

ANTI-COMPETITIVE PRACTICES IN THE FIXING PROCEDURE OF BANKING REFERENCE INDICES. A PRELIMINARY ANALYSIS OF THE COMPETITION COUNCIL'S SANCTIONING DECISION IN THE ROBOR CASE

Lacrima Bianca LUNTRARU*

ABSTRACT: On 5 June 2026, the Romanian Competition Council fined ten commercial banks a cumulative amount of RON 3.73 billion (approximately EUR 710 million), finding an infringement of competition rules on the grounds that the banks had coordinated their conduct within the ROBOR fixing procedure, in breach of Law No. 21/1996 and of Article 101 of the Treaty on the Functioning of the European Union. The decision thus rendered is, in terms of its implications, unprecedented in the practice of the competition authority and has given rise to intense public debate, particularly among the consumers concerned. This study sets out to provide a factual and legal analysis of the decision, examining, among other aspects, the first procedural steps taken before the courts by some of the sanctioned banks, as well as the procedural avenue that remains open to them – the action for annulment before the Bucharest Court of Appeal, contingent upon communication of the reasoned decision. The study further considers the prospects for redress available to consumers and professionals also under G.E.O. No. 170/2020, transposing Directive 2014/104/EU, emphasizing that the binding effect attached to a final finding of infringement extends only to the existence and the unlawful character of the practice, whereas the burden of proving the individual damage, the causal link and the quantum of compensation continues to rest with claimants. A separate section situates the ROBOR case comparatively alongside the European Commission's 2013 and 2016 decisions concerning the EURIBOR/LIBOR cartels, while also noting the National Bank of Romania's institutional objection regarding the lack of methodological comparability between the three indices. The study concludes that, in the absence of the reasoned decision, both the actual scope of the infringement and the viability of subsequent damages actions remain, at this stage, provisional. This study is presented as a preliminary note and first commentary on a decision whose reasoned version has not yet been issued. Its conclusions are therefore provisional and subject to revision once the statement of reasons becomes available.

KEYWORDS: Competition Council; ROBOR index; anti-competitive practices; damages action; Government Emergency Ordinance No. 170/2020; consumer protection; comparative law.

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* Lecturer, PhD, University of Medicine, Pharmacy, Science and Technology "George Emil Palade", Târgu Mureş, Lawyer, Mureş Bar, <https://orcid.org/0009-0008-5436-5108>, ROMANIA

1. INTRODUCTORY CONSIDERATIONS

The decision adopted by the Plenary of the Competition Council on 5 June 2026, and publicly communicated on 7 June 2026, represents, by virtue of the sanctions imposed, the most extensive intervention carried out by the national competition authority in its institutional history.¹ Ten commercial banks operating on the Romanian market were fined individually, for a cumulative amount of RON 3.73 billion, for infringing national and European competition rules through the exchange of confidential and strategically sensitive information regarding the level of the ROBOR index, within the daily fixing procedure.² Beyond its immediate media impact, the decision raises a series of legal issues that extend well beyond the field of competition law, touching upon the regime of administrative and judicial remedies, the conditions of civil damages actions, and, not least, the position of the parties harmed, whose credit agreements were, directly or indirectly, indexed to this reference rate.

This study pursues three objectives: (i) to reconstruct the chronology and the legal basis of the decision, with particular attention to the first two judicial proceedings dismissed by the Romanian courts in the course of the investigation; (ii) to analyse the procedural mechanism through which the decision may, or may not, produce effects benefiting consumers and other injured parties, by reference to G.E.O. No. 170/2020; and (iii) to provide a comparative assessment, in light of the European precedents concerning the manipulation of the EURIBOR and LIBOR indices.

A methodological clarification is necessary at the outset. As, at the time this study was finalised, the statement of reasons for the Competition Council's decision was still being drafted and had not yet been published, the analysis draws on a series of secondary sources, such as press releases, public statements and specialised press reports. In the course of preparing this work, the applicable legislation and the judicial rulings issued to date were analysed with respect to the proceedings initiated in direct connection with the investigation and the Competition Council decision under review, together with the Competition Council's public statements as to the nature and scope of the infringement found, and, respectively, the arguments and factual assertions publicly advanced by the sanctioned banks.

Consequently, the object of the present analysis is, strictly speaking, not the reasoned decision itself, but rather the publicly available information concerning the solution adopted by that authority and the conclusions reached below should accordingly be read as provisional and subject to revision once the statement of reasons is published.

¹Competition Council, Press Release, The Competition Council Fined 10 Banks with Penalties Totalling RON 3.73 Billion [Consiliul Concurenței a sancționat 10 bănci cu amenzi în valoare de 3,73 miliarde lei], 7 June 2026, available at www.consiliulconcurentei.ro/wp-content/uploads/2026/02/Banci-final-Iunie-2026-1.pdf, accessed 5 August 2026.

²Law No. 21/1996 on Competition (Legea concurenței nr. 21/1996), republished, as subsequently amended, published in the Official Gazette No. 153 of 29 February 2016; Article 101 of the Treaty on the Functioning of the European Union.

2. THE CONTEXT OF THE COMPETITION COUNCIL'S DECISION

The investigation underlying the decision under review was initiated at the end of 2022, through unannounced inspections carried out at the premises of several banks participating in the ROBOR fixing panel, prompted by suspicions concerning the unusually high level of the index, which had also been publicly flagged by the Governor of the National Bank of Romania.³ The investigation report, comprising more than 6,000 documents, approximately 768 pages and some 1,200 references to the National Bank of Romania, was communicated to the banks concerned in April 2026; the banks were granted a period within which to submit observations, followed by the hearings stage.⁴ The final decision was adopted unanimously by the Plenary of the Competition Council.⁵

From the standpoint of its legal basis, the authority found an infringement of the provisions of Law No. 21/1996 on Competition, as well as of Article 101 of the Treaty on the Functioning of the European Union, a finding that triggered the mandatory notification stage under the cooperation mechanism with the European Commission, applicable whenever an infringement of European, and not merely domestic, competition law is established. According to the authority's public statements, the conduct at issue does not consist in an explicit cartel agreement on interest-rate levels, but rather in an exchange of competitively sensitive information, the mutual visibility of quotations during the trading window, capable of affecting the independent formation of the price. This distinction is not merely terminological: as the literature on information exchanges between competitors has extensively shown, such an exchange may restrict competition even in the absence of an explicit agreement, provided it reduces the strategic uncertainty which would otherwise govern independent market conduct (Gassler, 2021). The distinction between an explicit agreement and a mere exchange of competitively sensitive information is, moreover, well established in the leading Romanian doctrine on the subject (Almășan, 2021) (Lazăr & Lazăr, 2025).

For an infringement of Article 101(1) TFEU to be established, three elements are required: an agreement between undertakings, a decision by an association of undertakings, or a concerted practice; its effect on trade between Member States; and the existence of an object or effect of preventing, restricting or distorting competition within the internal market (Ball, 2018). It is precisely this third hypothesis, the concerted practice, that appears, on the basis of the Competition Council's public statements, and subject to confirmation once the statement of reasons is published, to correspond to the conduct

³Competition Council, op. cit. (note 1).

⁴Profit.ro, The ROBOR Case: BCR Asked the Court to Order Disclosure of the Correspondence between the Competition Council and the National Bank of Romania. A Change to the National Bank's Rules Attributed to Employees Acting in a Personal Capacity [Dosarul ROBOR. BCR a cerut instanței predarea corespondenței dintre Concurență și BNR...], 11 June 2026, available at www.profit.ro/povesti-cu-profit/financiar/banci/dosarul-robob-bcr-a-cerut- instantei-predarea-corespondentei-dintre-concurenta-si-bnr-o-modificare-a-regulilor-bnr-pusa-pe-seama-unor-angajati-care-au-actionat-in-nume-propriu-22475524, accessed 4 August 2026.

⁵“Our decision did not concern the regulations or policies of the banking sector; it is confined exclusively to the banks' conduct during the ROBOR fixing period and is, of course, based on a finding of infringement of competition rules, not of other norms. The sanctioning decision was adopted unanimously by the Plenary of the Competition Council. The extensive public debate preceding the adoption of the decision is unusual and has generated confusion, which is why clarifications are necessary,” stated Bogdan Chirițoiu, President of the Competition Council — Competition Council, op. cit. [translation ours].

found in the ROBOR case, insofar as it does not involve a genuine agreement, but rather coordination achieved through the mere mutual visibility of quotations. This provisional qualification, drawn from the information currently available, is not without consequence: it is this very characterisation — agreement, decision, or concerted practice — that will determine, at the subsequent stage of civil liability, the structure and burden of proof available to injured persons relying on the statutory presumption of unlawfulness under G.E.O. No. 170/2020, since public and private enforcement of competition law remain closely interdependent (Waelbroeck, 2025).

The amount of the fines varied significantly depending on market share and the period of alleged participation in the practice: Banca Transilvania received the highest individual fine (RON 875.74 million, to which RON 85.03 million was added for conduct attributed to OTP Bank România, an entity subsequently absorbed), followed by Banca Comercială Română (RON 577.36 million), BRD-Groupe Société Générale (RON 412.47 million), Exim Banca Românească (RON 96.49 million) and Intesa Sanpaolo România (RON 28.1 million). According to the official press release, the fines represented, overall, between 5% and 7% of the gross revenues of the entities concerned⁶.

The institutional response was, predictably, divergent. The sanctioned banks publicly contested the merits of the report, denying the existence of any genuine “*agreement*” and characterising the conduct at issue as mere mutual transparency of quotations, said to be permitted by the trading platform used. The National Bank of Romania, for its part, requested further clarifications, emphasising that the decision did not concern the regulatory framework of the money market as such, but exclusively the individual conduct of participants during the fixing procedure.

3. THE FIRST JUDICIAL PROCEEDINGS

In the final stage of the investigation — after the report was transmitted on 6 April 2026 and following the period for observations and the hearings stage — two of the banks concerned, Raiffeisen Bank and Banca Comercială Română, chose to apply to the courts, respectively by way of an interim injunction (*ordonanță președințială*), governed by Article 997 et seq. of the Code of Civil Procedure, and by way of proceedings for the preservation of evidence, governed by Article 359 et seq. of the same Code, seeking to obtain, before the Plenary of the Competition Council settled the outcome of the case, either access to documents they considered essential to their defence, or the suspension of the remaining procedural steps⁷.

The real stake of these applications was not the blocking of a fine, which, moreover, did not yet exist at the time the applications were filed before the courts, but access to a body of information which the banks regarded as vital to their own defence. Raiffeisen Bank specifically sought a complete inventory of the investigation file, full access to the correspondence exchanged between the Competition Council and the National Bank of

⁶Competition Council, op. cit. (note 1).

⁷Competition Council, Press Release, The Competition Council Prevailed in the Proceedings Brought by Two Banks Involved in the Investigation Concerning the Setting of ROBOR [Consiliul Concurenței a câștigat procesele cu două bănci implicate în investigația privind stabilirea ROBOR], available at www.consiliulconcurenței.ro/wp-content/uploads/2026/06/Procese-banci-iun-2026.pdf, accessed 4 August 2026.

Romania concerning the regulatory framework of the fixing procedure, access to the database maintained by Refinitiv, the calculation agent recording the daily ROBID/ROBOR quotations submitted by participants, as well as access to the other banks' responses to the authority's questionnaire and to the datasets underlying the report's economic analysis. The central argument, expressly recorded in the reasoning of the judgment delivered by the Bucharest Court of Appeal, was that, absent these documents, the bank would have been unable to demonstrate that panel participants had not coordinated their quotations within the thirty-minute fixing window, and that their absence would have amounted to an effective restriction of the right to a defence⁸. The application, filed on 2 June 2026, was decided after the Plenary of the Competition Council had already adopted, on 5 June, the decision imposing sanctions, although that decision had not yet been reasoned. The court dismissed the application as inadmissible, while holding that the bank retained the possibility of renewing the same requests for access to the documentation within the action on the merits, once the reasoned decision had been communicated⁹.

Banca Comercială Română pursued a similar course, seeking, by way of proceedings for the preservation of evidence, an order requiring disclosure of the correspondence exchanged between the two authorities, and invoking, in support of its application, the sheer scale of the investigation file — over 6,000 documents totalling tens of thousands of pages and a 768-page report containing more than 1,200 direct references to positions expressed by the National Bank of Romania. Without access to this institutional exchange, the bank argued, the effective exercise of the right to a defence during the hearings stage would have been illusory. The court dismissed this application as well¹⁰, finding, on the one hand, that the legal conditions specific to the procedure relied upon were not met — in particular the absence of the urgency required for such a measure, given that the administrative procedure was already nearing completion — and, on the other hand, that the bank had, in any event, already had access to part of the documents sought¹¹.

Both procedural applications were described as unprecedented in the history of the Competition Council, insofar as, until that moment, the subjects of an investigation had never attempted, by judicial means, whether before the Bucharest District Court, Sector 1, or before the Bucharest Court of Appeal, to block the completion of an administrative

⁸Profit.ro, The ROBOR Case. Why the Court Dismissed Raiffeisen Bank's Application to Suspend the Competition Council's Investigation [Dosarul ROBOR. De ce a respins instanța cererea Raiffeisen Bank de suspendare a investigației Consiliului Concurenței], 23 July 2026, available at www.profit.ro/povesti-cu-profit/financiar/ultima-ora-dosarul-robtor-de-ce-a-respins-instanta-cererea-raiffeisen-bank-de-suspendare-a-investigatiei-consiliului-concurentei-22527029, accessed 4 August 2026.

⁹Judgment available at portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=200000000461053&id_inst=2, accessed 4 August 2026 [Bucharest Court of Appeal, application for an interim injunction filed by Raiffeisen Bank S.A. against the Competition Council, registered on 2 June 2026 and decided on 9 June 2026 — Case No. 3354/2/2026, Civil Judgment No. 1008 of 9 June 2026].

¹⁰Judgment available at portal.just.ro/299/SitePages/Dosar.aspx?id_dosar=29900000001174645&id_inst=299, accessed 4 August 2026 [Bucharest District Court, Sector 1, application filed by Banca Comercială Română S.A. against the Competition Council — Case No. 22809/299/2026, Judgment of 14 May 2026].

¹¹Profit.ro, The ROBOR Case. BCR Asked the Court to Order Disclosure of the Correspondence between the Competition Council and the National Bank of Romania, available at www.profit.ro/povesti-cu-profit/financiar/banci/dosarul-robtor-bcr-a-cerut-instantei-predarea-corespondentei-dintre-concurenta-si-bnr-o-modificare-a-regulilor-bnr-pusa-pe-seama-unor-angajati-care-au-actionat-in-nume-propriu-22475524, accessed 4 August 2026.

procedure already under way, through applications seeking the suspension of hearings, deliberations, or even the drafting of the decision itself¹².

Beyond the controversy over public image and the debate that naturally arose in the public sphere, these rulings carry genuine legal implications. An interim injunction is, by its statutory definition, a special and provisional procedure through which the court does not determine the merits of the underlying legal relationship, but instead orders, in conditions of urgency and on a *prima facie* assessment of the right invoked, measures of a temporary nature (Deleanu, 2014). Along the same lines, proceedings for the preservation of evidence are likewise a special, urgent procedure, conditional upon a risk that the taking of evidence may become impossible or difficult in the future (Fodor & Popescu, 2015). What the two procedures share, and what equally distinguishes both from an adjudication on the merits, is precisely this provisional and instrumental character: the court merely verifies the *prima facie* appearance of the right and the urgency of the measure sought, without examining the substance of the parties' claims. The dismissal of the two applications as inadmissible, rulings which, moreover, are not yet final, does not, in any way, amount to a judicial validation of the merits of the investigation. The courts did not examine whether the banks had in fact manipulated the ROBOR index, did not assess the substantive lawfulness of the prospective sanctions, did not rule on the confidential or strategic character of the information allegedly exchanged among fixing participants, and, still less, did not establish the existence of any harm suffered by consumers. What they examined was, strictly, the admissibility of provisional measures — a legal question entirely distinct from the proceedings on the merits which all ten sanctioned banks have announced they will initiate only after the reasoned decision is communicated.

4. THE REGIME OF REMEDIES AND THE MANNER OF IMPLEMENTING THE DECISION

The Competition Council's decision of 5 June 2026 will unfold across several successive procedural stages. First, the Competition Council has a statutory term of up to 120 days from the adoption of the decision within which to draft and communicate the statement of reasons to the sanctioned banks¹³. From the date of that communication, a 30-day period begins to run within which each bank may challenge the decision, by way of administrative-litigation proceedings, before the Bucharest Court of Appeal¹⁴.

The filing of an action for annulment does not, by itself, suspend enforcement of the sanction. Under Article 51(2) of Law No. 21/1996 on Competition, suspension of enforcement may be ordered by the court, upon the application of the interested party, and is, in the case of fines, conditional upon the lodging of security determined in accordance

¹²The Competition Council Prevailed in Two Procedural Actions Brought by Raiffeisen and BCR, Involved in the ROBOR Investigation, Profit.ro, 10 June 2026, in which the institution's President, Bogdan Chirițoiu, stated that this was the first time in the authority's history that the subjects of an investigation had attempted, by judicial means, to block the completion of the administrative procedure.

¹³Pursuant to Article 51(1) of Law No. 21/1996: 'Decisions adopted by the Competition Council in the application of Articles 8, 13, 25(5)(c), 41(2) and 46, with the exception of the decision provided for in Article 46(1)(b), shall be reasoned and communicated to the parties within a maximum term of 120 days from the deliberation.' [translation ours].

¹⁴See, to that effect, Article 51(1²) of Law No. 21/1996.

with the provisions of the Fiscal Procedure Code applicable to budgetary claims. Pursuant to Article 24(4) of the same statute, without any further formality, a Competition Council decision imposing a fine becomes an enforceable title upon the expiry of 30 days from the date of its communication. Consequently, absent an application for suspension, the banks remain, in principle, liable for payment of the sanctions for the duration of the proceedings on the action for annulment.

Finally, the decision requires the sanctioned banks to submit, within 60 days of receiving the statement of reasons, remedial action plans designed to eliminate the anti-competitive practices found within the fixing procedure, such plans being subject to the Competition Council's approval. This behavioural component of the decision is distinct from its punitive component and is intended, according to the authority, to prevent a recurrence of the practices identified, without affecting the ongoing operation of the interbank money market.

5. THE IMPACT OF THE DECISION

In order to protect their legitimate interests and obtain redress for the harm caused, injured parties — both consumers and undertakings alike — have at their disposal a dedicated procedural framework for damages actions arising from infringements of competition law, set out in G.E.O. No. 170/2020, which transposes Directive 2014/104/EU¹⁵. Under Article 3 of that instrument, any person who has suffered harm caused by a prohibited anti-competitive practice may claim and obtain full compensation for that harm, damages being intended to restore the injured person to the position that would have existed absent the infringement¹⁶. These special statutory provisions naturally operate alongside the general rules of civil liability laid down in Article 1349 et seq. of the Civil Code.

The legal mechanism underlying the special provisions of G.E.O. No. 170/2020 rests on the effect conferred upon final decisions of competition authorities. Under Article 9 (1), an infringement of competition law found by a final decision of the Competition Council or of the European Commission, or by a final court judgment, is deemed to be irrefutably established for the purposes of the court seised of the damages action. This binding effect operates exclusively in respect of the existence and the unlawful character of the anti-competitive practice; it does not extend to the individual damage suffered, the causal link between the infringement and that damage, or the quantum of compensation, each of which must still be proven by the claimant before the civil court. Within these limits, the mechanism constitutes, in theory, a significant procedural advantage for the injured party intending to bring a subsequent action.

¹⁵Government Emergency Ordinance No. 170/2020 on damages actions for infringements of competition law, and amending and supplementing Law No. 21/1996 on Competition (Ordonanța de urgență a Guvernului nr. 170/2020), published in the Official Gazette No. 949 of 15 October 2020, transposing Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014.

¹⁶ See the Explanatory Memorandum to Government Emergency Ordinance No. 170/14.10.2020, available on the official website of the Government of Romania at <https://gov.ro/ro/guvernul/procesullegislativ/note-de-fundamentare/nota-de-fundamentare-oug-nr-170-14-10-2020>, accessed on 6 August 2026 — the official document explaining the legislature's rationale and the circumstances preceding the adoption of the enactment.

A clarification of decisive practical importance must, however, be made at this stage for any banking customer contemplating such a claim: the presumption established by Article 9 of G.E.O. No. 170/2020 applies exclusively to a final decision. Yet the Competition Council's decision of 5 June 2026 does not, as of the date of this study, have final character — the statement of reasons has not yet been drafted, the statutory term for its communication being up to 120 days, followed by a separate 30-day term for bringing the action for annulment, an action which will, in turn, go through at least one level of jurisdiction. (Pavel, 2026) The public recommendations of caution issued by the Romanian Banking Association and by the National Bank of Romania regarding the premature exercise of civil actions accordingly rest on a genuine procedural foundation, even though the institutional motivation behind such recommendations obviously remains open to critical assessment.

A second limitation concerns the requirement of damage. Even once the decision becomes final, tortious civil liability, which underlies the action in question, requires the cumulative satisfaction of the four classical elements — an unlawful act, fault, a causal link, and damage (Boilă & Luntraru, 2023)(Luntraru, 2025). Whereas the first elements might be regarded as facilitated by the effect of the statutory presumption arising from the final sanctioning decision (the conduct and the identity of the perpetrator having been established by the final decision, although fault and the causal link are not thereby automatically established and must still be examined by the civil court in light of the specific circumstances of each claim), the requirement of the concrete damage suffered by each individual consumer — namely, the amount by which the ROBOR level applied to that consumer's contract would have been lower, absent the practice found — remains a matter for individual proof, difficult to resolve absent an agreed or judicially validated methodology for counterfactual calculation. The classical structure of tortious civil liability, comprising the four elements referred to above, is extensively established in Romanian civil-law doctrine (Pop, Popa & Vidu, 2020).

Finally, it should be noted that the practical shortcomings of the current framework prompted, as early as April 2026, a parliamentary legislative initiative (a bill introduced by the Save Romania Union) aimed at amending G.E.O. No. 170/2020 so as to establish a clear procedural mechanism for claims brought jointly by natural persons acting as co-claimants, through the corresponding application of Articles 59-60 of the Code of Civil Procedure on procedural joinder¹⁷. The adoption of such a mechanism would significantly reduce the individual costs of access to justice for consumers whose credit agreements were indexed to ROBOR during the period covered by the investigation, enabling a collective approach comparable to the representative actions regulated at Union level by Directive (EU) 2020/1828.

6. A COMPARATIVE LAW PERSPECTIVE: THE EUROPEAN EURIBOR AND LIBOR PRECEDENTS

As regards the conduct sanctioned, namely, the coordination of behaviour among banking institutions participating in the setting of a money-market reference index, the Competition Council's decision of 5 June 2026 is not without parallel at European level.

¹⁷ See <https://www.senat.ro/Legis/Lista.aspx?cod=27649>, accessed on 4 August 2026.

On 4 December 2013, the European Commission fined eight international financial institutions a cumulative amount of approximately EUR 1.71 billion for participating in anti-competitive arrangements concerning interest-rate derivatives denominated in euro (EURIBOR) and, respectively, in Japanese yen (Yen LIBOR)¹⁸ (Ball, 2018). The largest individual fine was imposed on Deutsche Bank (approximately EUR 725 million, combined across both infringements), followed by Société Générale (approximately EUR 446 million) and the Royal Bank of Scotland (EUR 391 million). Barclays and UBS benefited from immunity from fines, and from a substantial reduction thereof, respectively, as a result of their cooperation with the competition authority and their reporting of the arrangement — a leniency mechanism that played a central evidentiary role. The European investigation continued thereafter, with the Commission fining, in December 2016, Crédit Agricole, HSBC and JPMorgan a further EUR 485 million for similar conduct concerning EURIBOR¹⁹.

In essence, in the course of the proceedings referred to above, the Commission established, on the basis of direct evidence — such as, for example, messages from online chat rooms, emails and telephone contacts — that agreements or concerted practices existed between the parties. The arrangements between the parties involved constituted an interconnected string of occurrences, guided by the common objective of restricting and, as the case may be, distorting competition, which constituted a single and continuous infringement of Article 101 TFEU. Given that a common objective was involved, it was no longer necessary to demonstrate separately the anticompetitive effect produced by the agreements. Since benchmark interest rate indices were widely used, on international money markets, by banks, brokers and traders from numerous states, the practices at issue were, by their very nature, capable of appreciably affecting trade between Member States. (Ball, 2018)

The factual element common to both categories of cases lies in the exchange of competitively sensitive information among competitors during the process of forming a reference index. These decisions therefore concern a legal structure analogous to that attributed to the Romanian banks in the decision under review. Certain methodological differences, however, have been repeatedly invoked by the National Bank of Romania, which rejects any automatic transposition of the European precedent to the ROBOR case. According to the central bank's institutional position, LIBOR was calculated, prior to its reform, exclusively on the basis of estimates submitted by banks, without any obligation actually to conduct transactions at the levels declared — a structural vulnerability that facilitated the manipulation established by the authorities of the United States, the United

¹⁸ European Commission, Summary of Commission Decision of 4 December 2013 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.39914 – Interest Rate Derivatives in Euro) [notified under document C(2013) 8512], OJ C 206, 30.6.2017, pp. 17–20, Document 52017XC0630(02), available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52017XC0630%2802%29>, accessed on 4 August 2026.

¹⁹ European Commission, Antitrust: Commission fines Crédit Agricole, HSBC and JPMorgan Chase € 485 million for euro interest rate derivatives cartel, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_16_4304, accessed on 4 August 2026; European Commission, Summary of Commission Decision of 7 December 2016 relating to a proceeding under Article 101 of the TFEU and Article 53 of the EEA Agreement (Case AT.39914 — Euro Interest Rate Derivatives) (notified under document C(2016) 8530), OJ C130/11, 8.4.2019, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52019XC0408%2801%29>, accessed on 4 August 2026.

Kingdom and the European Union²⁰. ROBOR, by contrast, is administered directly by the National Bank of Romania, and the fixing procedure entails, under certain conditions, an obligation to transact at the quoted levels — a feature which the central bank regards as an additional safeguard of robustness absent from the pre-reform architecture of LIBOR²¹.

This institutional objection, while relevant to a comparative assessment of the regulatory framework, does not as such rule out the possibility of an anti-competitive practice occurring within an otherwise sound methodology: the mutual visibility of quotations during the fixing window — the central element relied upon in the Competition Council's report is, in any event, independent of the mechanism for validation through actual transactions. Ultimately, this remains a question that can only be resolved through the full content of the statement of reasons and, subsequently, through the judicial review exercised by the courts.

7. CONCLUSIONS

Beyond its unprecedented magnitude, the decision examined in this study raises an issue more profound than the isolated conduct of ten banks, namely that of the real limits of transparency within a market mechanism designed, by definition, to appear impartial. A thirty-minute fixing procedure, repeated daily for nearly two decades, whose figures directly dictated the cost of hundreds of thousands of credit agreements, has proven, according to the competition authority, to be anything but neutral. The analysis conducted in the preceding pages indicates, on the basis of the information currently available, that the conduct identified by the Competition Council does not appear to consist in a classic cartel, with secret meetings and explicitly fixed prices, but in a more insidious, and for that very reason more elusive, form: the mutual visibility of quotations within a trading window conceived to reflect market independence. Whether this characterization will withstand judicial review remains, at this stage, an open question — yet even as a mere working hypothesis, it compels a rethinking of how the transparency of the money market ought to be understood: the boundary between an efficient price-formation mechanism and fertile ground for tacit coordination appears, on the basis of the Competition Council's findings as currently made public, to be exceedingly thin — a characterization that remains, at this stage, provisional and subject to confirmation by the statement of reasons.

From a strictly procedural standpoint, the study reveals a gap that public debate has obscured but that legal rigour cannot ignore: between the media prominence of the sanction and its actual state of finality lies an interval of legal uncertainty that may last for years. The two judicial proceedings undertaken thus far validate nothing on the merits. It is the statement of reasons for the decision alone that will clarify the exact scope of the infringement, and it is that same statement which will open the way to the action for annulment. Anti-competitive practices within the fixing procedure of banking reference indices thus prove to be a field in which legal certainty is built slowly, in successive stages, whereas media certainty was established almost instantaneously.

²⁰ National Bank of Romania, ROBOR, EURIBOR, LIBOR – Key Differences, available at <https://opiniibnr.ro/robor-euribor-libor-diferente-esentiale/>, accessed on 4 August 2026.

²¹ Idem.

For the injured parties — consumers, but also professionals, as clients under the affected credit agreements — the real stakes of this case are not, however, played out in press releases, but in the far less spectacular laboratory of civil evidence. G.E.O. No. 170/2020 provides them with a genuinely powerful instrument — a statutory presumption of unlawfulness which, absent that instrument, would be impossible to construct unaided — but only from the moment the decision becomes final, while the burden of proving individual damage remains, in any event, theirs to bear. This case illustrates, with particular clarity, the distinction between prevailing in the public arena and prevailing in a courtroom: the consumer affected by ROBOR does not need collective indignation, but a counterfactual calculation methodology, a demonstrable causal link and, above all, procedural patience.

Viewed comparatively, the Romanian case naturally takes its place alongside the EURIBOR and LIBOR precedents, suggesting, at this preliminary stage and subject to confirmation once the statement of reasons is published, that the manipulation of banking reference indices may not be an isolated accident of the domestic market, but could reflect a structural vulnerability to which fixing mechanisms based on declarative quotations among direct competitors are potentially exposed— irrespective of the degree of sophistication of the regulatory framework in which it operates.

It thus remains for the subsequent chapters of this case — the statement of reasons, the actions for annulment, and any follow-on civil actions — to transform what is today the largest fine in the history of Romanian competition law into a truly consolidated doctrinal precedent. At this stage, it can be stated as an established fact that the Competition Council has adopted, unanimously, a sanctioning decision of unprecedented magnitude. What remains, for the time being, solely the Competition Council's own publicly stated position is the legal characterisation of the conduct as an infringement of Article 101 TFEU and of Law No. 21/1996. Finally, both the definitive scope of the infringement and the actual prospects of any follow-on damages actions remain, at this stage, provisional propositions, contingent upon publication of the statement of reasons and its subsequent judicial review.

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