



OPINION OF THE EUROPEAN CENTRAL BANK

of 16 April 2009

at the request of the Cypriot Ministry of Finance on draft provisions on payment services and systems

(CON/2009/36)

Introduction and legal basis

On 11 March 2009 the European Central Bank (ECB) received a request from the Cypriot Ministry of Finance for an opinion on draft provisions on payment services and systems (hereinafter the 'draft provisions').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and on 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 provisions relate to the Central Bank of Cyprus (CBC) 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 and contents of the draft provisions

- 1.1 The main purpose of the draft provisions is to transpose into Cypriot legislation 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/EC². This objective is to be achieved mainly through adopting (i) the Law on payment services (hereinafter the 'Law') and (ii) the CBC Directive laying down the licensing and prudential supervision requirements applicable to domestic payment institutions, as well as through amendments to the Law on the prevention and suppression of money laundering activities of 2007³.
- 1.2 As stated in the explanatory memorandum accompanying the consultation request, the draft provisions go beyond transposition of Directive 2007/64/EC. In particular, the Law goes beyond Article 2(1) and (2) of Directive 2007/64/EC and extends the national scope of application to (i) payment services where only one payment service provider (either that of the payer or that of the payee) is located in the Community, as well as (ii) to payment services provided in a currency

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 319, 5.12.2007, p. 1.

³ Law 188(I)/2007, *Episimi Efimerida tis Dimokratias*, Annex I(I), No 4154 of 31.12.2007.

other than the euro or the currency of a Member State outside the euro area (see Section 3 of the Law). Moreover, in deviation from Article 52(2) of Directive 2007/64/EC, the Law extends, subject to the contracting parties' agreement to the contrary, the scope of application of Article 52(2) to payment transactions involving currency conversion (see Section 45 of the Law).

- 1.3 On the basis of Article 1(2) of Council Decision 98/415/EC, this opinion only covers those draft provisions that directly relate to payment systems and the CBC. While acknowledging the importance of Directive 2007/64/EC for the establishment of the Single European Payments Area (SEPA), this opinion does not assess the overall transposition of the Directive in Cyprus.

2. General observations

The ECB welcomes the draft provisions that fulfil the regulatory conditions needed for the introduction of the SEPA. They will comprehensively govern the operation of the payment services market in Cyprus and ensure close cooperation between the CBC and the Ministry of Finance in transposing Directive 2007/64/EC.

3. New tasks and sufficient human and material resources

The draft provisions will entrust the CBC with new payment institution authorisation and supervision tasks (see, in particular, Titles III and X of the Law, read in conjunction with the CBC Directive). Significantly, these new tasks also extend to the assumption by the CBC of supervisory functions in connection with the prevention and suppression of money laundering by payment institutions (see amended Section 59(1) of the Law on the prevention and suppression of money laundering activities of 2007). In order for the CBC to be in a position to perform its new tasks in parallel with its Eurosystem-related tasks and other tasks assigned to the CBC by national law it is essential that the CBC has sufficient human and material resources⁴.

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

Done at Frankfurt am Main, 16 April 2009.

[signed]

The Vice-President of the ECB

Lucas D. PAPADEMOS

⁴ See also paragraph 3.1 of ECB Opinion CON/2009/27 of 24 March 2009 at the request of the Slovenian Ministry of Finance on a draft law on payment services and systems.