

Yves Mersch
Member of the Executive Board

[COURTESY TRANSLATION¹]

Mr E. Teodorovici
Minister of Finance

B-dul Libertății, nr.16,
Sector 5, București, 050706

5 February 2019

Palatul Victoria, Piața Victoriei nr. 1
Sector 1, București, 011791

Dear Mr. Teodorovici,

It has come to the attention of the European Central Bank (ECB) that on December 28th, 2018, the Romanian Government adopted Government Emergency Ordinance (GEO) no. 114/2018 introducing, through Chapter IV, a new tax on bank assets. GEO no. 114/2018 entered into force on December 29th, 2018².

In accordance with Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union (TFEU) and 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 provisions³ ('Council Decision 98/415/EC'), national authorities are required to consult the ECB on any draft legislative provision in its fields of competence⁴, including, in particular, rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.

In accordance with Article 4 of Council Decision 98/415/EC, the ECB should be consulted at an appropriate stage, which enables the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance.

The ECB was not consulted by the Romanian Government before the adoption and entry into force of GEO no. 114/2018. The ECB was not consulted on the earlier draft⁵ of GEO no. 114/2018 either. Furthermore, it is noted that GEO no. 114/2018 was not accompanied by any impact assessment by the Romanian Government studying the effects of the tax on the banking sector. In the absence of such an

1 The official ECB letter is addressed in the official language of the concerned Member State.

2 The date of its publication in the Romanian Official Journal no. 1116.

3 OJ L 189, 3.7.1998, p. 42.

4 See also European Central Bank, Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions (October 2015), p. 20, available on the ECB's website at: www.ecb.europa.eu/pub/pdf/other/consultationguide201510.en.pdf

5 Published on December 18th, 2018 on the website of the Ministry of Finance.

impact assessment the risk that the tax may have a material impact on the stability of the banking system cannot be excluded.

In this context, the ECB considers this non-consultation to be a case of non-compliance by the Romanian authorities with the duty to consult the ECB on draft national legislation, contrary to Articles 127(4) and 282(5) TFEU and Article 2(1) of Council Decision 98/415/EC.

In the future, where applicable, the ECB would appreciate the Romanian Government giving due consideration to the above observations by honouring its obligation to consult the ECB on draft legislation.

Yours sincerely,

Cc: Mr. M. Isărescu, Governor, Banca Națională a României
Mr. L. Romero Requena, Director-General of the Legal Service, European Commission

Encl. Guide to consultation of the ECB by national authorities regarding draft legislative provisions