



OPINION OF THE EUROPEAN CENTRAL BANK

of 3 August 2010

on certain competences of the Governing Council of Българска народна банка (Bulgarian National Bank)

(CON/2010/61)

Introduction and legal basis

On 7 July 2010 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 payment services and payment systems¹, the Law on the Bulgarian National Bank (hereinafter the ‘Law on BNB’)² and other national legal acts³ (hereinafter the ‘draft law’).

The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union 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 provisions⁴, as the draft law relates to 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 main purpose of the draft law is to transpose Directives 2009/44/EC⁵ and 2009/110/EC⁶ into Bulgarian law, and to bring relevant national legislation in line with these amendments. As a result, the draft law also adapts, through its transitional and final provisions, Articles of the Law on BNB related to the competences of BNB’s Governing Council⁷. The need for such an adaptation evolves from the exclusion of electronic money institutions from the scope of the credit institution definition under

¹ Published in *Darjaven vestnik* No 23, 27.3.2009.

² Published in *Darjaven vestnik* No 46, 10.6.1997.

³ These include the Law on credit institutions, published in *Darjaven vestnik* No 59, 21.7.2006.

⁴ OJ L 189, 3.7.1998, p. 42.

⁵ Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (OJ L 146, 10.6.2009, p. 37).

⁶ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

⁷ See § 3. of the Transitional and Final Provisions of the draft law.

Directive 2009/110/EC⁸ and from the subsequent implementation of Directive 2009/110/EC into national law⁹. Therefore, the draft law adjusts the competences of BNB's Governing Council in relation to the legal regime under which it grants, refuses or revokes licenses for electronic money institutions. Under the draft law, the license procedure and terms under the Law on credit institutions no longer apply to electronic money institutions¹⁰. In addition, since electronic money institutions are no longer defined as credit institutions, the draft law removes them from the list of types of credit institutions that BNB's Governing Council may place under special supervision as a remedy measure for credit institutions pursuant to the Law on credit institutions¹¹.

2. General observation

Amendments to the Law on BNB

- 2.1 The ECB understands the rationale of § 3 of the draft law. While welcoming it, the ECB considers that it would be beneficial for reasons of clarity and legal certainty if proposed Article 16(15) of the Law on BNB lists the full range of institutions for which the BNB's Governing Council is competent to grant, refuse or revoke licenses, including for example payment institutions and financial institutions, which are subject to a licensing regime.
- 2.2 The ECB also notes that the deletion of the words 'electronic money institutions' in Article 16(16) of the Law on BNB may be a source of uncertainty in relation to identifying the relevant BNB body competent to exercise supervision of electronic money institutions and more generally of payment services providers. This body should be clearly designated in the Law on BNB as is the case for the supervision of the banking system pursuant to Article 20(3) of the Law on BNB.
- 2.3 Furthermore, it is advisable to adapt the terminology of the Law on BNB to the new definition for credit institutions by replacing, where relevant, the term 'bank' with the term 'credit institution'.

⁸ See Article 20(1) of Directive 2009/110/EC amending Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1).

⁹ § 4. of the Transitional and Final Provisions of the draft law provides for changes of Article 1(2) and Article 2(1) of the Law on credit institutions to align the definition for credit institution thereof to the amended definition pursuant to Article 4(1) of Directive 2006/48/EC.

¹⁰ See proposed Article 16(15) of the Law on the BNB. The draft law, however, subjects electronic money institutions to the licensing procedure and terms for payment institutions under the Law on payment services and payment systems.

¹¹ See proposed Article 16(16) of the Law on the BNB.

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

Done at Frankfurt am Main, 3 August 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET