



OPINION OF THE EUROPEAN CENTRAL BANK
of 17 December 2019
on payment services and payment systems
(CON/2019/45)

Introduction and legal basis

On 11 November 2019 the European Central Bank (ECB) received a request from the Bulgarian Minister for Finance for an opinion on a draft law amending the Law on payment services and payment systems and other laws (hereinafter the 'draft law')¹.

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/EC², 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

- 1.1 The consulting authority explains that the draft law aims to transpose into national law the Corrigendum to Directive (EU) 2015/2366 of the European Parliament and of the Council³, and to implement certain measures of other Union legal acts adopted in connection to Directive (EU) 2015/2366, notably Regulation (EU) 2019/518 of the European Parliament and of the Council⁴.
- 1.2 According to the consulting authority, the draft law also includes measures to extend and strengthen the supervision of payment services and payment systems.
- 1.3 Thus, the draft law⁵ provides that any person acquiring a minimum of three percent of the shares of or voting rights in a payment institution or an electronic money institution authorised by *Българска народна банка* (BNB, Bulgarian National Bank) shall notify BNB within seven days thereof and submit the required information. In the event of an incomplete submission of information, or if BNB considers the influence exercised by a shareholder is likely to be detrimental to the soundness and

¹ Закон за изменение и допълнение на Закона за платежните услуги и платежните системи

² 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).

³ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/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).

⁴ Regulation (EU) 2019/518 of the European Parliament and of the Council of 19 March 2019 amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges (OJ L 91, 29.3.2019, p. 36).

⁵ Proposed new Articles 14a and 44a of the Law on payment services and payment systems.

- security of that institution or the payment services provided by it, BNB is empowered to temporarily suspend the voting rights of that person and/or to order them to divest those shares within 30 days.
- 1.4 The draft law⁶ further provides that payment service providers must charge payment service users equal fees for cross-border payments in euro within the Union and for payments in Bulgarian lev within Bulgaria which are of equal value and have identical characteristics in terms of initiating, executing and settling the payment.
- 1.5 The draft law⁷ provides that (i) the clearing and settlement of payment transactions in Bulgarian lev related to card payments shall take place in settlement finality systems that process card-based payment transactions and (ii) the net settlement of the same payment transactions shall take place in the real-time gross settlement system (RTGS) operated by BNB (RINGS) when both of the following conditions are met: (a) the payment card issuers are payment services providers authorised by BNB or are branches of payment services providers within the territory of Bulgaria and (b) the point of sale or the automated teller machine (ATM) is within the territory of Bulgaria.
- 1.6 The draft law also provides for a number of other miscellaneous amendments, including periodic reporting by payment service providers that benefit from a licence exemption; more detailed rules regarding the exemptions from strong customer authentication, as laid down in Commission Delegated Regulation (EU) 2018/389⁸; and an extended statute of limitations for the investigation of breaches of the Law on payment services and payment systems and increased administrative penalties for such breaches.

2. Specific observations

- 2.1 The ECB notes that when the two conditions mentioned in paragraph 1.5 are fulfilled, the clearing and settlement of such payment transactions will always be done by an operator of a settlement finality system with access to RINGS. The ECB understands that this restriction regarding card-based payment transactions in Bulgarian lev is aimed at ensuring that such retail payments, which are deemed to be closely linked to the territory of Bulgaria, are cleared and settled in central bank money through RINGS. This restriction should be considered in the light of the principle of open and non-discriminatory access to payment systems, as enshrined in Union legislation⁹ and in international standards¹⁰. In this regard the ECB understands that the restriction would not hamper cross-border acquiring of card-based payment transactions denominated in Bulgarian lev. To this end and for the purpose of cross-border acquiring of card-based payment transactions, the participation of payment service providers that (a) are authorised in other Member States and (b)

⁶ Proposed revised Article 68(6) of the Law on payment services and payment systems.

⁷ Proposed new Article 148a of the Law on payment services and payment systems.

⁸ Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication (OJ L 69, 13.3.2018, p. 23).

⁹ See, for example, Article 35 of Directive (EU) 2015/2366 and Article 16 of 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).

¹⁰ See Principles for Financial Market Infrastructures (PFMIs) available at https://www.bis.org/cpmi/info_pfmi.htm. The PFMIs were transposed in Bulgarian law by Article 141 of the Law on payment services and payment systems and Ordinance No. 16 of the BNB of 29 March 2018.

provide payment services in Bulgaria without a branch into settlement finality systems that process card-based payment transactions and perform net settlement in RINGS should not be prohibited and non-discrimination of the payment system participants should be ensured.

- 2.2 The ECB moreover understands that the same restriction aims to support the transposition of Directive (EU) 2015/2366 into national law with a view to reinforcing the protection of consumers from potential additional charges stemming from unexpected currency conversions related to the processing of card-based payment transactions mentioned in paragraph 1.5. In this regard, the ECB notes that Directive (EU) 2015/2366 already contains rules on currency conversion and information on charges¹¹, which the ECB understands were already transposed by the Law on payment services and payment systems¹².
- 2.2 Although credit institutions (alongside payment institutions and electronic money institutions) are considered payment services providers for the purposes of the Law on payment services and payment systems¹³, the ECB understands that acquisitions of shares or voting rights in credit institutions by any person will fall outside the scope of the notification requirement as laid down in the draft law regarding the acquisition of a certain shareholding in payment institutions and electronic money institutions¹⁴. Such acquisitions of shares or voting rights in credit institutions are already regulated in the Bulgarian Law on credit institutions¹⁵.
- 2.3 Finally, the ECB understands that the proposed amendment regarding the charges for cross-border payments in euro within the Union is intended to avoid any possible conflicts between the existing Law on payment services and payment systems and Regulation (EC) No 924/2009 as amended by Regulation (EU) 2019/518¹⁶.

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

Done at Frankfurt am Main, 17 December 2019.

[signed]

The President of the ECB

Christine LAGARDE

¹¹ Articles 59 and 60 of Directive (EU) 2015/2366.

¹² Articles 50 and 51 of the Law on payment services and payment systems.

¹³ See Article 3(1) of the Law on payment services and payment systems, which distinguishes between different payment services providers for the purposes of the law, namely (i) banks within the meaning of the Law on Credit Institutions; (ii) electronic money institutions within the meaning of that law; (iii) payment institutions within the meaning of this Law; (iv) account information service providers within the meaning of that law; (v) the European Central Bank and the national central banks of Member States, when not acting in their capacity as monetary authorities or other public authorities.

¹⁴ Proposed new Articles 14a and 44a of the Law on payment services and payment systems.

¹⁵ Article 32 of the Law on credit institutions.

¹⁶ 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 2560/2001 (OJ L 266, 9.10.2009, p. 11).