remains to be seen whether the European Commission would be able to press ahead with such a reform in the next supervisory cycle following the June 2024 European Parliament elections.

The ECB (somewhat elegantly) concludes in the Lithuanian Opinion that:

> "With a view to preserving the unity and integrity of the single monetary area, and considering the abovementioned ongoing work of the Commission, the ECB recommends that any rounding rules are established in a harmonised manner at Union, rather than at national level.[19] Accordingly, any mandatory rounding rules on euro coins would appear to call exclusively for Union rather than national legislation given that the euro coins are the only legal tender coins in the Member States whose currency is the euro."

The ECB goes on to state that:

> "it is important to stress that mandatory rounding legislation must not prevent the 1- and 2-euro cent coins from being accepted as a means of payment as they are de jure legal tender in the entire euro area. In this respect, Member States' legislation must not lead to divergent treatment of euro legal tender. In this regard, the ECB understands that the provisions of the draft law do not discharge individuals and businesses from the obligation to accept 1- and 2-euro cent coins even after the draft law introduces mandatory rounding. This means that 1 and 2 cent coins remain universally accepted legal tender in Lithuania. The ECB considers it crucial that 1- and 2-euro cent coins remain universally accepted legal tender for so long and insofar as they remain legal tender under Union law."

In both of these conclusions the ECB rather elegantly leaves the door open for Lithuania to adopt cash rounding as indeed many other EU Member States have already done or plan to do and equally put the ball back in the European Commission's court in Brussels to press ahead with their announced legislative reforms—so that all legal tender is accounted for equally around the entirety of the euro area.

Key considerations for financial services firms

The ECB's views in the respective legal opinions have jurisdiction-specific relevance for consumers, merchants and the real economy but equally for a number of financial services firms with a nexus to retail clients wishing to access, deposit and pay in cash.

Relevant financial services firms operating in and/or across other EU-27 Member States may want to consider how they would be affected if the EU legislative and regulatory policymakers and/or the Eurosystem put an increased emphasis and/or binding standards on: (i) reasonable access to cash—both during normal operating and crisis operating conditions; (ii) cash limits on transactions—beyond those currently in place and what that means for additional know-your-transaction checks for withdrawals and deposits; as well as (iii) cash rounding—and what that means for reconciling and monitoring transactions.

In particular regarding reasonable access to cash, some relevant financial services firms may wish to consider, on a pre-emptive and voluntary basis, taking any combination of the following steps:

- regularly evaluating whether a local banking (including ATM) service provision is flexible enough to accommodate different cash (withdrawal/deposit) needs in different areas (as distinguished between urban and rural areas) and be responsive enough to adapt to trends in cash usage by local communities and economies (consumers and merchants in particular SMEs);

[19] The ECB in the Lithuanian Opinion cross-refers to: para.2.4 of Opinion CON/2014/6, para.2.4 of Opinion CON/2018/41 and para.2.3 of Opinion CON/2021/14.

- building on the above, whether to conduct an analysis of the potential impact of the closure/material conversion on banking (as well as ATM) services and whether an alternative service including by an alternative provider is identifiable and reasonable (equally considering distances/costs of travel to access such alternative) prior to such closure/conversion as well as risks faced by the relevant financial services provider if it is or is likely to become the "last provider in town" and may be compelled by a competent authority to ensure mandatory continuity of service provision; and
- assessing whether their communications and information to customers about a proposed closure/material conversion of banking (as well as ATM) services and/or transition to an alternative service (including by an alternative provider) are delivered sufficiently, clearly, fairly and in a timely manner ahead of such action be taken by the firm. Special care may be also required to identify and further engage with those customers that are categorised as "vulnerable" in particular those that are unable to self-serve via an automated or digital service and require reasonable access to cash services that help them deposit or withdraw cash as needed. It should be noted that the EU is increasingly pushing to harmonise obligations on how to identify and treat vulnerable customers fairly.

Outlook

Aside from the jurisdictional specifics, the ECB's analysis and views as expressed in each of the Greek, Belgian and Lithuanian Opinions are clear on the benefits of cash and its important role in society for the EU as a whole. Accordingly, the Eurosystem's Cash Strategy as well as the expectations communicated in the ECB's opinions and as supported by the forthcoming SCP's legislative instruments, all aim to secure a future across all of the EU-27 where cash (even with common and comprehensive rules and standards on cash rounding as well as legitimate cash limits) will remain an inclusive, efficient and sustainable means for payment for consumers alongside digital retail payments means.

Yet despite these aims, the Eurosystem as well as the EU's co-legislators may over the longer term also look to take a leaf out of the reform playbook being considered in certain third-countries (including the UK[20]) on preserving as well as improving access to local banking services in particular access to cash, both through traditional (bank branches and ATMs) as well as alternative (post offices, supermarkets and other retailers) means. Whether the EU will be able to also push for access to fee-free cash ATMs as a legal right, as the UK is considering doing, or also to consider a similar "right to deposit" as opposed to just access cash remains to be seen.

In any event, some relevant financial services firms, in particular with a strong nexus to retail clients (both consumers and merchants) that have a need for reasonable access to cash services, may wish to take pre-emptive steps to ensure that they can better comply with increased supervisory scrutiny of how they service local communities and economies.

[20] See FCA, "CP23: 29: Access to cash", *https://www.fca.org.uk/publications/consultation-papers/cp23-29-access-cash*.