

Developments in the Legal and Regulatory Framework

Overview and Agenda for Reforms

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Evolution of international thinking

The starting point

- CPSS Core Principles for Systemically Important Payment Systems: Principle 1 - «The system should have a **well-founded legal basis** under all relevant jurisdictions»
- CPSS-IOSCO Recommendations for Securities Settlement Systems: Recommendation 1 - «Securities settlement systems should have a **well-founded, clear and transparent legal basis** in the relevant jurisdictions»
- CPSS-IOSCO Recommendations for Central Counterparties: 1. Legal Risk - «A CCP should have a **well founded, transparent, and enforceable legal framework** for each aspect of its activities in all relevant jurisdictions»

Legal risk as a potential barrier

- Reference to each system, not to the national payments system as a whole
- enforceability of each scheme under all relevant jurisdiction
- A step further - Recommendations on CCP: enforceability for each aspect of activities

Yet: CPSS General Guidance for National Payments System Development

Guidance 10. Promote legal certainty:
«Develop a transparent, comprehensive and
sound legal framework for the national
payment system»

Moreover: under the same General Guidance

- Guideline 2. Promote the role of a sound banking system
- Guideline 3. Recognize complexity
- Guideline 5. Set clear priorities
- Guideline 7. Promote market development
- Guideline 13. Align development of payment and securities systems
- Guideline 14. Coordinate settlement of retail, large-value and securities systems

These guidances require a comprehensive and consistent legal framework

Reforming the national payments system means much more than just eliminating legal barriers to systems, and requires to build-up a consistent legal framework able to pro-actively regulate the whole national payments system

In particular:

Legislation needs to:

- consistently reflect policy choices
- respond to the continuous evolution of technological and structural environment
- take into account specific features of the general legal order to avoid fragmentation and potential distortion
- be consistent with legislation on banking services, capital markets and foreign exchanges

The results of the Questionnaire on Legal Issues

Implementation of the legal reform: amendment of existing legislation or adoption of new laws

- Amendment of legislation on Central Bank, when needed
- Amendment of legislation on specific payment instruments, when existing (such as cheques)
- New legislation for clearing and settlement
- New rules on oversight
- In the absence of existing legislation, trend towards adoption of a single piece of legislation addressing all relevant issues

Consistency with banking regulation and capital markets legislation

- Banking legislation is rarely amended
- Reforms of the payments system market and of capital markets are usually not operated jointly
- Only the issues of clearing and settlement are jointly regulated under the same body of law
- Cooperation between relevant authorities is usually foreseen (at least NCB and regulator of the capital market, rarely with other authorities)

Relevance of technological and structural environment evaluation

- Electronic means of transfer are usually newly regulated (ATM, check truncation)
- Not always the issue of e-money is addressed in terms of regulation and oversight (as well as that of non-bank actors)
- Much less specific care for market structure
- Yet, awareness that to keep track of technological and structural evolutions secondary legislation is a useful tool

In general

- Adoption of a Payments Act addressing clearing, settlement, insolvency and oversight
- This also includes securities settlement systems
- The Payments Act gives the CB the power to oversee systems
- Under oversight power, the CB authorises systems responding to a number of minimum requirements
- Authorised systems benefit of some derogations from general law (such as insolvency)

The «good» of current reforms

- Adoption of a single act potentially addressing all relevant issues on payments (payment instruments, inter-banking, oversight)
- Extension of the scope of the act to securities settlement
- General act only to build-up the general framework
- Secondary rules for detailed regulation
- Self-regulation incentivated

The «bad» of current reform

- Little consideration for consistency between the general regulation of payment and capital markets in general (apart from clearing and settlement)
- Still little thinking on the structure of the market (kind and dimension of operators, cooperation vis-à-vis competition, role of non-bank actors)
- Little coordination with consumer protection authorities for retail payments

Conclusions on possible future agendas

From legislation as legal barrier to legislation as tool to promote market development

Awareness of interaction between payment and capital markets not only as per clearing and settlement

Use of flexible legislative tools to permit quick adaption to market developments

Inter-state cooperation for uniformity of treatment (such as the Treaty on payment and securities settlement systems in Central America and the Dominican Republic)

SEPA as a challenging example of
further steps in regulation and
harmonization

The Single Euro Payments Area

- An integrated retail payments market
- to bring higher service levels, more efficient products and cheaper alternatives for making payments
- requiring strong interaction between (a) the banking industry, (b) the clearing and settlement industry, (c) services providers such as telecom, (d) consumers, and (e) the public administration