



OPINION OF THE EUROPEAN CENTRAL BANK
of 21 September 2012
on a consolidated legal framework for payment services
(CON/2012/72)

Introduction and legal basis

On 20 August 2012, the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law amending the Law on payment services and certain other laws (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 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 Narodowy Bank Polski (NBP) and to 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

- 1.1 The draft law amends the Law of 19 August 2011 on payment services² (hereinafter the ‘Law on payment services’) to fully transpose in the Polish legal system 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/EC³.
- 1.2 In addition to transposing Directive 2009/110/EC, the draft law introduces certain other amendments. The main areas where the proposed amendments go beyond the strict transposition of Union directives include, *inter alia*:
- (a) recast of the various legal provisions concerning payment services currently contained in several legal acts, and consolidation in the Law on payment services, thereby creating a single act which comprehensively regulates the payment services market, including the operation and supervision of electronic money institutions. To this end, the draft law:

¹ OJ L 189, 3.7.1998, p. 42.

² *Dziennik Ustaw* (Dz. U.) of 2011 No 199, item 1175.

³ OJ L 267, 10.10.2009, p. 7.

- (i) repeals the Law of 12 September 2002 on electronic payment instruments⁴ (hereinafter the ‘Law on electronic payment instruments’) and transfers most of its provisions to the Law on payment services. Following such consolidation, general provisions concerning payment institutions will apply to electronic money institutions, while issues requiring detailed electronic money-specific regulation will be included in the proposed new Chapter VIIa of the Law on payment services;
 - (ii) transfers to the Law on payment services those provisions of the Law of 29 August 1997 on banking⁵ which regulate certain aspects of the payment services market⁶;
 - (iii) amends and aligns payment services-related definitions and terminology;
- (b) with a view to ensuring that NBP, as the overseer of payment systems, has access to the relevant payment services market data, the data reporting obligations⁷ of acquirers, electronic money issuers and payment instrument issuers are extended⁸ to also cover certain services exempted from the application of the Law on payment services⁹. At the same time, the draft law provides for the sharing of such information with the Financial Supervision Authority (KNF)¹⁰;
- (c) under the provisions currently in force, NBP’s oversight and licensing powers over payment systems¹¹ are applied *mutatis mutandis* to non-banking providers of acquiring services; the draft law redefines the concept of acquiring services and replaces these NBP oversight and licensing powers with consultative powers¹².

2. General observations

In accordance with Decision 98/415/EC, this opinion only addresses those provisions of the draft law relating to NBP and payment systems which go beyond the strict transposition of Union directives. While acknowledging the importance of Directive 2009/110/EC, its transposition into national law is not addressed in this opinion.

⁴ Dz. U. of 2002 No 169, item 1385.

⁵ Dz. U. of 2002 No 72, item 665.

⁶ The transferred provisions regulate, *inter alia*, the settlement of direct debit transactions where one of the providers comes from outside the European Union.

⁷ Articles 15a–c of the Law on payment services as inserted by Article 1(5)(b) of the draft law.

⁸ See proposed Article 6a of the Law on payment services.

⁹ Services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services, exempted under Article 6(11) of the Law on payment services.

¹⁰ Proposed Articles 15a(3), 15b(3) and 15c(3) of the Law on payment services.

¹¹ Exercised under the Law of 24 August 2001 on settlement finality in payment systems and securities settlement systems and supervision over such systems (Dz. U. of 2010 No 112, item 743); see Article 16(1).

¹² According to proposed Article 60(3) of the Law on payment services, the KNF Chair would be obliged to consult the NBP President whenever an application for authorisation as a payment institution covers the provision of acquiring services.

3. Specific observations

- 3.1 The ECB welcomes the consolidation of the various legal provisions concerning the payment services market in a single act, as it will increase the clarity and consistency of interpretation and application of the entire legal framework for payment services in Poland.
- 3.2 The ECB understands that, as a result of abolishing NBP's oversight and licensing powers over non-banking providers of acquiring services, such providers will no longer be subject to a dual licensing regime, consisting of: (i) authorisation as payment services providers – by the KNF; and (ii) authorisation as operators of acquiring systems¹³ – by NBP. This change will result in a single supervisory and licensing regime for all payment institutions, including those providing acquiring services, and should remove doubts currently arising over the application of the dual licensing regime. At the same time, the central bank's role has been clearly defined by enabling its involvement in licensing acquirers, in the form of opinions to be issued by the NBP President, and by defining the scope of acquiring services to exclude any elements of clearing and settlement, thereby ensuring that the new framework is without prejudice to NBP's oversight and licensing powers over payment systems¹⁴.
- 3.3 The draft law amends the rules on the redeemability of electronic money¹⁵. In this context, the ECB refers to the importance of redeemability as a means to ensure confidence in electronic money as an effective and reliable substitute for coins and banknotes, and the relevant provisions of Directive 2009/110/EC which provide for unlimited redeemability¹⁶.

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

Done at Frankfurt am Main, 21 September 2012.

[signed]

The President of the ECB

Mario DRAGHI

¹³ Referred to in Polish legislation as 'authorisation and clearing systems'.

¹⁴ See the proposed definition of 'acquiring' in Article 3(1)(5) of the Law on payment services as amended by Article 1(3)(b) of the draft law; see also the explanatory memorandum to the draft law, p. 13.

¹⁵ According to Article 60(1) of the Law on electronic payment instruments, 'during the period of validity of the contract' the holder of electronic money may demand that the issuer redeem the electronic money 'at any time'. The draft law removes the qualification relating to the period of the contract (see proposed Article 59i of the Law on payment services). At the same time, the draft law modifies the time limit for such requests for redemption by replacing the 10-year time limit (applicable under the general rules of civil law) with a five-year time limit (applicable specifically to the requests for redemption of electronic money) running from when the relevant contract concerning the issuance of electronic money is terminated (see proposed Article 59l of the Law on payment services).

¹⁶ See Article 11(2) of Directive 2009/110/EC.