Translation from Romanian

DECISION no. 139
of March 13th 2019

on the constitutional challenge of the Law for the completion of the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector

Valer Dorneanu	**- presiding judge of the court**
Marian Enache	**- judge**
Petre Lăzăroiu	**- judge**
Mircea Ştefan Minea	**- judge**
Daniel Marius Morar	**- judge**
Mona-Maria Pivniceru	**- judge**
Livia Doina Stanciu	**- judge**
Simona-Maya Teodoroiu	**- judge**
Varga Attila	**- judge**
Marieta Safta	**- senior assistant magistrate**

1. The constitutional challenge of the Law for the completion of the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector, formulated by a number of 83 deputies belonging to the parliamentary group of the National Liberal Party (PNL - Partidul Naţional Liberal) and of the Union Save Romania (USR - Uniunea Salvaţi România) is on the docket.

2. The constitutional challenge has been formulated on the basis of the first sentence of art. 146 (a) of the Constitution, of the art. 11 (1) (a) and of the art. 15 of Law no. 47/1992 on the Constitutional Court's organization and function, it has been recorded with the Constitutional Court under no. 10781 of December 27th 2018 and is the subject of the case no. 2359A/2018.

3. **In support of the constitutional challenge**, both reasons of extrinsic and intrinsic unconstitutionality have been invoked.

4. As regards the ***grounds for extrinsic unconstitutionality***, are first brought to the attention of the court the unconstitutionality of the law in relation to art. 1 (3) and (5) of the Constitution regarding the rule of law and democracy and the capacity of the law, as well as with respect to art. 141 of the Constitution, all corroborated with the provisions of the Law no. 24/2000 on the norms of legislative technique for the drafting of normative acts.

5. Consequently, referring to the case law of the Constitutional Court on the incidence of art. 1 (5) of the Constitution in the light of the violation of the Law no. 24/2000 on the norms of legislative technique for the drafting of normative acts (Decision no. 26 of January 18th 2012, published in Official Gazette of

Romania, Part I, No. 116 of February 15th 2012, Decision no. 681 of June 27th 2012, published in the Official Gazette of Romania, Part I, No. 477 of July 12th 2012, Decision no. 447 of the November 29th 2013, published in the Official Gazette of Romania, Part I, No. 674 of November 1st 2013, or Decision no. 448 of October 29th 2013, published in the Official Gazette of Romania, Part I, No. 5 of January 7th 2014, Decision no. 1 of January 10th 2014, published in the Official Gazette of Romania, Part I, No. 123 of February 19th 2014, or Decision No. 283 of May 21st 2014, published in the Official Gazette of Romania, Part I, no. 454 June 20th 2014), the authors of the complaint argue that the criticized normative act does not correspond to the idea of justice as a constitutional value, the premise of which is the fair laws. This implies that the regulation is not the result of a majority that imposes its will to legislate in a discretionary and arbitrary way, without any justification for the new legal obligations imposed on the private sector, namely the banking sector, all the more so as the sanctions imposed for non-compliance with these obligations are very serious, as is the sanction of the total loss of the right to charge interest on the granted loans in case of non-observance of the limits established by the law. It is argued in this respect that there is no real grounds of the adopted legislative solutions, which is not apparent either from the explanatory memorandum or from the reports of the specialized commissions on the amendments adopted, as a result the simple political majority cannot base a law that seriously affects the financial-banking system in Romania and the market economy. It is concluded that "this law places itself *de plano* outside of the rule of law and of the values on which the rule of law is built, especially on the value of justice."

6. The procedural unconstitutionality in relation to art. 141 of the Constitution on the Economic and Social Council, in conjunction with art. 1 (3) on the rule of law and para. (5) on the principle of legal certainty, determined by the absence of the Economic and Social Council's opinion, is also invoked in supporting the extrinsic unconstitutionality.

7. It is argued in this respect that, although it has an advisory role, the Economic and Social Council is a body whose mandate is established by a constitutional norm that must be observed in the law-making process. Therefore, although the opinion is advisory, this opinion must exist in the law-making process, in the areas covered by the organic law of the Economic and Social Council. The absence of the opinion represents a failure of constitutionality of the normative act criticized, given that the role of the Economic and Social Council is to guarantee, in a democratic process of law-making, that the laws do not establish arbitrary solutions, especially when these have a major economic impact.

8. Classified on the component of the criticism of extrinsic unconstitutionality is also the claim on the unconstitutionality of the law in relation to art. 1 (5) of the Constitution and art. 13-15 of the Law no. 24/2000, including the internal contradiction created in the text of the Government Ordinance no. 13/2011.

9. It is shown that the normative act criticized creates a contradiction in text of the amended ordinance, namely the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector. In this respect, it is argued that the annual effective interest rate cap (hereinafter referred to as *DAE* - dobânda anuală efectivă) and the penalty interest rate cap applicable to the credit agreements granted by credit institutions or

non-banking financial institutions was not and should not be regulated by the Government Ordinance no. 13/2011, which initially aimed at capping the current interest rate (remunerative interest rate) in the case of credit agreements concluded by professional players with consumers. Consequently, the criticized normative act contradicts art. 9 of the Government Ordinance no. 13/2011, which stipulates that the interest rate charged or paid, as well as the way of their calculation are established by specific regulations. Moreover, it is shown that both the DAE and the penalty interest rates applicable to the credit agreements concluded with consumers are regulated in other special normative acts, correspondingly in the Government Emergency Ordinance no. 50/2010 on credit agreements for consumers and the Government Emergency Ordinance no. 52/2016 on the loan agreements offered to consumers for real estate properties, as well as for the amendment and completion of the Government Emergency Ordinance no. 50/2010 on credit agreements for consumers, which are special regulations in the field of consumer protection.

10. The vagueness of art. 5^1 (2) (a) of the same law is also punctually criticized as regards the capping of the interest rate applicable to mortgage and real estate loans, showing that this vagueness affects even the understanding of the normative act, in violation of art. 1 (5) of the Constitution. As a result, the authors argue that the wording of the criticized law is incomplete, lacking the element to which the 3 percentage points mentioned in the text add to. The baseline to which the 3 percentage points add to was the statutory interest rate in the form of the law adopted by the Senate, but the successive changes to the text of law, through the amendments adopted, led to that in the final version one cannot determine how to set the maximum cap of DAE. It is argued that the baseline to which the 3% percentage applies is the statutory interest rate can be determined only from the analysis of the legislative process, as well as from the correlation with the entire contents of the amended ordinance.

11. Regarding the criticism of extrinsic unconstitutionality, it is concluded that "the law, in its entirety, is unconstitutional, in relation to the provisions of art. 1 (3) and (5), of art. 141 of the Constitution and that of the Law no. 24/2000, there being no economic, social and legal motivation and substantiation of the solutions that have been adopted through the amendments in the Senate and which have become law. The lack of economic, social and legal motivation and substantiation of the solutions has led to a contradictory, incoherent and unintelligible regulation that seriously alters the very understanding and application of the law and infringes fundamental rights from the Constitution."

12. As to the ***reasons for intrinsic unconstitutionality***, it is argued first that the provisions of art. 5^1 (2) on the amount of DAE are unconstitutional because these violate the provisions of art. 1 (3) and (5), of art. 44 (1), of art. 45, of art. 53 and of art. 135 (1) of the Constitution.

13. In the opinion of the authors of the complaint, if this law were constitutionally validated, this would create an extremely dangerous precedent that would allow and encourage the establishment of caps and tariffs in any other economic sector belonging to the free market, only on the basis of pretexts of "social pressure", without any economic, legal or social justification. The capping of the DAE cannot be justified, *per se,* by the concept of consumer protection, as otherwise reaching even the annihilation of the market economy. It is also shown that before 1989 there were such market control mechanisms, namely the Decree

of the Council of Ministers no. 311/1954 on the establishment of the legal interest rate, but by Law no. 7/1998 on repealing some normative acts, it was found that these are contrary to the new constitutional legal order established by the Constitution of 1991. This results in the unconstitutionality of the normative act that fixes prices on the market and "a law, in 2018, that revives such mechanisms of market control constitute a serious constitutional slippage, which must be sanctioned by the Constitutional Court."

14. It is also argued that the need for consumer protection cannot be achieved through the annihilation of the market economy concepts within the financial-banking sector, and that there is no regulation in the European Union to impose such a direction. Furthermore, the Council Directive 93/13/EEC of April 5th 1993 on unfair terms in consumer contracts "expressly provides that the price of the contract cannot be subject to review by the courts of law insofar as it is expressed in a clear and comprehensible manner". In the same sense, it is also claimed that the price is the result of market laws, of the supply and demand, and cannot be censored, such censorship entering in the market's static control sphere.

15. The authors of the challenge further argue that the capping of the DAE to "mortgage or real estate" loans in relation to statutory interest rate (if this were the intention of the legislator) is unconstitutional, given that, in fact, according to art. 3 (1) of the Government Ordinance no. 13/2011, the statutory interest rate is the monetary policy interest rate of the National Bank of Romania, which is an exogenous indicator of the free market economy, compatible with the civil legal relations between the non-professional player, but incompatible with the free market, there being no causal link between the monetary policy interest rate of the National Bank of Romania and the interest rate applied by financial institutions in the lending activity. The mathematical criterion applicable to the statutory interest has no economic or legal justification, being the expression of a pure political motivation, of an estimation that, in the absence of any impact study, of any transparent economic substantiation, remains within the sphere of subjectivity. In fact, this has even varied from one form to another in the legislative draft without any explanation or justification. In the opinion of the authors of the challenge, there is no economic or legal justification in setting the capping criteria for the DAE and, moreover, there is no legal mechanism to allow for the revision of the maximum DAE cap, under the circumstances, for example, where the variable interest rates depend on a market indicator (the ROBOR benchmark) and, as a result, are subject to fluctuations independent of the lender.

16. It is also argued that interest rates capping drastically reduces the free competition and inhibits the crediting process, which in the long run has a negative economic impact, in the sense that cost constraints for some economic operators could mean either reducing their product range available, or substantially altering their business, enabling them to continue their business in a profitable manner. By virtue of art. 4 of the Competition Law no. 21/1991, the state has a legal and constitutional mechanism allowing it to order price measures, with the opinion of the Competition Council, but such a measure must be well grounded and time-limited. However, in the absence of any impact study and of any economic substantiation, the law examined does not meet any constitutional and legal conditions allowing such a state intervention to set the maximum price of the credit (DAE) and to annihilate the free competition in the economy market.

17. Referring to the case-law of the Constitutional Court on the application of the provisions of art.

135 (1) of the Constitution concerning the market economy, including from the perspective of consumer protection (Decision no. 498 of May 10th 2012, published in the Official Gazette of Romania, Part I , No. 428 of June 28th 2012), the authors of the challenge show that, under the circumstances where there is a text concerning the market economy in the Constitution which obliges the legislator to adopted any general measure of consumer protection in compliance with the rules of operation of the market economy, such a normative act cannot meet the constitutional rigors. It is also argued that the fact that interest rates in other Member States of the European Union are lower than in Romania does not represent an argument in capping the interest rates, since the markets and the economic level are not comparable. There is no general legislative framework applicable at European Union level on the limitation of credit costs and each Member State has its own legislation in relation to the particularities of the legal system in question.

18. Also, in connection with the provisions of art. 5^1 (2) of the criticized law, it is claimed to be lacking clarity and predictability, thus infringing the provisions of art. 1 (3) and (5) of the Constitution, corroborated with art. 13, art. 23 and art. 37 of Law no. 24/2000, given that they refer to the definition of DAE from the Government Emergency Ordinance no. 52/2016, although such a definition is also found in Government Emergency Ordinance no. 50/2010. Instead, a definition of DAE is not found in Law no. 190/1999 on the mortgage/real estate loan. Analysing the definitions of different types of credits in the special legislation and in the new law, a serious correlation failure is observed, which affects the very understanding and application of the criticized law.

19. It is also shown that in order to generalize the capping of the DAE, the law starts from a distinction between mortgage and real estate loans on the one hand and consumer credit on the other and, for the purpose of capping the DAE, two new definitions are introduced, which are not found in the legislation, although it refers to the definitions in the legislation. Under the new law it results that mortgages or real estate loans are considered as defined by the Law no. 190/1999 on the mortgage loan for real estate investments, although this normative act only regulates the mortgage loans, and on the other hand, the text of the criticized law regulates a new definition of mortgage and real estate loans, which does not correspond to either the definition of the mortgage loan or to the definition of the real estate investments loan, as the latter is regulated by art. 2 of Government Emergency Ordinance no. 52/2016. Since all that is not considered as mortgage or real estate loan, as defined on art. 5^1 (2) (a) becomes consumer credit in the light of the definition on art. 5^1 (2) (b), it leads to the abnormal situation, contrary to the existing regulations, to which the new law refers to, where consumer credits will include not only the loans having the purpose of carrying out a real estate investment but also all mortgage or real estate investments loans that are granted for a duration of less than 10 years. In conclusion, the definitions of mortgage or real estate loans are in flagrant contradiction with the corresponding definitions contained in Law no. 190/1999 and the Government Emergency Ordinance no. 52/2016, escalating to that, in reality, “the result obtained is a great conceptual confusion”.

20. Concerning the violation of the private property right through the provisions of art. 5^1 (2) of the normative act criticized, it is showed that the DAE is not equivalent to the remuneration interest rate, which is only a component of the DAE, along with other credit costs (commissions). The DAE is an indicator

calculated on the basis of a complex mathematical formula and based on theoretical assumptions that assume that the items taken into account remain unchanged for the duration of the credit and express the total credit price. The DAE includes not only the remuneration interest rate, but all the costs associated with the loan, namely commissions expressly allowed by the special regulations in the field of consumer protection. The current interest is a component of the DAE. Therefore, according to the authors of the challenge, by capping the DAE, which is the very total credit price, i.e. the civil fruit of the amount of money borrowed, implicitly the right of ownership of the lending credit institution is limited. Moreover, by reference to the constitutional provisions contained in art. 53, such a measure is neither necessary nor proportionate, since consumer protection is not confused with social protection and cannot be achieved by infringing the property right. If the state wishes to stimulate a particular lending sector, it can do so through various programs, such as the "First Home" (*Prima casă)*, characterized by a low interest rate level, subsidized by the state, and not by generalizing the capping of interest rates on the consumer credit market. In the opinion of the authors of the challenge, generalizing the capping of interest rates on the consumer credit market to the level of subsidized interest rates means practically that the state would fully transfer to the professional player the obligation to insure the social protection under market economy conditions, which is inadmissible.

21. In the criticism of intrinsic unconstitutionality it is also claimed that the provisions of art. 5^1 (3) of the Law, relating to the capping of penalty interest rate, in conjunction with art. 5^1 (1) are unconstitutional in relation to art. 1 (3) and (5) of the Constitution and to art. 11 and to art 14 of the Law no. 24/2000.

22. According to the authors of the challenge, the text of the new law establishes a legislative parallelism, in relation to the provisions of art. 53-55 of Government Emergency Ordinance no. 52/2016, which contains express provisions on penalty interest rate in the field of real estate loans or similar provisions contained in art. 38 of Government Emergency Ordinance no. 50/2010. In this respect, it is claimed that the penalty interest rate is not included in the calculation of the DAE, as it is not a credit cost, so it is not clear how does the DAE capping apply in the case of the penalty interest rate, the criticized text of law being thus unclear, unintelligible and uncorrelated with the other legal provisions in the field.

23. It is also argued that the provisions of art. 5^1 (4) of the Law on the applicable sanctions are unconstitutional with respect to art. 1 (5) of the Constitution and art. 13 of Law no. 24/2000 and to art. 44 (1) and art. 53 of the Constitution.

24. Consequently, the text of law referred to establishes the sanction of nullity by law of the interest rate stipulated in the contract, as well as the sanction of the creditor's termination of rights with respect to charging the statutory interest rate, by referring it to the provisions of art. 5 (2) of the Government Ordinance no. 13/2011. It is claimed that this is unclear, unequivocal and uncorrelated with the legal provisions it completes. In the initial version of the legislative proposal concerned the payable interest rate and not the DAE, the text of the new law correlated with art. 5 (2) because it led to the interpretation that the legislator extended the sanctioning solution contained in art. 5 1, applicable in relationships not arising from the operation of a business enterprise, in the meaning of art. 3 (3) of the Law no. 287/2009 on the Civil Code and in the field of legal relationship between credit institutions and non-banking financial institutions

(professional players and consumers). In the final form of the law, the text becomes incomprehensible, the lack of clarity being obvious, given by the double reference, to art. 5 par. (2) of the law, which referred back to art. 5 par. (1) that caps the payable interest rate. The literal interpretation of re-referencing would lead to the absurd situation in the sense that the new law would not only directly cap the DAE, but would also implicitly cap its payable interest rate as an element of the DAE structure as a result of the indirect reference made by art. 5 (2) to art. 5 (1). However, para. (1) of art. 5 cannot become applicable in this matter, without an express derogatory legal provision, provided that art. 9 of the Government Ordinance no. 13/2011 is maintained, which excludes from its scope the loans granted by the credit institutions and non-banking financial institutions. Therefore, even art. 5 (1), corroborated with art. 9 of the Government Ordinance no. 13/2011, exclude themselves from application. Speak of to the same reference, it is further stated that, insofar as it is understood as only a partial reference to the sanction that this text establishes, without taking into account the further re-reference that art. 5 (2) makes to para. (1) of art. 5, then it would appear that the sanction of the rightful nullity of the contractual clause which establishes the DAE, whose level exceeds the cap established by the new law becomes applicable. But even in this version of reading the text, this is flawed and unintelligible, because it is not clear what are the contractual clauses that are automatically void: the DAE clause or all the clauses relating to the various costs that fall into the structure of the DAE. Assuming that the sanction of nullity of law would apply to the clause relating to the DAE, the consequence reached is an absurd one, namely that there would result a credit agreement concluded with a consumer where there is no DAE. However, such a situation is incompatible with the national and European regulation. The legislator ignored the fact that the DAE is not a payable interest rate, but a contract indicator that synthesizes the credit price, calculated on the basis of a complex mathematical formula based on working hypotheses and presumptions, which is precisely a guarantee for the consumer with respect to the price transparency, calculated at the time of the conclusion of the contract. Accordingly, if the DAE expresses the contract price, its complete removal would lead to the complete deprivation of the contract of its main object, that is to say the price. Accordingly, the sanction of nullity of law cannot be applicable to the DAE, because otherwise it would lead to the existence of an abusive contract or a contract lacking a legal cause for the professional player. On the other hand, in the hypothesis where the interest clause itself became null and void, then the contract would be virtually devoid of purpose, so that the nullity of that essential clause in the contract, which guarantees the very validity of the contract, would draw the nullity of the law of the contract in its entirety, with the consequence that the consumer would immediately have to repay the entire amount borrowed. The nullity of the clause and the termination of rights of the creditor from the right to charge any payable interest rate, is equivalent to the deprivation of the credit agreement of any legal cause for the professional player. Moreover, such a solution is even contrary to the purpose of consumer protection, which would be in the position to immediately repay the full amount borrowed, the contract being abolished by law.

25. At the same time, the provisions of art. 5^1 (4) of the criticized normative act contravenes the provisions of art. 44 (1) on the guarantee of ownership, in conjunction with art. 1 -P*rotection of property* contained in the First Additional Protocol to the Convention for the Protection of Human Rights and

Fundamental Freedoms, as well as in art. 53 of the Constitution, since any limitation on the right of charging interest rates on borrowed money constitutes an interference to the private property right, and such sanction is not proportionate to the purpose pursued by the legislator, being not just a restriction of the right, within the meaning of art. 53 of the Constitution, but even a loss of such right.

26. Another category of criticism of intrinsic unconstitutionality refers to the fact that the legal norm contained in art. 5^2 of the Law, regarding the application of the new provisions and the contracts in progress at the date of their entry into force, is unconstitutional in relation to art. 1 (5) and art. 15 (2) of the Constitution, corroborated with the provisions of art. 13-15 of the Law no. 24/2000.

27. Therefore, it is argued that the meaning of the phrase "*in order to balance contractual risks*" is not clear, phrase contained in the text of the criticized law, in the context in which the same phrase was used in the art. 11 of Law no. 77/2016 regarding the *datio in solutum* of immovable property in order to settle the obligations assumed by loans, and the Constitutional Court ruled on this matter, stating that the phrase is constitutional inasmuch as the court verifies the conditions regarding the existence of unpredictability. Therefore, according to the Constitutional Court, the authors of the challenge state that the phrase "*in order to balance contractual risks*" makes it clear that there is a clause of unpredictability, so that the two syntagms cannot coexist within the same normative text. Moreover, the unpredictability is incompatible with the matter regulated by the criticized normative act, given that it provides for the sanction of the nullity of the interest rate exceeding the cap established by the law. It is claimed that the nullity is incompatible with unpredictability, in which hypothesis entails a valid contract, for which the adaptation or its termination operates, the case of unpredictability occurring after the conclusion of the contract. While nullity implies a violation of a legal provision at the time of the conclusion of the contract, so that, by that hypothesis, it excludes unpredictability. On the other hand, assuming that unpredictability is the basis for the application of the interest rate caps for ongoing contracts, the sanction of nullity is clearly unconstitutional. Furthermore, it should be pointed out that all unpredictability should be the legal basis for the capping of interest rates in contracts that will be concluded after the enactment of the criticized law, so that in this situation a flagrant legal contradiction is reached between these the latter contracts, on the one hand the on-going contracts, on the other, that which makes the regulation lack clarity, logic and coherence. It is also argued that the capping of the DAE in the case of ongoing contracts on the basis of unpredictability is incompatible with the very concept of DAE, which is an indicator that is calculated and determined in the contract upon its conclusion, being part of the pre-contractual stage, and therefore it is not compatible with an amendment of it during the course of the contract.

28. At the same time, it is argued that the provisions of art. 5^2 of the criticized normative act contradicts the constitutional doctrine of non-retroactive of the civil law, since it establishes DAE caps which prior did not exist in the lending activity, ceilings that are immediately applicable to all ongoing credit agreements. The application of the unpredictability in this case is devoid of legal significance given the judicial nature of the finding of unpredictability, namely its application in each concrete case, according to the criterion of equity, so that the solution for the amendment or termination of the contract cannot refer to

the abstract caps established by the criticized law for the level of interest rate.

29. In accordance with the provisions of art. 16 (2) of Law no. 47/1992 on the Constitutional Court's organization and function, the challenge was communicated to the presidents of the two Chambers of Parliament and to the Government, in order to convey their standpoints.

30. **The President of the Chamber of Deputies** has transmitted his point of view with the Letter no. 2/891 dated February 4th 2019, recorded with the Constitutional Court under no. 781 of February 4th 2019, in which he considers that the challenge is groundless and proposes the Court to reject it.

31. As regards the reasons for extrinsic unconstitutionality, it is appreciated that these cannot be taken into account by the Court, since the explanatory memorandum to the Law on the completion of the Government Ordinance no. 13/2011 is very clear regarding the regulation that is being pursued through its adoption. Consequently, it is stated that the freedom to quantify the statutory interest rate, as regulated by the form in force in the Ordinance, applies not only to contracts between professional players but also to contracts between private individuals (consumers) and professional players. The freedom to quantify the interest rate, although considered to be reasonable in relations between professional players, based on equality between them, with respect to the relations between individuals and professional players, it becomes "unreasonable and unfair", leading in time to a serious imbalance of legal relationships between them, relationships that would have been "presumed to be in accordance with the originating interests of both parties". For that reason, it is precisely through this contractual freedom, as shown in the reasoning of the application of the law, as a result of the abuse of the economic power of the professional player, that a "deceptive practice and toxic contracts, of ruin" are reached and used by the professional player - the creditor in the relationship with the debtor, a simple consumer. The benchmark interest rate is set by the National Bank of Romania on a regular basis and is therefore "volatile and changing" according to various events, considered by the professional player, and introduces a "margin of hazard" in the contractual relations. This practice was, however, "incompatible with the principle of stability and predictability of the law", so it was pursued, by virtue of the special consumer protection law, that there was a cap in the legislation on statutory interest rate, which would introduce the "advantage of stability and predictability" in the legal relationships governed by an abuse of the economic power of the professional player in relation to the consumer. The completion brought to the criticized law by capping the DAE is an improved one, aiming at systematizing and unifying the financial-banking legislation, a field in which the special protection granted to consumers in contracts with professional players was not applicable. In fact, the establishment of statutory interest rates was governed by a false quantification freedom, remaining in the power pole of the professional player.

32. As regards the argument concerning the failure to state reasons for the amendments admitted, it is considered to be inconsistent with reality, as the joint statement of the Commission on Budgets, Finance and Banks and of the Legal, Disciplinary and Immunity Commission of the Chamber of Deputies states the reasons for the amendments, including: "the proposed cap (50% for consumer credit) is inspired by the European practice, it comes from Bulgaria (a country with a profile and an economic system similar to Romania), exists in other European countries (Finland) and is inferior to those existing in other countries

(Lithuania, Estonia, UK, etc.). In addition, a 50% cap for consumer credit observes the intention of the initiators in the sense of eliminating the market abuse, nevertheless allowing the continued existence of the lending activity by non-banking financial institutions." The claim of the authors of the challenge is considered to be wrong in the sense that the "total loss of the right to receive any interest, unless the established caps are observed". If the DAE exceeds the caps established by the present law, the applicable sanction is to reduce the DAE so that it does not exceed these caps, only if the conditions of unpredictability are met and under no circumstances leads to the loss of the right to receive any interest.

33. Accordingly, the Law for completing the Government Ordinance no. 13/2011 does not violate the provisions of art. 1 (3) and (5) of the Constitution and those of art. 30-32 of Law no. 24/2000 because the rationale behind the initiation of the legislative proposal is a clear one, in order to protect the consumer also through the legislation on statutory interest rate, and the reasons states for the amendments admitted may be found in the report of the specialized commissions of the Chamber of Deputies.

34. As regards to the criticism of the failure of having the opinion of the Economic and Social Council, it appears that it cannot be accepted, as the Parliament is not bound by the positive or negative opinion of that authority, but is bound by its request in the law-making process. In this respect, the jurisprudence of the Constitutional Court is invoked, namely Decision no. 383 of March 23rd 2011, published in the Official Gazette of Romania, Part I, No. 281 of April 21st 2011. The failure of the Economic and Social Council to fulfil its duty of issuing the advisory opinion provided in its organization law, following the letter issued by the Senate of Romania, requesting such an opinion, constitutes a misunderstanding of its mandatory advisory role, but without prejudice to the constitutionality of the law over which the Economic and Social Council has not delivered an opinion.

35. As for the criticism of breaching the provisions of art. 1 (5) of the Constitution and of art. 13-15 of the Law no. 24/2000, because "these norms represent a foreign body in the wording of the Government Ordinance no. 13/2011", it is stated that the law subject to constitutional review sought to protect a category of individuals, namely the consumers. In view of this, the legislator considered it appropriate to regulate the maximum annual effective interest rate that they may be required to bear for certain categories of credits, through the Government Ordinance no. 13/2011, which represents the general regulatory framework for interest rates. In doing so, the legislator sought to systemize and unify the legislation on interest rates. As to the alleged lack of clarity of the same norms, it cannot be taken into account, since, given the normative framework in which the capping of the DAE - the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector, it clearly results that the 3 percentage points apply to the statutory interest rate. It is concluded that the Law for the completion of the Government Ordinance no. 13/2011 does not violate the provisions of art. 1 (5) of the Constitution of Romania and of art. 13-15 of Law no. 24/2000 because, by capping the DAE, the legislator sought to unify and systematise the legislation on interest rates and at the same time, it clearly results that the 3 percentage points apply to the statutory interest rate.

36. According to the standpoint submitted by the President of the Chamber of Deputies, neither the

criticism of intrinsic unconstitutionality can be accepted. Consequently, the first argument put forward by the authors in support of the challenge, namely that the monetary policy interest rate of the National Bank of Romania (BNR - Banca Națională a României) is an exogenous indicator of the free market economy and that it cannot be used as a suitable reference for the purpose of establishing the cap, cannot be accepted. The European Commission has drafted a study - "*Final Report on interest rate restrictions in the EU*" - which shows that most EU Member States have adopted an interest rate capping system. According to this study, at the European Union level, there are already 4 states that use the statutory interest rate as a reference for the purpose of establishing the DAE cap. It is thereby observed that the benchmark consisting in the statutory interest rate will not be used for the first time in Romania to support the argument that it is not an appropriate indicator and that it is incompatible with the free market. Its use in countries such as Spain, the Netherlands, Belgium and Ireland, prior to the entry into force of the law which is subject to the constitutional review, only confirms its effectiveness.

37. It cannot be upheld either that the application of a 3 percentage points cap on the statutory interest rate in order to establish the maximum limit of the effective annual interest rate is the expression of a subjective political will without regard to an impact study or an economic justification. The establishment of the 3 percentage points was based on the *Methodology for setting the maximum DAE limits for credit agreements between credit institutions and consumers* drawn up by the National Bank of Romania. The Methodology provides the maximum DAE rate of 8.69% (valid in the 2nd quarter of 2018) and the average DAE rate (December 2017) of 4.83.

38. It is also shown that art. 4 of the Competition Law no. 21/1996, invoked on by the authors of the challenge, is not relevant to the present case. The DAE capping is not an exceptional measure of a temporary nature, but pursues long-term economic stability and, at the same time, consumer protection. The conditions imposed by the State for the conduct of certain economic activities in order to protect national interests is not such as to impede the market economy, that is based on free initiative and competition, in which the case law of the Constitutional Court is also invoked, namely Decision no. 91 of February 13th 2007, published in the Official Gazette of Romania, Part I, No. 190 of March 20th 2007. For the identity of reason, it is considered that the Court's arguments in the above-mentioned decision are also applicable in the present case because, by imposing on professional players the obligation of not exceeding a threshold in respect of the amount of interest rate, it is intended to protect a general interest of the society. The protected interest is represented by the equity that must exist in contractual matters, the balance between the obligations assumed by the professional players and those assumed by the consumers, category presumed by the law to be disadvantaged in relation to the professional players. At the same time, the Constitutional Court also ruled on imposing restrictive measures on the part of the State in the sense that "the functioning of the market economy and the application of its own principles does not exclude, but on the contrary requires the establishment and observance of certain rules capable of protecting all participants in the economic circuit, as well as the citizens' lives. The State's obligations in this respect are provided, for example, in the constitutional provisions of art. 135 (2) (b) and (f), according to which the state must ensure "the protection of the national

interests in the economic activity", as well as "the creation of the necessary conditions for the improvement of life quality" (see Decision no. 211 of January 22nd 2004, published in the Official Gazette of Romania, Part I, No. 11 of February 10th 2004).

39. It is also noted that the authors of the challenge claim that the law subject to the constitutional review seeks to "freeze" the contract price. The non-legal term plastically used by them has been heavily used in the media in connection with Swiss francs loan contracts. The consumers, parties to such contracts, have sued the professional players by asking the courts to decide on setting the exchange rate valid at the time of the conclusion of the contract for the payment of all the contract amounts, which is to virtually "freeze" the exchange rate. As can be easily seen from the drafting of the Law on the completion of Government Ordinance no. 13/2011 we are not in the presence of a "freezing" of the credit price because credit institutions still have the possibility to set their interest rates levels, provided that these do not exceed the maximum cap established and by this the economic freedom and the competition freedom are not affected in any way. In this regard, the Constitutional Court's case-law is invoked on the interpretation of art. 45 of the Constitution, namely Decision no. 362 of March 25th 2010, published in the Official Gazette of Romania, Part I, No. 328 of May 18th 2010.

40. It is concluded that the provisions of art. 135 (1) and of art. 45 of the Romanian Constitution are not violated in the meaning of art. 5^1 (2) regarding the annual effective interest rate because: the benchmark consisting of the statutory interest rate already exists at European level, its effectiveness being proved; the establishment of the 3 percentage points was based on the *Methodology for setting the maximum DAE limits for credit agreements between credit institutions and consumers*, elaborated by the National Bank of Romania; at the level of the European Union, the interest rate cap has been adopted by 14 other states, thereby pursuing long-term economic stability and consumer protection, without harming the economic and competition freedoms.

41. As regards the alleged infringement by the provisions of art. 5^1 (2) of the Law for completing the Government Ordinance no. 13/2011, of the provisions of art. 1 (3) and (5) of the Constitution of Romania and of art. 37 of the Law no. 24/2000 because "it leads to the abnormal situation, contrary to the existing regulations, to which the new law refers to, where consumer credits will include not only the loans having the purpose of carrying out a real estate investment but also all mortgage or real estate investments loans that are granted for a duration of less than 10 years", is appreciated that the authors of the challenge did not take into consideration a number of issues, set out below. Therefore, the Law no. 190/1999 on the mortgage loan for real estate investments represents the general framework for regulating mortgage loans for real estate investments and the definition contained therein applies to all these contracts. The Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector, represents the general framework for regulating the interest rate applied to all categories of loans. The definition of art. 5^1 (2) of the Law for completing the Government Ordinance no. 13/2011 on the mortgage or real estate loan, namely that this is "any loan contracted by consumers for a period of more than 10 years, guaranteed by mortgage on the real estate, bought, built,

rehabilitated, extended or consolidated, or on another real estate, property of the debtor or of a third party guarantor", represents a special norm limiting the scope of mortgage or real estate loans agreements.

42. From the above shown it results that, by amending the framework law on interest rates, the legislator instituted the DAE capping only for loans contracted by consumers for a period exceeding a period of more than 10 years, secured by mortgage on the purchased, built, rehabilitated, extended or consolidated real estate or on another real estate, property of the debtor or of a third party guarantor. Hence, the definition in art. 5^1 (2) represents a clarification norm that expressly states what conditions must be met for mortgage or real estate loans in order to apply the DAE capping.

43. It is concluded that the provisions of art. 5^1 (2) of the Law for completing the Government Ordinance no. 13/2011 does not violate the provisions of art. 1 (3) and (5) of the Constitution of Romania and of art. 37 of the Law no. 24/2000 because it is clear from the interpretation of the norm that the legislator instituted the DAE capping only for mortgage or real estate contracts as expressly defined by the law subject to the constitutional review.

44. As regards the claim according to which the provisions of art. 5^1 (2) of the Law for completing the Government Ordinance no. 13/2011 violates the provisions of art. 44 (1) and of art. 53 of the Constitution, the jurisprudence of the Constitutional Court regarding the content and limits of the property right are invoked, namely Decision no. 270 of May 7th 2014, published in the Official Gazette of Romania, Part I, No. 554 of July 28th 2014, Decision no. 19 of April 8th 1993, published in the Official Gazette of Romania, Part I, No. 105 of May 24th 1993, Decision no. 59 of February 17th 2004, published in the Official Gazette of Romania, Part I, No. 203 of March 9th 2004. It is further stated that the capping of the DAE is not in any way suppressing the property right of the credit institutions over the total credit price. These still have a property right over the interest rates and over all other credit costs, but in their entirety these cannot exceed the cap established by law. It is found that the property right is not restricted in any way, but must be exercised within the limits set out by the law, this measure being entirely in accordance with the Fundamental law.

45. As regards to the claim that the measure is neither necessary nor proportionate and therefore infringes art. 53 of the Constitution, the case law of the Constitutional Court is re-invoked in the sense that the exercise of a right cannot be taken to the extreme, namely Decision no. 587 of November 8th 2005, published in the Official Gazette of Romania, Part I, No. 1159 of December 21st 2005. Therefore, the property right of credit institutions cannot be exercised to the detriment of consumers, category presumed to be vulnerable in relation with the professional players. The measure of capping the DAE is both necessary and proportionate with respect to the purpose of the law, namely to protect the consumers. This measure has already shown its effectiveness at the level of other EU Member States that implemented it prior to the adoption of the law that is subject to the constitutional review.

46. It is concluded that the provisions of art. 5^1 (2) of the Law for completing the Government Ordinance no. 13/2011 does not violate the provisions of art. 44 (1) and of art. 53 of the Romanian Constitution, since the property right of credit institutions over the DAE is not suppressed, and the capping of the DAE is a necessary and proportionate measure with respect to the purpose pursued by the law, namely

to protect the category of consumers that is vulnerable to the professional players.

47. According to the standpoint sent by the President of the Chamber of Deputies, the claim according to which the provisions of art. 5^1 (3) of the Law for completing the Government Ordinance no. 13/2011 violates the provisions of art. 1 (3) and (5) of the Constitution, as well as those of art. 11 and art. 14 of the Law no. 24/2000 on the grounds that "it establishes a parallelism [...], the text is incomprehensible, and is not correlated with the legal provisions in the field" cannot be accepted. Consequently, the Government Emergency Ordinance no. 50/2010 represents the general regulatory framework regarding all credit agreements concluded by consumers, the Government Emergency Ordinance no. 52/2016 represents the normative framework only for real estate assets loan agreements concluded by consumers, and the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector represents the general framework for regulating the interest rates applied to all categories of loans. The law subject to constitutional review regulates the DAE capping only for 3 categories of consumer loan contracts: the mortgage or real estate loan concluded for a period exceeding a period of 10 years, guaranteed by mortgage on the purchased, built, rehabilitated, expanded or consolidated real estate, or on another real estate, property of the debtor or of a third party guarantor; the consumer credit that does not meet the criteria to be considered a mortgage or real estate credit as defined above; the credits, loans or any other forms of financing to consumers whose value in lei at the time of contracting or concluding the agreements does not exceed the equivalent of EUR 3,000. It is noted that the provisions of art. 5^1 (3) of the Law for completing the Government Ordinance no. 13/2011 introduces a derogatory scheme (DAE capping) from the general scheme of credit agreements concluded by consumers (Government Emergency Ordinance no. 50/2010) and from the credit agreements for real estate assets concluded by consumers (Government Emergency Ordinance no. 52/2016), since it applies only to the three categories of contracts expressly provided for in the law subject to the constitutional review. For that reason, by regulating a derogatory scheme, which applies only in the cases exhaustively and expressly provided by art. 5^1 (3) of the Law for completing the Government Ordinance no. 13/2011, it cannot be acknowledged that this establishes a parallelism with the provisions of the Government Emergency Ordinance no. 50/2010 and of the Government Emergency Ordinance no. 52/2016, which will continue to apply to the other types of credit agreements concluded with the consumers.

48. With regard to the claim concerning the lack of clarity of the legal norm as a result of the double reference, it can be said that it cannot be acknowledged, so long as the authors of the challenge correctly interpret the established norm. Consequently, from the corroboration of art. 5^1 (4) of the Law for completing the Government Ordinance no. 13/2011 with art. 5 (2) and art. 5 (1) of the Government Ordinance no. 13/2011, any clause whereby the payable interest rate exceeds the statutory interest rate by more than 50% per annum is null and void and in this case the creditor of any of the 3 types of cases exhaustively and expressly provided by art. 5^1 (2) is terminated the right to claim the statutory interest. This termination of the right to claim statutory interest is not to be confused with the termination of the right to claim the effective annual interest rate, which, in addition to the statutory interest rate and the costs of using a means of payment

for both transactions and withdrawals from that account, includes also other costs related to payment transactions. The legislator extended the sanctioning solution contained in art. 5 (1), applicable in relationships not arising from the operation of a business enterprise for the purpose of art. 3 (3) of Law 287/2009 on the Civil Code, and in the field of legal relations between professional players and consumers.

49. It is concluded that the provisions of art. 5^1 (4) of the Law for completing the Government Ordinance no. 13/2011 does not violate the provisions of art. 1 (5) of the Constitution and of art. 13 of the Law no. 24/2000, since their interpretation, in conjunction with the norms to which reference is made, clearly shows how the norm applies.

50. It is also shown that the claim according to which the provisions of art. 5^1 (4) of the Law for completing the Government Ordinance no. 13/2011 violates the provisions of art. 44 (1) and of art. 53 of the Constitution is based on an erroneous argument, the result of a misinterpretation of this text of the law which, in the view of the authors of the challenge, provides for the termination of the right to claim DAE and not the payable statutory interest rate. However, as stated in the preceding paragraph, art. 5^1 (4) governs the termination of the right to claim the payable statutory interest rate, the creditor being entitled to continue claiming all other credit costs.

51. As regards the claim according to which the provisions of art. 5^2 of the Law for completing the Government Ordinance no. 13/2011 violates art. 1 (5) of the Constitution and art. 13-15 of the Law no. 24/2000, in the absence of clarity, referring to the phrase "*in order to balance contractual risks*", the doctrine has been invoked, being pointed out that the unpredictability is an exception to the principle of *pacta sunt servanda* of "certain legal acts because of the disruption of the contractual equilibrium following the change in the circumstances envisaged by the parties at the time of the conclusion of the legal act, because a point is reached where the effects of the legal act are other than those which the parties at the time of conclusion of the act have understood to enter into and binding to them". At the same time, art. 1271 of the Civil Code provides for the conditions that must be met in order for the unpredictability to operate. It results that the purpose of applying the unpredictability is to balance the contractual risks if the conditions of unpredictability are observed. Consequently, the phrase "*for the balancing of contractual risks*" brings added clarity to the contested legal norm by specifying the purpose of applying the unpredictability.

52. According to the standpoint submitted by the President of the Chamber of Deputies, the argument that "the transitional norm is irrational because it would make applicable a law establishing the sanction of nullity of the DAE, namely the contract price (interest rates, commissions), if the conditions for unpredictability are met, which, by hypothesis excludes the nullity" neither can be acknowledged. The law subject to the constitutional review does not regulate the nullity of the DAE, but the nullity of the clause by which the payable interest rate exceeds the statutory interest rate by more than 50% per year. The nullity of the payable interest rate exceeds clause does not implicitly entail the nullity of the DAE clause, the contract continuing to produce legal effects even if the creditor is terminated the right to claim the statutory interest rate.

53. Similarly, it cannot be argued that "as the new law caps the DAE, it is obvious that, by hypothesis,

it takes into account the moment of conclusion of the contract, and not a later moment, of the adaptation of the contract, by virtue of the unpredictability, the contradiction between the transitional norm and capping of the DAE being obvious from the text of new law, namely the sanction of the absolute nullity / termination of the right of the creditor to charge interest rate". It is shown in this respect that, according to art. 1271 (2) of the Civil Code, the cause behind the application of the theory of unpredictability is an exceptional change of the circumstances contemplated at the time of conclusion of the contract, which would make it obviously unjust to order the debtor to comply with the execution of the obligation. In the loan agreements, this is highly possible, as an eloquent example in this respect being the loans granted in Swiss francs. In addition, the provisions of the law subject to the constitutional review clearly materialise the conditions and effects of applying the theory of unpredictability.

54. It is concluded that the provisions of art. 5^2 of the Law for completing the Government Ordinance no. 13/2011 does not violate the provisions of art. (5) of the Constitution and of art. 13-15 of the Law no. 24/2000, because the phrase "*for the balancing of contractual risks*" brings added clarity to the contested legal norm by specifying the purpose of applying the unpredictability; the nullity of the payable interest rate clause does not implicitly entail the nullity of the DAE clause, the contract continuing to produce legal effects even if the creditor is terminated the right to claim the statutory interest rate; on the basis of unpredictability, the contract may be adjusted and the DAE will be reduced so as not to exceed the cap established by the law subject to the constitutional review, with the consequence of adjusting all the contractual clauses in relation to it.

55. As regards the alleged violation of the principle of non-retroactivity of the law, the case-law of the Constitutional Court is recalled, showing that, even if it was not consecrated *in terminis*, from a normative standpoint, the unpredictability resulted from the very principle regulation related to contracts, being substantiated through the elements of good faith and fairness that characterize the execution of the contracts. The conditions for the application of unpredictability have been highlighted in the case law and largely taken over in the current Civil Code, in an approximately identical form [art. 1271]. Notwithstanding the specific legal text based on which contracts were concluded until the date of October 1st 2011, these are subject to the common law regulation, the Civil Code of 1864, which obviously allowed the application of the theory of unpredictability, by virtue of art. 969 and of art. 970 (see, in this respect, Decision no. 623 of October 25th 2016).

56. For all these reasons, it is considered that the constitutional challenge is groundless, and it is proposed to reject it.

57. **The President of the Senate and the Government** did not submit their standpoints to the Constitutional Court.

58. The standpoint of the National Bank of Romania regarding the law that forms the object of the challenge was requested based on art. 47 of the Regulation on the Constitutional Court's organization and function. With Letter registered with the Constitutional Court under no. 1202 of February 19th 2019, the requested standpoint was sent, under the signature of the Senior Deputy Governor of the National Bank of

Romania, Mr. Florin Georgescu.

59. In the standpoint it is stated first that by Letter no. 8161U of September 11th 2017, the Ministry for Relations with the Parliament requested the substantiated opinion of the National Bank of Romania regarding the support or rejection of the legislative proposal. However, with regard to the form of the initiators, the National Bank of Romania sent, with Letter no. 872/FG of September 26th 2017, the answer according to which this legislative proposal does not concern the areas in which the National Bank of Romania has attributions, considering that it does not affect the provisions of art. 9 which exempts professional players - creditors. Nevertheless, the form adopted by the Senate includes art. 5^1 (2) whose provisions are applicable, through the formulation of the texts, to the "mortgage loans", to the "real estate loans" and to the "consumer credits" and thus introduces norms that are contradictory to the exception provided in art. 9, which remained unchanged. As a result, compared to the form adopted by the Senate, the National Bank of Romania submitted its standpoint to the National Authority for Consumer Protection, to the Ministry of Public Finance and to the Chamber of Deputies, namely to the Committee on Economic Policy, Reform and Privatization, to the Committee on Budget, Finance and Banks, and to the Legal, Disciplinary and Immunities Committee. The analysis carried out concluded that "the establishment of an annual effective interest rate (DAE) limitation scheme to consumer credits, arbitrarily, undifferentiated by product categories and without substantiating those caps depending on the credit products, is likely to produces imbalances in the credit market and impact the financial stability." It is also obvious that the National Bank of Romania expressed its willingness to collaborate with the parliamentary structures and the relevant authorities for a judicious regulation of the issue in question, sense in which it has sent a proposal for a methodology for the determination of the caps that could be applied to the DAE rate, developed at the level of the National Bank of Romania, starting from the models applied by other European states and adjusted to the specific of the Romanian financial-banking sector.

60. This standpoint subsists in relation to the law adopted by the Parliament, sense in which in its standpoint mentions the reiteration of "the previously mentioned clarifications". Additionally, a number of issues related to the criticized law are highlighted, namely that it contains contradictory and incomplete provisions, that it violates fundamental principles of law and can seriously affect the financial stability. Consequently, regarding the contradictory and incomplete character, it is stated that art. 5^1 (2) refers to the definition of DAE from a normative act which regulates only the credits offered to consumers for real estate assets, while the limits of the DAE stipulated in letters a)-c) also cover consumer credits. The same text the law lacks the reference to which is added no more than 3 percentage points and, in the absence of a clarification, the norm cannot apply. There is reference made to the definition of real estate loans under Law no. 190/1999 on the mortgage loan for real estate investments, although this law does not define the real estate loans. The text of the law contains two definitions of the "mortgage or real estate loans", i.e. the reference to the definition from Law no. 190/1999 and a self-standing definition, different from the one to which it refers to. With respect to art. 5^1 (2) (c), it is considered that the provisions overlap and may get to a point where these are contradictory to those of the letters a) and b), which do not circumvent the DAE limit

based on the value of the loan. It is also shown that, according to the National Bank of Romania, the professional players - creditors, found under its supervision are exempt from the application of the provisions of the normative act subject to the amendment by art. 9 of the Government Ordinance no. 13/2011, so it is not clearly how this can art. 5^1 of the adopted law be applied to these creditors. The non-correlation between the title of the Government Ordinance no. 13/2011 and the content of the amending law, including the non-correlation with other regulations in the matter, is also invoked. The principles of law cited as being breached are the principle of non-retroactivity of the law and the principle of binding force of the contract, in that the law also applies to ongoing contracts, with extensive arguments in this regard, referring also to the case law of the Constitutional Court on the institution of unpredictability. Regarding the impact on the financial stability, it is considered that the adoption of such legislative initiatives "has the effect of increasing the legislative uncertainty, which may affect the business environment by reconsidering the decision of the economic agents to stay on the Romanian market". It is shown that "the law proposes established caps arbitrarily, without a substantiation based on an impact study and contrary to those European practices that have established interest rates caps, but have taken account of market-specific features and that may lead to the emergence of undesirable effects". The expected maximum impact of this law is further detailed, namely: in the case of credit institutions, an annual loss of about 625 million lei, of which 590 million lei corresponding to Romanian legal persons; in the case of non-banking financial institutions (IFN - instituții financiare nebancare) the interest income is expected to decrease by 245 million lei annually, most of the impact being due to the interest rate capping on consumer loans with values below EUR 3,000, and as a result of the losses registered it is expected for the equity to fall from 915 million lei to 670 million lei, 4 IFNs recording negative equity, while 3 other non-banking financial institutions would fall below the minimum regulated threshold of 200,000 euros.

61. Finally, it is stressed that "it is difficult to quantify the medium and long-term impact of the implementation of the provisions of the draft law, since the capping measure is an interference in credit agreements that are freely concluded between the parties, accelerating the legislative uncertainty". In addition to the formulated standpoint, the proposal for a Methodology for setting the maximum DAE limits for credit agreements between credit institutions and consumers and the study on EU interest rate capping practice were submitted to the Constitutional Court.

62. The *Amicus curiae* Memorandum addressed to the Constitutional Court by the Romanian Association of Banks, was filed under no. 1286 of February 22nd 2019, which presents economic and legal arguments regarding the "profoundly negative impact of the Law for the completion of the Government Ordinance no. 13/2011 on the stability of the banking system in Romania, as well as the irregularities of unconstitutionality of this law".

63. On the trial date set for February 27th 2019, the Court postponed the ruling for March 13th 2019, the date on which it delivered the herein decision.

THE COURT,

examining the constitutional challenge, the standpoints of the President of the Chamber of Deputies, the report drafted by the Judge-Rapporteur, the provisions of the criticized law in corroboration with the provisions of the Constitution, as well as the Law no. 47/1992, acknowledges the following:

63. The Constitutional Court has been duly referred and is competent, according to the provisions of art. 146 (a) of the Constitution, as well as that of art. 1, art. 10, art. 15 and art. 18 of the Law no. 47/1992, to resolve the constitutional challenge.

64. Consequently, the authors of the challenge are 83 deputies belonging to the Parliamentary Group of PNL and of USR, entitled to submit a referral to the Constitutional Court, in accordance with the provisions of art. 146 (a) of the Constitution, with at least 50 deputies.

66. The subject of the referral falls within the competence of the Court, set out in the above-mentioned texts, concerning the Law on the completion of the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector, adopted by the Parliament but not enacted.

67. Regarding the deadline for referral, it is clear from the corroboration of the information contained in the legislative documents published on the pages of the two Chambers of Parliament that the law criticized was adopted by the Chamber of Deputies on December 19th 2018 on December 20th this was filed with the Secretary General of the Senate and that of the Chamber of Deputies, for the exercise of the right of referral to the Constitutional Court, and on December 29th 2018 it was sent for enactment. The constitutional challenge was filed with the Constitutional Court on December 27th 2018, thus within the time limit set by art. 77 (1) of the Constitution.

68. The **object of the constitutional review** is the Law for completing the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector, criticized both in terms of extrinsic and intrinsic unconstitutionality.

69. The **constitutional provisions invoked** are contained in art. 1 (3), which enshrines the rule of law and democracy, with reference to the value of justice, art. 1 (5) according to which "*The observance of the Constitution, of its supremacy and of the laws is mandatory in Romania*", art. 15 (2), which enshrines the principle of non-retroactivity of the law, except for the more favourable criminal or contravention law, art. 44 (2), first sentence, regarding the equal guarantee and protection of private property law, art. 45 - *Economic freedom*, art. 53 on restricting the exercise of some rights or freedoms, art. 135 (1), according to which "*The Romanian economy is a market economy based on free initiative and competition*", and art. 141 - *The Economic and Social Council*.

70. As regards the criticisms of extrinsic unconstitutionality, the Court finds that these essentially refer to the lack of substantiation of the proposed and adopted legislative solutions, the failure to request the opinion of the Economic and Social Council and the contradictory regulation, lacking coherence and clarity, with the consequence of the violation, as appropriate, of the above mentioned constitutional texts. The

analysis of the above criticisms involves first observing the course of the criticized law, highlighting the changes appeared in the legislative process to which the authors of the challenge refer to, and then the Court examining their claims in a distinct manner.

(1) Legislative process of the Law for completing the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector

71. The Court finds that the legislative proposal for amending and completing the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector, signed by a number of 89 deputies and senators, respectively, an independent deputy, PSD (Partidul Social Democrat - Social Democratic Party) deputies, PNL deputies, UDMR (Uniunea Democrată Maghiară din România - Hungarian Democratic Union of Romania) deputies, ALDE (Partidul Alianța Liberalilor și Democraților - Party of the Alliance of Liberals and Democrats) deputies, PSD senators, PNL senators, UDMR senators, ALDE senators, was registered with the Senate as the first Chamber referred on June 30th 2017.

72. In the form of initiators, the legislative proposal had a unique article, amending and supplementing the Government Ordinance no. 13/2011, with two new articles, art. 5^1 and art. 5^2, with the following content:

"- Art. 5^1 - (1) In the legal relationship between consumers and professional players, including traders, the penalty interest may be capitalized and produce interests only under a special agreement and only in the case the maturity is exceeded with more than a year.

(1) The conventional interest, both payable and penalty, payable under the contract by the consumer, may not exceed the statutory interest by more than 50% per year.

(2) The provisions of the above paragraphs also apply if, under the contract, the consumer owes late payment penalties, increases or other costs that indicate moratorium damages.

(3) The provisions of art. 5 (2)-(3) shall remain applicable.

- Art. 5^2 - This law shall also apply to contracts in progress at the date of its entry into force for balancing the contractual risks. This law shall enter into force within 3 days of its publication in the Official Gazette of Romania."

73. On February 26th 2018, the Senate adopted the legislative proposal in the same structure, namely a single article, which introduces in the Government Ordinance no. 13/2011 two new articles, art. 5^1 and art. 5^2, but having a substantially different content from that proposed by the initiators, as follows:

"Art. 5^1 - (1) In the legal relationship between consumers and professional players, including traders, the penalty interest may produce interests only under a special agreement and only in the case the maturity is exceeded with more than a year.

(2) The annual effective interest as defined in art. 3 pt. 14 of the Government Emergency Ordinance no. 52/2016 on consumer credit agreements for real estate assets, as well as for the amendment and the completion of Government Emergency Ordinance no. 50/2010 on consumer credit agreements cannot

exceed:

a) more than 2.5 times the statutory interest, in the case of mortgage or real estate loans, as defined by the Law no. 190/1999 on the mortgage loan for real estate investments, with the subsequent amendments and completions; in order to avoid any confusion, any mortgage or real estate loan contracted by the consumers for a period of more than 10 years, guaranteed by a mortgage on the real estate purchased, built, rehabilitated, expanded or consolidated, or on another real estate, property of the debtor or of a third party guarantor;

b) 18% per year in the case of consumer credits; to avoid any confusion, the consumer credit is any credit contracted by consumers that does not meet the criteria to be considered a mortgage or real estate loan within the meaning of letter a);

(3) The provisions of para. (1) and (2) shall also apply if, according to the contract, the consumer owes late payment penalties, increases or other costs that indicate moratorium damages.

(4) The provisions of art. 5 (2) remain applicable.

- Art. 5^2 - This law shall also apply to contracts in progress at the date of its entry into force for balancing the contractual risks."

74. On March 5th 2018, the legislative proposal adopted by the Senate was submitted to the Standing Bureau of the Chamber of Deputies, and on December 19th 2018, following the legislative process in the Chamber of Deputies, the Law for the completion of the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector, with a series of amendments of the art. 5^1 and art. 5^2 compared to the form adopted by the Senate, having the following content:

"Art. 5^1 - (1) In the legal relationship between consumers and professional players, including traders, the penalty interests may produce interests only under a special agreement and only in the case the maturity is exceeded with more than a year.

(2) The annual effective interest as defined in art. 3 pt. 14 of the Government Emergency Ordinance no. 52/2016 on consumer credit agreements for real estate assets, as well as for the amendment and the completion of Government Emergency Ordinance no. 50/2010 on consumer credit agreements cannot exceed:

a) by more than 3 percentage points in the case of mortgage or real estate loans, as defined by the Law no. 190/1999 on the mortgage loan for real estate investments, with the subsequent amendments and completions; the mortgage or real estate loan is defined as for being any loan contracted by the consumers for a period of more than 10 years, guaranteed by a mortgage on the real estate purchased, built, rehabilitated, expanded or consolidated, or on another real estate, property of the debtor or of a third party guarantor;

b) 18% per year in the case of consumer credits; to avoid any confusion, the consumer credit is any credit contracted by consumers that does not meet the criteria to be considered a mortgage or real estate loan within the meaning of letter a);

c) 50% in the case of credits, loans or any other forms of consumer financing, whose value in lei at the date of contracting or the execution of contracts does not exceed the equivalent of EUR 3,000.

(2) The provisions of para. (1) and (2) shall also apply if, according to the contract, the consumer owes late payment penalties, increases or other costs that indicate moratorium damages.

(3) The provisions of art. 5 (2) shall remain applicable.

- Art. 52 - This law shall also apply to contracts in progress at the date of its entry into force, for which the condition of unpredictability is fulfilled, for balancing the contractual risks."

75. The Court finds that the law thus adopted amends and supplements the provisions contained in Chapter I of the Government Ordinance no. 13/2011 - *The statutory payable and penalizing interest for financial liabilities*, the chapter containing 11 articles. As in force, the Government Ordinance no. 13/2011 has a total of 19 articles. This amends and supplements several normative acts, including, as appropriate, five other chapters, as follows: Chapter II - *Amendment and completion of the Law no. 253/2004 on the final settlement in the case of payment systems and of financial instruments securities settlement systems and amending and supplementing the Government Ordinance no. 9/2004 on certain financial guarantee contracts*, Chapter III - *Amendment and completion of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy*, Chapter IV - *Amendment and completion of the Government Ordinance no. 39/1996 on the establishment and functioning of the Deposits Guarantee Fund in the Banking System*, Chapter V - *Amendment of the Government Ordinance no. 10/2004 on the bankruptcy of credit institutions*, Chapter VI - *Transitional provisions and entry into force*.

(2) The claims of violation of art. 1 (3) and (5) of the Constitution, which enshrines the rule of law and democracy and the principle of legality, referring to the lack of substantiation of the criticized law.

76. In essence, the reasoning of these claims concerns the lack of a "real" substantiation of the normative act, in which sense the provisions of art. 1 (3) and (5) of the Constitution with respect to the provisions of Law no. 24/2000 contained in art. 30 - *Presentation and substantiation tools*, art. 31 - *Content of the substantiation* and art. 32 - *Drafting of the substantiation*.

77. In examining the legislative record of the legislative act, as appropriate, for the Senate and for the Chamber of Deputies, as well as the attached documents, available in electronic format on the websites of the two Chambers of the Parliament, the Court finds that the legislative proposal is accompanied by the explanatory memorandum. Consequently, the requirement imposed by art. 30 (1) (a) of the Law no. 24/2000 on the norms of legislative technique for the drafting of normative acts, in the sense of the existence of an instrument of substantiation, is formally fulfilled. Applying, however, the provisions of art. 1 (5) of the Constitution, referring to those of art. 30-32 of the Law no. 24/2000, invoked by the authors of the challenge, circumscribed to the requirements of quality and predictability of the law imposed by the constitutional text the Court finds that these lay down a series of rules on the content of the instrument of substantiation designed to ensure a sound substantiation of the draft law. However, seeing the content of the explanatory statement, it is found to be deficient in this respect.

78. As a result, the explanatory memorandum contains two paragraphs, the wording of which does

not clearly set out the requirements which claimed the normative intervention. Even if there are a number of insufficiencies of the regulations in force, no mention is made of the proposed legislative solutions, the basic principles and their finality, lacking the elements of substantiation provided by art. 31 (1) (a) of Law no. 24/2000. Similarly, there is no socio-economic impact or impact on the legal system. It does not show any consultation that underpin the legislative proposal. The explanatory memorandum thus appears as a beginning of a substantiation tool in the sense that it presents a number of shortcomings in the legislation in force, without further mentioning the proposed amendment to the law. Also, during the parliamentary debates, the Joint report of the Economic, Industries and Services Commission, of the Budget, Finance, Banking Commission and Capital Market Commission and of the Legal, Appointments, Disciplinary, Immunities and Validation Commission of February 20th 2018 of the Senate contains a number of accepted and rejected amendments, without showing any substantiation in this respect. Although during the legislative process the original proposal has been substantially amended, as has been shown, there was no proper substantiation for the proposed and adopted legislative solutions.

79. In the absence of the substantiation, in the sense shown, of the law adopted, one cannot understand the reasoning of the legislator, which is essential for its understanding, interpretation and application. However, **the clear explanation of the proposed legislative solutions and the intended effects is all the more necessary, in view of the principle of legality invoked, since the object of the legislative initiative in this case appears to be technically delivered, of a strict nature, with effects on a sensitive segment of the market economy, namely the financial-banking one, and the law itself is lacking clarity.** In this respect, art. 6 of the Law no. 24/2000 establishes, in para. (1), that "*The draft normative act must establish the necessary, sufficient and possible rules leading to the greatest possible legal stability and efficiency. The solutions contained therein must be thoroughly based, taking into consideration the social interest, the legislative policy of the Romanian state and the requirements of the correlation with all the internal regulations and the harmonization of the national legislation with the Community legislation and with the international treaties to which Romania is a party of, as well as the case law of the European Court of Human Rights*", and in para. (2) that "*the starting point for the substantiation of the new regulation would be the present and future social desiderata, as well as the shortcomings of the legislation in force*".

80. The brevity of the instrument of presentation and substantiation as well as the lack of thorough substantiation of the normative acts were sanctioned by the Constitutional Court in its jurisprudence, in relation to the same requirements of clarity, predictability of the law and security of the legal relations imposed by art. 1 (5) of the Constitution, invoking also the legislative technique norms for the drafting of normative acts. Accordingly, for example, by Decision no. 710 of May 6th 2009, published in the Official Gazette of Romania, Part I, No. 358 of May 28th 2009, the Constitutional Court held that "no statement of reasons is given in the explanatory memorandum to any of the proposed solutions, which is contrary to the above-mentioned constitutional and legal provisions" [of art. 29-31 of the Law no. 24/2000 on the norms of legislative technique for the drafting of normative acts (regarding the substantiation of the draft acts, presentation and substantiation, as well as the content and the drafting of the substantiation) and art. 1 (5) of

the Fundamental law (...)]. Similarly, through the Decision no. 682 of June 27th 2012, published in the Official Gazette of Romania, Part I, No. 473 of July 11th 2012, the Court found that "the provisions of art. 6 of the Law no. 24/2000 on the norms of legislative technique for the drafting of normative acts, republished in the Official Gazette of Romania, Part I, No. 260 of April 21st 2010, with subsequent amendments and completions, establishes the obligation to substantiate the normative acts. (...) The lack of a thorough substantiation of the normative act under discussion determines, for the reasons shown, the violation of the provisions of the Constitution contained in art. 1 (5) according to which, "*The observance of the Constitution, of its supremacy and of the laws is mandatory in Romania*", as well as art. 147 (4) according to which the decisions of the Constitutional Court are generally binding. (p. 21 and 2.22) As to the object of the legislative initiative, technically delivered, of a strict nature, the Court finds that the formal substantiation in the current case, without a thorough substantiation of the criticized law affects its quality and its predictability, with the consequence of violating the provisions of art. 1 para. (5) of the Constitution.

81. For the reasons set out, the Court finds that the criticisms made in relation to the provisions of art. 1 (3) of the Constitution, which enshrine the rule of law and, among its values, the principle of justice, are also well grounded. The thorough reasoning of legislative initiatives is an exigency imposed by the constitutional provisions mentioned, as it prevents arbitrariness in law-making, ensuring that the proposed and adopted laws respond to real social needs and to the social justice. The accessibility and predictability of the law are requirements of the principle of legal certainty, which constitute safeguards against arbitrariness, and the role of constitutional review is to ensure these safeguards, as opposed to any arbitrary legislative intervention. Consequently, the Court acknowledges that the lack of substantiation of the legislative solutions is also likely to undermine the provisions of art. 1 (3) of the Constitution, which enshrines the rule of law and the principle of justice, in the sense of the arguments presented above.

(3) The claims regarding violation of art. 141 in conjunction with art. 1 (3) and (5) of the Constitution, determined by the failure to obtain the opinion of the Economic and Social Council

Examining the normative act factsheet, the Court finds that the Senate webpage contains the opinion request to the Legislative Council and the standpoint request to the Government, having attached the letters addressed to the President of the Legislative Council (registered under no. XXX/4193 of September 6th 2018), to the Minister for Relations with the Parliament (registered under no. XXXXV/4194 of September 6th 2018) and to the Secretary General of the Government (registered under no. XXX/4195 of September 6th 2018). In the name of the link address where these three letters are attached, there is also a reference to letter addressed to the Economic and Social Council, but this address is not attached. Similarly, in the actions mentioned during the legislative process at the Senate and at the Chamber of Deputies, the Economic and Social Council opinion request was not identified. As a result, with the Letter no. 1167 of February 19th 2019, the Secretary General of the Senate was asked to communicate to the Constitutional Court if the Economic and Social Council had been consulted on the criticized law, and if so, to send a copy of this letter. The Secretary General of the Senate confirmed, with the Letter registered with the Constitutional Court under no. 1234 of February 21st 2019 that the Economic and Social Council's opinion was not sought for this law.

83. The Court acknowledges in this respect that, according to art. 141 of the Constitution, "*the Economic and Social Council is the consultative body of Parliament and of the Government in the fields of expertise established by its organic law of establishment, organization and functioning*". According to art. 2 (1) and (2) of the Law no. 248/2013 on the organization of the Economic and Social Council, republished in the Official Gazette of Romania, Part I, No. 740 of October 2nd 2015, "*(1) The Economic and Social Council is compulsorily consulted on draft normative acts initiated by the Government or on legislative proposals of deputies or senators. The result of this consultation is reflected in the opinions to the draft normative acts.*

(2) The fields of expertise of the Economic and Social Council are:

a) economic policies;

b) financial and fiscal policies;

(...) e) consumer protection and fair competition; (...)", and according to art. 5 (a) of the same normative act, "*The Economic and Social Council exercises the following attributions: a) approves the draft normative acts in the specialized fields provided by art. 2 (2) initiated by the Government, as well as the legislative proposals of deputies and senators, inviting the initiators to debate the normative acts.*"

84. In the application of the constitutional norms of reference, the Law 24/2000 on the norms of legislative technique imposes, by art. 31 (3), previously quoted, that the final form of the instruments for presentation and substantiation of draft normative acts refer to the opinion of the Legislative Council and, where appropriate, of other advisory bodies such as the Economic and Social Council. Of course, as the Chamber of Deputies position points out, it is not obligatory to obtain an opinion, and the legislative procedure cannot be obstructed by the inactiveness of the advisory authorities. However, such an opinion was not requested. Therefore, in view of the constitutional and legal provisions quoted, the absence of the request of the Economic and Social Council's opinion is capable of supporting the extrinsic unconstitutionality of the law, in relation to the provisions of art. 1 (3) and (5), corroborated with those of art. 141 of the Constitution.

85. The Court emphasizes that the principle of legality provided for by art. 1 (5) of the Constitution, read in conjunction with the other principles underlying the rule of law, governed by art. 1 (3) of the Constitution, requires that both the requirements, procedural and substantive procedures, are observed within the framework of the legislation process. The rules on fund regulations, the procedures to be followed, including requesting opinions from law enforcement agencies, are not goals in themselves, but means, tools to ensure the desideratum of the quality of the law, a law that serves the citizens and does not create legal uncertainty. In the same sense, the Constitutional Court has also delivered, for example, through the Decision no. 128 of March 6th 2019, published in the Official Gazette of Romania, Part I, No. 189 of March 8th 2019, where it acknowledged that "in the overall constitutional norms, the provisions containing rules of procedural law that are incidental to the law-making are correlated and are subsumed under the principle of legality enshrined in art. 1 (5) of the Constitution, and this principle, in its turn, forms the basis of the rule of law, expressly enshrined in the provisions of art. 1 (3) of the Constitution. Besides, the Venice Commission, in its report *Rule of Law Checklist*, adopted at its 106th plenary session (Venice, 11-12 March 2016), has also

acknowledged that the adoption of laws represents a criterion in the assessment of legality, which is the first of the reference values of the rule of law (point II A5). In this respect, is relevant, inter alia, according to the same document, the existence of clear constitutional rules on the legislative procedure, the public debates of the draft laws, their adequate justification, the existence of impact assessments for the adoption of laws. Regarding the role of these procedures, the Commission acknowledges that the rule of law is linked to democracy by promoting responsibility and access to rights that limit the powers of the majority." (para. 32-33)

86. Accordingly, in accordance with the claims of the authors of the challenge, **the Court finds that the law, in its entirety, is unconstitutional, in relation to the provisions of art. 1 (3) and (5) and art. 141 of the Constitution, as the economic, social and legal reasoning and substantiation of the solutions adopted was not carried out and the opinion of the Economic and Social Council was not requested.**

87. Finding the failure of constitutionality of an extrinsic nature shown above determines the unconstitutionality of the examined law as a whole. As a result, the Court will no longer proceed with the analysis of the other criticisms formulated by the authors of the constitutional challenge (see, in the same sense, Decision no. 747 of November 4th 2015, published in the Official Gazette of Romania, Part I, No. 922 of December 11th 2015, paragraph 35, Decision no. 442 of June 10th 2015, published in the Official Gazette of Romania, Part I, No. 526 of July 15th 2015, Decision no. 545 of July 5th 2006, published in the Official Gazette of Romania, Part I, No. 638 of July 25th 2006, or, *mutatis mutandis*, Decision no. 82 of January 15th 2009, published in the Official Gazette of Romania, Part I, No. 33 of January 16th 2009).

88. In relation to the findings of this decision, pursuant to art. 147 (4) of the Fundamental law and in view of the case-law of the Court in this matter, the Parliament still has the obligation to establish the legal termination of the legislative process as a result of finding the failure of constitutionality of the law, in its entirety. In the case-law of the Constitutional Court it was stated in this regard that "the situation determined by finding the failure of constitutionality of the overall law […] has a definitive effect on that normative act, the consequence being the end of the legislative process in respect of that regulation". (see, for example, Decision no. 308 of March 28th 2012, published in the Official Gazette of Romania, Part I, No. 309 of May 9th 2012, Decision no. 1 of January 10th 2014, published in the Official Gazette of Romania, Part I, No. 123 of February 19th 2014, Decision no. 619 of October 11th 2016, published in the Official Gazette of Romania, Part I, No. 6 of January 4th 2017, Decision no. 89 of February 28th 2017, published in The Official Gazette of Romania, Part I, No. 260 of April 13th 2017, or the Decision no. 432 of June 21st 2018, published in the Official Gazette of Romania, Part I, No. 575 of July 6th 2018).

89. In the case of initiating a new legislative process, the reasoning contained in the Constitutional Court's decision on the admission to the extrinsic unconstitutionality found must be observed. The Court remembers, in that regard, the considerations of principle consistently upheld in its case-law, according to which the binding force accompanying the Court's case-law attaches not only to the provision but also to the considerations on which it is based (see, to that effect, Decision no. 414 of April 14th 2010, published in the Official Gazette of Romania, Part I, No. 291 of May 4th 2010, Decision no. 903 of July 6th 2010, published

in the Official Gazette of Romania, Part I, No. 584 of August 17th 2010, Decision no. 727 of July 9th 2012, published in the Official Gazette of Romania, Part I, No. 477 of July 12th 2012, Decision no. 1.039 of December 5th 2012, published in the Official Gazette of Romania, Part I, No. 61 of January 29th 2013). The Court also acknowledged that no other public authority can contest the principles of the Constitutional Court's jurisprudence, and that it is required to apply them accordingly, while observing the decisions of the Constitutional Court is an essential component of the rule of law.

90. For the reasons stated, by virtue of art. 146 (a) and of art. 147 (4) of the Constitution, as well as of art. 11 (1) (a), of art.15 (1) and of art. 18 (2) of the Law no. 47/1992, by unanimity of votes,

THE CONSTITUTIONAL COURT

In the name of the law DECIDES:

Admits the constitutional challenge formulated by 83 deputies belonging to the Parliamentary Group of PNL and of USR and finds that the Law for the completion of the Government Ordinance no. 13/2011 on the statutory payable and penalty interest for financial liabilities and the regulation of certain financial-fiscal measures in the banking sector is unconstitutional as a whole.

Final and generally binding.

The decision shall be communicated to the President of Romania, to the Presidents of the two Chambers of the Parliament and to the Prime Minister and shall be published in the Official Gazette of Romania, Part I.

Delivered in the session of March 13th 2019.