EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 August 2006

at the request of Magyar Nemzeti Bank

on a draft regulation on carrying out payment transactions

and the Hungarian Ministry of Finance

on a draft government regulation on payment services and electronic payment instruments

(CON/2006/46)

Introduction and legal basis

On 27 July 2006 the European Central Bank (ECB) received a request from Magyar Nemzeti Bank (MNB) for an opinion on an MNB draft regulation on carrying out payment transactions (hereinafter referred to as the 'draft MNB regulation'). On 3 August 2006, the ECB received a request from the Hungarian Ministry of Finance for an opinion on a draft government regulation on payment services and electronic payment instruments (hereinafter referred to as the 'draft government regulation') (draft MNB regulation and draft government regulation are hereinafter referred to jointly as 'draft regulations'). Since the draft regulations cover closely related subjects, the ECB has joined both consultations above in a single consultation procedure.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the fifth indent 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 regulations relate 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 regulations

According to their statements of reasons, the draft regulations will bring Hungarian law into line with Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers[2], Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts[3], Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer

1 OJ L 189, 3.7.1998, p. 42.
2 OJ L 43, 14.2.1997, p. 25.
3 OJ L 144, 4.6.1997, p. 19.

financial services and amending Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC[4] and Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder[5]. In addition to the implementing provisions:

(i) the draft MNB regulation provides detailed rules for identifying bank accounts, execution of payment orders and payment methods and standard forms for domestic payment instructions; and

(ii) the draft government regulation regulates opening of the bank accounts, disposal over accounts and limitations on disposal over accounts (bankruptcy, winding-up and debt settlement procedures and the queuing of payment orders).

In light of the above, the scope of the draft regulations goes beyond the mere implementation of the relevant Community directives.

2. General observations

2.1 The ECB welcomes the draft regulations, as they will foster transparency and legal certainty for the execution of cross-border and domestic payments and help achieve a level playing field throughout the European Union.

2.2 The ECB understands that the draft regulations prejudice neither (i) the application of the national law implementing the Settlement Finality Directive[6]; nor (ii) the powers of system operators to lay down the criteria for participants; nor (iii) any oversight standards applied to systems by the competent authorities.

3. Specific observations on the draft MNB regulation

3.1 The draft MNB regulation contains an exhaustive list of domestic payment methods. This legal technique of exhaustive listing is appropriate when the legislator intends to exclude any other possibilities. However, in light of rapid innovation and technological progress in payment methods, the ECB recommends listing the payment methods in an exemplificative way.

3.2 Article 55(1) of the draft MNB regulation refers to credit institutions authorised to provide 'payment services'. In the interests of clarity instead a reference could be made to 'direct participants in the domestic payment system'.

4. Specific observations on the draft government regulation

4.1 According to Article 6(5) of the draft government regulation, credit institutions may enforce their claims 'before having cognisance as defined in Article 7(12) of the opening of liquidation

4 OJ L 271, 9.10.2002, p. 16.

5 OJ L 208, 2.8.1997, p. 52.

6 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 (OJ L 166, 11.6.1998, p. 45).

proceedings'. The ECB is of the view that instead of the general reference to Article 7(12), Article 6(5) could refer expressly to the receipt of notification under Article 29(g) of the Law XLIX of 1991 on bankruptcy proceeding, liquidation proceeding and voluntary dissolution and the publication of the relevant court decision in the case of client account keepers not keeping a bank account for an account holder.

4.2 The ECB notes that in spelling the name of the single currency as 'euró', Article 9 of the draft government regulation does not comply with the spelling rules for the word 'euro'. To make the euro's singleness apparent, Community law[7] requires a single spelling of the word 'euro' in the nominative singular case in all Community and national legislative provisions. On the basis of these considerations and in view of the Community's exclusive competence to determine the name of the single currency, any deviations from this rule are incompatible with the Treaty and should be eliminated.

4.3 Article 13 of the draft government regulation will exempt institutions from the legal consequences under the draft government regulation of late execution in case of *force majeure*. According to Law XV of 2003 on preventing and combating money laundering (Money Laundering Law), service providers must suspend any transactions where there is a suspicion of money laundering and police action should be taken. Such suspension required under national law may result in late execution. Therefore, for reasons of clarity the ECB recommends referring to the relevant national legal provisions, including the Money Laundering Law, in addition to the exemptions already provided for in the draft government regulation.

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

Done at Frankfurt am Main, 30 August 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

7 See Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ L 162, 19.6.1997, p. 1), Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1) and Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro (OJ L 359 31.12.1998, p. 1), all three of which were amended in 2000 for the introduction of the euro in Greece. See also the Community legislation on euro coins in 1998 and 1999, as well as Council Regulation (EC) No 2169/2005 of 21 December 2005 amending Regulation (EC) No 974/98 on the introduction of the euro (OJ L 346, 29.12.2005, p. 1).