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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 April 2008

at the request of Národná banka Slovenska on a draft law amending Law No 510/2002 Coll. on payment systems and on amendments to certain laws

(CON/2008/18)

Introduction and legal basis

On 11 March 2008 the European Central Bank (ECB) received a request from Národná banka Slovenska (NBS) for an opinion on a draft law amending Law No 510/2002 Coll. on payment systems and on amendments to certain laws. On 10 April 2008 NBS sent the ECB a revised version of the draft law (hereinafter the 'revised 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 second 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 revised draft law relates to means of payment and 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

The revised draft law amends[2] the Law on payment systems[3] within the context of NBS's preparations to connect to TARGET2[4] and implement the TARGET2 legal framework, including the TARGET2 Guideline[5]. The revised draft law also amends certain provisions governing the existing domestic payment system, although the revised draft law does not address certain additional issues that it is envisaged will be governed by the Law on payment systems at a later stage[6]. This opinion therefore

1 OJ L 189, 3.7.1998, p. 42.

2 In line with the National Euro Changeover Plan for Slovakia adopted by Government Resolution No 525 of 6 July 2005, as amended.

3 Law No 510/2002 Coll. on the payment system and on amendments to certain laws, as amended.

4 Trans-European Automated Real-time Gross settlement Express Transfer system.

5 Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 237, 8.9.2007, p. 1).

6 For example, issues related to the implementation of the Single European Payments Area as from 2010 or issues related to the transposition of 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 (OJ L 319, 5.12.2007, p. 1).

focuses on the provisions of the Law on payment systems that relate to NBS's migration to TARGET2[7].

2. General observations

The ECB welcomes the revised draft law as an important preparatory measure for the future migration of NBS to TARGET2. Whether NBS has properly implemented the TARGET2 legal framework will be assessed separately by the ECB.

3. Specific observations

Execution of payments through the European payment system

3.1 Article 3(2) of the revised draft law provides for the possibility to execute domestic payments through a payment system operated by NBS, by any other person authorised as the operator of a payment system, or through a 'European payment system', which is defined in Article 31(2) of the revised draft law as a component system of TARGET2. The ECB notes that TARGET2 'provides real-time gross settlement [RTGS] for payments in euro, with settlement in central bank money'[8]. Moreover, TARGET2 is 'legally structured as a multiplicity of RTGS systems'[9] and each Eurosystem central bank operates its own TARGET2 component system, which is designated as a system under national legislation implementing 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[10] (hereinafter the 'Settlement Finality Directive'). A TARGET2 component system operated by NBS would therefore be designated as a system for the purposes of the Settlement Finality Directive and would already be covered by Article 3(2) of the Law on payment systems, as it would be operated by NBS. Nonetheless, the amendment of this provision as proposed in the draft law serves as clarification and as such the ECB has no objection.

Participants in a payment system

3.2 The ECB notes that the terminology used in the TARGET2 Guideline and the Law on payment systems is different with respect to entities offering clearing and settlement services and understands that the provisions of the Law on payment systems do not prevent such entities from connecting to the TARGET2 component system operated by NBS, unless the latter decides not to admit such entities to TARGET2.

Payment system rules

3.3 Article 37(1) of the revised draft law provides a non-exhaustive list of items that must be addressed

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7 See point 5.2 of ECB Opinion CON/2007/43 of 19 December 2007 at the request of the Slovak Ministry of Finance on a draft law on the introduction of the euro in Slovakia and on amendments to certain laws.

8 See Article 1(1) of the TARGET2 Guideline.

9 See Article 1(2) of the TARGET2 Guideline.

10 OJ L 166, 11.6.1998, p. 45. See also Article 3(1) and (2) of the TARGET2 Guideline.

in the payment system rules, which includes defining 'the moment of acceptance of an order by the payment system'. Further, Article 35 of the law defines the moment of irrevocability by operation of law (with reference to the moment of acceptance of a payment order) rather than by definition in the rules of the system. The ECB understands that according to Slovak legislation, the moment of acceptance of an order by the payment systems means the same as the 'entry of a payment order' under the Settlement Finality Directive. However, for reasons of legal certainty, it would be welcome for the legislation to be explicitly clarified with regard to this point.

License to operate a payment system

3.4 Under Article 61(3) of the Law on payment systems, an entity applying for a license to operate a payment system governed by Slovak law must fulfil certain criteria, which include a requirement to be a joint-stock company with a registered office in Slovakia. In conjunction with the registration requirement, the ECB notes that the services offered in TARGET2 are designed in accordance with the principle of an open market economy with free competition and with respect to the principle of equal treatment and non-discrimination when offering access to fund transfer services in TARGET2. Notwithstanding the fact that TARGET2 is exempted from the above-mentioned license requirement, the national authorities should in general avoid measures which may discriminate against any entities on grounds of residence or place of establishment since this would be contrary to the Treaty and the Statute of the European System of Central Banks and of the European Central Bank[11]. Therefore, the ECB invites the national authorities to reconsider the requirement that an entity intending to operate a system governed by Slovak law has to be a joint-stock company that has a registered office in Slovakia.

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

Done at Frankfurt am Main, 25 April 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

11 See Article 4 of the Treaty and Article 2 of the ESCB Statute.