



OPINION OF THE EUROPEAN CENTRAL BANK

of 16 April 2007

**on an amendment to the Law XV of 2003 on the prevention and combating of money laundering
(CON/2007/10)**

Introduction and legal basis

On 26 February 2007 the European Central Bank (ECB) received a request from Hungary's Ministry of Finance (hereinafter the 'Ministry') for an opinion on a draft amendment to Law XV of 2003 on the prevention and restriction of money laundering (hereinafter the '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 third and fifth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions¹, as the draft law relates to the national central bank 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

According to the Ministry's letter of 26 February 2007 (hereinafter the 'letter'), the draft law intends to bring Hungarian legislation into line with Regulation (EC) No 1781/2006 of the European Parliament and Council of 15 November 2006 on information on the payer accompanying transfers of funds (hereinafter the 'Regulation')².

2. General observations

- 2.1 First, the ECB would like to stress its commitment to contributing to the adoption, implementation and execution of measures preventing the use of the financial system for terrorist activities, as expressed in its public statement on 1 October 2001.
- 2.2 The ECB welcomes the enhanced clarity of the money laundering legislative framework that the draft law will introduce. In particular, this new sanctioning power will allow the relevant authority to respond within its legal framework to future challenges in the fight against money laundering.

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 345, 8.12.2006, p. 1.

- 2.3 The eighth recital of the Regulation reflected the ECB's recommendations in Opinion CON/2005/2, according to which any natural or legal person providing payment service providers solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of the Regulation. This is also consistent with recital 34 of the Third Money Laundering Directive³. The ECB notes that obligations are already imposed on credit institutions and financial institutions to combat money laundering. Hence, whenever the payment system operator ensures that only supervised credit institutions may participate, no further requirements should be imposed on the payment system itself⁴. In light of this, the ECB submits that reporting obligations and, consequently, the imposition of sanctions, should apply only to payment and settlement system participants, and not to payment, clearing and settlement systems operators, including the Magyar Nemzeti Bank, because such operators fall outside the scope of the Regulation. Against this background, the Ministry is invited to bring its interpretation into line with the Regulation and the Third Money Laundering Directive.
- 2.4 The Ministry indicates in the letter its view that the draft law will also extend the supervisory powers of the State Supervisory Authority of Financial Organisations (hereinafter the 'PSZÁF') to the Magyar Nemzeti Bank as a financial services provider, although the draft law does not expressly provide this. In addition, Section 5 of the draft law introduces provisions regarding the PSZÁF's sanctioning power, empowering the PSZÁF, inter alia, with the right to restructure internal rules of the subject in question, suspend the activity causing the breach, prohibit it to carry out money transfer activities, carry out on-site inspections and impose a fine. The ECB welcomes these proposed changes inasmuch as they are addressed to payment system participants as opposed to payment system operators, in line with applicable Community legislation.

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

Done at Frankfurt am Main, 16 April 2007.

[signed]

The Vice-President of the ECB

Lucas PAPADEMOS

³ OJ L 309, 25.11.2005, p. 15.

⁴ See also paragraph 5 of ECB Opinion CON/2002/4 of 18 January 2002 at the request of the Danish Ministry of Economic and Business Affairs on a draft act amending the Act on money laundering.