



## OPINION OF THE EUROPEAN CENTRAL BANK

of 7 May 2013

on strengthening Banca Națională a României's institutional role and independence

(CON/2013/31)

### Introduction and legal basis

On 18 April 2013, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on draft amendments to the Romanian Constitution concerning BNR (hereinafter the 'draft amendments').

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 first and third 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 provisions<sup>1</sup>, as the draft amendments relate to currency matters and the national central bank. 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 amendments**

BNR has prepared a set of proposals in the context of the revision of the Romanian Constitution. For institutional and functional stability purposes, the Statute of Banca Națională a României<sup>2</sup> (hereinafter the 'Statute of BNR') will be included in the category of organic laws<sup>3</sup> and BNR's institutional role and independence will be enshrined in the Constitution. Furthermore, the draft amendments aim to ensure the flexibility of the national legislation with regard to further developments at the European level and to the adoption of the euro by providing for the possibility of regulating by organic law the transfer of BNR tasks to the ECB and the introduction of the euro as legal tender.

### **2. General observations**

Due to the specific legislative stages in the national Constitution revision process, the consulting authority invokes reasons of extreme urgency and asks the ECB to deliver its opinion by 7 May 2013. The ECB

---

<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> Law 312/2004 on the Statute of Banca Națională a României, *Monitorul Oficial al României*, Part I No 582, 30 June 2004.

<sup>3</sup> Organic laws are laws which are adopted by the Romanian Parliament in areas of high importance for the functioning of the State and they cannot be subject to legislative delegation to the Romanian Government. Organic laws are adopted by a majority of both Chambers of Parliament.

draws the consulting authority's attention to the second sentence of Article 4 of Decision 98/415/EC pursuant to which 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 carefully 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.

### 3. Specific observations

- 3.1 The draft amendments provide that BNR is the central bank of Romania, an independent public institution and a member of the European System of Central Banks, and that its tasks, administration and functioning are regulated by law, in accordance with the treaties Romania has signed. The ECB welcomes the introduction of these provisions in the Romanian Constitution.
- 3.2 The ECB also welcomes the enhanced institutional and functional stability, as well as legal certainty, provided by the inclusion of the Statute of BNR in the category of organic laws<sup>3</sup>.
- 3.3 The draft amendments introduce a constitutional provision specifying that an organic law may be used to regulate: (a) the transfer of BNR's tasks to the ECB (draft Article 137<sup>1</sup>(4)(a)); and (b) the replacement of the national currency with the euro and the circulation thereof (draft Article 137<sup>1</sup>(4)(b)). The ECB notes that the draft Article 137<sup>1</sup>(4)(a) is not clear as to which tasks are intended to be transferred from BNR to the ECB or when this transfer would take place. The draft Article 137<sup>1</sup>(4)(a) appears to enable the Parliament to make the legislative adjustments to the Statute of BNR that are specified in the ECB's Convergence Report<sup>4</sup> and are necessary to ensure full integration of BNR into the Eurosystem<sup>5</sup>. While such adjustments to the Statute of BNR should be adopted as soon as possible, they need only to enter into force on the date Romania adopts the euro<sup>6</sup>. The scope of application of a possible organic law in accordance with Article 137<sup>1</sup>(4)(a) of the draft amendments should therefore be clarified.
- 3.4 In addition, changes to the draft Article 137<sup>1</sup>(1) are necessary in order to ensure, upon adoption of the euro by Romania, that the Constitution is compatible with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter 'Statute of the ESCB'). The draft Article 137<sup>1</sup>(1) provides that BNR has the exclusive right to issue currency in the form of banknotes and coins in Romania. This provision is not consistent with the Treaty and the Statute of ESCB as it neither recognises the ECB's exclusive right to authorise the issue of euro banknotes within the Union nor provides for a plurality of issuers<sup>7</sup>. In order to address this concern, the ECB suggests inserting references to the Treaty and the Statute of the ESCB in the draft Article 137<sup>1</sup>(1). In particular, Article 137<sup>1</sup>(1) should state that BNR shall have the right, in

---

<sup>4</sup> See the ECB's Convergence Report, 2012, p. 253.

<sup>5</sup> See the ECB's Convergence Report, 2012, p. 32.

<sup>6</sup> See the ECB's Convergence Report, 2012, p. 32.

<sup>7</sup> See paragraph 3 of Opinion CON/2005/38. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

## ECB-PUBLIC

accordance with the Treaty, to issue currency in the form of banknotes and coins. The ECB notes that such provisions, recognising that the ECB has the right to authorise the issue of euro banknotes and to approve the volume of issuance of euro coins, and that the ECB and the national central banks of the Member States whose currency is the euro may issue euro banknotes, should enter into force on the date on which Romania adopts the euro.

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

Done at Frankfurt am Main, 7 May 2013.

[signed]

*The President of the ECB*

Mario DRAGHI