EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 11 February 2008

at the request of Banca Națională a României

on two draft emergency ordinances amending Law No 58/1934 on bills of exchange and promissory notes and Law No 59/1934 on cheques

(CON/2008/7)

Introduction and legal basis

On 13 December 2007 the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on two draft emergency ordinances (hereinafter the 'draft emergency ordinances') amending Law No 58/1934 on bills of exchange and promissory notes and Law No 59/1934 on cheques, respectively.

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[1], as the draft emergency ordinances relate to means of payment, and 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 emergency ordinances

In contrast to credit payment instruments, which may already be electronically processed under Romanian law, manual processing of paper-based debit payment instruments such as cheques, bills of exchange and promissory notes is currently the only permitted option. The main purpose of the proposed amendments introduced by the draft emergency ordinances is therefore to allow the electronic processing and presentment for payment of such debit payment instruments as an alternative to their manual processing. In detail, the objectives of the draft emergency ordinances are as follows: (i) to regulate truncation; (ii) to define the concept of signature on cheques, bills of exchange and promissory notes more clearly; (iii) to eliminate post-dated cheques, the *allonge* and data/references to data on the back of cheques, bills of exchange and promissory notes; and (iv) to introduce a single period for presenting a cheque for payment, regardless of whether it is payable in the city where it was issued.

1 OJ L 189, 3.7.1998, p. 42.

2. General observations

The ECB welcomes the amendments proposed in the draft emergency ordinances, which will implement an automated processing solution for cheques, bills of exchange and promissory notes in Romania. The use of truncation and electronic presentment for payment can increase efficiency in the clearing and settlement of such debit payment instruments.

3. Secondary legislation

The draft emergency ordinances state that BNR will issue secondary legislation to implement them. Once such secondary legislation has been drafted, BNR should consider whether it would be appropriate to submit it to the ECB for consultation. As the ECB has previously stated in this regard 'an opinion should only be sought from the ECB on such draft secondary legislation if the subject matter is closely related to the ECB's tasks and if the impact on areas within the ECB's fields of competence is different from that resulting from the primary legislation itself'[2].

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

Done at Frankfurt am Main, 11 February 2008.

[*signed*]

The President of the ECB

Jean-Claude TRICHET

2 See the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, p. 14. Also paragraph 2.5 of ECB Opinion CON/2007/27 of 21 September 2007 at the request of Banca Națională a României on a draft regulation on oversight of payment systems, securities settlement systems and payment instruments. Both available on the ECB's website at www.ecb.int.