



OPINION OF THE EUROPEAN CENTRAL BANK

of 27 January 2010

**on the special administration procedure initiated by Banca Națională a României
for credit institutions in distress**

(CON/2010/12)

Introduction and legal basis

On 6 January 2010 the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft law amending and supplementing the Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy (hereinafter the 'draft law').

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 and 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 law 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 law

1.1 The draft law is designed to amend the special administration procedure currently provided for by the Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy (hereinafter the 'GEO No 99/2006'). The aim is to provide supplementary tools to enable BNR to respond in a timely and effective manner in the event of a credit institution in distress and to strengthen the special administrator's powers by explicitly allowing it to promptly implement a broad range of restructuring measures with respect to such credit institution. GEO No 99/2006 is the main piece of legislation regulating the activity of credit institutions and financial investment companies in Romania, as well as their prudential supervision and the supervision of payment systems and settlement systems for financial instruments. The draft law forms part of the legislative amendments to be adopted by Romania, as agreed during the negotiations between the Romanian Government, on the one hand, and the International Monetary Fund and the European Union, on the other.

¹ OJ L 189, 3.7.1998, p. 42.

1.2 Moreover, the draft law aims at ensuring greater legal certainty for the measures adopted during special administration so that they could neither be suspended nor reversed by a court of law, nor subject to the consent of the credit institution's creditors. The main issues relate to:

- the special administration procedure, including the conditions and the period of time for imposing this procedure, the characteristics and tasks of the special administrator and the possible measures to be taken during this procedure;
- the prerogatives of BNR in the case of the special administration procedure. With regard to the appointment of the special administrator, the draft law extends BNR's prerogatives by allowing it to specifically designate the objectives and tasks of the designated person(s), their remuneration and the amounts that may be spent in the performance of the authorised tasks (see, in particular, Section 2 in Chapter VIII of the draft law).

2. General observations

2.1 The consulting authority has informed the ECB that the draft law is to be adopted before 31 March 2010. In view thereof, the consulting authority invokes the exemption provided for in Article 3(2) of Council Decision 98/415/EC, which allows for a reduction of the minimum time limit for submission of the ECB's opinion of one month only in case of extreme urgency, and asks the ECB to deliver its opinion by 31 January 2010. The ECB would however wish to draw the consulting authority's attention to the fact that the second sentence of Article 4 of Decision 98/415/EC states that the ECB must be consulted 'at an appropriate stage' in the legislative process. This implies that the consultation should take place at a point in the legislative process that affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in the required language versions and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted.

2.2 The ECB takes note of the draft law's widening of BNR's prerogatives and restates its view that the tasks to be performed by BNR to aid the carrying out of stabilisation measures in the domestic banking sector must be conducted in a manner that is fully compatible with BNR's institutional and financial independence and that safeguards the proper performance of its existing tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank². Moreover, BNR should independently avail itself of sufficient financial and personnel resources, both in terms of quantity and quality, to carry out tasks related to the European System of Central Banks as well as its own tasks, including its new tasks based on the draft law³.

2.3.1 The ECB welcomes the intention of the draft law to increase the preventive character of the actions to be taken in order to improve the financial situation of a credit institution in distress. Furthermore, the ECB supports the extension of the responsibility of those involved in the special administration

² See paragraph 3.7 of ECB Opinion CON/2008/68. All ECB opinions are published on the ECB website at www.ecb.europa.eu.

³ See the ECB Convergence Report, May 2008, p. 20. See also Opinion CON/2009/27.

procedure for the purposes of assuring financial stability and protecting the interests of the credit institution's depositors.

2.3.2 The ECB understands that the draft law aims to: (i) allow the special administrator to deal with ailing credit institutions with a broader range of restructuring measures; (ii) ensure that credit institution resolution measures during the special administration may not be suspended or reversed by a court of law, and are not subject to the creditors' consent; (iii) specify a clear trigger for the early and mandatory appointment of a special administrator based on a regulatory threshold. The ECB notes that the financial crisis has shown the importance of an efficient resolution regime and has triggered reflections both at international and European level on how to enhance the instruments at the disposal of competent authorities in a crisis situation. In this context, the ECB welcomes the measures contained in the draft law to enhance the capability of BNR to respond in a timely and effective manner in the event of a credit institution in distress. The forthcoming legislative proposals of the European Commission on early intervention tools and crisis resolution may result in a need to further improve the national legal framework.

3. Specific observations

The draft law provides only for the right of the creditor of a credit institution to claim compensation if his interests have been negatively affected as a result of the measures implemented during a special administration procedure concerning the credit institution, without specifying who bears the liability to compensate such creditor (see Article 254¹(3) of the draft law). This should therefore also be expressly specified in the draft law.

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

Done at Frankfurt am Main, 27 January 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET