EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 24 March 2009

at the request of the Slovenian Ministry of Finance

on a draft law on payment services and systems

(CON/2009/27)

Introduction and legal basis

On 25 February 2009 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on payment services and payment systems (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and fifth indents of 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[1], as the draft law relates to Banka Slovenije and to payment and settlement systems. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft law

1.1 The main purpose of the draft law is to transpose into Slovenian legislation Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC[2]. The draft law also implements Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[3] and Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions[4]. As stated in the consultation request, the draft law goes beyond the

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 319, 5.12.2007, p. 1.

3 OJ L 166, 11.6.1998, p. 45. Directive 98/26/EC has already been transposed into Slovenian legislation by several legal acts. Payment systems were covered in the Law on payment transactions (*Zakon o plačilnem prometu*, adopted on 20 March 2002, published in *Uradni list RS* No 30/2002, ZPlaP) which the draft law will repeal. The Law on the market in financial instruments (*Zakon o trgu finančnih instrumentov*, adopted on 12 July 2007, published in *Uradni list RS* No 67/2007) and the Law on dematerialised securities (*Zakon o nematerializiranih vrednostnih papirjih*, adopted on 23 March 1999, published in *Uradni list RS* No 23/1999) regulate settlement finality in securities settlement systems.

4 OJ L 275, 27.10.2000, p. 39. The ZPlaP has already transposed Directive 2000/46/EC.

implementation of the abovementioned Community directives, by including provisions governing payment systems (Chapter 11) and penal provisions for infringements of the draft law (Chapter 17).

1.2 On the basis of Article 1(2) of Council Decision 98/415/EC, this opinion only covers the provisions of Chapter 11 of the draft law that relate to payment systems. While acknowledging the importance of Directive 2007/64/EC for the establishment of the Single European Payments Area (SEPA), the ECB provides no assessment in this opinion of the overall implementation of Directives 2007/64/EC[5], 98/26/EC and 2000/46/EC in Slovenia.

2. General observations

The ECB welcomes the draft law which will comprehensively govern the payment infrastructure in Slovenia and, by implementing Directive 2007/64/EC, will among others also fulfil regulatory pre-conditions for the introduction of the SEPA.

3. Specific observations

3.1 *Supervision of payment institutions*

The draft law will entrust Banka Slovenije with new payment institution oversight and supervision tasks. The ECB welcomes this widening of Banka Slovenije's powers which has to be supported by providing Banka Slovenije with sufficient human and financial resources, both in terms of quantity and quality, to carry out its new tasks without affecting its capacity to carry out its Eurosystem-related tasks. In this respect, the ECB notes Articles 185 and 200 and Article 231(5) of the draft law, which provide for the reimbursement of Banka Slovenije's expenses arising from the performance of the newly assigned tasks.

3.2 *Important payment systems*

Article 151 of the draft law defines 'important payment systems' as payment systems which, due to the scale or type of payment transactions settled in such payment systems or other circumstances, have significant influence on the smooth execution of payment transactions in the country or on the confidence of payment service users in their safety and efficiency. The ECB notes that pursuant to Article 161(5) of the draft law, Banka Slovenije should notify important payment systems to the Commission to fulfil Slovenia's obligation under Article 10 of Directive 98/26/EC. The ECB welcomes allocating to the overseeing authority the competence to notify systems under Directive 98/26/EC and notes, in addition, that Banka Slovenije will exercise its oversight function pursuant to the Law on Banka Slovenije[6] in line with the harmonised oversight framework adopted by the ECB's Governing Council.

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5 See ECB Opinion CON/2006/21 of 26 April 2006 on a proposal for a directive on payment services in the internal market (OJ C 109, 9.5.2006, p. 10).

6 *Zakon o Banki Slovenije*, official consolidated version adopted on 23 June 2006, published in *Uradni list RS* No 72/06.

3.3 *Notifying insolvency proceedings*

Pursuant to Article 163(5) of the draft law, Banka Slovenije informs competent authorities of other Member States of the opening of insolvency proceedings against a participant in an important payment system or similar measures referred to in Article 163(1) of the draft law. The ECB welcomes this provision and would suggest going beyond the scope of Directive 98/26/EC by requiring Banka Slovenije to also notify the national payment systems of such proceedings or measures, hence preventing the settlement of an insolvent participant's payment instructions.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 24 March 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET