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Deputy John McGuinness

Chairman

Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Leinster House

Dublin 2

D02 XR20

8 March 2023

Re: Pre-Legislative Scrutiny of the General Scheme of the Access to Cash Bill 2024.

Your ref: JFPERT-I-0934

Dear Deputy McGuinness,

I refer to your letter of 21 February 2024 seeking Central Bank submissions as part of the pre-legislative scrutiny of the General Scheme of the Access to Cash Bill 2024 ("the Bill")¹ published by the Department of Finance on 23 January 2024. The Central Bank is supportive of the Government's work to ensure that consumers continue to have reasonable access to cash and to protect the resilience of the cash system. Over the past number of months, the Central Bank was consulted by, and engaged with, the Department of Finance on the development of the Bill. We have provided technical input and views on aspects of the Bill, including through our written submissions, the Access to Cash Report² and Perspectives on the Evolution of Retail Banking in Ireland³.

Background

¹ <https://www.gov.ie/en/publication/377b2-access-to-cash-general-scheme/>

² <https://www.gov.ie/en/publication/9f041-central-bank-of-ireland-access-to-cash-report/>

³ https://www.centralbank.ie/docs/default-source/publications/correspondence/general-correspondence/central-bank-response-to-the-retail-banking-review-consultation.pdf?sfvrsn=d566941d_2



The Retail Banking Review Report, published in November 2022⁴, recommended that the Department of Finance develop access to cash legislation. The report was produced against a backdrop of a rapidly changing banking sector, characterised by rapid developments in financial technology, changing customer preferences, the exit of two large retail banks from the Irish market and the decrease in the use of cash.

As you will be aware, the Central Bank's mission is to serve the public interest by maintaining monetary and financial stability, while ensuring that the financial system operates in the best interests of consumers and the wider economy. In our current strategy, we are seeking to promote the provision of choice and access to payment instruments in Ireland, including cash. Indeed, the Eurosystem's cash strategy 2030 – which the Central Bank is part of – aims to ensure that cash will remain generally available and accepted as an attractive, reliable and competitive payment instrument and a store of value of choice. In addition, the European Commission has published a proposal for a Regulation on the legal tender of euro banknotes and coins⁵, which will consider access and acceptance of cash. Finally, and in parallel, the Central Bank is supporting the Department of Finance with its initiative to develop a National Payment Strategy, which has recently concluded a public consultation⁶, and inter alia, considers the topic of acceptance of cash.

Central Bank's views on the proposed legislation

Overall, the Central Bank welcomes the Bill and considers it an important public policy intervention. While the use of cash in Ireland has been declining, it is very clear that there is a continued societal and economic demand by households and businesses to be able to use cash as a means of payment. The remainder of this section sets out the Central Bank's views on specific elements of the proposed legislation.

Stakeholder responsibilities

The Bill directly places obligations on stakeholders within the cash system, including Designated Entities (initially the three retail banks), ATM operators and Cash-in-Transit (CIT) companies. Overall, the Central Bank judges that the Bill places responsibilities appropriately to relevant stakeholders. More broadly, we believe there is an inherent collective responsibility on all cash cycle participants to ensure that reasonable access is maintained for consumers in Ireland and that

⁴ <https://www.gov.ie/en/publication/28cf9-retail-banking-review-november-2022/>

⁵ https://economy-finance.ec.europa.eu/euro/use-euro/euro-legal-tender_en#legislative-proposal-on-the-legal-tender-of-euro-banknotes-and-coins

⁶ <https://www.gov.ie/en/consultation/6ed3d-national-payments-strategy-public-consultation/>



the cash system is resilient. It is vital that cash cycle participants recognise this and work together to develop solutions to achieve this objective.

The Bill endeavours to protect reasonable access to cash and the resilience of the cash system as a whole. Of course, maintaining a given level of cash infrastructure also entails costs, which are ultimately borne by consumers. This is why the proposed Bill has set out explicit criteria for defining *reasonable* access. There will be instances in which the access to cash criteria will temporarily not be met in certain locations, and there are also likely to be operational disruptions that emerge from time to time, and with little or no warning, in certain parts of the cash system. Our expectation is that parties within the ecosystem have the right processes to respond to such instances or disruptions.

Registration and oversight of Independent ATM Deployers

The Bill requires Independent ATM Deployers (IADs) to be registered and subject to oversight by the Central Bank. We support these provisions and are commencing work to be ready to implement these requirements and to develop the secondary regulations envisaged under the Bill.

It is important that any new requirements are proportionate and risk based, commensurate to the risks posed by these firms. The Bill seeks to strike a balance between ensuring positive outcomes for consumers, without placing undue requirements on IADs. One of the purposes of the Bill is that consumers should have a reasonable expectation that when seeking to withdraw cash, the ATM is operational and can dispense appropriate denominations. To ensure this, the Central Bank's main role in overseeing IADs will be to produce regulations to set minimum service standards and oversee compliance with these standards.

Registration of IADs will require applicant firms to provide basic information, including their name and address, in addition to other information that the Central Bank may reasonably require. This is a less onerous regime than the authorisation process applied to other firms within the financial sector regulated by the Central Bank. Authorisation assessments are more intrusive and focus on areas including applicant firms' risk management frameworks, governance arrangements, fitness and probity of key staff, business plans, strategy, financial resilience, operational resilience, IT frameworks, and ability to recover and/or safely wind down. The Central Bank does not foresee this level of intrusiveness being required for IADs, and therefore, the registration regime is more proportionate for the IAD sector.



Once registered, IADs will be subject to regulatory oversight by the Central Bank. This oversight model should not be misinterpreted as a full supervisory regime. A full supervision regime would assess the safety and soundness of firms through several lenses including business model sustainability under stressed conditions, financial resilience, operational resilience, risk management capabilities, and ability to recover or be resolved/wound down. This is not the case in an oversight regime, which is more targeted to a narrower set of risks. In the case of oversight of IADs, the oversight regime will seek to (1) ensure IADs are adhering to service standards, and (2) ensure IADs provide sufficient notice of withdrawal of services.

Registration and oversight of Cash in Transit companies

A key feature of the evolution of the cash system has been an increasing reliance on a small number of CIT companies. The Bill contains provisions that aim to strengthen the resilience of the cash system, including requiring CIT companies to be registered and subject to oversight by the Central Bank. A registration and oversight regime will be implemented for this sector for similar reasons as set out above for IADs.

Oversight of CITs will involve the Central Bank collecting data to monitor their evolution and observe early warning signs of stress in these entities. The Private Security Authority (PSA) will continue to regulate CIT companies for all other aspects of their activity. The Central Bank will also have the power to require CIT companies to notify us in advance of material changes planned to their business. We will also have the power to require CIT companies to have business continuity plans and exit strategies to ensure an orderly withdrawal from the Irish market in the event they decide to leave. CIT companies may be required to have living wills that provide insight into how they are structured and operate, which could be used in the event of sudden failure.

In addition, the Central Bank will be able to petition the High Court to appoint an examiner to a CIT company under the Companies Act 2014. However, there are limitations to this power as an examiner can only be appointed for a limited total time and to enter examinership it is necessary to show that there is a reasonable prospect of survival of the whole or part of the relevant business as a going concern.

The Central Bank supports the provisions introduced in the Bill. In addition, the Central Bank judges that protecting the resilience of the cash system also requires effective contingency planning and arrangements at system-wide level. The Central Bank continues to engage with the Department of Finance on options to support the development of such system-wide contingency arrangements.



Ensuring Reasonable Access to Cash

Access to Cash (ATC) means the ability for the public and businesses to lodge or withdraw cash (notes and coins). This is facilitated through ATMs and branches where Over-The-Counter cash services (OTC) are offered. We support these provisions and are commencing work to be ready to implement these requirements.

The Bill provides for the Minister, following consultation with the Central Bank, to make regulations setting out Reasonable Access to Cash (RAC) criteria for lodgement and withdrawal facilities. The criteria for withdrawal will be based on proximity (% of population within 10km of an ATM and ATMs per capita (minimum number of ATMs per 100,000 people). The criteria for lodgement will be based on proximity (% of population within 10km of a location where customers can lodge cash with assistance). These criteria will be applied regionally, based on a NUTS3⁷ statistical segmentation (i.e. statistical manner in which the country is divided into eight regions).

The Central Bank considers 10km to represent an appropriate distance metric, particularly when compared to distances adopted by other EU countries addressing access to cash. For example, Lithuania set criteria at 10km and 20km, whilst Latvia adopted 20km and Sweden 25km. The combination of the distance metric and the ATMs per capita metric provides a robust framework to provide for reasonable levels of access to cash. RAC is further safeguarded through the local deficiencies provisions as detailed below.

RAC criteria will be initially calibrated to ensure that the level of access to cash (i.e. all those provided by banks, An Post and IADs) will be maintained at December 2022 levels (excluding KBC and Ulster Bank). The Central Bank will be responsible for advising the Minister on the operation of the RAC criteria on an ongoing basis. To ensure that the RAC criteria remain appropriate, as the usage of cash evolves, the Central Bank will prepare a report on a review of RAC criteria: (i) within 12 months of the publication of the census, (ii) at the request of the Minister, (iii) if there is a significant reduction in cash usage, or (iv) on its own initiative.

The Central Bank will monitor compliance with the RAC criteria quarterly, based on regulatory data collection from Cash Access Providers. Where breaches are identified, the Central Bank will inform Designated Entities of details of the breach and request that they respond with details as to how they will resolve it. Designated Entities will all be informed individually of the requirement to remedy the breach but may choose to work together to address their obligations. Indeed, the

⁷ <https://www.cso.ie/en/methods/informationnotefordatausersrevisiontotheirishnuts2andnuts3regions/>



process set out in the Heads of Bill follows a structure intended to enable the designated entities to work together to provide reasonable access to cash and, if necessary, work together to remedy any issues that emerge.

Designated Entities are credit institutions whose market share of household deposits and number of current accounts exceeds certain thresholds. The criteria will be defined in Ministerial regulations, and it is expected that the three main retail banks will initially be the Designated Entities. However, the Bill envisages other credit institutions to be included as Designated Entities if their market share of household deposits exceeds the prescribed thresholds.

The Bill also provides for local deficiencies, which refers to a situation where ATC infrastructure may be deficient in a local area, even if the RAC criteria for the NUTS3 region are met. It is important that the process of identifying (and, where appropriate and proportionate, remedying) local deficiencies is based on a transparent framework and relies as much as possible on objective criteria. In that vein, the Central Bank intends to develop guidelines for how a local deficiency process will operate and consult on these guidelines. The local deficiencies process will include the ability for a person to make submissions to the Central Bank, requesting a local deficiencies review in their area. The guidelines will address the Central Bank's assessment and classification of local deficiencies and when a remedy is appropriate and proportionate.

Where the Central Bank determines that a local deficiency is evident, it will notify the Designated Entities, requesting them to propose and implement a remedy. The General Scheme further envisages that the Central Bank will have powers to issue directions and pursue administrative sanctions where necessary in addressing breaches of RAC and local deficiencies.

Balancing societal costs and benefits of a given level of cash infrastructure

To reiterate, the Central Bank welcomes the Bill and considers it an important public policy intervention. Of course, a given level of cash infrastructure entails both benefits and costs, and these needs to be balanced from the perspective of society as a whole. So it is important that – amid changing demographics, consumer preferences, and participants in the cash cycle ecosystem – there is continued consideration of the operation of the framework, to ensure it appropriately balances the key trade-offs from a societal perspective. In that context, the Central Bank welcomes the provisions set out in the Heads of Bill for the Minister to have the power to vary the access to cash criteria, taking into account issues such as cash demand, population changes, operating costs and impacts on financial exclusion.



The Central Bank will continue to engage bilaterally with the Department of Finance officials as required in relation to detailed technical aspects of the General Scheme. Finally, the ECB is required to be consulted on the Bill.⁸ We understand that the ECB will be consulted once the provisions of the Bill are published and they may decide to issue an Opinion on its provisions.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'V. Madouros', with a stylized flourish at the end.

Vasileios Madouros

Deputy Governor, Central Bank of Ireland

⁸ Article 2 (1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions