



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 March 2016

on mandatory requirements for credit transfers and direct debits

(CON/2016/13)

Introduction and legal basis

On 3 February 2016 the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft regulation on credit transfer and direct debit transactions (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 second and fifth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft regulation relates to means of payment and payment 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 The purpose of the draft regulation is to recast and update the national legal framework governing payment orders used in credit transfer operations and direct debits executed through the automated clearing house², by establishing minimum mandatory requirements for credit transfers and direct debits processed in Romania.
- 1.2 The draft regulation covers certain technical requirements which are also addressed in Regulation (EU) No 260/2012 of the European Parliament and of the Council³ (hereinafter, the 'SEPA Regulation'), which has been implemented into Romanian law by Law No 231/2015 on setting out measures to implement the SEPA Regulation⁴. In addition, the draft regulation relates to certain provisions of Directive 2007/64/EC of the European Parliament and of the Council⁵ (hereinafter, the

¹ 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).

² See BNR's Regulations No 2/2005 and 3/2005, which will be repealed once the draft regulation enters into force.

³ Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

⁴ Law no. 231/2015 on setting out measures to implement Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009, published in *Monitorul Oficial al României*, Part I, No 758 of 10 October 2015. The law designates BNR as the competent authority for ensuring compliance with the SEPA Regulation in which respect BNR is entitled to issue regulations.

⁵ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

'Payment Services Directive'), which has been transposed into Romanian law by Government Emergency Ordinance No 113/2009 on payment services⁶.

- 1.3 Under the draft regulation, a credit transfer instruction shall include the following mandatory data elements: (a) the identification as a credit transfer instruction; (b) the payer's name and the unique identifier of its payment account; (c) the payee's name and the unique identifier of its payment account; (d) the amount and currency of the credit transfer; (e) the elements allowing the verification of the authenticity of the credit transfer instruction, as determined by the payer's institution according to a pre-agreed security procedure⁷.

In addition to the requirements outlined above, the payer and the payer's institution may agree that the payer shall additionally provide, for example, the following elements: (a) the amount of the credit transfer spelled in letters; (b) the execution date for the credit transfer; and (c) details on the economic content of the transaction that determined the initiation of the credit transfer instruction⁸. For State Treasury-related payments certain specific additional elements, such as fiscal identifiers, are to be required for credit transfers⁹.

- 1.4 The mandatory data elements for a direct debit instruction are as follows: (a) the identification as a direct debit instruction; (b) the amount of the direct debit; (c) the name and/or BIC code of the payer's institution; (d) the name and/or BIC code of the payee's institution; (e) the holder's name and the unique identifier of the payment account to be debited; (f) the holder's name and the unique identifier of the payment account to be credited; (g) the elements allowing the authentication of the payee by the payee's institution¹⁰. In addition, mandatory data elements are prescribed for direct debit mandates and commitments¹¹.
- 1.5 Following the liability regime laid down in the Payment Services Directive, the draft regulation prescribes no liability for the payee's institution where the credit transfer transaction was carried out in accordance with the payee's unique identifiers¹². According to the draft regulation the payee's institution shall only take into consideration as unique identifiers the payee's unique identification code and/or the BIC code¹³. Further rules are laid down in the draft regulation with regard to the State Treasury's liability in relation to credit transfer instructions received by it as the payee's institution¹⁴.

2. General observations

The draft regulation aims to standardise current practices with regard to credit transfers and direct debit operations in Romania, while at the same time simplifying the requirements laid down in the

⁶ Published in *Monitorul Oficial al României*, Part I, No 685 of 12 October 2009.

⁷ See Article 3(1) of the draft regulation.

⁸ See Article 3(2) of the draft regulation.

⁹ See Article 3(3) of the draft regulation.

¹⁰ See Article 5(2) of the draft regulation.

¹¹ See Article 5(1) and (3) of the draft regulation, respectively. A direct debit commitment is defined in Article 2(1) of the draft regulation as an agreement between the payee and the payee's institution which relates, inter alia, to the consent given by the payee's institution regarding the use of direct debit instructions by the payee.

¹² See Article 4(2) of the draft regulation and Article 74 of Directive 2007/64/EC.

¹³ See Article 4(1) of the draft regulation.

¹⁴ See Article 4(5) to (8) of the draft regulation.

currently applicable national legal framework. Harmonised rules and common standards are welcome as a means of generating benefits and increasing efficiency for the electronic payments market. Although Union law only regulates the technical and business requirements for euro-denominated credit transfers and direct debits, the ECB welcomes the alignment of national standards for payment transactions denominated in Romanian lei with established Union standards. To further support integration and harmonisation, an even higher degree of alignment with relevant EU legislation could be considered, for example by relying on existing definitions contained in Union law.

3. Specific observations

- 3.1 With a view to enhancing legal certainty, it would be desirable to specify the scope of the draft regulation in terms of whether it applies to: (a) payment transactions carried out between and within payment service providers; (b) transactions processed and settled through large-value payment systems; and (c) other means of payment.
- 3.2 The subject matter of the draft regulation would also benefit from further clarification to the effect that it covers only transactions denominated in Romanian lei, since the SEPA Regulation is to apply, as of 31 October 2016, to euro-denominated credit transfers and direct debit transactions also in Member States whose currency is not the euro.

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

Done at Frankfurt am Main, 16 March 2016.

[signed]

The President of the ECB

Mario DRAGHI