



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 25 November 2013**  
**on stabilisation measures and the deposit guarantee fund**  
**(CON/2013/80)**

**Introduction and legal basis**

On 29 October 2013, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft government emergency ordinance amending and supplementing Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy (GEO No 99/2006)<sup>1</sup> and Government Ordinance No 39/1996 on the setting up and operation of the deposit guarantee fund in the banking system (GO No 39/1996)<sup>2</sup> (hereinafter the ‘draft ordinance’).

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, fifth 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 provisions<sup>3</sup>, as the draft ordinance relates to BNR, to payments and settlement systems and to rules applicable to the 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 ordinance**

The purpose of the draft ordinance is to enhance the clarity and legal certainty of the framework on stabilisation measures that BNR can adopt. The draft ordinance amends GEO No 99/2006 and GO No 39/1996 with regard to: (a) the separation of tasks between BNR and the Deposit Guarantee Fund; (b) issues related to the sources, levels and uses of financing of stabilisation measures; (c) conditions for the establishment, operation and closure of a bridge bank; and (d) the settlement finality regime in case of enforcement procedures against any payment system participants.

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<sup>1</sup> Published in *Monitorul Oficial al României*, Part One, No 1027, 27.12.2006.

<sup>2</sup> Republished in *Monitorul Oficial al României*, Part One, No 587, 19.8.2010.

<sup>3</sup> OJ L 189, 3.7.1998, p. 42.

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### 2. Observations

The ECB notes that the draft ordinance enhances the clarity and legal certainty of the framework on stabilisation measures in Romanian legislation.

With regard to the proposed amendment concerning the bridge bank's access to payment and settlement systems and other financial market infrastructures, the ECB notes that it does not address the issue of the possible non-compliance of the bridge bank with the rules of the relevant system or infrastructure. System operators should only be obliged to allow the bridge bank to access the systems or infrastructures that they operate and to continue the operations which are subject to the contractual and operational obligations of the transferor credit institution, provided the bridge bank complies with the rules of the system or infrastructure, including criteria for membership or participation, payment and delivery obligations, and provision of collateral<sup>4</sup>.

If the bridge bank does not comply with all of the rules prior to the time of transfer, there may exceptionally be a need for the resolution authority to lay down a reasonably short period of time during which the bridge bank may exercise rights arising from participation in the system or infrastructure on condition that it makes the necessary adjustments in order to become compliant with the relevant rules by the end of that period.

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

Done at Frankfurt am Main, 25 November 2013.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>4</sup> See ECB Opinion CON/2012/99, explanation to Amendment 14. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).