



EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 31 May 2005

at the request of the Danish Competition Authority

on a proposal for a law amending the Act on certain means of payment

(CON/2005/15)

1. On 21 March 2005 the European Central Bank (ECB) received a request from the *Konkurrencestyrelsen* (the Danish Competition Authority) for an opinion on a proposal for a law amending the *Lov om visse betalingsmidler* (Act on certain means of payment) (hereinafter the ‘draft law’).
2. The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the second 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 provisions<sup>1</sup>, as the draft law contains provisions concerning means of payment and 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.
3. The draft law focuses on two main issues. First, credit institutions established in Denmark, which jointly own and operate Dankort (the Danish debit card system), will no longer be allowed to charge consumers a fee of DKK 0.50 per physical transaction when consumers use a Dankort with a chip. Instead, according to the draft law, credit institutions will only be allowed to charge merchants an annual subscription fee for the costs of operating the Dankort system. Moreover, according to the draft law, the Minister of Economic and Business Affairs (hereinafter the ‘Minister’) may lay down detailed rules for how the annual Dankort subscription shall be calculated. Second, the draft law prohibits merchants from passing on Dankort costs to consumers both in respect of physical and non-physical (i.e., Internet) transactions. In addition, in accordance with powers given in Article 1.7 of the current Act on certain means of payment, the Minister may exempt internationally issued (i.e., non-Danish) means of payment from the provisions of the draft law. From the comments which accompanied the draft law, the ECB understands that it is intended that the Minister will exercise his existing right to issue secondary legislation to exempt payment instruments provided by service providers established outside Denmark from the provisions of the

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

draft law, so that such service providers could still charge fees from the redeeming banks in connection with each transaction, and merchants would be free to charge the consumers for using such cards.

4. While recognising that Denmark has not adopted the single currency, the ECB would like to draw attention to the European banking industry's project for a Single Euro Payments Area (SEPA), the aim of which is to abolish barriers to payments within the euro area. More specifically, the purpose of the SEPA project is to create a single domestic payments market in which citizens and economic actors will be able to make payments as easily and inexpensively as in their place of residence. The establishment of a Single Payment Market is also an objective of the European Commission, which aims to bring European cross-border and national payments to the same level of efficiency as the best national system. Notwithstanding the right of national legislators to adopt legislation on consumer protection measures, the creation of national rules might have the potential to fragment the market, create obstacles and impose costs on providers and users who wish to operate and carry out transactions in the wider EU market. Another potential distortion may arise in the provision of acquiring services or issuing cards in Denmark, given that the existence of a business model which is fixed by law and which prohibits the imposition of charges on consumers will not facilitate other European business models entering the market.
5. The ECB is of the opinion that legally binding measures to restrict free pricing have to be carefully considered and an assessment made as to whether they are compatible with the principle of an open market economy with free competition, as laid down by Article 4(1) of the Treaty and the other objectives recognised by the Treaty, and consistent with the principle of proportionality.
6. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 31 May 2005.

[signed]

*The President of the ECB*

Jean-Claude TRICHET