



OPINION OF THE EUROPEAN CENTRAL BANK

of 23 March 2011

on amendments to the legislation on settlement finality and on financial collateral arrangements

(CON/2011/26)

Introduction and legal basis

On 25 February 2011, 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 Law No 253 of 16 June 2004 on settlement finality in payment and securities settlement systems¹ and Government Ordinance No 9/2004 on certain financial collateral arrangements² (hereinafter the 'draft emergency 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 second, fifth and sixth 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 provisions³, as the draft emergency ordinance relates to means of payment, payment and settlement systems and 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 main objective of the draft emergency ordinance is to transpose Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims⁴. For this purpose, it amends the two legal acts through which Directive 98/26/EC and Directive 2002/47/EC have been implemented in the Romanian legal system.

¹ Published in *Monitorul Oficial al României* Part One, No 566 of 28 June 2004.

² Published in *Monitorul Oficial al României* Part One, No 78 of 30 January 2004.

³ OJ L 189, 3.7.1998, p. 42.

⁴ OJ L 146, 10.6.2009, p. 37.

2. General observations

- 2.1 The deadline for the transposition of Directive 2009/44/EC by the Member States was 30 December 2010. In view thereof, the consulting authority invokes reasons of extreme urgency and asks the ECB to deliver its opinion by 22 March 2011. The ECB would like to draw the consulting authority's attention to the fact that according to the second sentence of Article 4 of Decision 98/415/EC, 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 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.
- 2.2 The ECB has no comments on the substance of the Romanian transposition of Directive 2009/44/EC.

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

Done at Frankfurt am Main, 23 March 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET