



OPINION OF THE EUROPEAN CENTRAL BANK

of 5 June 2009

on measures to increase the effectiveness of the deposit-guarantee scheme

(CON/2009/51)

Introduction and legal basis

On 25 May 2009 the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft emergency ordinance amending and supplementing Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system (hereinafter the ‘draft emergency ordinance’).

The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and the sixth 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 provisions¹, as the draft emergency ordinance relates to BNR and to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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

The draft emergency ordinance aims to implement into Romanian legislation Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay² and also to adopt the measures necessary to ensure a higher level of effectiveness of the Romanian deposit-guarantee scheme. This opinion is not a comprehensive assessment of the provisions of the draft emergency ordinance implementing Directive 2009/14/EC. Instead, it only focuses on those provisions of the draft emergency ordinance that go beyond implementation of Directive 2009/14/EC.

The draft emergency ordinance amends Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system (hereinafter ‘GO No 39/1996’). The Deposit Guarantee Fund (hereinafter the ‘Fund’), as Romania’s officially recognised deposit-guarantee scheme, guarantees deposits and the payment of compensation to depositors in accordance with the

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 68, 13.3.2009, p. 3.

conditions and limits laid down by GO No 39/1996. The draft emergency ordinance will make certain changes to the way that the Fund operates. In particular, it will: (i) increase the maximum coverage ceiling from the equivalent in Romanian lei of EUR 20 000 to the equivalent in Romanian lei of EUR 50 000; (ii) reduce the payout delay, following expiry of a transitional period, to 20 working days; (iii) introduce the obligation for credit institutions to inform depositors adequately if a deposit is not guaranteed by the Fund; (iv) introduce a specific mechanism for BNR as the competent authority to declare that deposits are unavailable; (v) introduce the obligation for the Fund's members to keep permanently complete and accurate records of all information necessary to determine the value of the compensation due to each covered depositor; and (vi) strengthen the Fund's capacity to pay compensation on time.

2. General observations

- 2.1 The ECB takes this opportunity to reiterate that, when implementing Directive 2009/14/EC or otherwise amending the legal framework for operation of national deposit-guarantee schemes, Member States should act in a coordinated manner to avoid significant differences in national legal frameworks having a counterproductive effect and creating distortions in global banking markets³.
- 2.2 The ECB also emphasises that the funding arrangements for national deposit-guarantee schemes must, *inter alia*, comply with the monetary financing prohibition laid down in the Treaty, and in particular with the prohibition on national central banks providing overdraft facilities or any other type of credit facility within the meaning of Article 101 of the Treaty⁴, as specifically considered in past ECB opinions concerning draft national legislation⁵ and in the ECB's Convergence Reports⁶.

3. Specific observations

- 3.1 Under the draft emergency ordinance the Fund may be financed by means of borrowings from the Romanian Government⁷. In specific circumstances and where the Fund's financial resources are insufficient to pay compensation, the Government, through the Ministry of Finance, will lend the necessary amount to the Fund⁸. The draft emergency ordinance also states that the loan repayment

³ See paragraph 2.1 of ECB Opinion CON/2008/70 of 18 November 2008 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ C 314, 9.12.2008, p. 1).

⁴ Interpreted in line with Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

⁵ See, for example, paragraph 3.1 of ECB Opinion CON/2009/10.

⁶ See, for example, the ECB's Convergence Report of December 2006, p. 30.

⁷ See Article I point 7 of the draft emergency ordinance.

⁸ See Article I point 13 of the draft emergency ordinance.

conditions will be set by Government decision. In this context, the ECB notes that such conditions should be in accordance with a coordinated framework within the European Union⁹.

- 3.2 The ECB considers that the draft emergency ordinance should establish a framework that is consistent with the need to enable payouts in the prescribed time period. In this respect, the ECB refers to Article 10(1) of Directive 94/19/EC, which requires that '[d]eposit-guarantee schemes shall be in a position to pay duly verified claims by depositors in respect of unavailable deposits'. This means that it is primarily the responsibility of the national deposit-guarantee scheme to ensure that guaranteed deposits are made available to entitled depositors in an orderly and timely manner, whatever the payment system chosen¹⁰. In line with its recent opinions¹¹, the ECB reminds the consulting authority that reducing delays in payouts of guaranteed deposits can strengthen depositor confidence, which plays a key role in the effectiveness of deposit protection schemes¹². At the same time, it is essential that a pragmatic approach is taken to introducing the necessary reduction in payout delays, thereby preserving the credibility of deposit-guarantee schemes¹³. Finally, attention should be drawn to the importance of establishing efficient operational processes for verifying claims and reimbursing depositors, as well as ensuring that sufficient sources of funding are available.
- 3.3 The ECB further notes that the draft emergency ordinance provides for a specific mechanism for declaring deposits unavailable and entrusts BNR with the assessment of such a measure. This represents an extension of BNR's regulatory and supervisory powers. In this context the ECB restates its general position that 'Member States may not put their national central banks in a position where they have insufficient financial resources to carry out their European System of Central Banks (ESCB) or Eurosystem-related tasks, as applicable'.

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

Done at Frankfurt am Main, 5 June 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁹ See, by analogy, paragraph 6 of ECB Opinion CON/2008/58 regarding a State guarantee set as a 'complement to and in addition to' an existing deposit-guarantee scheme.

¹⁰ See paragraphs 3.5 and 3.6 of ECB Opinion CON/2009/31.

¹¹ See, for example, paragraph 2.2. of ECB Opinion CON/2009/20.

¹² See, for example, paragraph 2.2 of ECB Opinion CON/2008/70.

¹³ See Opinion CON/2008/70.