



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 29 October 2013**  
**on the transfer of the management of State properties to**  
**Banca Națională a României**  
**(CON/2013/74)**

**Introduction and legal basis**

On 5 August 2013, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft law on the transfer of certain State properties from the management of Regia Autonomă ‘Administrația Patrimoniului Protocolului de Stat’ to the management of BNR (hereinafter the ‘draft law’).

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 provisions<sup>1</sup>, as the draft law 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 law**

The draft law provides for the transfer of the management of two State-owned properties from the Regia Autonomă ‘Administrația Patrimoniului Protocolului de Stat’(RA-APPS, a financially autonomous body with legal personality responsible for management of the State heritage and protocol)<sup>2</sup> to BNR (hereinafter the ‘transfer’) to serve as its premises. According to the explanatory memorandum to the consultation request, the transfer is meant to cater for BNR space requirements following changes to its organisational structure, and it includes the fixed assets, inventory goods and on-going investments related to the properties concerned.

As manager of these properties, BNR will be obliged to ensure, *inter alia*, that they are guarded, maintained, preserved and restored<sup>3</sup>. If used for purposes other than those provided for in the draft law, the properties are to be transferred back to RA-APPS<sup>4</sup>.

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

<sup>2</sup> RA-APPS is established pursuant to Government Decision No 60 of January 21 2005 to manage, preserve the integrity of, and protect State property.

<sup>3</sup> Article 7 of the draft law.

<sup>4</sup> Article 6 of the draft law.

One of the properties concerned is a historical monument and the other one is located within the protection zone of a historical monument. Therefore, Romanian legislation on the preservation of historical monuments<sup>5</sup> is applicable, and BNR will be obliged to ensure that the properties are guarded and protected, to take all necessary measures to prevent or extinguish fires and to carry out works of preservation, consolidation, restoration, repair and maintenance<sup>6</sup>. Any works carried out on the properties must be authorised by the Ministry of Culture<sup>7</sup>.

## 2. Central bank independence

The wording of the draft law gives rise to concerns as regards central bank independence<sup>8</sup> under Article 130 of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter ‘the Statute of the ESCB’) as it does not mention whether BNR has given its prior agreement<sup>9</sup> to this transfer. Overall, the ECB notes that the draft law is silent on the reasons for the transfer.

In addition, the scope of the envisaged transfer needs to be clarified as it is not clear whether this transfer concerns property rights, management or both with regard to the two buildings. Moreover, the draft law only indicates that, if used for purposes other than those provided for in the draft law, management of the properties is to be transferred back to RA-APPS. There is no other provision relating to the duration of the transfer or a situation where BNR would no longer need the use of the buildings.

## 3. Monetary financing prohibition

The wording of the draft law also raises concerns regarding compliance with the monetary financing prohibition under Article 123(1) of the Treaty and Article 21.1 of the Statute of the ESCB<sup>10, 11</sup>, as the draft law contains no reference to the financial aspects of the transfer, except to state the inventory value of the two buildings. There is no indication of whether BNR must make any payment for this transfer and it is not clear whether an assessment has been carried out with regard to the costs for renovating the buildings and their amortisation or the costs to be incurred by BNR for management of these buildings and how these costs will be financed. These financial aspects of the envisaged transfer need to be addressed in compliance with the monetary financing prohibition before adoption of the draft law.

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<sup>5</sup> Law 422/2001 on the preservation of historical monuments, published in *Monitorul Oficial al României*, Part I, No 407 of 24 July 2001.

<sup>6</sup> Article 36(1)(b) of Law 422/2001.

<sup>7</sup> Article 24(1) and (2) of Law 422/2001.

<sup>8</sup> See the ECB’s Convergence Report, 2013, p. 20.

<sup>9</sup> Article 55 of the BNR Statute provides that: ‘BNR may only invest in real estate for its own operating needs and the collective needs of its employees, as established by its Board’.

<sup>10</sup> Further clarified by Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1). Articles 104 and 104b(1) of the Treaty establishing the European Community are now Articles 123 and 125(1) of the Treaty.

<sup>11</sup> For details see the ECB’s Convergence Report, 2013, p. 27.

**ECB-PUBLIC**

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

Done at Frankfurt am Main, 29 October 2013.

[signed]

*The Vice President of the ECB*

Vitor CONSTÂNCIO