



OPINION OF THE EUROPEAN CENTRAL BANK
of 12 December 2008
at the request of the Spanish State Secretary for Economic Affairs
on a draft law amending the Law on payment and securities settlement systems
(CON/2008/87)

Introduction and legal basis

On 10 November 2008 the European Central Bank (ECB) received a request from the Spanish State Secretary for Economic Affairs for an opinion on a proposal for a draft law on payment services amending Law 41/1999 on payment and securities settlement 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 and fifth indents 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 Banco de España and payment 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 draft law transposes Directive 2007/64/EC². The sixth final provision of the draft law amends Law 41/1999 on payment and securities settlement systems, which transposed Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems³ (hereinafter the ‘Settlement Finality Directive’). This opinion focuses on the amendments to Law 41/1999, as the consulting authority requested the ECB’s comments only on the sixth final provision of the draft law.

The proposed amendments are:

- to delete the Servicio de Liquidación del Banco de España (SLBE, the Spanish real-time gross settlement system (RTGS) component of TARGET⁴) from the list of systems designated by the competent Spanish authorities, following the replacement of TARGET by TARGET2 and the subsequent replacement of the SLBE by TARGET2-Banco de España;

¹ OJ L 189, 3.7.1998, p. 42.

² Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance), OJ L319, 5.12.2007.

³ OJ L 166, 11.6.1998, p. 45.

⁴ Trans-European Automated Real-time Gross settlement Express Transfer.

- to extend the definition of system participant to cover credit institutions and investment firms authorised to operate in the European Economic Area (EEA), in order to allow their participation in systems designated by the competent Spanish authorities, thereby meeting the needs expressed by payment system market operators, in particular in the context of achieving the single euro payment area (SEPA);
- to extend participation in the Sistema Nacional de Compensación Electrónica, (SNCE, the Spanish system for retail transactions) or other systems managed by Sociedad Española de Sistemas de Pago, S.A. (Iberpay) to institutions authorised to operate in the EEA;
- to delete the requirement that Iberpay systems settle fund transfer orders only on a cash account with the Banco de España, in line with the current Article 3(d) of Law 41/1999, which is applicable to such systems and allows for settlement on a cash account with the Banco de España but also with the ECB or a national central bank whose system is connected to Banco de España's within the European System of Central Banks;
- also with regard to Iberpay systems, to delete the requirement to publish basic system operation rules in the *Boletín Oficial del Estado*, as this requirement is already laid down in Article 3(a) of Law 41/1999, which is applicable to all Spanish designated systems.

2. Participation in designated systems

The ECB welcomes the proposal to open up cross-border participation in the Spanish retail payment market, thereby helping to achieve the SEPA's objective of one single payment area.

The ECB also welcomes the proposal to extend the definition of system participant to cover institutions authorised to operate in the EEA in order to allow their participation in systems designated by the competent Spanish authorities, but notes that the list of institutions which may participate in payment or settlement systems designated under the Settlement Finality Directive should include any undertaking whose head office is outside the Community and whose functions correspond to those of the Community credit institutions or investment firms⁵.

3. Oversight of Iberpay

Regarding the Banco de España's oversight of Iberpay provided for in Article 17(3) of the draft law, the ECB notes that this competence has to be exercised in accordance with Eurosystem oversight standards and policies established on the basis of the fourth indent of Article 105(2) of the Treaty and Article 22 of the Statute of the European System of Central Banks and of the European Central Bank.

⁵ See Article 2(b), fourth indent of the Settlement Finality Directive.

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

Done at Frankfurt am Main, 12 December 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET