

The adoption of the Euro by Romania - theoretical considerations

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Abstract

The paper contains, first of all, aspects of the convergence report drawn up by the European Commission and the European Central Bank on the level of readiness of a Member State to join the euro area when there is an express request for it. The second part refers to several proposals for actions that Romania thinks should follow in order to adopt the euro, starting with the Convergence Report of the European Commission and the European Central Bank of May 2018.

Keywords: euro, convergence report, convergence criteria, harmonization.

JEL Classification: K23, K33

1. Convergence Report of the European Commission²

The name "euro" was elected in 1995 by the European Council in Madrid.

The convergence report is the basis of the EU Council³ decision on the fulfillment by a Member State of the necessary conditions for joining the euro area. The adoption of the Euro by Romania is currently conditioned by the Convergence Report (Commission) of May 2018, which highlights: the assessment of the progress made by the Member States towards the adoption of the Euro, including Romania⁴.

The progress made is, in fact, the measure of meeting the necessary conditions (criteria) for joining the Eurozone.

Convergence reports are published every two years or when there is an explicit request from a Member State to assess its level of readiness for joining the euro area, as was the case for Latvia in 2013.

The UK and Denmark are exceptions, while all other Member States have the obligation to adopt the euro and to join the euro area. Therefore, the United Kingdom and Denmark are not the subject of the report.

Those Member States which do not yet fulfill the necessary conditions for the adoption of the euro are referred to in the TFEU as "Member States with a derogation". These Member States have negotiated non-participation clauses under

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² European Commission - Information Sheet 2018 Convergence Report: Evaluation of the progress made by Member States towards the adoption of the euro Brussels, 23 May 2018; http://europa.eu/rapid/press-release_MEMO-18-3827_ro.htm, consulted on 1.10.2018.

³ Radu Ștefan Pătru, *Anumite considerațiuni privind personalitatea juridică a Uniunii Europene în urma Tratatului de la Lisabona (Some Considerations on the Legal Personality of the European Union following the Treaty of Lisbon)*, in „Consilier European”, edited by the Department for European Affairs no. 1/16 April 2010, p. 12 -16.

⁴ https://www.dcnnews.ro/romania-zona-euro-comisia-europeana-romania-risc-major_545959.html, consulted on 1.10.2018.

the Maastricht Treaty, with the exception of Denmark and the United Kingdom of Great Britain, as we have seen.

The 2018 convergence report covers the seven Member States with a derogation: Bulgaria, Croatia, Poland, the Czech Republic, Romania, Sweden and Hungary.

The report assesses whether Member States with a derogation have achieved a high level of sustainable economic⁵ convergence and therefore whether Romania meets the necessary conditions for adopting the euro, namely: price stability, sound public finances, exchange rate stability, convergence of long-term interest rates.

The report to be taken into account assesses the compatibility of national legislation with the EMU rules set out in the Treaty on the Functioning of the European Union (TFEU) on: the independence of the national central bank, the prohibition of monetary financing, the compatibility with the European Statute of Banks Central Bank (ESCB) and the European Central Bank (ECB)⁶.

According to the Commission Report, Romania currently meets only one of the four economic criteria necessary for the adoption of the euro, namely the criterion of public finances. From this report, it does not meet the criteria related to: price stability, exchange rate, long-term interest rates. It also does not meet the legal criterion; the Romanian legislation is not fully compatible with the Treaty (Functioning of the European Union).

To be noted, the convergence criteria examined in the concession report, also referred to as the "Maastricht Criteria", are set out in Art. 140 para. 1 TFEU.

In evaluating the Maastricht criteria, the keyword is sustainability, therefore, progress on convergence must be based on structural elements that guarantee sustainability rather than temporary factors.

2. Proposals for measures to adopt the euro, according to the convergence criteria

1. One of the concrete measures to be implemented in practice is that national legislation should provide for the conditions / criteria for convergence (by areas, as mentioned above), in order to ensure their fulfillment.

2. It is also necessary to regulate the Euro in the Constitution to specify the possibility of transferring some prerogatives to the ECB and the changeover to the euro⁷; the members of the Review Committee⁸ added a new article after Article 137 of the current Constitution, entitled "National Bank and Central Bank".

"(1) The Bank has the right to issue currency in Romania.

⁵ See Silvia Cristea, *Aspecte internaționale ale recuperării creanțelor fiscale între statele membre ale U.E (International Aspects of Recovery of Tax Claims between Member States of the EU)*, „Curierul fiscal” no.10/2007, p. 14.

⁶ See Florentina-Camelia Stoica, *Dreptul Uniunii Europene. Libertățile Fundamentale (The Fundamental Freedoms of the European Union)*, Universitaria Publishing House, 2009, pp. 184-197.

⁷ <http://incont.stirileprotv.ro/credite-si-economii/bnr-a-cerut-introducerea-monedei-euro-in-noua-constitutie.html>, consulted on 1.10. 2018.

⁸ *Idem*.

(2) The National Bank of Romania is the central bank of the Romanian state, an independent public institution, whose powers, administration and operation shall be regulated by law, in accordance with of international law deriving from the treaties to which Romania is a party.

(3) The National Bank of Romania is headed by a Board of Directors whose members are appointed by Parliament for a renewable term of five years.

(4) According to the constitutive treaties and the legislative acts of the European Union, by organic law it is possible to regulate:

a) the transfer of the prerogatives of the National Bank of Romania to the European Central Bank,

b) the recognition of circulation and the replacement of the national currency with the euro", the amendment adopted by the Commission specifies.

At the same time, it was envisaged to amend Article 138 of the Basic Law, which allows the Government to draft the draft multiannual state budget.

The current article 138, paragraph 2 of the Constitution "The Government draws up the draft state budget and state social security budget on a yearly basis, which it submits separately to the approval of the Parliament", according to the amendment, shall have the following content: "The Government draws up annually or multiannual state budget and state social security project, which it sends to the institutions of the European Union, after informing the Parliament about their content".

3. Another action to be taken is the entry into force of an Organic Law regulating the replacement of the national currency, including the circulation of the euro (as regulated by the "denomination of the national currency" by Law 348/2004), after what convergence criteria are met and laid down in the legislation.

4. The Convergence Reports of the European Central Bank and the Commission of May 2018 reported non-compliance issues between Law no. 312/2004 on the Statute of the National Bank of Romania and the Treaty on the Functioning of the European Union.

Therefore, in order to address non-compliance issues, appropriate legislation is required. Mention some of these, as they are found in a table of correspondence of the "Convergence Report":

- the said legislation (Law No 312/2004) must be aligned with the provisions of Regulation (EC) No. No 3603/93 of 13 December 1993 laying down the definitions necessary for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJEU);

- aspects of non-compliance also concern Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and business environment, prevention and sanctioning of corruption (Ministry of Foreign Affairs, Part I no 279, 21.4.2003) and Law no. 176/2010 on integrity in the exercise of public office and dignity. For legal certainty, the Commission recommends clarifying that sanctions for breach of obligations under these laws are not additional grounds for dismissal of the Governor, in addition to those contained in Art. 33 of the NBR;

- in the event of the Governor's dismissal, judicial review of the Court of Justice of the European Union (pursuant to Article 14.2 of the Statute of the ESCB) is required.

5. For the purpose of the legal integration of the National Bank of Romania into the Eurosystem, the Convergence Reports of the European Central Bank and the Commission of May 2018 provided for actions necessary to amend Law no. 312/2004 on the Statute of the National Bank of Romania, among this, we mention:

- the secondary objective of the NBR is to support the general economic policy of the Union (by amending Article 2 paragraph 3 of Law 312/2004);
- article 32 of the Law no. 312/2004 should be amended in order to ensure certainty that it does not eliminate the need to consult the ECB in accordance with the provisions of Articles 127 (4) and 282 (5) of the Treaty;
- in the context of the monetary policy promoted by the National Bank of Romania, the ECB's attributions in this field (the following items are taken into account: 2 paragraph 2 letter a), 5, 6 paragraph 3, 7 paragraph 1, 8, 19, 20, 22, paragraph 3 and Article 33, paragraph 1, letter a);
- within the NBR's tasks regarding the collection of statistics, Art. 49 in order to recognize the role of the ECB and the EU in this area;
- within the scope of the NBR's tasks regarding the management of international reserves, Articles 22, letter e), 9 par. 2 letter c), 30 and 31 must be amended to recognize the ECB's attributions in this area;
- the tasks of the ECB, in the area of the smooth operation of payment systems, should be recognized, by amending Articles 22 letter b) and 33 (1) letter b), which stipulate the role of the NBR in this field;
- articles on the role of the NBR with regard to the issue of banknotes and coins should be amended to recognize the tasks of the Council and the ECB in this area (by amending Articles 2 (2) (c), 12 to 18 of the BNR;
- articles 10 and 11 of the NBR Statute, which empowers the NBR to develop regulations on the monitoring and control of foreign exchange transactions on the territory of the country and to issue authorizations for capital injections, foreign exchange and other specific transactions, should be amended so that to recognize the tasks of the Council and the ECB in this area.
- article 57 of the NBR Statute must be completed in such a way as to recognize the ECB's powers to issue sanctions.

In principle, all Member States for which no opt-out clauses (as in the case of Denmark and the United Kingdom) are committed to adopting the euro as soon as they meet the necessary conditions. It is up to each country to plan their course towards the euro, with no timetable.

Once the Member State meets all the criteria for the euro area accession process, based on the convergence report, the Commission is submitting a proposal to the ECOFIN Council, which - following consultation with the European Parliament and discussions with Heads of State and Government - decides whether the country meets the necessary conditions and whether it can adopt the euro⁹. If the

⁹ European Commission - Information Sheet 2018 Convergence Report: Assessment of Member States' progress towards euro adoption Brussels, 23 May 2018; http://europa.eu/rapid/press-release_MEMO-18-3827_ro.htm, consulted on 1.10.2018.

decision is favorable, the ECOFIN Council shall take the necessary legal steps and, on the basis of a proposal by the Commission and after consulting the ECB, shall adopt the exchange rate at which the national currency will be replaced by the euro and will remain irrevocably fixed¹⁰.

On the basis of the convergence report, the Commission puts forward a proposal to the ECOFIN Council, which - in consultation with the European Parliament and the talks with Heads of State and Government - decides whether the country fulfills the necessary conditions and whether it can adopt the euro. If the decision is favorable, the ECOFIN Council shall take the necessary legal steps and, on the basis of a proposal by the Commission and after consulting the ECB, shall adopt the exchange rate at which the national currency will be replaced by the euro and will remain irrevocably fixed.

Seven of the 12 Member States that joined the EU in 2004 or 2007 have already adopted the euro. Slovenia adopted it in 2007, Cyprus and Malta in 2008, Slovakia in 2009, Estonia in 2011, Latvia in 2014, and Lithuania in 2015. Currently, over 338 million people in 19 EU Member States use the euro. The euro area Member States are Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia, Spain and the Netherlands¹¹.

In principle, all Member States for which no opt-out clauses (as in the case of Denmark and the United Kingdom) are committed to adopting the euro as soon as they meet the necessary conditions. However, it is up to each country to plan its course towards the euro, with no timetable. Member States that joined the EU in 2004 and 2007 and 2013 after the launch of the euro did not qualify for entry into the euro area at the time of their accession. Their accession treaties give them time to make the necessary adjustments¹².

3. Conclusions¹³

The Commission supports the Member States which are on the way to joining the euro area through the technical support provided by the current Structure Support Service.

¹⁰ *Idem.*

¹¹ *Idem.*

¹² See Radu Ștefan Pătru, *Considerațiuni privind eventuala calitate de izvor de Drept al Uniunii Europene a acordurilor colective de muncă încheiate în contextul dialogului social din cadrul UE (Consideration of the possible quality of European Union law of collective bargaining agreements concluded in the context of social dialogue within the EU)*, in the volume of the International Conference of Doctoral Students in Law (5th edition) organized by the Faculty of Law and Administrative Sciences, West University of Timisoara and the European Center for Legal Studies and Research, Timisoara, May 16-18, 2013, Universul Juridic Publishing House, Bucharest, 2013, pp. 568-575; Iulia Boghirnea, *The importance and utility of the preliminary ruling procedure of the Court of Justice of the European Union*, Rev. „Research and Science Today”, no. 1 (9) / 2015.

¹³ European Commission - Information Sheet 2018 Convergence Report: Evaluation of the progress made by Member States towards the adoption of the euro Brussels, 23 May 2018; http://europa.eu/rapid/press-release_MEMO-18-3827_ro.htm, consulted on 1.10.2018.

Among the proposals put forward by the Commission to deepen Europe's economic and monetary union for the period 2018-2020, there was also the creation of a workflow within the framework of the Structural Reform Support Program (PSRS) to provide on-demand support technically to Member States which are not part of the euro area but wish to become members of the euro area¹⁴.

The Commission proposed the creation of a special convergence mechanism in its proposal for a multiannual financial framework for the period after 2020.

After 2020, this Convergence Mechanism has proposed to provide specific financial and technical support to Member States that have taken concrete steps and can be proven to move towards the adoption of the single currency over a certain period of time. Its objective is to support the implementation of reforms aimed at contributing to a successful preparation for euro area participation.

This mechanism does not interfere with the current criteria for joining the euro area but will facilitate practical training and convergence based on a specific engagement and partnership process.

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¹⁴ Radu Ștefan Pătru, *op. cit.* (*Some Considerations on the Legal Personality...*), 2010, p. 12-16.