EUROPEAN CENTRAL BANK

EUROSYSTEM

EN **ECB-PUBLIC**

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 October 2017

on payment services

(CON/2017/44)

Introduction and legal basis

On 23 August 2017, the European Central Bank (ECB) received a request from the Cypriot Minister for Finance for an opinion on three draft laws entitled (1) "The Provision and Use of Payment Services and Access to the Payment Systems Law of 2017" (hereinafter, the 'draft payment services law'), (2) "The Electronic Money (Amending) Law of 2017" and (3) "The Business of Credit Institutions (Amending)(No.3) Law of 2017" (together with the draft payment services law, hereinafter collectively referred to as the 'draft laws').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third indent of Article 2(1) of Council Decision 98/415/EC[1], as certain provisions of the draft laws relate to the Central Bank of Cyprus (CBC). 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 laws

1.1. As stated in the explanatory note, the main aim of the draft laws is to harmonise Cypriot legislation with Directive (EU) 2015/2366 of the European Parliament and of the Council[2].

1.2. The draft payment services law contains a provision[3] providing that no director, officer or employee of the CBC will bear any liability in the event that legal proceedings are initiated for compensation in connection with an act or omission committed during the exercise of powers under the draft payment services law, unless it is proven that the act or omission was committed in bad faith or as a result of gross negligence.

1.3. The draft payment services law removes the current duty of the CBC of organising and handling out-of-court dispute resolution processes.

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1 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

2 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

3 Article 108 of the draft payment services law.

2. General observations

2.1. This opinion does not address whether the draft laws effectively implement Directive (EU) 2015/2366 into Cypriot law. The focus of this opinion is on those provisions that may impact on the roles and tasks of the CBC as a central bank and as a member of the European System of Central Banks (ESCB).

2.2. The ECB notes that the draft laws do not confer any new tasks on the CBC by comparison to the Payment Services Law of 2009[4] currently in force in relation to payment service providers.

2.3. The ECB recalls the principle of financial independence, which requires that the Member States must not put the national central banks in a position where they have insufficient financial resources to carry out their ESCB or Eurosystem-related tasks.

3. Specific observations

3.1. The ECB notes that there is a change in the approach as regards the CBC's potential liability for damages caused in the course of the exercise of supervisory powers over payment service providers. In the Payment Services Law of 2009[5], which is currently in force, the limitation of liability is extended to any supervisory authority, and not only to directors, officers and employees of the supervisory authority. As noted in previous opinions, the Cypriot authorities should consider aligning the CBC's liability under the draft law with its liability concerning its supervision of credit institutions, given that potential liability issues could represent substantial financial risks for the CBC[6].

3.2. The ECB notes that the draft payment services law removes the CBC's current duty of organising and handling out-of-court dispute resolution processes. This task is not related to the tasks conferred upon the ECB and national central banks in the ESCB by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.

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

Done at Frankfurt am Main, 27 October 2017.

[signed]

The President of the ECB

Mario DRAGHI

4 Law 128(I)/2009.

5 Law 128(I)/2009.

6 See, for example, paragraphs 2.3.6 and 2.3.8 of Opinion CON/2017/3, paragraph 3.4.7 of Opinion CON/2016/5, paragraph 3.1.7 of Opinion CON/2015/45 and paragraph 3.1.7 of Opinion CON/2015/37.