



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 11 April 2001****at the request of the French Ministry of Economy, Finance and Industry on a draft article of a
legal act in the field of payment systems****(CON/2001/2)**

1. On 22 March 2001, the European Central Bank (ECB) received a request from the French Ministry of Economy, Finance and Industry for an opinion on a draft amendment to Article L. 141-4 of the French Monetary and Financial Code in the field of payment systems (hereinafter referred to as the 'draft amendment').
2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty'), Article 3.1 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, and Article 2 of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft amendment contains provisions concerning a national central bank, in addition to rules applicable to the smooth operation of payment systems in so far as it is intended to increase the capacity of the Banque de France to ensure such smooth operation. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, this opinion has been adopted by the Governing Council of the ECB.
3. The draft amendment is based on Article 105(2) of the Treaty and draws from the ECB's policy statement of June 2000 relating to the 'Role of the Eurosystem in the field of payment systems oversight'. The draft amendment extends the competence of the Banque de France to the security of the payment instruments themselves. According to the draft amendment, where the Banque de France considers that a payment instrument does not provide for sufficient security, it may recommend that its issuer adopt the corrective measures necessary to remedy that

¹ OJ L 189, 3.7.1998, pp. 42-43.

situation. If these recommendations are not implemented, the Banque de France may decide to issue a negative opinion and to publish it. In order to carry out these tasks, the Banque de France shall carry out expert work and obtain relevant information.

4. The ECB welcomes the introduction of the draft amendment. Indeed, safeguarding the security of payment instruments used by the public is one of the main objectives of the Eurosystem within its oversight competence. The security of payment instruments is of high importance for the Eurosystem in order to maintain the confidence of users of payment systems.
5. The ECB notes that, pursuant to the first indent of the draft amendment, the provision introduced by the draft amendment applies to the payment instruments ‘defined by Article L. 311-3 of the Monetary and Financial Code with the exception of fiduciary money’. Article L. 311-3 of the Monetary and Financial Code is drafted broadly to cover all instruments which allow any person to transfer funds whatever the support or technical means used. Besides, the ECB understands that in France, making available to the customer or administrating payment instruments, including e-money instruments, is, according to Article L. 311-1 of the Monetary and Financial Code, a banking operation and that, consequently, all e-money products are covered by the draft amendment. However, it should be noted that the note presenting the draft amendment, which was attached to the request from the Ministry of Economy, Finance and Industry, states that the draft amendment empowers the Banque de France to ensure the security of scriptural payment instruments (*‘moyens de paiements scripturaux’*). For the sake of completeness, the ECB would appreciate a clarification that the draft amendment covers also all e-money products where the payment instrument is not necessarily linked to the credit or debit of a bank account.
6. The last indent of the draft amendment provides that ‘In order to carry out these tasks, the Banque de France shall carry out expert work and obtain any relevant information’. The note presenting the draft amendment is more explicit than the draft amendment as far as the communication of information is concerned. It specifies that the Banque de France is empowered ‘to obtain from the issuers or from any party having an interest in the circulation of the payment instrument, all relevant information for the accomplishment of these tasks’. The ECB proposes the incorporation of these specifications in the draft amendment itself. This would make it clear in the legislation itself that the Banque de France has the power to obtain information from issuers or from any party having an interest in the circulation of the payment instrument.

7. The ECB confirms that it has no objection to the publication of this opinion by the competent national authorities at their discretion.

Done at Frankfurt am Main on 11 April 2001.

The President of the ECB

[signed]

Willem F. DUISENBERG