



OPINION OF THE EUROPEAN CENTRAL BANK

of 28 June 2011

on cross-border transactions

(CON/2011/54)

Introduction and legal basis

On 16 May 2011, the European Central Bank (ECB) received a request from the Spanish State Secretary for Economic Affairs for an opinion on a draft royal decree amending Royal Decree 1816/1991 on cross-border financial transactions and on a draft ministerial order amending the order implementing Royal Decree 1816/1991 (hereinafter collectively referred to as 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 fourth 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 the Banco de España and to the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payment statistics. 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 eliminates the obligation for payment service providers registered with the Banco de España to report information on cross-border transactions that they do not immediately and automatically have at their disposal. More specifically, payment service providers registered with the Banco de España will only be required to report to the competent authorities and the Banco de España information they can automatically collect without affecting the direct processing of payments, in respect of: (a) cross-border charges and payments within the scope of Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001², ordered or received by a resident, and involving a payment service provider from another Member State; and (b) credits and debits to accounts of non-resident clients. The Banco de España will collect the remainder of the information on cross-border transactions necessary for administrative or statistical purposes from those involved in such transactions. The new reporting system for cross-border transactions will co-exist with the current one until the end of 2013. This transitional period is considered necessary for payment service providers to make adjustments so that the relevant

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 266, 9.10.2009, p. 11.

data may be obtained automatically and for those involved in cross-border transactions to adapt to survey and direct collection procedures.

2. General observations

The ECB welcomes the draft law as a positive development, as it facilitates the implementation of the single euro payments area (SEPA) and it is also in line with the ECB's position on cross-border payments in the Union³. As stated in Opinion CON/2009/1, balance of payments reporting systems mainly based on payments data cannot be maintained as they are in respect of payments in euro within the Union. Reforming such systems may require substantially lowering reporting obligations for payment service providers, while at the same time increasing the reporting burden on other economic agents, which should be limited to the extent possible (e.g. by applying proper survey and sampling techniques). Statistical reporting requirements that have no impact on the direct processing of SEPA payments by payment service providers and can be fully automated by them should not be subject to exemption thresholds. In addition, the reform of balance of payments reporting systems should ensure that such statistics can continue to be compiled with the high reliability, frequency and timeliness required for ECB monetary policy-making in Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template⁴.

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

Done at Frankfurt am Main, 28 June 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

³ See paragraphs 1.2 and 1.6 of Opinion CON/2009/1. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁴ OJ L 354, 30.11.2004, p. 34.