



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 24 April 2017

on the Payment Services, Services of Issuing Electronic Money and Payment Systems Act
(CON/2017/15)

Introduction and legal basis

On 13 February 2017 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft Payment Services, Services for Issuing Electronic Money and Payment Systems Act (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 fifth indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates 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

The main objective of the draft law is to transpose Directive (EU) No 2015/2366 on payment services in the internal market (hereinafter the 'Directive')² into Slovenian law. The draft law also amends some existing provisions relating to payment systems. The draft law does not apply to systemically important systems, which the draft law clarifies are covered by Regulation of the European Central Bank (EU) No 795/2014 (ECB/2014/28)³.

- 1.1 Under existing national law⁴ Banka Slovenije issues two types of authorisations for payment systems: (i) an authorisation for the establishment of a payment system, issued to the participants in the payment system, and (ii) an authorisation for the provision of payment system operation services, issued to payment system operators. The draft law provides that in the future Banka Slovenije will issue only one authorisation to operate a payment system. For this purpose, the operator of a payment system is defined as the entity responsible for operating the payment system in compliance with the law and for the comprehensive risk management of the payment

¹ 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).

² Directive (EU) No 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2001/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

³ Regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28) (OJ L 217, 23.7.2014, p.16).

⁴ Payment Services and Systems Act (*Zakon o plačilnih storitvah in sistemih*), published in the Official Gazette of the Republic of Slovenia, No. 58/09, 34/10, 9/11, 32/12, 81/15 and 47/16.

system. When applying for an authorisation to operate a payment system, the applicant must submit the rules that apply to the payment system. Any existing authorisations for the establishment of a payment system and for the provision of payment system operation services are to be regarded as authorisations to operate a payment system under the draft law.

- 1.2 The draft law sets out a number of new basic requirements for payment system operators, including some additional requirements to be fulfilled by the operators of important payment systems. The new requirements include provisions relating to the legal basis, governance, a framework for the comprehensive management of risks, settlement finality, money settlements (including a requirement that the operator of an important payment system must ensure that money settlements are made in central bank money), participant default rules and procedures, general business risk, operational risk, access and participation requirements, efficiency and effectiveness, communication procedures and standards, disclosure of rules, key procedures and market data. More detailed requirements will be subject to further regulation by Banka Slovenije in an implementing regulation⁵. The draft law provides that entities authorised by Banka Slovenije to operate a payment system may open a special fiduciary account with Banka Slovenije that will be used for the benefit of system participants exclusively for clearing and/or securitising claims and/ or performing obligations under payment orders.

2 General comments

- 2.1 This opinion does not address the issue of the draft law's effective implementation into Slovenian law of Directive (EU) No 2015/2366. The focus of this opinion is on the provisions of the draft law that amend existing provisions relating to payment systems.
- 2.2 The ECB understands that despite the change in the licensing procedure proposed by the draft law, the aim of which is to simplify the process of issuing authorisations to operate payment systems, the roles of Banka Slovenije with respect to the licensing of payment systems and of payment system operators will remain unchanged.
- 2.3 The ECB welcomes the fact that the provisions laying down the requirements for payment system operators follow the principles and general requirements set out in the Eurosystem oversight framework for retail payment systems⁶, which is in turn derived from certain principles and key considerations applicable to systemically important systems under the Regulation (EU) No 795/2014 (ECB/2014/28), pursuant to which the ECB has adopted the CPSS-IOSCO principles for financial market infrastructures (PFMIs)⁷. The draft law will thus facilitate the consistent and harmonised application by Banka Slovenije of Eurosystem standards when conducting its oversight of payment systems in Slovenia.

⁵ The requirements for the operation of the payment systems, including requirements related to risk management, are currently already set out in implementing regulation adopted by Banka Slovenije. See Banka Slovenije, Decision on payment systems (*Sklep o plačilnih sistemih*), Official Gazette of the Republic of Slovenia, No. 73/09 and 5/11.

⁶ See the ECB's note on a Revised oversight framework for retail payment systems, February 2016, available on the ECB's website at www.ecb.europa.eu.

⁷ See the Bank for International Settlements Committee on Payment and Settlement Systems' (CPSS) and Technical Committee of the International Organization of Securities Commission's (IOSCO) Principles for financial market infrastructures, April 2012, available at <http://www.bis.org/cpmi/publ/d101a.pdf>.

- 2.4 Although the draft law does not directly implement the entire set of PFMI identified by the Eurosystem as fundamental for the operation of retail payment systems, the ECB understands that more detailed requirements may be specified in the implementing regulation to be adopted by Banka Slovenije. Banka Slovenije may consider including additional elements in the implementing regulation, such as an entity's ability to implement default rules and procedures; ensuring the high quality of any assets held to cover business risks and maintaining a plan for raising capital; a requirement for periodic reviews of risk management frameworks and for clearly-defined operational reliability objectives and policies designed to achieve these objectives; and a requirement for comprehensive physical and information security policies that address all potential vulnerabilities and threats. In this respect, the draft law provides a sufficient legal basis for Banka Slovenije to further align the requirements for payment system operators with international standards.
- 2.5 The ECB welcomes the fact that the draft law's provision enabling payment system operators to open a special fiduciary account with Banka Slovenije is designed to minimise the effects of the potential insolvency of a payment system operator on the settlement positions of participants in the payment system, thus improving the security of settlement. However, in line with the principle of central bank independence, the ECB suggests that this provision be reformulated so as to clarify that these entities do not have a right to open such an account with Banka Slovenije, but that the decision to open such an account should rest with the Banka Slovenije.

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

Done at Frankfurt am Main, 24 April 2017.

[signed]

The President of the ECB

Mario DRAGHI