



OPINION OF THE EUROPEAN CENTRAL BANK
of 26 August 2010
on further measures for the restoration of budgetary balance
(CON/2010/69)

Introduction and legal basis

On 19 August 2010 the European Central Bank (ECB) received a request from the Romanian Ministry of Public Finance for an opinion on a draft government emergency ordinance amending Law No 118/2010 on certain measures necessary for the restoration of budgetary balance¹ (hereinafter ‘draft emergency ordinance’).

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 third indent 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 provisions², as the draft emergency ordinance relates to Banca Națională a României (BNR). 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 ordinance

On 1 July 2010, the ECB adopted Opinion CON/2010/51 on the draft of Law No 118/2010 which decreased the salaries of BNR’s staff and transferred directly to the State budget the amounts representing this decrease. In terms of substance, the ECB expressed its concerns mainly with regard to the compliance of these provisions with the principles of central bank independence pursuant to Article 130 of the Treaty and the monetary financing prohibition pursuant to Article 123 of the Treaty and invited the Romanian authorities to amend these provisions accordingly.

The draft emergency ordinance is intended to bring Law No 118/2010 into line with the abovementioned Treaty provisions, to avoid infringement proceedings for breach of Articles 123 and 130 of the Treaty. Consequently, it provides that all the amounts representing the decrease of the salary rights of BNR’s staff will be reflected in BNR’s financial results.

¹ *Monitorul Oficial al României* No 441, 30.6.2010.

² OJ L 189, 3.7.1998, p. 42.

2. General observations

The Romanian Ministry of Public Finance requested the ECB to deliver an opinion before 28 August 2010. While the ECB generally appreciates the swift reaction by the Romanian authorities to amend provisions on which the ECB and the European Commission have expressed serious concerns, there are continued concerns as elaborated below. The ECB would like to point out that, in cases of particular urgency which do not allow for a normal consultation period, the consulting authority may indicate such urgency in the consultation request and ask for a shorter deadline for the adoption of the ECB opinion. Therefore, the ECB understands the reasons for the application of an accelerated legislative procedure, but would appreciate receiving consultations allowing more time for it to prepare its opinion in the future.

3. Specific observations

3.1 The ECB notes that the draft emergency ordinance maintains the decrease of BNR's salaries, although the Romanian State is not the formal employer of BNR staff and the Law on the Statute of Banca Națională a României³ clearly provides that BNR's management board decides on BNR's staff salaries. In this regard, the explanatory memorandum addresses only the ECB's concerns in Opinion CON/2010/51 regarding the monetary financing prohibition whereas BNR's autonomy in staff matters is not discussed.

In this context, the ECB notes that Member States are obliged to safeguard the independence of their national central banks (NCBs), thus ensuring the proper performance of their tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. In particular, the principle of central bank independence requires that no third party should be able to exercise direct or indirect influence over the NCB. As a consequence, Member States may not put an NCB in a position where it has limited or no control over its staff, or where the government of a Member State can influence its policy on staff matters. This implies that to protect BNR's autonomy in staff matters, a particular aspect of the central bank independence principle, the Romanian authorities are under an obligation to ensure that any amendment to the legislative provisions relating to the remuneration of BNR's staff is decided in close cooperation with BNR, taking due account of BNR's views.

3.2 Article II of the draft emergency ordinance provides that the amounts representing the decrease of the 'salary rights ... not transferred to the State budget until entry into force of this emergency ordinance shall be reflected in the financial results of Banca Națională a României'. The ECB understands from this wording that certain salary rights are still intended to be and others have already been transferred to the State budget. For the latter, any such already transferred rights must be transferred back adequately to avoid any breach of the monetary financing prohibition in Article 123 of the Treaty.

³ Law No 312/2004 (*Monitorul Oficial al României* No 582, 30.6.2004).

- 3.3 As regards the funds not yet transferred to the State budget, in Opinion CON/2010/51 the ECB stressed that from an accounting perspective, a decrease of staff salaries will de facto decrease BNR's operational costs, hence increasing its financial results leading to a potential increase in its financial resources. However, if this related increase of BNR's financial resources is directly transferred to the State, this would effectively mean increasing the funding of the Romanian State at BNR's expense. In this respect, any direct financial transfer of this nature from BNR to the State budget can be assimilated to monetary financing, which is clearly prohibited under Article 123 of the Treaty. In the same vein, any circumvention of the objectives of the monetary financing prohibition should be avoided.
- 3.4 In view of Opinion CON/2010/51 and to comply with Article 123 of the Treaty, the draft emergency ordinance amends Law No 118/2010, so that all the amounts representing the decrease of the salary rights of BNR staff will be reflected in BNR's financial results. The ECB understands that this does not amount to an instruction to BNR regarding decisions taken in respect of its financial results. The ECB notes that BNR must be fully independent in deciding how to use the funds resulting from the 25% decrease of salaries as it considers appropriate, in accordance with the Law on its Statute and with a view to ensuring sufficient levels of its own financial resources to fulfil its mandate in the long term. Subject to this interpretation of the Law on BNR's Statute, this particular provision complies with the principle of central bank independence, which implies that BNR can independently use its financial resources to fulfil its mandate.
- 3.5 If, however, the main purpose of the salary rights cut were to eventually increase the financial resources of the State through the distribution of increased profits from BNR to the State, this would appear to be a circumvention of the objectives of the prohibition on monetary financing. In addition, Article 43 of the Law on the Statute of BNR provides that BNR must transfer to the State budget, on a monthly basis, an 80% share of the net revenues left after deducting expenses relating to the financial year, including provisions for credit risk, and loss related to the previous financial years that remain uncovered. The ECB's Convergence Report of May 2010 already criticised this Article⁴, as it does not rule out the possibility of an intra-year anticipated profit distribution which, in turn, gives rise to concerns relating to the monetary financing prohibition. As noted in past ECB opinions⁵, it is indeed of crucial importance for the distribution of profits to be exclusively the result of profits that are fully realised, accounted for and audited, which in turn requires due calculation of profits and losses to avoid such possibility.
- 3.6 By contrast, a decrease in the operational costs of the central bank with a view to increasing its own financial resources to strengthen the performance of its mandate would be acceptable.

⁴ Chapter 6.8. All ECB documents are available on the ECB's website at www.ecb.europa.eu.

⁵ See e.g. ECB Opinion CON/2008/82.

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

Done at Frankfurt am Main, 26 August 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET