EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 November 2011

on the payment by the Banco de Portugal of an increase in Portugal's quota with the International Monetary Fund

(CON/2011/89)

Introduction and legal basis

On 11 October 2011, the European Central Bank (ECB) received a request from the Portuguese Ministry of Finance for an opinion on a decision by the Minister for State and for Finance authorising the increase of Portugal's quota with the International Monetary Fund (IMF) (hereinafter the 'draft decision').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and on the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the draft decision relates to the Banco de Portugal. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft decision

On 15 December 2010, the Board of Governors of the IMF adopted Resolution No 66-2 proposing, inter alia, increases in the quotas of all Fund members under the 14th General Review of Quotas. The required notices of consent to such increases must be received by the Fund by 31 December 2011.

Pursuant to Decree-law No 245/89 of 25 August 1989 defining the intervention of the Banco de Portugal in the relationship with the International Monetary Fund, the Minister for Finance, on behalf of the Portuguese Government, has to authorise any change in the national quota after consulting the Banco de Portugal[2].

The aim of the draft decision is to authorise the Banco de Portugal to pay the increase of Portugal's quota from special drawing rights (SDR) 1 029,7 million to SDR 2 060,1 million. As stated in the Explanatory Memorandum attached to the consultation letter, 25% of the proposed quota increase must be paid in reserve assets and the remainder is payable in euro.

Article 19(b) of the Organic Law on the Banco de Portugal[3] expressly states that the prohibition of monetary financing enshrined in Article 18 thereof does not apply to the financing of obligations of the

1 OJ L 189, 3.7.1998, p. 42.

2 Article 2(3).

3 Approved by Law 5/98, of 31 January, as last amended.

State towards the IMF. Thus, it is incumbent on the Banco de Portugal to make the 'necessary deliveries in SDR, other members' currency and euro' on its own account[4]. Furthermore, Portugal's contribution to the IMF and the Banco de Portugal liabilities to the IMF are included in the Banco de Portugal's balance sheet.

2. General observations

The ECB notes that the Banco de Portugal is responsible for paying any increases in Portugal's IMF quota upon the authorisation of the Minister for Finance.

Several ECB opinions[5] have noted that the tasks performed by a national central bank (NCB) must comply with the monetary financing prohibition under Article 123 of the Treaty and Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to referred to in Article 104 and Article 104(b)(1) [now Article 123 and Article 125(1) of the Treaty on the Functioning of the European Union][6]. Pursuant to Article 7 of Regulation (EC) No 3603/93, the financing by NCBs of obligations falling upon the public sector vis-à-vis the IMF is not regarded as a credit facility within the meaning of Article 123 of the Treaty. Therefore, the ECB notes that the payment by the Banco de Portugal of the proposed increase in Portugal's quota does not infringe the monetary financing prohibition.

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

Done at Frankfurt am Main, 9 November 2011.

[signed]

The President of the ECB

Mario DRAGHI

4 Article 2(1) of Decree-law No 245/89.

5 See Opinions CON/1997/16, CON/2005/29, CON/2009/5, CON/2009/33, CON/2009/35, CON/2009/41, CON/2009/100, CON/2010/13, CON/2010/15, CON/2010/22, CON/2010/40, CON/2010/74, CON/2011/10 and CON/2011/68. All Opinions are available on the ECB's website at www.ecb.europa.eu

6 OJ L 332, 31.12.1993, p. 1.