



OPINION OF THE EUROPEAN CENTRAL BANK

of 23 August 2007

**at the request of the Spanish Ministry for Economic Affairs and Finance
on the draft State budget law for 2008 amending Law 41/1999 on payment and securities
settlement systems
(CON/2007/25)**

Introduction and legal basis

On 1 August 2007 the European Central Bank (ECB) received a request from the Spanish Ministry for Economic Affairs and Finance for an opinion on some provisions of the draft State budget law for 2008 (hereinafter the 'draft law') amending Law 41/1999 on payment and securities settlement systems.

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 provisions¹, as the draft law relates 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 law

The purpose of the draft law is to adapt the Spanish legislation in the field of payment and securities settlement systems to the Trans-European Automated Real-time Gross settlement system 2 (TARGET2) in general and more specifically to TARGET2-Banco de España by: (i) including TARGET2-Banco de España in the list of designated systems; (ii) allowing designated systems to settle credit transfer orders not only in an account held with the Banco de España, but also in an account held with other European Union central banks whose systems are connected to the Banco de España's system in the European System of Central Banks context; and (iii) prohibiting funds on a settlement account from being used for other purposes during a system's daily settlement session, fully protecting them from insolvency proceedings and from attachments or similar measures.

¹ OJ L 189, 3.7.1998, p. 42.

2. General observations

The ECB welcomes the amendments proposed by the draft law, as they support the smooth functioning of TARGET2.

3. Specific observations

- 3.1 The ECB welcomes the broadening of the concept of designated system by the proposed new Article 3(d) and considers that the possibility to settle in central bank money through accounts with any member of the ESCB is compatible with the design and organisation of TARGET2. However, the scope of Article 3(d) and the protection of systems proposed in the draft law are limited to payment and securities settlement systems settling in an account at the Banco de España or any other ESCB member. Although not strictly required by the Settlement Finality Directive², the national authorities might consider broadening the concept of designated system so as to include the possibility of also designating systems settling in commercial bank money. In such instances, steps should be taken to protect participants from credit and liquidity risks arising from the failure of the cash settlement agent whose assets are used for that purpose. Also, the ECB observes that the TARGET2 component system operated by the ECB is not expressly covered by the provisions of the proposed Article 3(d).
- 3.2 The ECB also welcomes the full protection by the new Article 11(3) of funds on a settlement account from insolvency proceedings and any other judicial or administrative enforcement measure, thus guaranteeing the availability of a participant account and the enforceability of credit transfer orders during the operational day according to the system rules.
- 3.3 With regard to the designation of TARGET2-Banco de España as a system, it should be considered clarifying in the draft law that the current Spanish RTGS system, *Servicio de Liquidación del Banco de España* (SLBE), will only operate until its replacement by TARGET2-Banco de España.

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

Done at Frankfurt am Main, 23 August 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

² 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, 11.6.1999, p. 45).