



EUROPEAN CENTRAL BANK

EUROSYSTEM

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## OPINION OF THE EUROPEAN CENTRAL BANK

of 14 May 2024

on amendments to the minimum reserves regime

(CON/2024/15)

### Introduction and legal basis

On 2 April 2024 the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on three draft regulations of BNR: (1) a draft regulation on the minimum reserves regime, (2) a draft regulation amending Regulation No 1/2000 on open market operations performed by Banca Națională a României and standing facilities granted to eligible participants<sup>1</sup> (hereinafter the 'draft regulation amending Regulation No 1/2000') and (3) a draft regulation amending Regulation No 4/2021 on the reporting of data and statistical information to Banca Națională a României<sup>2</sup> (hereinafter the 'draft regulation amending Regulation No 4/2021') (together hereinafter the 'draft regulations').

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) and Article 2(2) of Council Decision 98/415/EC<sup>3</sup>, as the draft regulations relate to BNR and the instruments of monetary policy in a Member State whose currency is not the euro. 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 regulations**

1.1 The draft regulations update the legislative framework governing the minimum reserves regime established by BNR<sup>4</sup> with the aim of achieving a significant increase in the degree of harmonisation of this legislative framework with the Eurosystem framework in order to enhance the robustness, clarity and transparency of the legislative framework regarding this monetary policy instrument and to allow for a smooth transition of the Romanian banking system to the Eurosystem framework once Romania adopts the euro.

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<sup>1</sup> Regulamentul Băncii Naționale a României nr. 1/2000 privind operațiunile de piață monetară efectuate de Banca Națională a României și facilitățile permanente acordate de aceasta participanților eligibili, *Monitorul Oficial al României, Partea I, nr. 84/01.02.2008*.

<sup>2</sup> Regulamentul Băncii Naționale a României nr. 4/2021 privind raportarea de date și informații statistice la Banca Națională a României, *Monitorul Oficial al României, Partea I, nr. 1163/08.12.2021*.

<sup>3</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>4</sup> Regulamentul Băncii Naționale a României nr. 6/2002 privind regimul rezervelor minime obligatorii, *Monitorul Oficial al României, Partea I, nr. 566/01.08.2002*.

- 1.2 By means of the draft regulations, BNR aims to continue the process of easing the restrictions that characterise the minimum reserves regime established by BNR<sup>5</sup>, while at the same time harmonising it with the Eurosystem's standards. In particular, the explanatory memorandum to the draft regulations points out that the draft regulation on the minimum reserves regime brings significant changes to elements previously not harmonised with the Eurosystem minimum reserves framework, in particular: (1) the reserve base (definition and source of data for its calculation); (2) the definition of minimum reserves ratios and the reserve bases to which they apply; (3) the observance period of the minimum reserves; (4) the contents and the means of reporting the minimum reserves; (5) the terms for exemption of credit institutions from minimum reserve requirements; and (6) the sanctions applied for non-compliance with minimum reserve requirements. The explanatory memorandum also highlights that a few elements remain unharmonised: (1) the holding of minimum reserves in both domestic currency and euro; (2) the maintenance period; and (3) the remuneration of minimum reserves. This is considered justified in view of the particularities of the national legal framework governing BNR and credit institutions, as well as by practical considerations.
- 1.3 The draft regulation amending Regulation No 4/2021 introduces related requirements regarding the reporting of statistical information and data related to minimum reserves.
- 1.4 The draft regulation amending Regulation No 1/2000 updates the categories of credit institutions and the eligibility criteria regarding access to open market and standing facilities offered by BNR. Eligibility criteria include the requirements of (1) being subject to BNR's minimum reserve requirements; (2) being subject to at least one form of prudential supervision; (3) having a sound financial situation (to be assessed taking into account prudential information); and (4) fulfilling all operational requirements and having the technical capacities necessary to execute the respective operation.

## **2. General observations**

- 2.1 The ECB welcomes BNR's initiative to update the legal framework governing the minimum reserves regime. As a Member State with a derogation, i. e., whose currency is not the euro, Romania retains the powers in the field of monetary policy as provided for under national law until such time as the relevant derogation is abrogated by the Council of the EU and the euro is introduced in Romania. This notwithstanding, a timely alignment of the minimum reserve system ahead of Romania's adoption of the euro contributes to ensuring a smooth changeover and an effective transmission of monetary policy when such adoption takes place. In addition, it is beneficial to achieve consistency

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<sup>5</sup> See Opinions CON/2011/73 and CON/2016/40, which point to differences between the BNR minimum reserves regime and the Eurosystem's minimum reserves framework, including more restrictive features of the former, such as the level of required reserves or sanctions applicable in the event of breaches of minimum reserves requirements. All ECB opinions are published on EUR-Lex.

with the Eurosystem's minimum reserves framework<sup>6</sup> so that credit institutions become acquainted with the reserve requirements that will apply to them following the adoption of the euro. In this respect, it is noted that BNR presents the draft regulations as the most important and comprehensive stage of the process aiming to bring BNR's minimum reserves regime in line with the Eurosystem framework, with limited revisions remaining to achieve full consistency.

- 2.2 The draft regulation on the minimum reserves regime is intended to repeal and replace the existing BNR regulation on the minimum reserves regime, and appears to be based on the structure of Regulation (EU) No 2021/378 (ECB/2021/1), while the chapter on sanctions appears to be based on the provisions of Decision (EU) 2021/1815 (ECB/2021/45).

### 3. Specific observations on harmonised elements

Following the structure of the Eurosystem framework on minimum reserve requirements, the draft regulations aim to harmonise important elements of the Romanian minimum reserves regime with the Eurosystem framework. Certain aspects are not yet completely aligned. Specific observations on some of the proposed changes are set out below.

#### 3.1 *Credit institutions subject to minimum reserves*

The draft regulation on the minimum reserves regime applies to credit institutions that are Romanian legal persons, which are either credit institutions authorised by BNR, or are development banks, as well as branches located in Romania of credit institutions from other Member States or from third countries. The ECB understands that development banks are a type of credit institution newly and specifically regulated under Romanian law and that this is why they have been explicitly added to the scope of application of the minimum reserves regime. It is also clear from certain specific provisions on the minimum reserve holdings that credit cooperatives are also subject to minimum reserve requirements. This clarity as to the scope of application of the minimum reserves regime is welcome. It is noted that the Eurosystem opted for a functional interpretation of the concept of credit institution for the purpose of applying minimum reserves, which has also included credit unions or credit cooperatives<sup>7</sup>. This interpretation is also reflected in the explicit inclusion in the scope of application of Regulation (EU) No 2021/378 (ECB/2021/1) of credit institutions 'exempt from such authorisation pursuant to Article 2(5) of Directive 2013/36/EU'<sup>8</sup>.

#### 3.2 *The reserve base*

While some key elements of the reserve base under the existing BNR minimum reserves framework were already similar to the corresponding elements of the Eurosystem framework (e.g. differentiation

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<sup>6</sup> See, in particular, Article 19 of the Statute of the European System of Central Banks and the European Central Bank; Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank (OJ L 318, 27.11.1998, p. 1); Regulation (EU) No 2021/378 of the European Central Bank of 22 January 2021 on the application of minimum reserves (ECB/2021/1) (OJ L 73, 3.3.2021, p. 1); Regulation (EU) No 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (ECB/2021/2) (OJ L 73, 3.3.2021, p. 16); Decision (EU) 2021/1815 of the European Central Bank of 7 October 2021 on the methodology applied for the calculation of sanctions for non-compliance with the requirement to hold minimum reserves and related minimum reserve requirements (ECB/2021/45) (OJ L 367, 15.10.2021, p. 4).

<sup>7</sup> See, for example, paragraphs 10 to 14 of Opinion CON/2005/8; paragraph 3.1 of Opinion CON/2006/4; paragraphs 10 to 17 of Opinion CON/2006/11; and paragraphs 2.1 to 2.5 of Opinion CON/2009/60.

<sup>8</sup> See Article 1, point (a)(ii), of Regulation (EU) No 2021/378 (ECB/2021/1).

between relevant liabilities with maturity under and over two years respectively), the draft regulations define the types of liabilities used for the calculation of the reserve base with greater precision and with greater similarity to the approach taken under the Eurosystem framework, and make reference to the statistical information reported by credit institutions concerning those liabilities.

### 3.3 *The minimum reserves ratios and the reserve base*

The draft regulations maintain the approach taken under the existing BNR minimum reserves framework, setting out a reserve ratio of zero applicable to the relevant liabilities with maturities over two years and a different ratio applicable to the relevant liabilities with maturities under two years. This is similar to the Eurosystem framework. However, the second ratio, which determines the minimum reserves through its application to the liabilities included in the reserve base and is set at 1% under the Eurosystem framework, is to be established by a BNR circular, allowing BNR to change it at short notice (at least 10 days prior to the start of the maintenance period when the changed ratio would enter into force). This ratio is higher than the Eurosystem one and is differentiated between the reserve base denominated in domestic currency and the reserve base denominated in euro<sup>9</sup>. Thus, further alignment of the reserve ratio will be necessary in this respect as and when Romania adopts the euro. In this context, a timely alignment of the BNR minimum reserve system with the Eurosystem framework would contribute to ensuring a smooth changeover with a view to preserving the effectiveness of the transmission of monetary policy.

### 3.4 *Exemptions from minimum reserves*

Whereas the current regime provides for BNR's Board to apply an exceptional minimum reserves regime in certain circumstances, which are not fully clear<sup>10</sup>, the ECB notes that the draft regulation on the minimum reserves regime contains a provision that is aligned to a great extent with Article 4 of Regulation (EU) No 2021/378 (ECB/2021/1), which sets out the circumstances under which automatic or discretionary exemptions from minimum reserve requirements apply.

### 3.5 *Sanctions for non-compliance with minimum reserve requirements*

The existing sanctioning regime is replaced by the draft regulations to reflect the Eurosystem's approach of applying only financial penalties<sup>11</sup> with respect to the failure to hold the required level of minimum reserves. The proposed sanctions are similar to those laid down under Decision (EU) 2021/1815 (ECB/2021/45), applying a margin of 2.5 percentage points to the average interest rate on BNR's lending facility taken over the maintenance period during which the breach occurred, with the resulting penalty interest rate being applied to the daily average amount of minimum reserves that the credit institution failed to hold for that maintenance period; in the event of a repetitive breach, a penalty of 5 percentage points is added. The proposed approach addresses comments made by the ECB in earlier opinions<sup>12</sup> that, under the Romanian minimum reserves regime, the sanctions in cases of non-compliance are considerably more severe than those provided for under the

<sup>9</sup> 8% for minimum reserves denominated in national currency and 5% for minimum reserves denominated in foreign currency, according to information provided on the BNR's website at [www.bnr.ro](http://www.bnr.ro).

<sup>10</sup> See paragraph 3.2 of Opinion CON/2016/40.

<sup>11</sup> See in particular Decision (EU) 2021/1815 (ECB/2021/45), Article 7 of Council Regulation (EC) No 2531/98 and Article 2 of Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).

<sup>12</sup> See paragraph 3.3.4 of Opinion CON/2011/73 and paragraph 3.1 of Opinion CON/2016/40.

Eurosystem's minimum reserves framework. Notably, in the event of a credit institution's failure to hold the required level of minimum reserves on more than two occasions within a 12-month period, the existing rules allow BNR to apply sanctions ranging from warnings and fines to the partial or total suspension of the concerned credit institution's authorisation for a period of up to 90 days, and even to the withdrawal of authorisation. The same applies in the event of misreporting or repeated failure to report data for the calculation of the reserve base or of the minimum reserves remuneration rate. However, as regards other breaches related to the minimum reserves, BNR maintains a particular approach, different from the approach taken by the Eurosystem, whereby the draft regulation on the minimum reserves regime imposes a penalty for the non-reporting of data that consists of increasing the minimum reserves during the applicable maintenance period by 10 % compared to the previous maintenance period<sup>13</sup>. Other breaches, such as misreporting, are not expressly referred to in the draft regulation on the minimum reserves regime and thus appear to remain under BNR's general sanctioning power, which includes the abovementioned types of severe sanctions. In view of the broad range and severity of sanctions applicable for breaches not related to the holding of the required level of minimum reserves in those cases, the ECB invites the consulting authority to consider whether those sanctions are proportional and suitable for the purposes of minimum reserves requirements<sup>14</sup>.

#### 4. Specific observations on non-harmonised elements

Certain elements of the minimum reserves regime have been left unharmonised and will need to be aligned with the Eurosystem framework as and when Romania adopts the euro.

##### 4.1 *The holding of minimum reserves in both domestic currency and euro*

Romanian credit institutions are required to hold minimum reserves in both the national currency and euro for their reserve base denominated in foreign currency, whereas holding minimum reserves in US dollars has been excluded under the draft regulations. Different reserve ratios that may be set in respect of holdings in the two different currencies would reflect different monetary policy objectives that may be pursued by BNR through this instrument.<sup>15</sup> The Eurosystem framework only provides for the holding of minimum reserves in euro.

##### 4.2 *The maintenance period*

The draft regulations maintain the existing system of defining the maintenance period by reference to fixed calendar days (from the 24<sup>th</sup> day of a month to the 23<sup>rd</sup> day of the following month). The Eurosystem establishes the calendar of maintenance periods by reference to the setting of certain monetary policy rates, which implies that maintenance periods are not related to fixed calendar days and that their duration is variable. Romanian credit institutions will need to adapt to the new system as and when Romania adopts the euro. This also implies different timelines for the calculation, notification and reporting of minimum reserves.

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<sup>13</sup> See Article 7 of the draft regulation on the minimum reserves regime.

<sup>14</sup> See paragraph 3.1 of Opinion CON/2016/40.

<sup>15</sup> This approach is grounded in Legea nr. 312/2004 privind Statutul Băncii Naționale a României, *Monitorul Oficial al României, Partea I, nr. 582/30.06.2004* (hereinafter the 'BNR Statute'), Article 8(2) of which provides that 'Minimum required reserves for foreign exchange resources shall be set up in foreign exchange alone'.

#### 4.3 *The remuneration of minimum reserves*

BNR's approach on the remuneration of minimum reserves is maintained under the draft regulation on the minimum reserves regime. The remuneration is set by reference to the average interest rate on demand deposits applied by credit institutions, which is thus a market rate.<sup>16</sup> This is different from the Eurosystem, which in the past remunerated minimum reserves by reference to certain monetary policy rates and currently applies remuneration at zero percent. The ECB understands that, currently, in practice, the difference between the BNR and the Eurosystem approach is limited, as the BNR remuneration is also close to zero percent.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 14 May 2024.

[signed]

*The President of the ECB*

Christine LAGARDE

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<sup>16</sup> This approach is grounded in the BNR Statute, Article 8(3) of which provides that 'The interest paid by Banca Națională a României for minimum required reserves shall equal at least the average interest rate applied by credit institutions on demand deposits'.