EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 June 2013

on the macro-prudential oversight of the national financial system

(CON/2013/39)

Introduction and legal basis

On 3 May 2013, the European Central Bank (ECB) received a request from Banca Națională a României (BNR) for an opinion on a draft emergency ordinance on the macro-prudential oversight of the national financial system (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 third and sixth indents 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[1], as the draft emergency ordinance relates to Banca Națională a României 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 emergency ordinance

The draft emergency ordinance establishes the National Committee for Macro-prudential Oversight (hereinafter the 'Committee') mandated to coordinate macro-prudential oversight of the national financial system by defining macro-prudential policy and determining the appropriate instruments for its implementation[2]. The Committee's primary objective is to contribute to the safeguarding of financial stability by strengthening the resilience of the financial system and decreasing the build-up of systemic risks, thereby ensuring a sustainable contribution of the financial sector to economic growth. The Committee is also entrusted with: (a) coordinating financial crisis management; (b) supervising implementation of European Systemic Risk Board (ESRB) recommendations and measures taken at national level as a follow-up to ESRB warnings; (c) collaborating and exchanging information with the micro-prudential supervisory authorities, relevant authorities in the other Member States and the ESRB.

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1 OJ L 189, 3.7.1998, p. 42.

2 Currently, in Romania, macro-prudential policy at national level is not explicitly regulated in national legislation. Oversight of the national financial system is performed by BNR (for the credit institutions sector) and the Financial Supervisory Authority (for the capital market, insurance and private pensions sector). The legislation governing the activity of the two national supervisory authorities provides for their respective task of maintaining the financial stability of the respective sectors. No single authority is entrusted with the exclusive competence of safeguarding the overall stability of the financial system.

The Committee is an entity without legal personality designed as a structure for inter-institutional cooperation[3]. It consists of representatives from BNR, the Financial Supervisory Authority (FSA) and the Ministry of Public Finances. It has the following governing bodies: the General Board, a technical committee on systemic risk, a technical committee on financial crisis management and a Secretariat provided by BNR.

BNR's Governor is the president of the Committee, as well as the chairperson of the General Board, which will include two more representatives of BNR's executive management, the FSA's chairperson and the Minister for Public Finance. The chairperson of the Bank Deposit Guarantee Fund also attends the meetings, but has no voting right.

Where a potential risk to financial stability is identified based on the assessments conducted, the Committee may issue recommendations and warnings to national micro-prudential supervisory authorities for a policy response. It may also issue recommendations to the Government for legislative initiatives aimed at safeguarding financial stability. The President of the Committee submits the Committee's annual report to Parliament by 30 June of the following year.

2. General observations

The consulting authority asked for an ECB opinion on an urgent basis[4]. The ECB draws the consulting authority's attention to the second sentence of Article 4 of Decision 98/415/EC pursuant to which 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 carefully 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 draft legislative provisions are adopted.

3. Specific observations

3.1 The Committee's tasks include identifying systemically-relevant financial institutions and any other tasks related to macro-prudential oversight, as specified in Union legal acts[5]. Under the proposed directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[6] (hereinafter the 'proposed directive'), Member States are to designate a public authority that is responsible for setting the countercyclical buffer rate for that Member State[7]. Such a designated authority may also be attributed the task of identifying

3 Article 1 of the draft emergency ordinance.

4 Due to the deadline of 1 July 2013 for the implementation of Recommendation ESRB/2011/3 of the European Systemic Risk Board on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 1).

5 Article 3(1) of the draft emergency ordinance.

6 Proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (2011/0203 (COD) available at: http://register.consilium.europa.eu/pdf/en/13/st07/st07746.en13.pdf).

7 Article 126(1) of the proposed directive.

systemically important institutions[8], setting a systemic risk buffer[9] or taking specific measures to address macro-prudential concerns[10]. The latter tasks may also be attributed to the competent authority. The ECB understands that the draft emergency ordinance may have to be reviewed upon entry into force of the proposed directive and proposed regulation[11] to determine whether the Committee is a designated authority and to reflect the tasks laid down thereof for designated authorities.

3.2 The ECB welcomes the express provisions of the draft emergency ordinance stating BNR's independence with regard to macro-prudential policy decisions[12] and the institutional independence of the Committee[13], in line with Article 130 of the Treaty,

3.3 This opinion does not prejudice the conclusions of the follow-up assessment of the above mentioned recommendation, which the ESRB will issue in accordance with Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board[14].

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

Done at Frankfurt am Main, 3 June 2013.

[signed]

The President of the ECB

Mario DRAGHI

8 Article 124a of the proposed directive.

9 Article 124d of the proposed directive.

10 Article 443a of the proposal for a regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (2011/0202 (COD) available at: http://register.consilium.europa.eu/pdf/en/13/st07/st07747.en13.pdf).

11 See footnote 10.

12 Article 13 of the draft emergency ordinance.

13 Pursuant to Article 2(2) of the draft emergency ordinance, the Committee and the General Board members may not seek or take instructions from public authorities or institutions or any public or private bodies.

14 OJ L 331, 15.12.2010, p. 1.