EUROPEAN CENTRAL BANK

EUROSYSTEM

EN **ECB-PUBLIC**

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 August 2016

on amendments to the minimum reserves regime

(CON/2016/40)

Introduction and legal basis

On 29 July 2016 the European Central Bank (ECB) received a request from Banca Naţională a României (BNR) for an opinion on a draft regulation amending the BNR Regulation on the minimum reserves regime (hereinafter the '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 and the third indent of Articles 2(1), and Article 2(2) of Council Decision 98/415/EC[1], as the draft regulation relates to a national central bank and 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 regulation

1.1 The draft regulation updates the legal framework governing the minimum reserves regime established by BNR (hereinafter the 'BNR Regulation')[2] with a view to replacing references to certain repealed legal acts, replacing the legal basis for BNR's power to take punitive action in the event of certain infringements of the BNR Regulation, and expanding the circumstances under which BNR may impose exceptional reserve requirements for a defined period of time with regard to certain credit institutions.

1.2 Under the draft regulation, certain infringements of the minimum reserves regime are no longer qualified as a breach of banking conduct but as a breach of a BNR regulation. Hence, such infringements are no longer subject to the sanctioning regime under the banking law, but instead to the sanctioning regime under the Statute of BNR[3]. As a consequence, where a credit institution (i) repeatedly fails to report or misreports the reserve base and data for the calculation of the average interest rate on demand deposits, or (ii) modifies accounting operations and/or statistical data in order to decrease its minimum reserves, BNR may impose the following sanctions[4]: (a) a written

1 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).

2 Regulation No 6/2002 of Banca Naţională a României regarding the minimum reserves regime, published in Monitorul Oficial al României, Part I, No 566 of 1 August 2002.

3 See Article 57 of Law No 312/2004 regarding the Statute of Banca Naţională a României, published in Monitorul Oficial al României, Part I, No 528 of 30 June 2004.

4 See paragraph 3 of the sole Article of the draft regulation, which amends Article 27 of the BNR Regulation.

warning; (b) a fine from 500 to 5 000 Romanian lei; (c) partial or total suspension of the authorisation granted by BNR for a period of up to 90 days; and (d) withdrawal of the authorisation granted by BNR.

1.3 Furthermore, according to the draft regulation, where a credit institution fails to hold the required minimum reserves for two consecutive maintenance periods, BNR may carry out an on-site inspection at the institution's headquarters. In addition, should the failure to hold the required minimum reserves occur more than twice within a 12-month period, BNR may impose any of the sanctions provided by the Statute of BNR for breach of a BNR regulation as listed in paragraph 1.2[5].

1.4 The draft regulation also amends the provision that lays down the circumstances under which BNR may establish exceptional reserve requirements, for a defined period of time, with regard to certain credit institutions. The application of an exceptional regime, which includes exemptions from penalty interest payments and the exclusion of certain liabilities from the reserve base, is subject to approval by the BNR's Board. It may be applied on a case-by-case basis with regard to credit institutions subject to crisis prevention or crisis management measures, as well as in any other exceptional situations justified by objective considerations where the purpose of imposing minimum reserves requirements would not be met[6]. In this regard, the explanatory memorandum to the draft regulation notes that the said amendment aims to enable BNR to apply, for a defined period, 'derogatory' reserves requirements in respect of certain liabilities with residual maturity over two years with a view to supporting an adequate capitalisation of credit institutions.

2. General observations

The ECB welcomes BNR's initiative to update the legal framework governing the minimum reserves regime. As a Member State whose currency is not the euro, Romania retains its powers in the field of monetary policy according to national law until such time as the relevant derogation is lifted and Romania adopts the euro. This notwithstanding, it is beneficial to achieve consistency with the Eurosystem's minimum reserves framework[7] so that credit institutions become acquainted with the reserves requirements that will apply to them following the adoption of the euro in the Member State where they are established[8]. To that end, BNR should already give consideration to gradually bringing its regulations in this field in line with Eurosystem standards[9].

---

5 See paragraph 4 of the sole Article of the draft regulation, which amends Article 28(2) of the BNR Regulation. Article 57 of the Statute of BNR constitutes the general provision for the imposition of sanctions in case of a breach of the Statute and BNR regulations and decisions. In addition, in the area of minimum reserves, special provisions on sanctions are laid down in Article 8(4) of the Statute of BNR and Article 12 of the BNR Regulation, according to which BNR shall calculate and impose penalty interest, at a rate established by BNR, for the failure to hold the required reserves over the maintenance period.

6 See paragraph 5 of the sole Article of the draft regulation, which amends Article 29 of the BNR Regulation.

7 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, 27.11.98, p. 1); Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9) (OJ L 250, 2.10.2003, p. 10); Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (ECB/2013/33) (OJ L 297, 7.11.2013, p. 14).

8 In the same vein, see Opinions CON/2014/42, CON/2013/79, CON/2011/75 and CON/2011/73.

9 See, in this regard, paragraph 3.2 of Opinion CON/2011/73. On that occasion, the ECB also noted the differences at the time between the domestic minimum reserves regime and the Eurosystem's minimum reserves framework.

3. Specific observations

3.1 *Sanctions in the event of certain infringements*

The ECB noted in an earlier opinion[10] that, under the Romanian minimum reserves regime, the sanctions in cases of non-compliance are considerably more severe than those provided for under the Eurosystem's minimum reserves framework. Following the amendments proposed under the draft regulation, the sanctioning regime applied to credit institutions failing to comply with obligations imposed upon them by BNR becomes even more severe. Thus, pursuant to the amended Article 28(2) of the BNR Regulation, the sanctions that BNR is empowered to apply for the failure to hold the required minimum reserves more than twice within a 12-month period are no longer confined to warnings, fines and levying a penalty interest, but also include partial or total suspension of an authorisation for a period of up to 90 days as well as withdrawal of an authorisation. In contrast, for the same type of infringements, the Eurosystem's minimum reserves framework provides for periodic penalty payments only[11]. The ECB invites the consulting authority to ensure that the sanctions applied under the BNR Regulation are proportional and suitable for the purposes of minimum reserves requirements.

3.2 *Exceptional reserve requirements*

The ECB understands that the amendment to Article 29 of the BNR Regulation aims to enable BNR's Board to apply an exceptional minimum reserves regime to credit institutions which may temporarily face difficulties in meeting their capital requirements. In this regard, the ECB cautions against setting temporary tailor-made reserve requirements for certain credit institutions. Any exemptions from the obligation to hold certain minimum reserves should be established based on clear criteria and the principle of non-discrimination. From this perspective, it is noted that pursuant to the draft regulation the application of the exceptional regime has to be decided on objective grounds. However, it is not clear what are these 'exceptional circumstances', other than crisis prevention or crisis management, that may be considered by BNR's Board in taking such a decision.

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

Done at Frankfurt am Main, 30 August 2016.

[signed]

The President of the ECB

Mario DRAGHI

10 See paragraph 3.3.4 of Opinion CON/2011/73.

11 See Article 7(1) of Council Regulation (EC) No 2531/98.