

Several legal and historical perspectives for prohibiting cash payments

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Abstract:

Is this the end of cash in France? Only the future will tell us but, for now, one thing is certain: the French have never made wide use of cash to pay their bills. This is not simply due to their dislike of coins and notes but also, and perhaps above all, to the French authorities' use of regulations to steer payment habits for several decades now. The quite specific nature of the ranking of means of payment in France can therefore be partly explained by legal aspects, coupled with the fact that our banking system's special setup also very probably plays a part.

A rule prohibiting the payment of certain debts in cash is at the root of the fact that cash payments are less common in France than in other countries. The ban was put in place under the Vichy regime and has never been rescinded. Whereas today, it is justified by the fight against money laundering and terrorist financing, historically, the measure arose from other policies introduced in the aftermath of the Second World War, the purpose of which has altered over time.

The Act of 22 October 1940¹ on payments by cheque and transfer made it mandatory to pay wages, salaries, rent, transport, services, supplies and works by crossed cheque or transfer for amounts of three thousand francs (FRF 3,000)² or more. The Act also contained an implicit ban on settling debts in cash. At the time, this initiative was part of an anti-inflation policy and was aimed at reining in the stock of money in circulation in the economy.

¹ Official Journal of the French Republic (JORF) of 8 November 1940, p. 5602.

² Specifically, Article 1 of the Act of 22 October 1940 laid down this requirement.

This Act has been amended on numerous occasions,³ with the range of debts covered being gradually extended and the amounts relating to each of them also varying⁴. The landmark amendment was made in 1988⁵ when the limit was made uniform and increased to five thousand francs (FRF 5,000), and payments by credit or debit card were added to the authorised means of payment.

In 2000⁶, when the Monetary and Financial Code was drawn up, the requirement to settle certain debts by crossed cheque, transfer or bank card was introduced in the Code's Book I on "The Currency" and, in particular, in Chapter II which focuses on the "Rules Governing the Use of the Currency", and within a Section 3 which is explicitly entitled "Cash Settlements Prohibited for Certain Debts". The requirement was set out in the Code's Article L.112-6 where it remains enshrined to this day.

Since 2000, the arrangements have been constantly altered or, to be more precise tightened, as regulations to combat money laundering and terrorist financing have evolved. The most telling adjustment was certainly the 2013 extension of the ban on payments using electronic money which, in some of its forms (for instance, prepaid cards) allows for anonymous payments like with cash⁷. The most-recent version of the legislation originates from the Transparency, Anti-Corruption and Economic Modernisation Act (known as Sapin II) of 9 December 2016⁸, which relaxed the framework governing payments made as part of a pledge loan⁹.

³ There were 13 amendments between 1940 and the Act of 23 December 1988.

⁴ For instance, in its effective version following Act no. 77-574 of 7 June 1977, Article 1 of the Act of 22 October 1940 provided, in particular, that:

"The following shall be made either by crossed cheque or by transfer to a bank or postal current account:

1° Payments of rent, transport, services, supplies, works or relating to acquisitions, in any form whatsoever, of immovable or movable property, when they exceed FRF 1,000 or are intended to settle a debt whose overall amount is more than this figure in instalments. For payments made to notaries, the limit shall be raised to FRF 2,000.

2° Payments of the revenue derived from all registered securities issued by public or private bodies when they exceed FRF 1,000 per certificate and per maturity date

3° Payments of wages and salaries when the amount is more than FRF 2,500 for a full month [...]"

⁵ Article 80 of Act no. 88-1149 of 23 December 1988 (1989 Budget Act).

⁶ Order no. 2000-1223 of 14 December 2000 on the legislative part of the Monetary and Financial Code.

⁷ Act no. 2013-100 of 28 January 2013 containing a number of provisions for adjusting French legislation to EU economic and financial law.

⁸ Act no. 2016-1691 of 9 December 2016, Article 61.

⁹ The current version of Article L.112-6 of the Monetary and Financial Code provides that:

"I. – A debt that exceeds the amount established by decree shall not be settled in cash or using electronic money, with the debtor's tax residence as well as the professional or non-professional nature of the transaction and the person to whom the payment is made being taken into account.

Where it exceeds a monthly amount established by decree, the payment of salaries or wages shall be subject to the prohibitions set forth in the preceding paragraph and must be paid either by crossed cheque or transfer to a bank or postal account, or to an account held with a payment institution or with an electronic money institution which provides payment services.

When a professional buys metal from an individual or another professional, payment must be made by crossed cheque or transfer to an account in the seller's name. Failure to comply with this obligation shall be punishable as a fifth-class offence.

II. – Notwithstanding the provisions in paragraph I, settlements for services rendered that exceed 450 euros shall be made by transfer.

II bis. – Notwithstanding paragraph I, settlements for pledge loan transactions may be made in cash or using electronic money, up to an amount established by decree.

III. – The preceding provisions shall not apply where:

a) Settlements are paid by persons who are unable to pay by cheque or by any other means of payment as well as by those that do not hold a deposit account

b) Settlements are paid between individuals who are not acting for professional purposes

c) The settlement is paid for expenditures of the State or of other public entities"

The rationale for the ban has changed over the decades. In 1940, the purpose of the prohibition of cash payments was to limit the stock of money in circulation in the economy. However, over time, the amendments have been informed by tax and public morality issues. The intention of the French authorities was to be able to “track” certain payments, particularly with an eye to containing the black market and transactions evading a number of tax and social security contributions. As a result, since 1979, the ban on cash payments has been accompanied by a tax penalty that is laid down by the General Tax Code: violators are liable for a tax fine of 5% of the amounts unlawfully paid in cash¹⁰.

Obviously, in order to be effective, the ban on cash payments had to involve promotion of other “book money” means of payment. In this respect, the targets of fighting inflation, the black market, and then tax and social security contribution evasion, have been channelled towards other goals such as familiarising households, and the economy as a whole, with the banking system. Since the Second World War, the French government has intervened on a number of occasions in favour of other means of payment. The first measure was certainly the introduction of free cheque books under the Vichy regime in 1943¹¹, to tackle the black market which had been fostered by the German occupation¹². In the 1960s, a partnership between six major French banks – made easier due to the highly-concentrated banking model – led to the introduction of the first payment card. A decade later, the public authorities backed the emergence of a new means of payment called the *Titre universel de paiement* (universal transfer instrument, TUP), which was subsequently superseded by the *Titre interbancaire de paiement* (interbank transfer instrument, TIP). The aim of these instruments was to facilitate collection of invoices by France’s major billers and tax collection by the Treasury.

In the medium term, it is possible that the expansion of electronic money and new payment services, in particular those able to be used on smartphones, will lead to the phasing out of cash. But, this succinct overview of historical French regulations reminds us that cash payments have long been distrusted by our authorities.

¹⁰ General Tax Code (CGI), Article. 1840 N sexièms (version in force from 1 July 1979 to 25 January 1984: “Violations of the provisions of Article 1 of the Act of 22 October 1940 on payments by cheque and transfer, as amended, which stipulate that certain payments shall be made by crossed cheque or transfer to a bank or postal current account, are punishable by a tax fine of 5% of the amounts unlawfully paid in cash. This fine, which is collected in the same manner as stamp duty, is owed in equal parts by the debtor and creditor, but each of them is jointly and severally liable for full payment thereof”.

Since 1 January 2006, the fine has been laid down by Article 1840 J of the CGI which currently provides that: “Violations of the provisions of Articles L.112-6 to L.112-6-2 of the Monetary and Financial Code are subject to a fine pursuant to the provisions set out in the second and third sentences of Article L.112-7 of said Code”.

¹¹ Act of 1 February 1943 on payments by cheques and transfers: Official Journal of the French Republic (JORF) of 2 February 1943, p. 308.

¹² The rule is now enshrined in paragraph 2 of Article L.131-71 which stipulates that “Where they are issued, cheque books are provided free of charge to the account holder”.