OPINION OF THE EUROPEAN CENTRAL BANK
of 24 March 2009
at the request of the Slovenian Ministry of Finance
on a draft law on payment services and systems
(CON/2009/27)

Introduction and legal basis

On 25 February 2009 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on payment services 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 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 Banka Slovenije and 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


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implementation of the abovementioned Community directives, by including provisions governing payment systems (Chapter 11) and penal provisions for infringements of the draft law (Chapter 17).

1.2 On the basis of Article 1(2) of Council Decision 98/415/EC, this opinion only covers the provisions of Chapter 11 of the draft law that relate to payment systems. While acknowledging the importance of Directive 2007/64/EC for the establishment of the Single European Payments Area (SEPA), the ECB provides no assessment in this opinion of the overall implementation of Directives 2007/64/EC\(^5\), 98/26/EC and 2000/46/EC in Slovenia.

2. **General observations**

The ECB welcomes the draft law which will comprehensively govern the payment infrastructure in Slovenia and, by implementing Directive 2007/64/EC, will among others also fulfil regulatory pre-conditions for the introduction of the SEPA.

3. **Specific observations**

3.1 *Supervision of payment institutions*

The draft law will entrust Banka Slovenije with new payment institution oversight and supervision tasks. The ECB welcomes this widening of Banka Slovenije’s powers which has to be supported by providing Banka Slovenije with sufficient human and financial resources, both in terms of quantity and quality, to carry out its new tasks without affecting its capacity to carry out its Eurosystem-related tasks. In this respect, the ECB notes Articles 185 and 200 and Article 231(5) of the draft law, which provide for the reimbursement of Banka Slovenije’s expenses arising from the performance of the newly assigned tasks.

3.2 *Important payment systems*

Article 151 of the draft law defines ‘important payment systems’ as payment systems which, due to the scale or type of payment transactions settled in such payment systems or other circumstances, have significant influence on the smooth execution of payment transactions in the country or on the confidence of payment service users in their safety and efficiency. The ECB notes that pursuant to Article 161(5) of the draft law, Banka Slovenije should notify important payment systems to the Commission to fulfil Slovenia’s obligation under Article 10 of Directive 98/26/EC. The ECB welcomes allocating to the overseeing authority the competence to notify systems under Directive 98/26/EC and notes, in addition, that Banka Slovenije will exercise its oversight function pursuant to the Law on Banka Slovenije\(^6\) in line with the harmonised oversight framework adopted by the ECB’s Governing Council.

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\(^5\) See ECB Opinion CON/2006/21 of 26 April 2006 on a proposal for a directive on payment services in the internal market (OJ C 109, 9.5.2006, p. 10).

\(^6\) *Zakon o Banki Slovenije*, official consolidated version adopted on 23 June 2006, published in *Uradni list RS* No 72/06.
3.3 *Notifying insolvency proceedings*

Pursuant to Article 163(5) of the draft law, Banka Slovenije informs competent authorities of other Member States of the opening of insolvency proceedings against a participant in an important payment system or similar measures referred to in Article 163(1) of the draft law. The ECB welcomes this provision and would suggest going beyond the scope of Directive 98/26/EC by requiring Banka Slovenije to also notify the national payment systems of such proceedings or measures, hence preventing the settlement of an insolvent participant’s payment instructions.

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

Done at Frankfurt am Main, 24 March 2009.

[signed]

*The President of the ECB*

Jean-Claude TRICHET