EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 4 March 2013

on the Oesterreichische Nationalbank's contributions to the International Monetary Fund's Poverty Reduction and Growth Trust and a bilateral loan agreement between the International Monetary Fund and the Oesterreichische Nationalbank

(CON/2013/16)

Introduction and legal basis

On 31 January 2013, the European Central Bank (ECB) received requests from the Austrian Ministry of Finance for an opinion on two draft laws concerning (a) contributions by the Oesterreichische Nationalbank (OeNB) to the General Subsidy Account of the International Monetary Fund's (IMF) Poverty Reduction and Growth Trust (PRGT) (hereinafter the 'draft law on contributions to the PRGT') and (b) a bilateral loan agreement between the IMF and the OeNB (hereinafter the 'draft law on the bilateral loan agreement').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third 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 law relates to the OeNB. 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 laws

1.1 The draft law on contributions to the PRGT

1.1.1 The IMF's Executive Board agreed in two resolutions passed on 24 February and 28 September 2012 to distribute 700 million Special Drawing Rights (SDR) and SDR 1.750 million from IMF's windfall gold sales profits to IMF member countries in proportion to their quota shares. The distributions are subject to IMF members' satisfactory assurances that an amount equivalent to at least 90% of the distributions will be made available to the PRGT[2]. In this way, the IMF envisages raising further subsidy resources for the PRGT[3].

1 OJ L 189, 3.7.1998, p. 42.

2 Further information is available in the IMF's press release No 12/368 of 28 September 2012, available on the IMF's website at www.imf.org.

3 See Opinion CON/2010/22 for more information regarding the establishment and funding of the PRGT; all ECB opinions are published on the ECB's website at www.ecb.europa.eu.

1.1.2 The draft law authorises the OeNB to transfer 21.76 million SDR to the General Subsidy Account of the PRGT on behalf of Austria. The amount will be transferred in two tranches, of SDR 6.22 million and SDR 15.54 million. The amount of the first tranche has already been distributed by the IMF to the OeNB as Austria's share of the IMF's windfall gold sales profits and can therefore be transferred by the OeNB to the General Subsidy Account of the PRGT. However, payment of the second tranche is subject to the transfer of the equivalent amount to the OeNB by the IMF and, furthermore, to satisfactory assurances by IMF member countries that an amount equivalent to at least 90% of the second distribution of windfall gold sales profits will be allocated to the PRGT.

1.1.3 A separate statutory authorisation is required to enable the OeNB to transfer the abovementioned amounts of SDR 6.22 million and SDR 15.54 million to the PRGT, because Article 41(2) of the Law on the OeNB prohibits Austria from using OeNB funds, even indirectly, for any purpose without providing the equivalent value in gold or foreign exchange.

1.2 The draft law on the bilateral loan agreement

1.2.1 The G20 Cannes Summit of 4 November 2011 adopted a recommendation to temporarily replenish IMF funds in response to persistently weak economic growth. Based on Austria's share of the IMF quota for the Member States whose currency is the euro, the Austrian contribution to this bilateral IMF funding is EUR 6.13 billion.

1.2.2 The draft law implements resolutions of the Euro Area Heads of State or Government of 9 December 2011 and the Union Finance Ministers dated 19 December 2011, respectively, whereby Member States whose currency is the euro consented to provide EUR 150 billion to the IMF on the basis of bilateral agreements. It authorises the OeNB to grant the IMF a loan to the maximum amount of EUR 6.13 billion under a bilateral agreement on behalf of Austria.

2. Monetary financing prohibition

2.1 Several ECB opinions[4] have noted that the tasks performed by a national central bank 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 in Articles 104 and 104b(1) of the Treaty[5]. Pursuant to Article 7 of Regulation (EC) No 3603/93, the financing by national central banks 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. The fourteenth recital of Regulation (EC) No 3603/93 sets out the rationale of the exemption and confirms that it is appropriate to authorise the financing by the national central banks of obligations falling upon the public sector vis-à-vis the IMF, as this financing results in claims which have all the characteristics of reserve assets.

2.2 The draft law on contributions to the PRGT is similar to the draft laws addressed in Opinion CON/2008/41 and CON/2010/22, where the ECB considered that the OeNB's financing of

4 See, most recently, Opinions CON/2011/89, CON/2011/97, CON/2011/102, CON 2012/45 and CON/2012/65.

5 OJ L 332, 31.12.1993, p. 1.

Austrian contributions to the Heavily Indebted Poor Countries and the PRGT initiatives fell within the Article 7 exemption of Regulation (EC) No 3603/93. Similarly, the OeNB's PRGT financing under the draft law should also be considered as falling under the Article 7 exemption and therefore should not be regarded as a form of monetary financing prohibited by the Treaty.

2.3 The draft law on the bilateral loan agreement is similar to that addressed in Opinion CON/2010/40, where the ECB considered that the OeNB's authorisation to grant a loan to the IMF on behalf of Austria under the IMF's New Arrangement to Borrow scheme was not a credit facility within the meaning of Article 104, but fell within the Article 7 exception of Regulation (EC) No 3603/93[6]. The OeNB's authority, under the draft law, to grant a bilateral loan to the IMF should also be considered as falling under the Article 7 exception of Regulation (EC) No 3603/93 and should therefore not be regarded as a form of monetary financing prohibited by the Treaty[7].

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

Done at Frankfurt am Main, 4 March 2013.

[signed]

The President of the ECB

Mario DRAGHI

6 See also Opinions CON/2011/10 and CON/2009/100.

7 See also Opinions CON/2010/22, CON/2009/5, CON/2008/41 and CON/2005/29.