



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 21 September 2011**

**on statistics and interbank money and government securities markets managed by Banca Națională a României, and the foreign exchange and minimum reserves regime**

**(CON/2011/73)**

### **Introduction and legal basis**

On 31 May 2011, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on its draft regulation on statistics, its draft regulation on interbank money and government securities markets managed by BNR and the foreign exchange and minimum reserves regime, and its draft regulation on payments.

This opinion concerns the draft regulation on statistics (hereinafter the ‘first draft regulation’) and the draft regulation on interbank money and government securities markets managed by BNR, and the foreign exchange and minimum reserves regime (hereinafter the ‘second draft regulation’).

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, the third, fourth and sixth indents of Article 2(1), and Article 2(2) 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 regulations relate to BNR; the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics; and rules applicable to 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 regulations**

BNR’s two draft regulations are the result of a systematisation and standardisation process through which the BNR will consolidate regulations currently in force that it has adopted in the performance of its statutory tasks. The objectives of this process are to ensure legal clarity, consistency, access and understanding.

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

### 1.1 The first draft regulation

The draft regulation on statistical data and information reporting to BNR provides the framework for the collection, processing, analysis and dissemination of statistical data in its areas of competence. It covers reporting of data and information (i) on monetary and financial statistics, balance of payments and Romania's medium and long-term private external debt, (ii) for the oversight of money/foreign exchange market transactions, and (iii) for payments oversight. It defines the reporting mechanisms under the relevant Union regulations<sup>2</sup>.

### 1.2 The second draft regulation

This draft regulation covers BNR's monetary policy and exchange rate policy, the foreign exchange and minimum reserves regimes, as well as transactions with government securities and certificates of deposit.

## 2. General observations

The ECB welcomes BNR's efforts to increase legal certainty, as well as the transparency and clarity of its requirements for market participants. Moreover, such a project should take into account the need for precision and consistency throughout the draft regulations and with the national and Union legal frameworks. Although Romania has not yet adopted the euro, the draft provisions should already take into consideration and be broadly consistent with the Union legislative framework that will apply in Romania once it has adopted the euro.

## 3. Specific observations

### *The first draft regulation*

3.1 The regime for the production of European statistics is set out in Regulations (EC) Nos 223/2009<sup>3</sup> and 2533/98<sup>4</sup>. A national regime's specific arrangements should optimise the quality and availability of official statistics, also in the context of the NCB's participation in the European

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<sup>2</sup> Regulation ECB/2008/32 of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (recast) (OJ L 15, 20.1.2009, p. 14).

Regulation ECB/2001/18 of 20 December 2001 concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations (OJ L 10, 12.1.2002, p. 24).

Regulation ECB/2007/8 of 27 July 2007 concerning statistics on the assets and liabilities of investment funds (OJ L 211, 11.8.2007, p. 8).

Regulation (EC) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment (OJ L 35, 8.2.2005, p. 23).

Article 5(1) of Regulation (EC) No 924/2009/EC of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

<sup>3</sup> Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

<sup>4</sup> Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

System of Central Banks (ESCB) in general and its duty to collaborate with the ECB on statistical matters in particular, while preserving its independence as a central bank participating in the ESCB.

*The second draft regulation*

- 3.2 Member States that have not adopted the euro retain their monetary policy powers. It is nevertheless beneficial for them to achieve consistency with Eurosystem standards so that their credit institutions can familiarise themselves with the requirements that will apply once the euro has been introduced. With these considerations in mind, the ECB welcomes Title IV of this draft regulation, outlining the architecture and operation of the minimum reserves regime for Romanian credit institutions. The regime strongly resembles the Eurosystem's minimum reserves framework<sup>5</sup>. The main parameters are calculated in a similar manner, including the computation of the reserve base and the resulting minimum reserves requirements and its averaging mechanism. These similarities are expected to make the future transition of Romanian credit institutions to the Eurosystem's minimum reserves framework smoother and more straightforward.
- 3.3 The ECB has, nevertheless, identified a number of differences between the minimum reserves regime for Romanian credit institutions and the Eurosystem's minimum reserves framework.
- 3.3.1 First, the reserve base for Romanian cooperative credit institutions appears to differ from that applicable to other credit institutions. The Eurosystem's minimum reserves framework treats all credit institutions equally, irrespective of their nomenclature. While legitimate economic considerations relevant to the market share of cooperative credit institutions in Romania may warrant a differentiated treatment for the purposes of the imposition and collection of minimum reserves, such differentiated treatment will be unsustainable once Romania has adopted the euro.
- 3.3.2 Second, BNR will communicate the remuneration rate on minimum reserves to credit institutions only on an *ad hoc* basis. Under the Eurosystem's minimum reserves framework, the relevant rate is derived from the main financing operation rates. In the interests of transparency, the consulting authority should consider communicating, *ex ante*, the basis on which the remuneration rate is to be defined. Similar considerations apply to BNR's discretion as regards the penalty rate, compared to the fixed penalty rate under the Eurosystem's minimum reserves framework<sup>6</sup>.
- 3.3.3 Third, under the Romanian minimum reserves regime, the credit institutions' minimum reserves calculations may be revised both during the reserve maintenance period and subsequently. The Eurosystem's minimum reserves framework considers the credit institutions' minimum reserves calculations to be frozen at the start of the relevant reserve maintenance period. A national law arrangement more closely resembling the Eurosystem's minimum reserves framework would provide more legal certainty.

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<sup>5</sup> The reference is mainly to Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves (OJ L 250, 2.10.2003, p. 10), which also provides the basis for sub-paragraph 3.3.2 of this Opinion.

<sup>6</sup> This is derived from the marginal lending facility rate, incremented by 250 basis points.

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3.3.4 Finally, there are also differences in sanctions when data for the calculation of a credit institution's minimum reserves requirements are reported late, as well as for repetitive breaches. In both cases the sanctions under the minimum reserves regime for Romanian credit institutions are considerably more severe compared to the corresponding sanctions under the Eurosystem's minimum reserves framework.

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

Done at Frankfurt am Main, 21 September 2011.

[signed]

*The President of the ECB*

Jean-Claude TRICHET