



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 13 April 2011**

**on the settlement risk management procedure for net settlement systems**

**(CON/2011/35)**

### **Introduction and legal basis**

On 21 February 2011, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft regulation on the procedure for settlement risk management for net settlement systems and the facilities granted by BNR for smooth settlement in ReGIS (hereinafter the ‘draft regulation’).

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/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 regulation 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 regulation**

- 1.1 According to Article 1, the draft regulation has two main objectives. First, it establishes a procedure for settlement risk management applicable to net settlement systems which settle in ReGIS<sup>2</sup>, unless they are governed by their own procedures for the management of settlement risk in ReGIS. Second, it provides facilities granted by BNR to the credit institutions participating in ReGIS for smooth settlement.
- 1.2 The ECB understands that the draft regulation is intended to modify the national regulatory framework for the settlement risk management procedure in ReGIS in connection with the closure of the paper-based clearing house operated by BNR.
- 1.3 The draft regulation lays down various provisions under which eligible credit institutions may benefit from the facilities granted by BNR. These facilities include: (i) the intraday liquidity facility

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

<sup>2</sup> According to BNR Order No 34/2008 on the systems falling under Law No 253/2004 on settlement finality in payment and securities settlement systems (*Monitorul Oficial al României* Part One, No 61, 25.1.2008), ReGIS is a national real-time gross settlement payment system in Romanian leu owned and operated by BNR.

provided via repurchase transactions with settlement on the same day, against assets eligible for collateralisation; (ii) the Lombard credit lending facility, into which the intraday facility can be converted at the request of the credit institution in the event of a failure to repurchase the assets used for the purposes of that facility; and (iii) the lending facility for the settlement of net positions calculated in the card payment schemes. To be eligible to access the intraday liquidity facility, or the lending facility for the settlement of net positions, the respective credit institutions must be participants in ReGIS and SaFIR<sup>3</sup>, must not be suspended from these systems, and should have concluded with BNR the framework contract for intraday repo transactions using the draft template annexed to the draft regulation.

## **2. General observations**

- 2.1 The ECB notes the update of the national regulatory framework by the draft regulation. The safety and efficiency of payment systems are key to maintaining and promoting financial stability. Therefore, the ECB attaches great importance to reinforcing a consistent legal framework for smooth settlement within ReGIS.
- 2.2 The ECB notes that the legislation in this area needs to take into account the internationally accepted standards that govern the design and operation of payment systems, notably the ‘Core Principles for Systemically Important Payment Systems’<sup>4</sup> and the ‘Business Continuity Oversight Expectations for Systemically Important Payment Systems’<sup>5</sup>, while also making it possible for entities providing settlement services to include additional provisions in their settlement risk management procedures and to introduce further or stricter measures to ensure the safety of their operations. Moreover, the ECB assumes that the operators of net settlement systems are expected to comply with international standards.

## **3. Specific observations**

- 3.1 The draft regulation does not define ‘card payment schemes’, a term used extensively throughout the draft regulation. To increase the transparency of the draft regulation, as well as to enable the relevant participants to have a clear understanding of settlement risks for card payment systems, it would be appropriate to explicitly define ‘card payment scheme’ or to refer to its definition in national law.
- 3.2 Furthermore, to become eligible for credit to manage the settlement risk, the clearing participant in a card payment scheme should enter into the framework contract with BNR in accordance with the

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<sup>3</sup> According to BNR Order No 34/2008 and the system rules, SaFIR is a depository and settlement system for financial instruments owned and operated by BNR.

<sup>4</sup> Committee on Payment and Settlement Systems. Core Principles for Systemically Important Payment Systems, 2001. Available on the Bank for International Settlement’s website at [www.bis.org](http://www.bis.org).

<sup>5</sup> Available on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

templates for framework contracts in Annexes 2a and 2b of the draft regulation. Against this background, the ECB notes that the draft regulation appears to restrict the eligibility of credit institutions for settling net positions calculated in the card payment schemes to clearing participants in card payment systems operated by VISA Europe (Annex 2a) or by MasterCard International (Annex 2b). This limitation of the draft regulation may disadvantage disproportionately and without objective justification credit institutions administered by other card payment schemes, whether existing competitors or new market entrants.

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

Done at Frankfurt am Main, 13 April 2011.

[signed]

*The President of the ECB*

Jean-Claude TRICHET