



OPINION OF THE EUROPEAN CENTRAL BANK

of 29 January 2013

**on new competences granted to Banca Națională a României concerning sovereign debt and
sovereign credit default swaps**

(CON/2013/6)

Introduction and legal basis

On 16 January 2013, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft Government Emergency Ordinance establishing certain measures for implementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (hereinafter the ‘draft legal act’).

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 draft legal act relates to 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 draft legal act

For the purposes of implementing Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps², BNR is designated as the national competent authority responsible for ensuring the application of the Regulation in respect of transactions relating to sovereign debt issued by Romania or related sovereign credit default swaps. To this end, BNR is also responsible for taking measures and imposing sanctions against any natural or legal person who violates the provisions of the Regulation, any acts enacted at Union level under the scope of the Regulation, or any regulations issued by BNR under the draft legal act. BNR is also given the power to coordinate cooperation and exchange of information in relation to application of the Regulation with the European Commission, the European Securities and Markets Authority and competent authorities of other Member States, as well as with competent authorities from third countries. On the basis of the

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 86, 24.3.2012, p. 1.

explanatory memorandum to the draft law, such powers are assigned to BNR because of its functions related to the organisation of a Romanian market for sovereign debt instruments³.

2. The appropriate time to consult the ECB

As Regulation (EU) No 236/2012 has been applicable since 1 November 2012, the consulting authority invokes reasons of extreme urgency and asks the ECB to deliver its opinion by 31 January 2013. The ECB 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. Impact of allocating additional tasks to BNR

- 3.1 The ECB understands that powers related to the application of Regulation (EU) No 236/2012 in Romania are to be performed by two authorities which are to act as designated authorities under Article 32 of the Regulation: (a) the Romanian National Securities Commission (*Comisia Națională a Valorilor Mobiliare*) (CNVM), in relation to securities markets, with the exception of markets for Romanian sovereign debt and related sovereign credit default swaps⁴, and (b) BNR, in relation to Romanian sovereign debt and related sovereign credit default swaps. BNR is also to act as a coordinating authority under the second paragraph of Article 32 of the Regulation.
- 3.2 BNR will need to commit additional human and financial resources to carry out the tasks derived from these new competences. The ECB has consistently stated that, when allocating additional tasks to national central banks, it must be ensured that they have sufficient human and financial resources, both in terms of quantity and quality, for all of their tasks, and in particular that their capacity to fulfil their European System of Central Banks or Eurosystem-related tasks is not affected⁵.

³ See Article 29 of Law No 312/2004 on the Statute of Banca Națională a României, *Monitorul oficial al României* Part I No 582/2004.

⁴ See Law No 297/2004 on the capital market, *Monitorul oficial al României* Part I No 571/2004. The CNVM is scheduled to be replaced by the Romanian Financial Supervisory Authority on 15 March 2013 (see Government Emergency Ordinance No 93/2012, *Monitorul oficial al României* Part I No 874/2012).

⁵ See the ECB's Convergence Report 2012, p. 25. See also Opinion CON/2011/105. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

ECB-PUBLIC

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

Done at Frankfurt am Main, 29 January 2013.

[signed]

The Vice-President of the ECB

Vitor CONSTÂNCIO