Cash Payments: Freedom, Privacy and Security

Why an EU initiative on restrictions on payments in cash would hurt Europe

Produced by the ATM Industry Association

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Executive Summary

As part of a trend in restrictions on cash payments, the European Commission released its *Inception Impact Assessment* in preparation for a possible *Proposal* for an EU initiative on restrictions on payments in cash on January 23, 2017. Examining the potential effects and legal issues associated with a European system of cash payment restrictions, the document signals the Commission's willingness to burden the ability of law-abiding citizens to spend their own money and contribute to their recovering economy.

In calling for limits on cash, the European Union presumably aims to reduce organized crime, tax evasion and terrorism and to bring businesses out of the shadow economy. However, there remains very little evidence of a correlation between cash and these systemic problems. According to research by F. Schneider, eliminating cash would only shrink the shadow economy by 2-3%. Meanwhile, a lack of supervision of the profits of multinational corporations deprives states of billions of euros in tax revenue.

The initiative also rests on the farfetched assumption that those involved in terrorism or organized crime would even submit to restrictions on cash payments. If it were the case, the effect on terrorism would be minimal. Expenses of terrorists tend to be low, while much of their finances originate from their conquered territories in the Middle East or from perpetrators' personal accounts.

The anonymity afforded to criminals and terrorists by cash is being surpassed by pre-paid cards, bitcoin and money transfer systems that are easy to manipulate. As for the role of cash in money laundering, the world's foremost authority on the matter, the Financial Action Task Force, asserts that the most popular method of money laundering is the physical transportation of cash. Nowhere in its major reports does it mention cash payments in otherwise legal industries as a contributing factor.

Europeans have little to gain from cash restrictions, and the potential downsides are staggering. Cash is the preferred payment instrument of Europeans. 139 million Europeans without bank accounts depend on it. Limiting cash usage would further marginalize those who, for various reasons, have been shut out of traditional financial institutions. Proponents of cash's supposed replacements—digital payment systems—decry the anonymity cash provides to its users. Yet, the intrusiveness and vulnerability that accompany electronic payments and credit card networks represent a threat to EU citizens' rights to privacy and to protection of personal data, which are enshrined in the EU's Charter of Fundamental Rights. Security breaches remain frequent, and the extension of third-party access to users' payment and financial data constitutes a burgeoning industry in and of itself. Polls show that most Europeans are worried about how their personal data is used.

The proposed restrictions also undermine the guaranteed status of cash as legal tender. The euro banknote's designation as legal tender, according to Article 128 of the *Treaty of the Functioning of the European Union*, means that limitations of its use may only be imposed when "other lawful means for the settlement of monetary debts are available." Yet, there are 139 million financially excluded Europeans unable to use the checks or credit cards that come with bank accounts, while those who do have bank accounts are often subjected to spending limits from their own banks.

The ubiquity of electronic payment instruments, though convenient, masks a network of costs that are shouldered by the customer. With increases in payment card fraud, the largest 10% of merchants pay $500,000 annually or more to protect consumers. For example, anti-money laundering measures in the United States have resulted in costs of up to $7 billion to the American payments industry. The fact that payment fraud data is not available at European levels reflects a total lack of transparency.

European policymakers dedicated to the project of the Union should also proceed with caution. Euro banknotes reinforce feelings of a shared European identity. Support for the single currency now stands at 70%, its highest ever. The less Europeans encounter physical euro banknotes, the less they will feel attached to the European Union itself, which is under attack from populist parties on the rise. "Holding a euro banknote and knowing that it can be used in 19 countries is a reminder of the deep integration Europe has attained," said Mario Draghi on April 4, 2017.

Furthermore, exceptions for foreign nonresidents to existing cash restrictions in certain member states are unfair to law-abiding European citizens and can likely be exploited by foreign residents. As pieces of identity proving residency tend to remain separate from those that prove foreign citizenship, a merchant has no practical option for determining whether a customer does indeed lack residency.

At a moment when economic recovery finally seems within reach, the European Union should prioritize measures that encourage growth. Placing restrictions on how citizens spend their money would serve only to hamper spending, while failing to bring about the reductions in tax evasion, crime and terrorism that policymakers hope for.

Chapter 1. Introduction

Laws restricting payments in cash have surged across the European Union over the past decade. The ceilings imposed, the types of transactions to which they apply, and the exceptions they entail all differ between the member states. Behind these restrictions lie the objectives of curtailing tax evasion and money laundering and reducing organized crime and terrorism.

With the acceleration in uptake of digital devices for executing a wide variety of tasks, some might see these well-intentioned measures as part of a reasonable trade-off—as easy as learning a new smart phone application. However, no study has thus far shown definitively that a higher presence of cash in a country contributes to higher rates of crime, corruption or terrorism. Neither is there any definitive way to measure compliance to these rules across legal businesses, let alone the effects on criminal organizations which inherently conduct their transactions in the shadows.

The European Commission's *Inception Impact Assessment* of a potential *Proposal* for an EU initiative on restrictions on payments in cash raises questions concerning the impact of limits on cash and the readiness of its supposed substitutes. This paper demonstrates how plans under consideration by the Commission would hurt both Europe's economy and citizens without any guarantee of bringing about the safety or security they envision.

Chapter 2. The Proposal and Its Context

On January 23, 2017, the European Commission published its *Inception Impact Assessment* in preparation for a possible *Proposal* for an EU initiative on restrictions on payments in cash. Following its 2016 *Action Plan* to step up the fight against the financing of terrorism, this document signals the Commission's willingness to consider limiting cash payments across the Union to deter terrorism, money laundering and organized crime. The initiative is not only part of a broader trend undertaken by countries around the world, but also represents a culmination of the anti-cash measures EU member states themselves have adopted. Moreover, it comes on the heels of the European Central Bank's decision to cease issuing the EUR 500 banknote towards 2018 as a means of crippling the financing of illegal activities.

2.1. Restriction versus Declaration

According to the *Inception Impact Assessment*, restrictions on cash payments would achieve the goal of forcing payments "to go through means that are not anonymous." On the other hand, it states that the same objective could be obtained by requiring a declaration to a competent authority for all cash payments exceeding a certain amount. The threshold would "presumably be lower" for a declaratory system than for a system of restrictions.

The assessment also considers the option of variable thresholds, as opposed to a single EU-wide threshold. A single threshold may ensure coherence across the internal market and make compliance easier, while variable standards allow legislation to adapt to the unique needs and different levels of bureaucratic capacity across member states. This option may be ideal for a declaratory system, but it also takes into consideration the "diverging purchasing powers, payments practices and availability of alternative payment means in the EU."

2.2. Methods of Cash Restriction across Member States

Two factors drive the existing thresholds across member states: one is the standard of living, the second is the payment mix used in each country.

EU Member States and Cash Payment Limits[1]

Member State	*Limits*
Belgium	€3,000. For goods and services. Cash payments for real estate are prohibited. Fines from €250 to €225,000 can be imposed.
Bulgaria	9,999 leva (approximately €5,110). Above this limit, payment must be done through a bank even if payment is divided into multiple payments. If done in another currency, equivalent is determined by the Bulgarian National Bank.
Czech Republic	350,000 CZK (approximately €14,000) in one day. Limits of 50 coins for payment. Any amount of cash must be accepted.
Denmark	PARTIAL. No limits on cash payments, but a legislative proposal may allow vendors to refuse cash. For any cash payments exceeding 10,000 DKK (including VAT) – approx. €1,340, both the vendor and customer are responsible if the vendor does not pay taxes or VAT.
Estonia	Partial. Number of coins used for payments limited 50 at a time.
Finland	Partial. Companies can refuse high numbers of coins or exceptionally large banknotes. Any limits by a company on payment instruments must be clearly explained.
France	€1,000 euros for residents; €10,000 for non-residents. No limits for transactions between individuals, but any payment exceeding €1,500 must be accompanied by an invoice. Retailers must accept cash, but can limit number of coins to 50, refuse damaged banknotes. For cases of large bank notes, the retailer may inquire as to the identity of the buyer and the origin of the banknote.
Croatia	€15,000 cash payment limitation.
Greece	€1,500 (including VAT) cash payment limit for products and services. Any payment beyond must be done using a bank, check or card.
Ireland	No legal limit, but restricted in practice.
Italy	€2,999 limit. Any payment beyond must be done with debit cards, credit cards, non-transferable checks or bank transfers. Fines range from 3,000 to 40% of the amount paid. €15,000 fine for any payment over €50,000
Netherlands	Partial. Duty to report identity of buyer for any unusual payments.
Poland	€15,000 limit for cash payments
Portugal	€1,000. Any payments beyond must be made to trader's bank account using a means allowing for identification of buyer.
Romania	10,000 RON (€2260)/person/day limit for individual persons to traders.
Slovakia	€5,000 limit for buyer-to-buyer, buyer-to-consumer and consumer-to-buyer payments. Natural persons may pay in cash for payments outside of the domain of their trade or business up to €50,000.

[1] http://www.evz.de/en/consumer-topics/buying-goods-and-services/shopping-in-the-eu/cash-payment-limitations/

Member State	Limits
Spain	€2,500 for residents, €15,000 for non-resident. Any payment beyond must be done through bank transfer. Limits apply to payments between traders and consumers, not between consumers. Fine is 25% of payment.
Sweden	Partial. Payments may be limited on a contractual basis. Any companies engaging in transactions of more than 15,000 kroner must request identification of payer, verify origin of money and abide by money laundering rules.
United Kingdom	Partial. Traders accepting cash payments of more than £15,000 must register as high value dealers.

In May 2016, the European Central Bank announced its decision to discontinue the EUR 500 bill—its highest denominated banknote—citing concerns over its use for illicit activities.[2] Its issuance is set to end in 2018. However, it will continue to retain its legal tender status; there are over €200 billion worth of €500 notes in circulation.

These actions on the part of both EU and national authorities to curb cash use would almost make one wonder if cash itself, the most popular form of payment for EU citizens, is being criminalized.

[2] https://www.ecb.europa.eu/press/pr/date/2016/html/pr160504.en.html

Chapter 3. Cutting Cash to Fight Crime and Pay the Tax Man?

The anonymity of cash purportedly makes it attractive for illegal activity. The *Inception Impact Assessment*, as with other calls for cash limitations, underlines its use for the specific activities of tax evasion, money laundering, organized crime and even terrorism.

3.1. The Shadow Economy

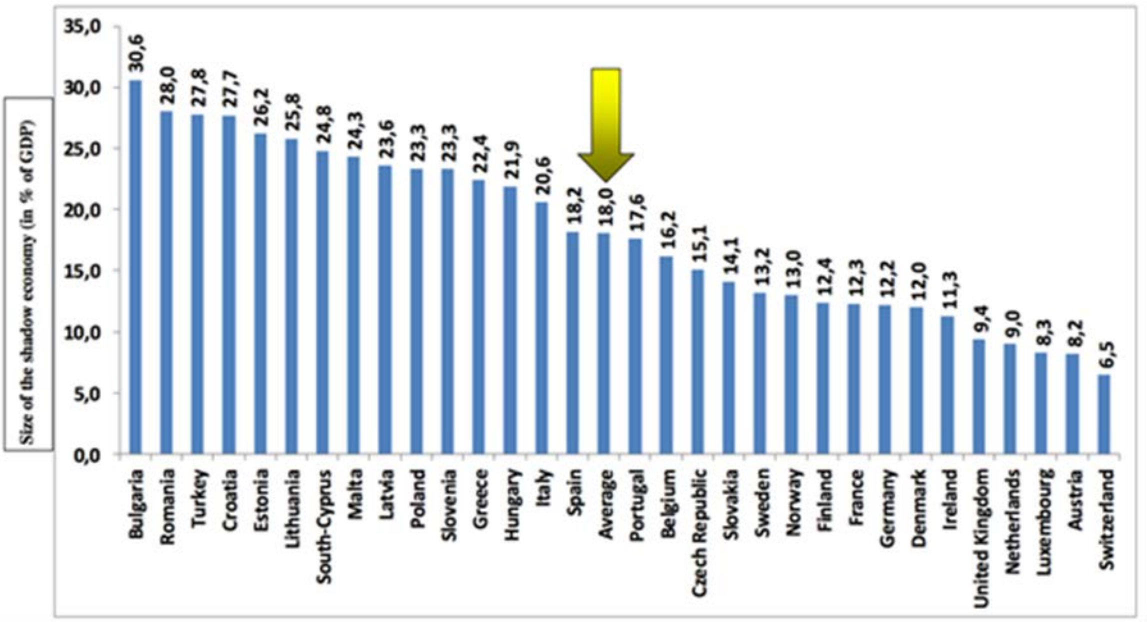
The amount of tax money lost from undeclared goods and services in the European Union amounts to 54 billion euros.[3] The average size of an EU member state's shadow economy at the beginning of 2015 was estimated by Freidrich Schneider at 18.3 percent of its gross domestic product.[4]

While the correlation between the abundance of cash and the shadow economy has yet to be proven, economic health has been identified as a major factor. Schneider's study points to economic recovery as the main reason for a decline in the shadow economy in 25 out of 36 OECD countries. Newer EU member states, such as Bulgaria, Cyprus, the Czech Republic, Latvia, Lithuania and Poland, continue to exhibit a larger portion of their economies conducted underground, compared with the older members like Austria, Belgium, Germany and Italy. Southern European countries also tend to have larger shadow economies than their central and western counterparts.

[3] http://www.euronews.com/2015/11/23/shining-a-light-on-europe-s-shadow-economy

[4] http://www.econ.jku.at/members/Schneider/files/publications/2015/ShadEcEurope31.pdf

The following graph illustrates the size of the shadow economy of 31 European countries in 2015 (in % of GDP):



Deutsche Bank Research recently conducted a study on this issue and found that a high presence of cash in a country's economy does not signal the existence of a large shadow economy. Germany and Austria, both cash intensive, have small shadow economies. In Sweden, where society has gone almost cashless, a mid-sized shadow economy persists.[5] A variety of factors determine the size of a shadow economy in each country. The work of F. Schneider—who estimates the EU's annual tax losses from the shadow economy at 8.6 percent of total revenue, or €454 billion[6] —has concluded that tax level, the quality of public institutions, tax morale and the level of per capita income together fuel the shadow economy. VAT evasion alone amounts to some €160bn per year.[7] In making illegal payments costlier, stamping out cash would only cut the shadow economy by 2-3%.

Head of ECB's currency management division, Doris Schneeberger, made her stance clear during the Future of Cash Conference, held April 11-12, 2016, in Paris. She stated, there is "no statistically demonstrable link between crime and the use of cash."[8]

[5] https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000427044/Cash,_freedom_and_crime%3A_Use_and_impact_of_cash_in.pdf

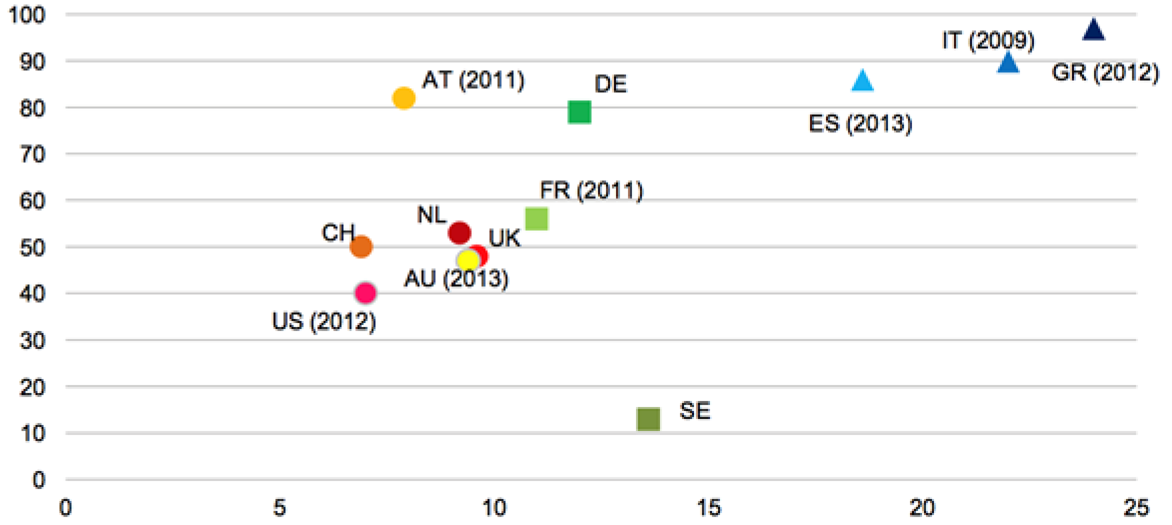
[6] Houlder, Vanessa. Europe's shadow economy costs €454 billion in lost taxes. Financial Times. September 24, 2015.

[7] European Commission, "Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report." TAXUD/2015/CC/131.

[8] http://www.cashessentials.org/news/news-details/2016/04/27/standing-up-for-cash

The following chart illustrates that the size of cash payments is not a reliable indicator of the size of the shadow economy.

Share of cash payments in total number of payments in % (y-axis);
shadow economy as % of official GDP (x-axis);
data refers to 2014 unless otherwise indicated



Annotation: Surveys and estimations on cash payments differ between countries. All focus on consumer payments at POS, but surveys may or may not include P2P or online payments or only refer to payments below a certain value.

Sources: Schneider, F. and Boockmann, B. (2016); Bagnall, J. et al (2014), Deutsche Bundesbank, Payments Council, Banca d'Italia, Banco de Espana, De Nederlandsche Bank, Sveriges Riksbank, Verband Elektronischer Zahlungsverkehr, G4S, Federal Reserve Banks of Boston, Richmond and San Fransisco, Reserve Bank of Australia, Deutsche Bank Research.

3.2. The Case of Israel – Making Taxes Easier for the People

For a developed nation, Israel possesses a sizable shadow economy. A 2014 report from the Taub Center estimated it at 20% of Israel's GDP, without including inherently illegal activities.[9] Comparatively, the shadow economies of the United States, Japan and other advanced economies in Europe hover around 10%. The result is a loss of tens of billions of shekels for the state and little protection for the underground workers. The report put forth ideas for increasing state revenue by 3-4% by tackling undeclared income and reducing the shadow economy by half. The measures it recommended were: (1) improving the enforcement process; (2) changing the collection method; and (3) reducing the tax burden.

The disproportionate burden of Israel's tax system on small businesses likely feeds the resistance to declaring one's income. Although large companies cooperate with authorities, they benefit from their position by exploiting loopholes. Many pay real tax rates as low as 5%. Small businesses are subject to 26.5% tax rates. Meanwhile, tax filing typically takes up to 235 hours per year, leaving small companies distressed.

[9] http://taubcenter.org.il/wp-content/files_mf/e2014.11shadoweconomy1449.pdf

Although Israel has much work ahead to truly reduce the overall size of its shadow economy, its finance ministry showed strong progress by the end of 2014. By streamlining the tax collection process and setting goals for each collection office, the Israel Tax Authority surpassed its goal for that year by more than $1 million.

3.3. Tax Havens and Profit Shifting: The Institutionalized Shadow Economy

When formulating policies to increase tax revenue, one should consider which options would be most effective and least burdensome of the general population. Often left out of the equation of the shadow economy, abusive use of tax havens by large multinational companies and banks deprives European member states of enormous sums of money. With hardly any effort in disguising their activity, these actors can optimize their tax statements through profit shifting—a tax avoidance strategy used by multinational companies wherein profits are artificially shifted from the jurisdictions where real economic activity occurs to jurisdictions that have low or zero taxes. This form of tax dodging drives severe global inequality. The poorest half of the world's populations has received only one percent of the rise in global wealth since 2000. Inversely, half of the same increase has ended up in the hands of the richest one percent. Much of this is due to corporate tax dodging, which diminishes the amount of revenue that companies should pay to the governments of countries where their real economic activity takes place.

The *EU Capital Requirements Directive of 2013* required banks to reveal more information on their assets and activities for each country of operation than was previously demanded. This country-by-country reporting marked a new era of transparency for banking, which has not yet extended to other sectors.

In analyzing the data, Oxfam recently published a study underlining the extent to which the top 20 European banks seem to have shifted profits to tax havens.[10] Although a common list between international authorities has not been agreed upon, Oxfam defines tax havens as "jurisdictions or territories that have intentionally adopted fiscal and legal frameworks that allow non-residents (physical persons or legal entities) to minimize the amount of taxes they should pay where they perform a substantial economic activity." Such countries only represent 5% of the world's GDP. In 2015, they accounted for only 12% of the turnover and 7% of the employees of the EU's top 20 banks, but represented more than a quarter of their profits.

[10] https://www.oxfam.org/sites/www.oxfam.org/files/bp-opening-vaults-banks-tax-havens-270317-en.pdf

The asymmetry in banks' claims of profits and productivity in jurisdictions with limited tax regimes is astounding. According to published documents, bank employees working in tax havens generate an average profit of €171,000 a year, while the typical employee of these groups brings only €45,000 in profit—about four times less. Similarly, "productivity per employee in banks' home countries is on average €29,000 annually, six times less than that of the average employee based in a tax haven." The banks' profit margins in tax havens are reportedly double that of their global average.

According to Oxfam, explanations for these figures cannot be reduced to the real productivity of workers located in these tax havens or by the real profits generated in them. European banks are deliberately shifting profits from activity produced elsewhere to countries with less onerous tax systems.

More international cooperation against profit-shifting would increase tax revenues in a much more equitable fashion than targeting Europeans' spending habits.

3.4. Terrorism, Organized Crime and Money Laundering: Is Cash the Culprit?

3.4.1. Organized Crime and Why Alternatives to Cash Could Be Worse

According to the Deutsche Bank report mentioned above, the existence of a correlation between the presence of cash in a society and the level of crime committed for obtaining it should not be surprising. Bank and security van robberies dropped as Sweden phased out cash. But at the same time, electronic fraud increased. Having gone the farthest in phasing out cash, Sweden presents a case study in how replacing one payment instrument may favor the emergence of a new type of crime, rather than reduce the overall level of crime.

Sweden, where rapid technological innovation is second nature (thanks to a sophisticated infrastructure and a small population), was the first nation to print paper money and may be the first to eliminate it. In fact, the transition is happening so quickly that, today, only 20% of retail payments are done in cash as opposed to 40% in 2010. More and more Swedes are trading in their paper kroners for mobile payment systems like Swish, which allows users to exchange money between accounts using only a telephone number.

Driven by the sense that digital systems are less exposed to criminal activities, advocates of Sweden's move toward a cashless society overlook the vulnerabilities created by these digital systems. As Ulrika Sundling, chief inspector of the country's cyber-investigations unit, points out, "We see that cybercrime is becoming more aggressive." Consumers, who have little understanding of the threat and, therefore, do not take the necessary actions to protect themselves, she says, are the "weakest link." Cases of fraud in Sweden, often related to identity theft, have doubled since Sweden began making the push toward digital payments.[11]

Eying cash because of the anonymity it offers its users, policymakers have suggested eliminating it as a means of cracking down on organized crime. As the two principal forms of international organized crime, drug trafficking makes up half and counterfeiting represents 39% of the world's illicit proceeds. Restrictions on cash use may raise transaction costs for these organizations, but only a moderate decline in these activities of 10-20% would result from the complete elimination of cash. It should be noted that tax evasion generates twice as much in proceeds, and that this type of activity has been shown, by scandals such as the Panama Papers or the Laundromat case, to use digital tools as much as cash.[12]

Cash has traditionally been perceived as a facilitator of money laundering schemes. "Dirty" money, associated with illicit activities, can be spun through a multi-layered process, even traversing national frontiers in the form of cash to elude authorities. The physical transport of cash "plays an increasingly important role due to Anti-Money Laundering (AML) measures in the financial system," according to the Financial Action Task Force.

But along with the voluntary shift toward digital payment systems has come new tools that criminal organizations use to hide the origins of their money. Digital currencies, of which bitcoin is a famed example, have taken the anonymity usually associated with cash to another level. Although national authorities are raising their capacity to detect addresses of bitcoin users, new schemes to disguise purchasers of illegal products and services on digital-based platforms akin to the now defunct Silk Road have arisen. For example, one user with the aim of buying illegal weapons may pay an intermediary who places the money in an account mixed with payments from other users. The intermediary then purchases the weapon, eventually having it delivered to the original buyer. The multiplication of such intermediaries can render tracking the money flow almost impossible.[13]

[11] https://www.wired.com/2016/05/sweden-cashless-economy/

[12] https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000427044/Cash,_freedom_and_crime%3A_Use_and_impact_of_cash_in.pdf

[13] https://cseweb.ucsd.edu/~smeiklejohn/files/imc13.pdf

3.4.2. Terrorism: a Low-Budget Affair in Europe, a Tithe in Conquered Territory

Terrorism is also reliant on clandestine financing. But since counterterrorist finance efforts went into full force in 2001, terrorism has only increased. Once in control of a territory, a terrorist organization can raise funds through its occupation. A study conducted by the Forsvarets forskningsinstitutt (Norwegian Defense Research Establishment) found that most funding for terrorist cells in Europe came from the personal funds of fighters and that 75% of the 40 attacks analyzed cost altogether less than $10,000.[14] Authorities such as the Financial Action Task Force, an arm of the OECD specializing in tracking terrorist and criminal financing, would find it difficult to detect such low sums.

Following the Charlie Hebdo attacks in Paris in 2015, France lowered the ceiling for cash payments from €3,000 to €1,000, as well as a drop from €15,000 to €10,000 for foreign non-residents. But the attacks were estimated to cost less than €10,000, raised most likely by the attackers themselves inside France.[15] They were financed by consumer loans and trafficking counterfeit goods.[16]

The financing of the terrorist attacks that took place in France in January and November 2015 have been analyzed in detail by the Center for Analysis of Terrorism, a leading European think tank on the analysis of terrorism. The report, *The Financing of the Paris Attacks* (in French), concludes:

- The January attacks against Charlie Hebdo cost €26,000 and were funded essentially thanks to consumer credit fraud, including two car loans.
- For both attacks, the perpetrators used a mix of payment instruments, including money transfer services and anonymous pre-paid cards.

The report states, "Anonymous reloadable pre-paid cards enable anonymous transactions up to €2,500, including over the Internet. Anonymity is guaranteed at all levels, from the purchase of the card, to its reloading, making it the ideal payment instrument for the perpetrators of the 2015 attacks."

[14] http://www.ffi.no/no/Rapporter/14-02234.pdf

[15] https://www.bloomberg.com/news/articles/2015-01-12/why-frances-terror-attacks-were-probably-selffinanced

[16] http://www.reuters.com/article/us-france-security-financing-idUSKBN0ME14720150318

Recommendations from the French report point to broader European cooperation and harmonization across national policies as the surest ways to improve efficiency in identifying and preventing potential terrorist activity before it occurs. There is, however, little evidence that cash payment restrictions would prevent terrorists from financing their activities. Although the perpetrators used cash at certain points of the run up to the attacks, the sources of financing were guaranteed anonymity by different money transfer systems, pre-paid cards and the poor verification systems established by the credit institutions who loaned them money.

3.4.3. Money Laundering: Why Payments Are Beside the Point

Although cash may be used in part of money laundering operations, the potential of limiting payments to reduce money laundering remains doubtful. The Financial Action Task Force (FATF), in its *Annual Report 2015-2016*, states that the most popular method of money laundering is certainly the physical transportation of cash. Yet, it makes no mention of payment limits in its recommendations to countries on how to fight money laundering and terrorist financing.[17] Its sole recommendation pertaining to cash addresses cash couriers, encouraging better detection and effective sanctions of those who transport cash connected with illegal activities.[18]

According to the FATF report, *Money Laundering through the Physical Transportation of Cash* (which is cited by the *Inception Impact Assessment* to justify cash restrictions), a major obstacle to the detection of illegitimate movements of cash is the inadequacy of customs rules in many countries. Although authorities in most countries must require declarations of cash from "natural persons," they expect only a basic declaration for cash in cargo. This type of declaration provides only a bare minimum of detail of the cargo, overlooking even the value of the cash being transported. Agents often have no ability to determine whether cargo is suspicious. "Some countries even noted that this absence of ability to form a suspicion restricted the ability of their customs authorities to open and inspect shipments, to require the provision of further information and to exercise effective control of cash in cargo."[19]

[17] http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

[18] http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

[19] http://www.fatf-gafi.org/media/fatf/documents/reports/money-laundering-through-transportation-cash.pdf

Cash is not the only form of money that can be physically transported. Terrorists and criminals now also turn to transporting pre-paid cards for laundering money. A report from the FATF mentions an Australian individual who was caught with not only AUD 140,000 in cash, but with 46 prepaid cards. A storage unit under his name holding more gift cards and prepaid cards was later raided. The individual had apparently intended to have them brought to India for money laundering. The cards with markings of 50 and 100 Australian dollars could have been purchased at post offices and service stations, while those at AUD 500 were likely bought online.

The report cites this case as one of many examples that show a growing trend in criminals' preference for what are termed "new payment methods" (NPM), stating: "It can therefore be assumed that some criminals consider NPMs to be a better option than cash for money laundering/terrorist financing (ML/TF) purposes. This especially applies to cases where NPMs are a substitute for bulk cash to carry, or where the non-face-to-face nature of the business relationship facilitates the use of straw men or fake identities."[20]

The prevalence of cash can even have an inverse relationship with bribery. In countries such as Switzerland, Austria and Germany, "low levels of perceived public sector corruption coincide with a high share of cash in total payments and/or a low number of cashless payments per person."[21]

How much pressure to comply with cash restriction would criminal organizations feel?

Underlying speculation on the effectiveness of cash restrictions on illicit activities is the difficult question of the extent to which criminals would feel pressure to comply. For organizations whose affairs are inherently conducted in the shadows, what interest would there be in abiding by such laws?

[20] http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20using%20New%20Payment%20Methods.pdf

[21] https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000427044/Cash,_freedom_and_crime%3A_Use_and_impact_of_cash_in.pdf

Chapter 4. Why We Cannot Abandon Cash

4.1. Cash as a Means of Subsistence for Millions

Cash is the most widely used payment instrument in Europe. “Even in this digital age, cash remains essential in our economy,” Mario Draghi, President of the ECB said. “A soon-to-be-published survey on cash use, carried out on behalf of the ECB, shows that over three-quarters of all payments at points-of-sale in the euro area are made in cash. In terms of transaction values, that’s slightly more than half.”

Restricting cash usage is a burden for fragile groups who depend on it.

The livelihood of millions of Europeans is still closely linked to the availability of cash. 138.6 million Europeans are considered financially excluded—having no access to financial services.[22] By restricting their sole means of payment and storage of value, measures towards demonetization could further obstruct the economic activity of millions of law-abiding citizens. Consider the following:

- **139 million people are unbanked in Europe**: The *MasterCard Financial Inclusion* study estimates that 139 million adults in Europe lack access to a basic bank account and electronic payment instruments, based on data from the World Bank. Whereas the share of adults who have a bank account reaches 100% in Switzerland, 99% in Sweden or the Netherlands, it is only 72% in Hungary, 70 % in Poland and 63% in Bulgaria.
- **33% of the unbanked are employed**: The number of unbanked people who are employed has actually increased from 28% in 2013 to 33% in 2016.
- **Most of the unbanked have been in their current country all their life**: 87% of the unbanked have lived their whole lives in their current country. The number has increased since 2013. So much for the idea that financial exclusion is due to immigration or lack of documentation.

[22] https://newsroom.mastercard.com/wp-content/uploads/2016/12/Road-to-Inclusion_Mastercard-Financial-Inclusion-Survey-2016.pdf

- **One in five people is unbanked because of lack of trust in financial institutions**: Mistrust in the banking sector is an important factor behind financial exclusion. One in five people cite this as one of the main reasons why they do not have a bank account. One in ten say it is the main reason.
- **The young are more likely to be financially excluded**: Being unbanked is not synonymous with being old. Far from it. 32% of the financially excluded are between the ages of 18 and 34 years old. 9% are students. In the majority of cases, lack of money is the main reason they do not have access to a bank account.

MasterCard concludes that the road to financial inclusion is digital. Perhaps. That may prove challenging, however, as the report emphasizes the negative association between conventional financial services and online technology.

Meanwhile let's make sure that these people have access to cash. Does it make sense to distribute social benefits electronically when the beneficiaries need cash? Does it make sense to restrict the usage of cash when so many people rely on it?

Limiting the usage of cash would marginalize millions of Europeans who, for a variety of reasons, remain without access to a bank account. For the financially excluded, the proposed transition toward a cashless society, even gradually, would further complicate how they go about paying for something as simple as their rent. Even for expenses that remain below the threshold of cash payments, the use of banknotes will grow stigmatized.

4.2. The Privacy of Cash as a Fundamental Right

Cash is criticized for the anonymity it provides the user. Cash ensures anonymity and leaves no trail for governments, corporations or hackers to exploit. Digital payment systems, on the other hand, provide the companies managing them with information on users' behavior, which in turn shapes how they will be treated by not only payment providers but by merchants and third parties who are able to access this information without the customer's knowledge.

By pressuring citizens into transitioning to digital payment systems, the European Union would be rendering the data relating to their purchases, movement and personal interests vulnerable to these actors and thus violate articles 7 and 8 of the European Union's Charter of Fundamental Rights:

- **Article 7: Respect for private and family life**

  Everyone has the right to respect for his or her private and family life, home and communications.

- **Article 8: Protection of personal data**

  1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

As digital payment systems proliferate among European consumers, the risks and issues involved in digital payment networks have come under focus by regulators and consumer associations. 72% of Internet users in the European Union are "worried about using online services through fear of revealing too much personal data online," according to the European Commission.[23] Such fears may be linked to reports of security breaches and bugs. A study from the Ponemon Institute in 2014 found that security breaches affected 43% of companies, including banks, in the United States over the span of one year.[24]

Beyond fears of security breaches, gray zones of legality remain regarding the use of payment information by data controllers and third parties. Although European legislation requires explicit consent to be given by the consumer before his or her payment information may be supplied to third parties, the fine print underpinning the engagement of consent is often illegible or incomprehensible. In a 2013 study published by the CNIL (the French data protection authority), data protection authorities from 20 countries found that "20 percent of leading global websites and 50 percent of mobile apps do not provide information on the type of personal data processing they conduct, meaning that informed consent for users is not possible."[25]

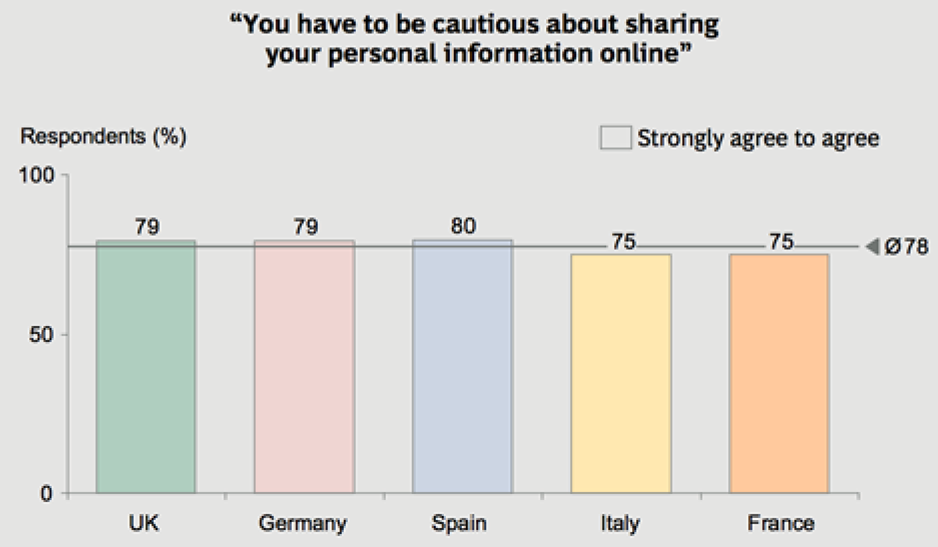
Depending on the type of information being revealed, privacy concerns vary. Credit card and payment information are perceived as most important. In a survey conducted by the Boston Consulting Group (BCG), nine out of ten people consider financial data and data regarding payment card use private. 50% consider information on their location, Internet use, e-mail, purchasing history and use of social networks to be essentially private.

[23] Valant, Jana. "Consumer protection aspects of mobile payments." Briefing, June 2015. European Parliamentary Research Service.

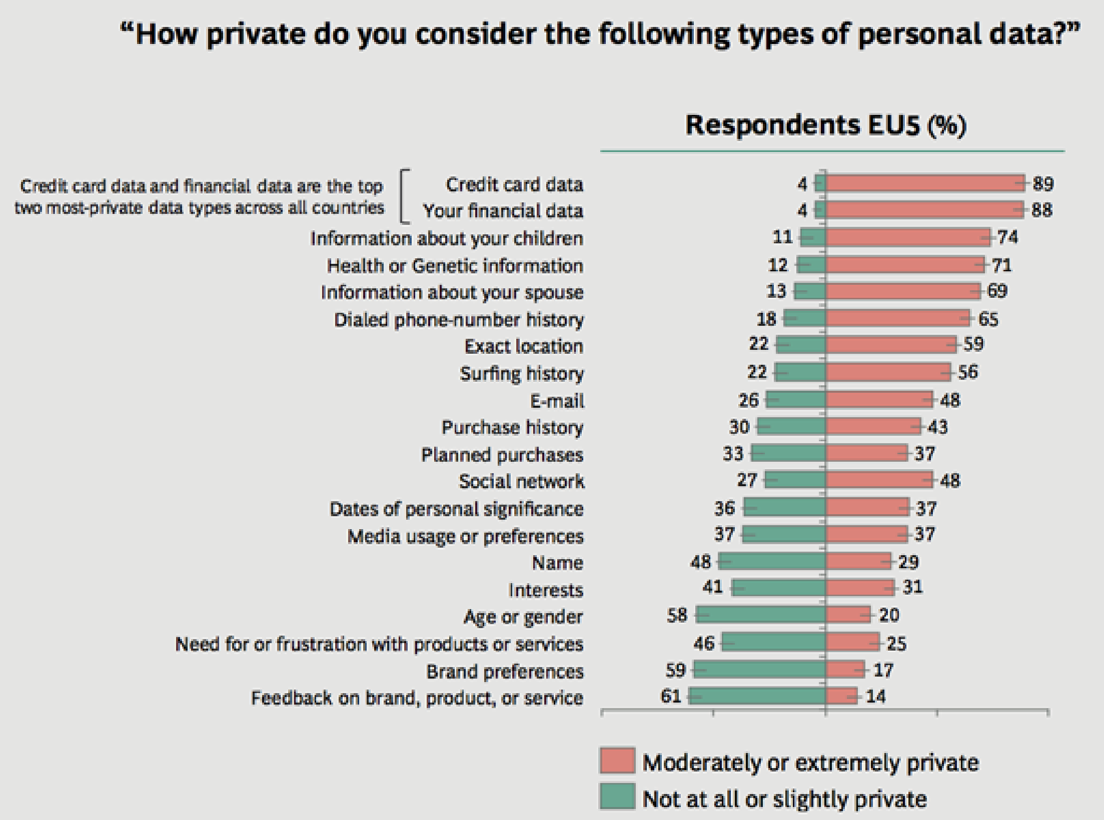
[24] http://www.experian.com/assets/data-breach/brochures/2014-ponemon-2nd-annual-preparedness.pdf

[25] http://docplayer.net/1580536-Earning-consumer-trust-in-big-data-a-european-perspective.html

Following are charts from the BCG survey:



Source: BCG Global Consumer Sentiment Survey 2013.
Note: Respondents were asked, "Please indicate how much you agree with the following statement."



Source: BCG Global Consumer Sentiment Survey 2013.
Note: EU5 (European Union 5) includes Germany, France, Italy, Spain, and the U.K.

The consolidation of data can also enable private companies to discriminate against consumers. By engaging in IP tracking, online merchants can decipher how many times certain users have returned to their site and artificially raise the price accordingly. Merchants can also discriminate based on the location of the customer.

The *Impact Assessment* itself recognizes that the *Proposal* may trigger controversy—the public "regards payment by cash as a personal freedom." Cash, the most widely used payment instrument, provides privacy to its user and, unlike credit cards or digital solutions, is accessible to anyone, regardless of financial situation, ethnicity, age or gender.

The high potential for public opposition toward any measure that would put pressure on citizens to use systems of payment perceived as vulnerable or invasive of one's privacy should make policymakers reconsider any further steps limiting use of cash. The situation is made worse in Europe as many of the leading players in the payments industry are not headquartered in Europe; consumer data is no longer protected by European legislation if it is not stored in Europe.

4.3. Cash: The Irreplaceable Legal Tender

Members of a common society exchange with each other their pieces of currency with the understanding that they can be redeemed for products at any point of sale within their monetary zone. In addition to being a cherished cultural symbol, euro banknotes have legal tender status. This is even specified in Article 128 of the *Treaty on the Functioning of the European Union*. In view of the differentiation between national legislation of its member states, the European Commission clarified the extent of its currency's legal tender status. It underlined the ten following principles:

- The concept of legal tender should rely on three main elements: a mandatory acceptance of banknotes and coins, for their full face-value, with a power to discharge debts.
- The acceptance of payments in cash should be the rule: a refusal is only possible if grounded on reasons related to the good faith principle (for example, if the retailer does not have enough change).
- Similarly, the acceptance of high denomination banknotes should also be the rule.
- No surcharges should be imposed on payments in cash.
- Member states should refrain from adopting new rounding rules to the nearest five cent.
- Member states should take all appropriate measures to prevent euro collector coins from being used as means of payment.
- Stained banknotes should be brought back to the National Central Banks as they might be the product of a theft.
- Total destruction of banknotes and coins by individuals in small quantities should not be prohibited.

- Mutilation of banknotes and coins for artistic purposes should be tolerated.
- The competence to destroy fit euro coins should not belong to national authorities in isolation anymore.

Although such rules should guarantee that banknotes be accepted throughout the Eurozone, certain member states have obstructed their use. Finland and the Netherland have put in place rounding rules, which involve rounding to the nearest five cents, to reduce the handling of lower value coins. Retailers across the continent frequently continue to refuse €200 and €500 notes.

When considering legislation, the Commission should weigh the benefits and negative consequences that such legislation may have.

In its "subsidiarity check," the *Impact Assessment* justifies the legal basis of legislative action at the European level by underlining the lack of coherence between the different national restriction regimes in place. However, as the question of these regimes' compatibility with Union law is even more important, the *Assessment* cites a line from Recital 19 of Council Regulation (EC) No 974/98: "Limitations on payments in notes and coins, established by member states for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available." While the intention of the last clause may seem sufficient to guarantee citizens' rights to dispose of their financial resources as they see fit, many banks throughout Europe impose daily and monthly transaction limits on card users.

For example, a typical transaction limit for BNP Paribas, one of the world's largest banks, for its Classic card-holding clients is €2,500 per month.[26] Given the limits on cash payments imposed in France, a French resident holding a BNP Classic account would be obstructed from paying not only €1,000 euros in cash at a time, but also from using a card to pay the same amount more than twice.

The acceptance of checks is also dwindling among retailers. A legislative action from the European Union concerning the use of its own currency would have to remain consistent with its previous declarations. Limits on cash payments would require accompanying vast financial reforms to ensure that EU citizens have unfettered access to other lawful means of payment.

[26] https://mabanque.bnpparibas/fr/notre-offre/comptes-cartes-et-services/comparateur-cartes

4.4. The Hidden Costs of Electronic Payments

The benefits of a more digitized economy appear obvious:

- Cards and electronic payments can be executed almost instantly.
- With one card, the user has access to his or her whole account, while the amount of cash used is often determined by how much is conveniently carried in one's pocket.
- The handling of cash between banks and businesses may require extra time and expense that could be directed to other productive activities; however, the actual costs of card payments are rarely assessed.

As cards become more prevalent, so does card fraud. The Nilson Report estimates a total of $21.84 billion in card fraud globally.[27] More than one million instances of card fraud occurred in the United Kingdom over the first six months of 2016, representing a 56% increase from 2015.

Protecting consumers throughout the whole value chain comes at a cost, and many merchants are going to great lengths. The largest merchants pay $225,000 annually for compliance-related work, while 10% of the largest spend $500,000 or more. Resources also must be directed toward resolving data breaches, which are ever growing in number. From 2013 to the end of 2016, 4.8 billion personal records were exposed, with a growth of 15% recorded at the beginning of 2016. Undergoing AML measures, the payments industry in the United States alone is also subject to costs of up to $7 billion a year.

Digital payment systems often also encounter technical problems, discouraging users from completing purchases. For example, the Baymard Institute estimates that 68.81% of online shopping carts are abandoned. Around half of these are attributed to problems with the payment process. Credit card payment systems are also quite complex and, like a circuit, can be blocked by one minor element in the transaction.

4.5. Euro Banknotes Are a Strong Symbol of European Identity

Euro banknotes and coins serve not only to exchange and store value, but also to remind Europeans of their shared identity. The generations that lived before the entry into force of the Maastricht Treaty on November 1, 1993, recall using a national currency that united them with their fellow countrymen and countrywomen, but had to be traded in once they set foot into their European neighbors' territory.

[27] https://www.nilsonreport.com/upload/content_promo/The_Nilson_Report_10-17-2016.pdf

In addressing the launch of the EUR 50 banknote, Mario Draghi said the following:

> In a multi-country union such as ours, it is inevitably harder to create a shared identity than in a single nation state with its own culture and history. The euro is something we all have in common – it is a tangible symbol of European unity. Holding a euro banknote and knowing that it can be used in nineteen countries is a reminder of the deep integration Europe has attained. Indeed, when asked about the most important elements of European identity, the single currency is the one most frequently quoted by euro area citizens after democracy and freedom. And in spite of the difficulties in recent years, support for the single currency now stands at 70%, equaling the highs recorded in the pre-crisis period.[28]

Membership in the Eurozone and the European Union is regularly brought into question by populist parties on the rise. Eliminating citizens' connection to physical European currency would reduce their emotional connection to the European project.

4.6. Exceptions for Non-Residents: Impractical and Unfair

Perhaps hoping to accommodate tourists, many of the member states that have established thresholds on payments in cash have made exceptions for non-residents. For example, France, where residents cannot exceed a €1,000 euro sum when paying in cash, allows non-residents to pay as much as €10,000 in cash at a time.

One can easily imagine how this may create complications. For example, a foreign citizen living in France who has obtained residency could simply claim to be a non-resident. If a merchant bothers to demand examination of his or her passport, a stamp from recent entry to France would only provide false reassurance. A foreign resident can leave the Schengen Zone on vacation, have a passport stamped at the airport or train station and from that point forward, possess a passport that would resemble that of a non-resident. Standard proof of French residency often comes in the form of a separate identity card. For such foreign residents, the burden of proof necessary to enforce the lower threshold lies upon their goodwill to cooperate.

Of course, one of the advantages of tourism is the outside money that it brings. The ability to attract foreigners who are willing to convert their currency into euros for injection into local industries of services and goods as soon as they arrive is beneficial not only for the tourism industry, which preserves cultural and traditional heritage sites, but also for a country's entire economy.

[28] http://www.ecb.europa.eu/press/key/date/2017/html/sp170404.en.html

But the question remains of why residents, who nonetheless continue to drive their own economies upon which their very livelihoods depend, are shut out from spending their money the way they wish. Such questions need to be resolved before instituting an EU-wide restriction on cash payments.

Chapter 5. Conclusion

On the surface, lowering the threshold for cash payments across the European Union might appear useful in the fight against organized crime, money laundering, terrorism and other illicit activities that rely on financing. However, no significant studies have shown the benefits of national restrictions of cash payments. Neither does the level of cash use across countries correspond with the size of their shadow economies or perceived corruption. Furthermore, the digital payment instruments passing as alternatives remain at risk to cyber-security threats and third-party data siphoning, threatening the rights to property and privacy that are part of Europe's values.

A cashless society is a scenario in which Europeans would have little to gain and much to lose: their privacy, security, identity and independence from unnecessary costs. A recent attempt by the German government to limit cash payments to a threshold of €5,000 was met with warranted outcry from citizens before eventually failing.[29] Such attitudes should not be dismissed by the European Union.

Cash has inherent characteristics that no other payment method can fully possess. It is accepted universally, by anybody—regardless of the holder's financial situation, gender or ethnicity—anywhere, and does not require prior infrastructure. Digital payment systems necessitate heavy investment from merchants, which is eventually passed on to the consumer in the form of higher prices.

For purposes of security, the anonymity of cash can also be tempered by technology. Serial number tracking solutions provide law enforcement agencies with tools to trace banknotes that have been connected to criminal activity. Forensic taggants with unique chemical signatures are used to protect cash; in the event of a robbery, the stolen notes can be traced to the crime. The physical bulk of currency is also a limit to its anonymity. A million euros in €100 notes weighs approximately 10kg.

[29] http://www.bild.de/politik/inland/bundesministerium-finanzen/finger-weg-von-unserem-bargeld-44469892.bild.html

The sophistication of electronic substitutes for cash is rivaled by the innovation of cyber-criminals and hackers who continually find new ways to break into the computerized systems protecting transactions and accounts. Governments stress the need to rein in tax evasion through cash limits, hoping to bring business out from the shadows and into the formal economy. But, as the Laundromat[30] and Panama Papers[31] scandals, among others, have shown, moving large amounts of money electronically is easier and even more difficult for authorities to detect. Are further cash restrictions on law-abiding citizens the best way to improve tax collection?

Despite signs of mild economic growth across the European Union, the European Central Bank has plans for further stimulus measures.[32] Brexit, a new American administration wary of trade, and instability around the world could yet constrain potential economic expansion. Reducing citizens' options for payment would be another obstacle to economic growth at a time when spending should be encouraged.

At a time when most member states' economies are finally on a trajectory toward recovery, the Union should refrain from imposing limits on any type of spending that has heretofore been considered legal.

Since 2008, the European Commission, hoping to return to pre-crisis levels of growth, has aimed at boosting demand through investment stimulus policy. The European Fund for Strategic Investment was designed, as part of the 2015 Investment Plan, to create a "virtuous circle in which investment projects help support employment and demand and lead to a sustained reduction of the output gap as well as to an increase in growth potential." Hampering consumer spending, even in such an indirect way as limiting cash payments, could risk weakening a key driver of this vision.

Now, above all, is neither the time to stifle economic growth with burdensome restrictions on consumers nor to invest our financial future in untested digital technologies.

[30] The Laundromat is a name given by the Organized Crime and Corruption Reporting Project to a vast money laundering scheme. Between autumn 2010 and spring 2014 Russian officials and insiders moved billions of dollars into Europe, the US and other countries. Law enforcement officers in Moldova and Latvia have tracked down at least $20bn in dirty money. They believe the real total may be as high as $80bn. Not all of those involved in the Laundromat have been identified.

[31] The Panama Papers are an unprecedented leak of 11.5m files from the database of the world's fourth biggest offshore law firm, Mossack Fonseca. The records were obtained from an anonymous source by the German newspaper *Süddeutsche Zeitung*, which shared them with the International Consortium of Investigative Journalists (ICIJ). The ICIJ then shared them with a large network of international partners.

The documents show the myriad ways in which secretive offshore tax regimes enable tax evasion. Twelve national leaders are among 143 politicians, their families and close associates from around the world known to have been using offshore tax havens.

[32] https://www.businessworld.ie/european-news/Economic-recovery-in-the-euro-zone-is-gaining-ground-567899.html