



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 1 March 2017

on provision of information and data by payment systems, payment schemes, securities depositories and clearing and settlement systems

(CON/2017/5)

### Introduction and legal basis

On 1 February 2017 the European Central Bank (ECB) received a request from the Polish Ministry of Economic Development and Finance for an opinion on three draft executive decrees to be adopted by the Minister of Economic Development and Finance: (1) a decree on the functioning of payment systems; (2) a decree on the functioning of payment schemes; and (3) a decree on data and information to be provided by operators of securities depositories, systems for registering financial instruments other than securities and settlement systems (together 'the draft decrees').

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, fourth and fifth indents of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft decrees relate to (1) Narodowy Bank Polski (NBP), (2) the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics and (3) 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 decrees**

1.1 According to the Law of 24 August 2001 on the finality of settlement in payment systems and securities settlement systems and rules governing the oversight of such systems, the President of NBP is responsible for the oversight of payment systems. In particular, the operation of a payment system requires the consent of the President of NBP who is also entitled to revoke such consent and receive information on the functioning of the payment system. Against this backdrop, the decree on the functioning of payment systems sets out (1) the criteria for the President of NBP to assess the functioning of the payment system; (2) the detailed scope of information and types of documents to be provided with the application for consent to operate a payment system; (3) the detailed scope of information to be provided to the President of NBP (a) by a payment system operator which intends to enter into an arrangement with another operator relating to cross-system execution of transfer orders; (b) generally by payment system operators on a monthly basis; and

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<sup>1</sup> 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).

- (c) in respect of an incident which may have a negative impact on the functioning of the payment system.
- 1.2 According to the Law of 19 September 2011 on payment services, the President of NBP is responsible for the oversight of payment schemes. In particular, the operation of a payment scheme requires the consent of the President of NBP who is also entitled to revoke such consent and receive information on the functioning of the payment scheme. Against this backdrop, the decree on the functioning of payment schemes sets out (1) the criteria for the President of NBP to assess the functioning of the payment scheme; (2) the detailed scope of documents and information to be provided by the payment organisation i.e. the payment scheme governance authority, when applying for consent to operate the payment scheme; (3) the detailed scope of documents and information to be provided in cases where no consent by the President of NBP is required for the operation of the payment scheme because the payment scheme's rules have been assessed by the appropriate oversight authority of a Member State or the Union (see paragraph 1.3); (4) the detailed scope of quarterly information to be provided by the payment organisation to NBP on the total number and value of domestic payment transactions processed and cleared, including information about unauthorised payment transactions; and (5) the detailed scope of quarterly information to be provided by a card organisation to NBP concerning compliance with the level of interchange fees prescribed by Regulation (EU) 2015/751 of the European Parliament and of the Council<sup>2</sup>.
- 1.3 With respect to payment schemes whose rules have been assessed by the appropriate oversight authority of a Member State or the Union, and whose operation therefore does not require the consent of the President of NBP, the decree on the functioning of payment schemes provides that the documents and information that must be submitted to the President of NBP comprise: (1) confirmation of the completion of an assessment of the rules governing the operation of the payment scheme by the appropriate oversight authority of a Member State or the Union; (2) documentation that was subject to assessment by the appropriate oversight authority of a Member State or the Union. In addition, the following information that is also required from payment schemes directly overseen by the President of NBP must be submitted: (3) the name and registered office of the payment organisation; (4) the name of the payment scheme; (5) the types of payment instruments issued with an indication of the currencies in which payment transactions initiated using the payment instruments issued within the context of the payment scheme will be processed and settled; (6) conditions for accessing and participation in the payment scheme; (7) the procedure for making the rules governing the operation of the payment scheme available to participants; (8) the name and registered office of every entity that is responsible for carrying out specific outsourced operations of the payment scheme and the functions for which the entity is responsible, and the scope of its responsibility; (9) details of the infrastructure, payment systems, and payment schemes with which the operation of the scheme is linked, and also regarding the processing entity if the payment scheme is a four party payment card scheme as defined in

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<sup>2</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1).

Regulation (EU) 2015/751; (10) the rules associated with the complaints procedure within the context of the payment scheme; and (11) the procedure governing the protection of professional secrecy, including the protection of sensitive payment data. If the payment scheme is a payment card scheme, the following also must be provided: (a) information on the established interchange fee rate for an individual payment transaction and the rules governing the calculation of this fee; (b) information whether, within the context of the payment scheme, different interchange fee rates are applied, and an indication of the range for the rates applied; (c) the manner in which the fee is calculated on net refunds, taking into account the level of rates established for each type of instrument, split by currency; (d) the manner in which the system fee is calculated; and (e) the manner in which the payment card system and the processors are separated, as referred to in Article 7 of Regulation (EU) 2015/751.

- 1.4 According to the Law of 29 July 2005 on trading in financial instruments, the President of NBP participates in the oversight of operators of securities settlement systems. In particular, the President of NBP performs cyclical assessments and monitors the functioning of such infrastructures. Against this backdrop, the decree on data and information to be provided by operators of securities depositories, systems for registering financial instruments other than securities and settlement systems sets out (1) the detailed scope of information to be submitted to NBP by the operator of a securities depository or a system for registering financial instruments other than securities and the deadline for such transmission; (2) the detailed scope of information to be submitted to NBP by the operator of a settlement system in respect of settlement and clearing activities, and the deadline for such transmission; and (3) the detailed scope of information to be submitted to NBP by all of the above operators on incidents that have or could have a negative impact on the smooth or secure operation of the system.

## **2. General comments**

- 2.1 The ECB welcomes the draft decrees as the scope of information and documents required from the relevant entities follows the principles and general requirements set out in the Eurosystem oversight policy framework<sup>3</sup> and aims at strengthening the oversight function of NBP.
- 2.2 With respect to the obligation to provide statistical data, the ECB suggests that more detailed requirements on the scope of data requested are aligned with future ECB statistical data requirements applicable to payment system providers and payment schemes.
- 2.3 In addition, the ECB suggests that specific incident reporting requirements be aligned with future Eurosystem requirements.

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<sup>3</sup> See Eurosystem Oversight Policy Framework, July 2016, available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu)

### 3. Specific comments

#### *Decree on the functioning of payment schemes*

- 3.1 The ECB welcomes the fact that the criteria for the assessment of a payment scheme follow the same guiding principles as the criteria established under the Eurosystem oversight policy framework for payment instruments.
- 3.2 The ECB understands that more detailed information requirements relating to payment schemes will be set out in NBP's assessment guides. In that respect the ECB suggests that these assessment guides be aligned with the applicable Eurosystem oversight instruments.
- 3.3 The ECB also suggests that, in the exercise of its oversight powers over payment schemes in respect of which a leading oversight role has already been assigned to the ECB and/or one or more Eurosystem national central banks (NCBs), NBP could essentially rely on cooperative oversight arrangements with the ECB and other competent NCBs<sup>4</sup>. NBP is entitled to participate in the Eurosystem assessment groups on the basis of the contractual arrangements in place with the Eurosystem oversight authorities for international card payment schemes. In order to promote increased pan-European harmonisation and efficiency in the provision of card payments, the ECB suggests that NBP could, in the first instance, usefully rely on the Eurosystem cooperative arrangements in order to seek information required from the international payment schemes in question, instead of requesting the same information directly from the payment organisation, i.e. the scheme governance authority.

#### *Decree on the data and information to be provided by operators of securities depositories, systems for registering financial instruments other than securities and settlement systems*

- 3.4 The ECB notes that Regulation (EU) No 909/2014 of the European Parliament and of the Council<sup>5</sup> and the regulatory and implementing technical standards thereunder<sup>6</sup> establish requirements on the information and data to be provided by central securities depositories (CSDs) to competent authorities and relevant authorities, including NCBs in their capacity as overseers of CSDs. Therefore, whilst the ECB welcomes the draft decree on the data and information to be provided by securities depositories and clearing and settlement systems, which facilitates the effective conduct of oversight activities by NBP by making available data and information, it invites NBP to ensure that the draft decree does not duplicate, but merely complements, the requirements stemming from Regulation (EU) No 909/2014 and the regulatory and implementing technical standards, for example in terms of granularity or frequency of reporting.
- 3.5 The ECB supports the initiative to gather information and data on the business activities of local central counterparties (CCPs) for the oversight activities NBP conducts. NBP may wish to keep in mind that local CCPs may already report some data in line with the quantitative disclosure

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<sup>4</sup> As previously stated in paragraph 3.4 of Opinion CON/2016/38. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu)

<sup>5</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

<sup>6</sup> See the regulatory and implementing technical standards on CSD requirements and the draft regulatory technical standards on settlement discipline under Regulation (EU) No 909/2014 developed by the European and Securities Markets Authority (ESMA), available on ESMA's website at [www.esma.europa.eu](http://www.esma.europa.eu)

standards established by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO)<sup>7</sup>, and NBP should strive to avoid duplication, which would lead to a higher regulatory burden for CCPs. However, direct reporting to NBP of some of the published data could be justified by the need to have more granular and/or relatively frequent data reporting.

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

Done at Frankfurt am Main, 1 March 2017.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>7</sup> See CPMI-IOSCO *Public quantitative disclosure standards for central counterparties*, February 2015, available on the website of the Bank for International Settlements at [www.bis.org](http://www.bis.org)