



OPINION OF THE EUROPEAN CENTRAL BANK

of 1 July 2010

on the remuneration of the staff of Banca Națională a României

(CON/2010/51)

Introduction and legal basis

On 18 June 2010 the ECB received a request from the Romanian Ministry of Public Finances for an opinion on a law on certain measures necessary for the restoration of budgetary balance (hereinafter the ‘law’). This law was adopted on 30 May 2010 by the Romanian Government. The ECB had not been consulted and, on 9 June 2010, the ECB sent a letter to the Romanian Government, drawing attention to the obligation to consult it.

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 provisions¹, as the law 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 law

The law, among various decreases of the salaries of different categories of public employees, provides for a decrease of 25% of the salaries of the staff of BNR, and for the transfer to the State budget of the amounts representing this decrease. The law indicates that the salary decreases set out in the law will apply until 31 December 2010. Starting on 1 January 2011, social and personnel policies will be applied which should ensure the observance of both the public expenditure level set through the measures adopted in 2010 for the decrease of public expenditure and the provisions of the 2011 State budget and State social insurance budget.

2. General observations

The ECB received the consultation request after the adoption of the law and before the delivery of a decision of the Romanian Constitutional Court regarding its constitutionality. In view of the late stage in

¹ OJ L 189, 3.7.1998, p. 42.

the legislative process at which the ECB was consulted, it 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 adoption of the ECB's opinion. This does not prejudice the national authorities' duty under Article 127(4) of the Treaty to appropriately consult the ECB on national draft legislative provisions falling within its fields of competence. It follows from Article 3(4) of Decision 98/415/EC that Member States are obliged to suspend the process of adoption of the draft legislative provision pending receipt of the ECB's opinion. It is necessary that the adopting national authority should have the opportunity meaningfully to deliberate the ECB's opinion prior to taking its decision on the substance. If a time limit has been set for submission of the ECB opinion and this time limit has expired, the national authority concerned may restart the adoption process². As regards future amendments or implementing measures to the law, it is expected that the obligation to consult the ECB is respected. This is particularly important considering that Article 17(2) of the law seems to indicate the possibility of further legislative measures affecting the staff of BNR. In this regard, it is recommended that internal administrative procedures should be in place to ensure that timely consultation of the ECB is foreseen whenever such consultation is mandatory.

3. Specific observations

As is the case for certain other categories of public employees, the law provides for a decrease of the salaries of the staff of BNR, although the Romanian state is not the formal employer of the BNR staff. According to the Statute of BNR, the salaries of BNR staff are paid from the central bank's own resources. In addition, Article 3(2) of the law provides for the direct transfer to the State budget of the amounts representing the decrease. In this context and independently of the need for emergency measures, the ECB would like to recall that any operation between a national central bank (NCB) and the national authorities of an EU Member State has to comply with the limitations imposed in this respect by the Treaty, and in particular with the principle of central bank independence in Article 130 and the prohibition on monetary financing in Article 123³. Previous ECB opinions have clarified the implications of these Treaty-based requirements⁴, which can be summarised as follows.

3.1 Compliance with the central bank independence principle

3.1.1 The principle of central bank independence requires that no third party should be able to exercise direct or indirect influence over the NCB. This includes, as recalled in the ECB convergence reports and stressed in various ECB opinions, the point that Member States may not impair an

² See Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, Title IV, Section 1.

³ As also reflected respectively in Article 7 and Article 21.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

⁴ See, concerning independence, for example paragraph 6 of ECB Opinion CON/99/16, paragraphs 3.2 and 3.3 of ECB Opinion CON/2008/82, paragraphs 2.2 and 2.4 of ECB Opinion CON/2009/53 and further opinions quoted in the footnotes below. See also the ECB's Convergence Report of December 2006, pp. 27-30; of May 2007, pp. 19-23; and of May 2010, p. 23. As concerns the prohibition on monetary financing, see paragraph 3 of ECB Opinion CON/2009/47 and paragraph 2.2(b) of ECB Opinion CON/2009/59. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty, the Statute of the ESCB and national legislation⁵. Also, an NCB may not be put into 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.

3.1.2 The Law on the Statute of Banca Națională a României (hereinafter the 'Law on the Statute of BNR') clearly provides for the Management Board of BNR to decide on the internal organisation and the salaries of the members of BNR staff. In order to protect BNR's autonomy in staff matters, which is a particular aspect of central bank independence under Article 130 of the Treaty, the Romanian authorities are under an obligation to ensure that any amendment to the legislative provisions relating to the determination of the remuneration of the employees of BNR is decided in cooperation with BNR, taking due account of the views of BNR⁶.

3.2 *Compliance with the monetary financing prohibition*

3.2.1 The provisions on central bank salary decreases must also comply with the monetary financing prohibition laid down in Article 123 of the Treaty, as further clarified in Council Regulation (EC) No 3603/93 of 13 December 1993 specifying the definitions for the application of the prohibitions referred to in Articles 104 [now 123] and 104b(1) [now 125(1)] of the Treaty⁷. The provision prohibits overdraft facilities or any other type of credit facility with the ECB or NCBs in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States, and the purchase directly from these public sector entities by the ECB or NCBs of debt instruments. With a view to preserving the integrity of the central bank's balance sheet, the monetary financing prohibition is of key importance in ensuring the primary monetary policy objective of price stability, which must not be impeded. Therefore, the prohibition must be interpreted extensively to ensure its strict application. Even if Article 123(1) of the Treaty refers literally to 'credit facilities', i.e. with the obligation to repay such credit, this prohibition also applies a fortiori to other forms of funding, i.e. without the obligation to repay, since it has the overall aim of public finance discipline and of prohibiting NCBs from financing the public sector. This implies that both the ultimate objective and the spirit of this provision must be taken into account in its interpretation⁸.

3.2.2 From an accounting perspective, a decrease of staff salaries will de facto decrease the operational costs of the BNR, hence increasing potentially its financial resources. However, if the related increase of BNR's financial resources is directly transferred to the State, such a situation would effectively mean increasing the funding of the Romanian State at the expense of the BNR. In this respect, any direct financial transfer of this nature from the BNR to the State budget can be assimilated to monetary financing which is clearly prohibited under Article 123 of the Treaty.

⁵ See paragraph 2.2 of ECB Opinion CON/2008/9.

⁶ See paragraph 4.3 of ECB Opinion CON/2010/42.

⁷ OJ L 332, 31.12.1993, p. 1.

⁸ See paragraph 9 of ECB Opinion CON/2003/27.

Therefore, in order to avoid a breach of the monetary financing prohibition the law should be amended to ensure full compliance with the Treaty provisions⁹.

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

Done at Frankfurt am Main, 1 July 2010.

[signed]

The Vice-President of the ECB

Vitor CONSTÂNCIO

⁹ In this respect, the situation is different from that addressed in ECB Opinion CON/2009/15.