EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 10 May 2019

on the tax on banks' financial assets and the interest rate benchmark for consumer credit agreements

(CON/2019/18)

Introduction and legal basis

On 20 March 2019 the European Central Bank (ECB) received a request from Ministerul Finanțelor Publice (the Romanian Ministry of Public Finances) for an opinion on a draft Government Emergency Ordinance on the amendment and supplementation of three legislative acts in relation to the tax on banks' financial assets and the interest rate benchmark for consumer credit agreements (hereinafter the 'draft ordinance'). On 29 March 2019 the draft ordinance was adopted with amendments by the Romanian government (hereinafter the 'government ordinance')[1] and is currently subject to the parliamentary approval procedure.

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[2], as the government ordinance relates to Banca Naţională a României (BNR) 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 government ordinance

1.1 The government ordinance was introduced to revise certain features of the tax on banks' financial assets which was introduced in late December 2018[3] and to replace the interest rate benchmark referenced in consumer credit agreements with variable interest rates denominated in Romanian lei[4].

---

1 Ordonanţa de urgenţă a Guvernului nr. 19/2019 pentru modificarea şi completarea unor acte normative, publicată în *Monitorul Oficial al României*, Partea I, nr. 245 din 29 martie 2019.

2 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).

3 Government Emergency Ordinance 114/2018 of 28 December 2018 on the establishment of certain measures in the field of public investment and of certain fiscal and budgetary measures, the amendment and supplementation of certain legislative acts and the prolongation of certain time limits (Ordonanţa de urgenţă a Guvernului nr. 114/2018 privind instituirea unor măsuri în domeniul investiţiilor publice şi a unor măsuri fiscal-bugetare, modificarea şi completarea unor acte normative şi prorogarea unor termene, publicată în *Monitorul Oficial al României*, Partea I, nr. 1116 din 29 decembrie 2018).

4 By virtue of Government Emergency Ordinance 50/2010 of 9 June 2010 on credit agreements for consumers (Ordonanţa de urgenţă a Guvernului nr. 50/2010 privind contractele de credit pentru consumatori, publicată în *Monitorul Oficial al României*, Partea I, nr. 389 din 11 iunie 2010) and Government Emergency Ordinance 52/2016 of 14 September 2016 on credit agreements offered to consumers for immovable property, as well as for amending and completing Government Emergency Ordinance 50/2010 on credit agreements for consumers (Ordonanţa de urgenţă

1.2 *The tax on banks' financial assets*

The objectives underlying the revised features of this tax are to increase financial intermediation, reduce the cost of credit for households and stimulate savings. The government ordinance thus aims to encourage credit institutions to contribute to achieving these objectives by: (a) increasing lending to non-financial corporations and households; and (b) reducing the difference between interest rates for loans granted to non-financial corporations and households and the interest rates for deposits made by non-financial corporations and households[5].

1.3 The tax on banks' financial assets is levied on credit institutions which are Romanian legal entities, including their foreign branches, and Romanian branches of foreign legal entities. The proceeds of the tax are considered State budget revenue and the tax expense will be deductible when establishing the banks' fiscal result in accordance with the Law on the Fiscal Code[6].

1.4 Following the amendments introduced by the government ordinance, the tax base is represented by the banks' financial assets at net value as recorded in the balance sheet at the end of the semester or of the year for which the tax is due, from which the following categories of financial assets are subtracted: (a) cash; (b) cash balances with central banks at net value, excluding non-performing exposures; (c) non-performing exposures at net value; (d) debt securities issued by the public administration at net value, excluding non-performing exposures; (e) loans and credit advances to the public administration at net value, excluding non-performing exposures; (f) loans to the non-governmental sector which are guaranteed by the central public administration at net value, excluding non-performing exposures; (g) loans to credit institutions, related receivables and amounts to be depreciated at net value, excluding non-performing exposures; (h) deposits with credit institutions, related receivables and amounts to be depreciated at net value, excluding non-performing exposures; (i) nostro accounts with credit institutions and related receivables at net value, excluding non-performing exposures; (j) reverse-repo operations and borrowed securities, related receivables and amounts to be depreciated at net value, excluding non-performing exposures.

1.5 Following the amendments introduced by the government ordinance, the tax rate is either 0.4% of the tax base per year for banks with a market share above or equal to 1%, or 0.2% of the tax base per year for banks with a market share below 1%. For this purpose, a bank's market share is calculated as the ratio between the total value of the bank's assets and the total amount of aggregate assets for the banking system, including branches.

1.6 Following the amendments introduced by the government ordinance, the tax on banks' financial assets is limited to the accounting profit as recorded at the end of the semester or year for which the tax is due. Moreover, banks that register losses at the end of the semester or year for which this tax is due will not be subject to it. Additionally, banks on which lending restrictions have been

---

a Guvernului nr. 52/2016 privind contractele de credit oferite consumatorilor pentru bunuri immobile, precum şi pentru modificarea şi completarea Ordonanţei de urgenţă a Guvernului nr. 50/2010 privind contractele de credit pentru consumatori, publicată în *Monitorul Oficial al României*, Partea I, nr. 727 din 20 septembrie 2016).

5 Preamble to the government ordinance and Explanatory memorandum to the government ordinance as submitted to Parliament.

6 Legea nr. 227/2015 privind Codul fiscal, publicată în *Monitorul Oficial al României*, Partea I, nr. 688 din 10 septembrie 2015.

imposed by the supervisory authority for the period in which those restrictions apply will not be subject to this tax.

1.7 Furthermore, in line with its stated objectives, the government ordinance introduces two categories of tax deductions: (a) a tax deduction of up to 50% in return for contributing to increasing financial intermediation by increasing lending to non-financial corporations and households in accordance with an annually-established governmental target; and (b) a tax deduction of up to 50% in return for reducing interest rate margins, either below an annually-established reference margin rate or in line with an annually-established governmental target. For this purpose the interest rate margin is the difference between the weighted average interest rate for loans denominated in lei to non-financial corporations and households and the weighted average interest rate for deposits denominated in lei received from non-financial corporations and households.

1.8 Accordingly, as regards the first category of tax deduction, the government ordinance provides for a pro-rata tax reduction of up to 50%, if the balance of loans to non-financial corporations and households at the end of the semester or year for which the tax is due increases in relation to the balance of the same type of credits at the end of the preceding year. The tax deduction is proportional to the ratio between the increase in lending to non-financial corporations and households and the lending increase target established for the year for which the tax is due. If lending to non-financial corporations and households decreases, there is no tax deduction. In addition, the benchmark against which the increase in lending is calculated for the following year will not be reduced, but instead maintained at the level of the balance of loans at the end of the year preceding the year in which lending to non-financial corporations and households decreased until the balance of loans to non-financial corporations and households at the end of the semester or year for which the tax is due exceeds that benchmark.

1.9 As for the second category of tax deduction, the government ordinance provides for: (a) a tax deduction of 50%, if the interest rate margin for the semester or year for which the tax is due is below or equal to the reference interest rate margin established for the year for which the tax is due; or (b) a pro-rata tax deduction of up to 50%, if the interest rate margin calculated at the end of the semester or year for which the tax is due decreases in relation to the interest rate margin calculated at the end of the preceding year. The tax deduction is proportional to the ratio between the decrease in the interest rate margin and the margin decrease target established for the year for which the tax is due. If the interest rate margin increases, there is no tax deduction. In addition, the benchmark against which the decrease in the interest rate margin is calculated for the following year will not be increased, but instead maintained at the level of the interest rate margin at the end of the year preceding the year in which the interest rate margin increased until the interest rate margin at the end of the semester or year for which the tax is due falls short of that benchmark.

1.10 In addition to these tax deductions, the government ordinance provides for an exemption from the tax for the first semester in any of the following cases: (a) where the lending increase target has been fully met; (b) where the margin decrease target has been fully met; (c) where the aggregated percentage of the lending increase and of the interest-margin decrease is at least 100%.

1.11 Finally, the government ordinance specifies that the lending increase target, the margin decrease target and the reference interest rate margin are established annually by the Romanian government, upon the proposal of Ministerul Finanțelor Publice on the recommendation of Comitetul Național pentru Supravegherea Macroprudențială (the National Committee for Macroprudential Oversight). For 2019, the government ordinance sets the lending increase target and the margin decrease target at 8% and the reference interest rate margin at 4%.

1.12 *The interest rate benchmark for consumer credit agreements*

The government ordinance aims to increase the transparency of the interest rate benchmark referenced in consumer credit agreements with variable interest rates denominated in lei by replacing the Romanian Interbank Offer Rate with a new benchmark calculated exclusively on the basis of interbank transactions[7].

1.13 The government ordinance stipulates that the new interest rate benchmark is to be published each working day on BNR's website.

1.14 The government ordinance further stipulates that the new interest rate benchmark will be an average of interest rates weighted against the volumes of interbank market transactions. The benchmark is calculated at the end of each quarter as an arithmetic mean of the daily interest rates determined for the preceding quarter and is applied by each credit institution for the following quarter.

2. Observations regarding tax on banks' financial assets

2.1 *Need for impact assessment*

The ECB has consistently advised that the introduction of special taxes on banks or financial institutions should be preceded by a comprehensive impact assessment[8]. A comprehensive impact assessment of the tax on banks' financial assets is necessary to ensure that the benefits of the fiscal measure outweigh its costs not only in view of the potentially negative effects on financial stability and the economy, but also in view of the potential implications for bank lending conditions and for the transmission of monetary policy. In this respect, the ECB notes that the use of timely and meaningful impact assessments was also emphasised, albeit more broadly, in Council Recommendation of 13 July 2018 on the 2018 National Reform Programme of Romania and delivering a Council opinion on the 2018 Convergence Programme of Romania[9], according to which Romania should take action to increase the predictability of decision-making by enforcing the systematic and effective use of regulatory impact assessments and stakeholder consultations and involvement in the design and implementation of reforms.

2.2 *Effects on financial stability*

Without prejudice to the government's objective of increasing financial intermediation, the introduction of the tax would benefit from a prior impact assessment so as to mitigate potential risks to financial stability. Given the incentive mechanism introduced by the government ordinance, such

---

7 Explanatory memorandum to the government ordinance as submitted to Parliament.

8 See paragraph 3.2.2 of Opinion CON/2010/62, paragraph 3.3 of Opinion CON/2011/31, paragraph 2.2 of Opinion CON/2013/44 and paragraph 2 of Opinion CON/2016/1. All ECB opinions are published on the ECB website at www.ecb.europa.eu.

9 Council Recommendation of 13 July 2018 on the 2018 National Reform Programme of Romania and delivering a Council opinion on the 2018 Convergence Programme of Romania (OJ C 320, 10.9.2018, p. 98).

an assessment should also take into account the risk that the provision of credit to non-financial corporations and households might be steered by the potential tax benefits. Such an assessment should also consider whether the design of the tax gives credit institutions an incentive to change their risk profile by restructuring their portfolios. The provision of credit should primarily rely on a robust prudential system and full compliance with requirements for the creditworthiness of borrowers[10]. This latter approach would contribute to an appropriate distribution of loans in the economy, and this in turn would safeguard banks' balance sheets from future potential losses. Over time, this approach would also aid in fostering sustainable financial stability, and contributing to the safety and soundness of banks. Finally, the incentives created by the revised tax must be aligned with macroprudential policy objectives and measures implemented in Romania.

2.3 *Effects on the Romanian economy*

A thorough and timely impact analysis of the practical implications of the government ordinance is warranted, also in view of the fact that introducing ad hoc taxes on banks may create uncertainty for their business and eventually pose risks to the provision of credit, which could adversely affect long-term growth in the real economy[11]. In line with the stance maintained in the past[12], the ECB cautions against incentives in loan provision that may lead to distortions in the efficient allocation of loan supply and further sectoral imbalances in the real economy.

2.4 *Implications for bank lending conditions and for the transmission of monetary policy*

An inefficient allocation of credit is detrimental not only to financial stability and the real economy but also to the monetary policy transmission mechanism. The government ordinance introduces tax deductions for banks that lend more, or at low margins, to the real sector. Any measure aimed at stimulating lending activity, if not appropriately designed, may cause distortions in the allocation of credit. Such measures may result in banks becoming overly lenient with regard to their lending standards in order to meet their lending volume targets. At the opposite extreme, in an attempt to meet their targets in terms of margin compression, banks may disproportionately tilt their lending supply away from relatively riskier but still creditworthy borrowers involving high risk premia, e.g. small and medium-sized enterprises, which rely solely on bank lending and have no access to capital market finance. The likelihood that such side effects materialise depends on the details of the calibration and on the credit risk and demand conditions that each intermediary is facing.

2.5 While the tax introduced by the government ordinance is designed to have a lower impact on banks which lend more to the real economy, it can nonetheless be expected to have an overall adverse impact on their profitability. Since retained earnings are an important source of capital, a tax on banks' activity could have implications on their intermediation capacity that should not be neglected. Thus, the impact assessment should also take into account the overall equilibrium effects of the fiscal measure, even more so in a country relying on the presence of foreign intermediaries who can more easily avoid the increased tax burden by geographically reallocating their assets.

10 See paragraph 3.2 of Opinion CON/2011/31.

11 See paragraph 2.1 of Opinion CON/2016/1 and paragraph 3.2.2 of Opinion CON/2010/62.

12 See paragraph 3.1 of Opinion CON/2011/31.

2.6 Finally, the cost-benefit analysis should also consider the financing conditions for the real sector that play an important role in the monetary policy transmission mechanism and might de facto represent an intermediate target for central banks. The same applies to the volume of lending to the real economy, which can be explicitly utilised as an intermediate target of monetary policy measures. Consequently, the incentive mechanism provided for under the government ordinance, which is targeting financing conditions and lending activity, should be assessed to determine whether it may have any implications on BNR's toolbox.

3. Observations regarding interest rate benchmark for consumer credit agreements

3.1 The ECB welcomes the government ordinance's aim to introduce a transaction-based benchmark for consumer credit agreements with variable interest rates denominated in lei (the 'new benchmark'). This is in line with the principles underlying the Union regulatory framework on financial benchmarks, in particular Regulation (EU) 2016/1011 of the European Parliament and of the Council[13], and other recognised international best practice[14]. Where the input data is transaction-based data, less discretion can be exercised in providing input data and therefore the opportunity to manipulate the data is reduced[15].

3.2 However, the government ordinance should take into account the fact that actual transaction-based input data are to be used only where available and appropriate. If transaction data is insufficient or inappropriate to accurately and reliably represent the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may also be used, including estimated prices, quotes and committed quotes, or other values[16].

3.3 Furthermore, the compatibility of the government ordinance with Regulation (EU) 2016/1011 and related provisions of Directive 2014/17/EU of the European Parliament and of the Council[17] and Directive 2008/48/EC of the European Parliament and of the Council[18] should be ensured. Without prejudice to the European Commission's competence to monitor the implementation of Union law, the ECB notes that, although interest rate benchmarks are referenced in consumer credit agreements with variable interest rates denominated in foreign currencies or denominated in lei (such as the new benchmark), the government ordinance does not introduce information requirements concerning the names of the respective benchmarks and of their administrators and the potential impact of the means by which the benchmarks are determined on the consumer[19].

---

13 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2017/14/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

14 See the Board of the International Organization of Securities Commissions (OICU-IOSCO), Principles for Financial Benchmarks (July 2013), available at www.iosco.org.

15 Recital 26 of Regulation (EU) 2016/1011.

16 Article 11(1) and Annex I of Regulation (EU) 2016/1011.

17 Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

18 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

19 See Article 5(1), third subparagraph, of Directive 2008/48/EC and Article 13(1), second subparagraph, point (ea) of Directive 2014/17/EU.

3.4 The ECB further notes that the government ordinance does not specify key features of the new benchmark, such as the name (and acronym) and the administrator of the new benchmark, nor does it specify the full methodology for the determination of the new benchmark or where such details are to be made available. If the administrator of the new benchmark envisaged under the government ordinance were to be BNR, the ECB notes that Regulation (EU) 2016/1011 does not apply to central banks[20], as central banks already meet principles, standards and procedures which ensure that they exercise their activities with integrity and in an independent manner[21]. Accordingly, if BNR were to be the designated administrator the government ordinance should not impinge on BNR's discretion to develop the methodology for determining the new benchmark so as to ensure its accuracy, integrity and reliability. When central banks provide benchmarks, it is their responsibility to establish appropriate internal procedures in order to ensure the accuracy, integrity, reliability and independence of those benchmarks, taking into account international best practice where relevant and appropriate[22]. The ECB would need to be consulted under Articles 127(4) and 282(5) of the Treaty with regard to draft national legislation that confers further tasks on BNR in this respect.

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

Done at Frankfurt am Main, 10 May 2019.

[signed]

The President of the ECB

Mario DRAGHI

---

20 Article 2(2)(a) of Regulation (EU) 2016/1011.

21 Recital 14 of Regulation (EU) 2016/1011.

22 See the Board of the International Organization of Securities Commissions (OICU-IOSCO), Principles for Financial Benchmarks (July 2013), available at www.iosco.org.