



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 14 October 2014**  
**on financial transparency, payment services and electronic money**  
**(CON/2014/74)**

**Introduction and legal basis**

On 2 September 2014, the European Central Bank (ECB) received a request from the Danish Financial Supervisory Authority (FSA) for an opinion on a draft law amending the Law on financial business, the Law on securities trading, the Law on payment services and electronic money and various 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 second and sixth indents of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft law relates to means of payment and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 introduces a number of changes to the financial legislation. Among these, the draft law aims to increase openness with regard to the FSA’s assessment of undertakings under supervision, e.g. all such undertakings shall have the obligation to publish the FSA’s inspection reports<sup>2</sup>. Furthermore, the draft law introduces changes to the Law on payment services and electronic money in order to cut down on administrative burden<sup>3</sup>.

**1.1 *Publication of the FSA’s inspection reports***

The draft law proposes extending the scope of financial undertakings’ obligation to publish the FSA’s assessment of the undertaking in question, with the result that all types of financial undertakings under supervision pursuant to the Law on financial business are covered, i.e. the obligation is extended to savings firms, investment advisors, joint data centres, and carbon emissions traders.

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<sup>1</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>2</sup> See Section 6(10), Section 7(3), Section 8(2), Section 9(2) and Section 12(1) of the draft law.

<sup>3</sup> See Section 3 of the draft law.

1.2 *Amendments to the Law on payment services and electronic money*

In order to ease the administrative burden for electronic money issuers, the draft law contains an exemption with regard to the issuance of electronic money in amounts of less than DKK 3 000 (approximately 400 euro) from the Law on payment services and electronic money, if such electronic money cannot be automatically reloaded. At the same time, this electronic money must have a limited scope of application, e.g. it can only be used in one particular shopping centre or in establishments forming a particular association of retailers. The draft law also removes payment substitutes that are free of charge and payment substitutes in amounts of less than DKK 3 000 from the draft law's scope of application if automatic reloading is not possible.

Additionally, the draft law provides an option to payers where they will have additional information on where they have used their payment instrument (credit cards, mobile payments etc.) in order to provide them with an overview of the payments made (i.e. diagrams). This information would only be made available to the payer, who will have the option of declining this option.

**2. General observations**

- 2.1 The ECB notes that the obligation to publish FSA's inspection reports (or information included in the FSA inspection reports) is proposed to be extended to cover all financial undertakings supervised by the FSA. While transparency is an important aspect in prudential supervision, publication of inspection reports may influence the way these reports are written, and the speed with which they are written, which could be detrimental to effective supervision. The ECB recalls that the obligation to disclose inspection reports will not apply to credit institutions supervised by the Single Supervisory Mechanism. In addition, it should be observed whether these reports contain information which, if published, could have an impact on financial stability.
- 2.2 The amendments to the Law on payment services and electronic money provide for an exemption from the application of the law for the issuance of electronic money in amounts of less than DKK 3 000, as well as payment substitutes that are free of charge and payment substitutes in amounts of less than DKK 3 000. Directive 2009/110/EC of the European Parliament and of the Council<sup>4</sup> makes a distinction between services to which the directive does not apply<sup>5</sup> and areas where the Member States have the possibility to waive the application of the directive for legal

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<sup>4</sup> See Article 1(4) of 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).

<sup>5</sup> For example, services based on payment instruments that can only be used to acquire goods or services on 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. See Article 3(k) of 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 (OJ L 319, 5.12.2007, p. 1).

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persons fulfilling certain requirements<sup>6</sup>. The ECB suggests that the Danish legislator should clarify the exemption or waiver of the directive under which the issuance of electronic money and the payment substitutes fall. In addition, the ECB suggests that the Danish legislator should make clear that ‘payment substitutes’ correspond to services specified in Article 3(k) of Directive 2007/64/EC and therefore do not fall within the scope of either Directive 2007/64/EC or Directive 2009/110/EC.

- 2.3 Finally, the ECB would like to mention the recommendations from the European Forum on the Security of Retail Payments, SecuRe Pay, with regard to the proposed additional possibilities to provide collected payment information, which might provide some guidance in the area of user security<sup>7</sup>.

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

Done at Frankfurt am Main, 14 October 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>6</sup> This possibility is available where: (a) the total business activities generate an average amount of outstanding electronic money that does not exceed a limit set by the Member State but that amounts to no more than EUR 5 000 000; and (b) none of the natural persons responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes. See Article 9(1) of Directive 2009/110/EC.

<sup>7</sup> Please see ‘Final recommendations for the security of payment account access services following the consultation’, available on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).