

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



Technical and regulatory requirements for improving clearing and settlement of checks, drafts and promissory notes

SPI Working Group Meeting: 16 March 2007 – STFD-TRANSFOND S.A.

Project Objective

To prepare a document that would represent a solution acceptable to all stakeholders for transition to final solution on paper-less check and other debit instrument processing on a time-compressed schedule.

Main Problem to Solve

To convince all banks, irrespective of their DI market share, on the necessity and opportunity to get to the electronic processing of DI and to agree on a comprehensive technical and regulatory framework for implementation.

Project Management Team

Project Owner (PO): Gabriela Tudor (RBA Vice President)

Project Manager (PM): Mirela Palade (TransFond, Deputy General Manager)

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Participants: Mirela Palade, PM, TransFond
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Agenda:

1. Gap analysis
2. Setting up the next meeting

I. GAP Analysis

At the meetings of the SPI Working Group during the period 16 February – 9 March 2007 the discussed topics included the (updated) amendments proposed to be made to Laws no. 58/1934 and 59/1934 on cheque and bills of exchange and promissory notes, accordingly; the amendments are imposed by the automation, starting on 2008, of the clearing process for debit payment instruments via the SENT system.

These proposed amendments of the primary legislation will have to be also transposed into the other regulations in this field, in order to harmonize the entire legal and regulatory framework on debit payment instruments.

TRANSFOND has consequently drawn up a gap analysis concerning the cheques, bills of exchange and promissory notes regulatory framework, in order to identify the applicable provisions that need to be amended or repealed as a result of the primary legislation amendments.

On 16 March 2007 the SPI Working Group reunited for the time for this purpose, i.e. to identify the amendments that should be made to the secondary legislation.

The discussions had the following results:

1. Concerning the **Framework Norm no. 7/1994 on the cheques trading by banking institutions and other credit institutions** the analysis is to be changed as follows:
 - a. Points 6, 9-11, 17-19, 21, 23, 26 will need to be rephrased according to the amendments of the Technical Norm no. 9/1994 on the form and contents of cheques;
 - b. Points 27, 28 and 57 will need to be consistent with the amendments of art. 11 of Law no. 59/1934, as subsequently amended, i.e. the acceptability of holographic signatures and the repeal of the last paragraph that allows using the short form of a person's forename or the name initials. It remains to be decided whether there are any other circumstances when the NBR may accept cheques (according to the provisions of art. 57) or the references in the text should be taken out;
 - c. Due to the changes brought to art. 29 of Law no. 59/1934, points 159 and 160 will have to be repealed and a new point should be included, specifying that credit institutions will accept to pay only cheques issued on the same day as the presentment day or the day before the presentment day;
 - d. Point 171 of art. 35 of Law no. 59/1934 will be rephrased in such manner that, in case of truncation, it is not mandatory to provide the paper-based cheque; the proof of payment will be done by electronic means. In case of litigation only, the drawee may ask to receive the original paper-based cheque, marked as "paid";

- e. Due to the new article 32.2 (a), in case of cheque truncation, the credit institution holding the original cheque has, in its turn, the obligation to check the regularity of the cheque endorsements. Point 180 of the framework norm will be amended accordingly;
 - f. Point 221 of art 43 of Law 59/1934 will be amended with the provisions of the new art. 32.3 of the Law;
 - g. Point 242 of art. 50 of Law 59/1934 will be completed with the provision that, in case of processing by truncation, the recourse debtor may ask the credit institution that paid the cheque to require the credit institution that holds the original cheque to hand it in, marked as “paid”;
 - h. The proposed amendments to points 245 and 246 of art. 50, point 248 of art. 51, as well as point 262 of art. 55 of Law no. 59/1934 will be repealed, as they need no amendment;
 - i. As regards point 364, it should be checked whether the archiving periods stipulated in the framework norm are compliant with the provisions of Law no. 16/1996 on archiving, as subsequently amended.
2. As regards the **Technical Norms no. 9 and 10/1994 on cheques, bills of exchange and promissory notes**, the actual amendments will consider the technical solutions proposed by the NBR, by the banks and/or the specialised experts, in order to ensure that the form and contents of the debit payment instruments are consistent and allow for the electronic capture of data by scanning and their further processing by electronic means (OCR, ICR);
3. As regards the **Framework Norm no. 6/1994 on bills of exchange and promissory notes trading by banks and other credit institutions** the gap analysis will be changed as follows:
- a. As regards point 3, par. 2 of the framework norm, it has to be decided whether the provisions to the NBR’s operations with bills of exchange and promissory notes are still applicable or should be repealed;
 - b. Points 6, 7, 10, 12, 20, 24-26, 28 and 33 of the framework will need to be amended in accordance with the amendments that will be made to the technical norm no. 10/1994 on bills of exchange and promissory notes;
 - c. Points 23, 34 and 35 will need to be correlated with the amendments of art. 8 of Law no 58/1934 as subsequently amended, in order to include provisions concerning the acceptance of holographic signatures and to repeal the last paragraph that provides for the acceptability of using the short form of the forename or name initials. It also remains to be decided whether there are any other circumstances when the NBR may accept bills of exchange (or promissory notes) according to the provisions of art. 60 of the framework norm or the references in the text should be taken out;

- d. Point 245 of art. 43 of Law 58/1934 will be rephrased in such manner that, in case of truncation, the provision of the paper-based bill of exchange or promissory note is not mandatory; the proof of payment will be done by electronic means. In case of litigation only, to the drawee's credit institution, at the drawee's request, may ask to receive the original paper-based bill of exchange, marked as "paid";
 - e. Due to the new article 46.2 (a) of Law 58/1934, in case of truncation, the credit institution holding the original bill of exchange has, in its turn, the obligation to check the regularity of the endorsements. Point 256 of the framework norm will be amended accordingly and point 257 will not be amended;
 - f. Point 253 of art. 43 of Law 58/1934 will be amended with the provisions of the new art. 46.3 of the Law;
 - g. Point 296 of art. 55 of Law 58/1934 will be completed with the provision that, in case of processing by truncation, the recourse debtor may ask the credit institution that paid the bill of exchange to require the credit institution that holds the original bill of exchange to hand it in, marked as "paid";
 - h. The proposed amendments to points 298 and 299 of art. 55, point 315 of art. 59 of Law no. 59/1934 will be repealed, as they need no amendment;
 - i. As regards point 514, it should be checked whether the archiving periods stipulated in the framework norm are compliant with the provisions of Law no. 16/1996 on archiving, as subsequently amended
4. As regards the gap analysis concerning the **NBR Regulation no. 11/2006 on the circuit flow of the debit payment instruments**, the proposed amendment of point 5.1 (f) will be cancelled, as it is unnecessary.
 5. All the other proposals included in the gap analysis of the regulatory framework and which have not been mentioned as part of the above paragraphs 1-4 are agreed by all members of the working group.

The gap analysis, as reviewed during the discussions on 16.03.2017, will be submitted to all SPI committee members.

II. The next meeting: Friday, March 23rd, 14:00 hours at TransFonD offices, no. 8, Ficusului Boulevard (the training room).

The agenda will include the draft laws (on cheques, bills of exchange and promissory notes) as reviewed by the Musat & Associates law practice.