



OPINION OF THE EUROPEAN CENTRAL BANK

of 12 December 2007

at the request of Българска народна банка (Bulgarian National Bank)

on a draft law introducing a licensing regime for entities providing money remittance services

(CON/2007/40)

Introduction and legal basis

On 25 October 2007 the European Central Bank (ECB) received a request from the Governor of Българска народна банка (Bulgarian National Bank) (BNB) for an opinion on a draft law amending the Law on funds transfers, electronic payment instruments and payment systems (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 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 the BNB. 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 aim of the draft law is to introduce a licensing regime for entities providing money remittance services and thus to implement the requirements of Article 36 of Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing² (hereinafter the 'Directive'). In particular, the draft law specifies: (i) the categories of money remittance companies and the requirements for operating such a business; (ii) the conditions under which a licence is granted, revoked or discontinued; and (iii) the supervisory activities of the BNB to ensure that money remittance companies operate their business in conformity with this draft law, including the BNB's right to carry out on-site inspections and to obtain information.

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 309, 25.11.2005, p. 15.

2. General observations

- 2.1 The ECB reiterates 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 of 1 October 2001³.
- 2.2 The ECB welcomes the draft law, which will increase transparency with regard to money remittance companies. The draft law also provides for measures that will enhance the BNB's supervisory powers over such entities thus allowing it to play a more active role in the prevention of money laundering. It is important to bring the draft law into line with the Directive so as to also ensure that money remittance companies do not facilitate terrorist activities in any way.
- 2.3 The ECB recommends adding certain provisions to the draft law's requirements for granting licences to money remittance companies, which will bring it into line with the Directive. Under the draft law, one condition for granting a licence is that 'the internal control systems, administrative and accounting procedures, risk management systems, and internal rules on measures against money laundering are adequate and proportionate to the nature and size of the business the applicant will operate'⁴. This requirement should also include the internal rules on measures against terrorist financing. In particular, Article 26e(1) item 4 of the draft law should be reformulated so as to ensure that the internal rules that are to be approved by the Director of the Financial Intelligence Agency must also comply with the requirements of the Law on the Measures against Terrorism Financing⁵.
- 2.4 The ECB welcomes the introduction of a licensing system under which the reliability and financial soundness of partners and shareholders who are owners of the money remittance companies is assessed⁶. In this respect, the Directive requires that if the competent authorities are not satisfied that 'the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities' they must refuse to license or register such entities⁷. In the light of the above, and in view of the crucial importance of preventing money laundering and terrorist financing, it is essential to introduce more specific and detailed provisions in the draft law relating to the identification and verification of all beneficial owners.
- 2.5 In addition, it is important to examine in the licensing procedure that the persons who effectively direct an applicant's business, as well as those persons who are authorised to manage and represent the applicant⁸, are fit and proper persons, and the draft law should be amended accordingly.

³ See the Public statement of the European Central Bank on its support for measures to prevent the use of the financial system in the funding of terrorist activities, available on the ECB's website at www.ecb.europa.eu/press/pr/date/2001/html/pr011001.en.html.

⁴ See Article 26b(1) item 6 of the draft law.

⁵ *Закон за мерките срещу финансирането на тероризма*, published in Darjaven Vestnik issue No 16, 18.02.2003, as last amended on 21.07.2006.

⁶ See Article 26b(1) item 7 of the draft law.

⁷ See Article 36(2) of the Directive.

⁸ See Article 26b(1) item 8 of the draft law.

3. Provisions on granting a licence to money transmission or remittance entities

- 3.1 It is important to make it clear that the BNB is the sole authority responsible for assessing all the conditions necessary for obtaining a licence set out in Article 26b(1) of the draft law. The ECB understands that Article 26b(2) is meant to grant the BNB power of discretion over whether the requirements set out in Article 26b(1) items 5-9 are met. In this respect, it seems appropriate that such discretion also covers Article 26b(1) items 1.
- 3.2 The recently adopted Directive on Payment Services in the Internal Market (PSD)⁹ sets out a harmonised set of licensing rules for providers of payment services that are not connected to taking deposits or issuing e-money. Since the PSD should be transposed into national law by 1 November 2009, it may facilitate the future legislative process if applicable parts of the PSD are already taken into consideration.

4. Extension of the BNB's supervisory powers

- 4.1 The ECB welcomes the extension of the BNB's supervisory powers to include the area of money laundering and terrorist financing and the BNB's right to conduct on-site inspections. However, Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB- or Eurosystem-related tasks, as applicable¹⁰. Therefore, the ECB expects that, when extending the BNB's tasks, sufficient financial and personnel resources will be available to the BNB, both in terms of quantity and quality to carry out all its tasks, and in particular that its capacity to carry out ESCB-related tasks will not be affected¹¹.

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

Done at Frankfurt am Main, 12 December 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁹ Not yet published.

¹⁰ See the ECB's Convergence Report 2007, p. 19, available on the ECB's website at www.ecb.int.

¹¹ See paragraph 3.2 of ECB Opinion CON/2007/17 of 18 June 2007 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law on the regulation and supervision of markets and the functioning of the competent independent authorities, paragraph 3 of ECB Opinion CON/2007/8 of 21 March 2007 at the request of the Czech Ministry of Industry and Trade on certain provisions of a draft law amending the Law on consumer protection relating to Česká národní banka, paragraph 2 of ECB Opinion CON/2007/23 of 2 August 2007 at the request of Banca Națională a României on a draft law on non-banking financial institutions.