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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 18 May 2009

on measures on public sector remuneration with regard to central bank independence

(CON/2009/47)

Introduction and legal basis

On 8 May 2009 the European Central Bank (ECB) received a request from Latvijas Banka for an opinion on a draft law on a uniform remuneration system for government and local government officials (employees) (hereinafter the 'draft law') and its possible application to Latvijas Banka. Although, according to its current wording, the draft law does not apply to Latvijas Banka, the consulting authority is aware that the Latvian Government is considering applying the draft law to Latvijas Banka and that it is highly possible that amendments will be made to the draft law during the legislative process to include Latvijas Banka within its scope.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 Latvijas Banka. 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 law

The purpose of the draft law is to establish uniform conditions for determining the remuneration of public and local government officials and employees. The draft law sets out principles for establishing monthly wages and salaries, additional payments, bonuses and cash awards, allowances, compensation and leave. In all other respects the existing provisions of legal acts governing employment will continue to apply.

The remuneration of members of Parliament and of local government authorities, and the remuneration of officials approved and appointed by Parliament, will be established by linking it to the average remuneration of employees in Latvia[2]. The remuneration of officials of other public institutions will be set according to a scale determined by the Latvian Government[3].

1 OJ L 189, 3.7.1998, p. 42.

2 Article 4(1), Articles 5 and 6 of the draft law.

3 Article 4(2) and Article 7 of the draft law.

Under the draft law remuneration may be further reviewed as part of the process of drawing up or amending the state budget[4].

2. General observations

2.1 The ECB recognises the very difficult economic circumstances, both in Latvia and internationally, and the current efforts being made by the Latvian Government to stabilise public finances.

2.2 As noted in the ECB Convergence Report of May 2008 under the heading 'Autonomy in staff matters', 'Member States may not impair an NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute[5]. In addition, an NCB may not be put into a position where it has limited or no control over its staff, or where the government of a Member State is in a position to influence its policy on staff matters'[6]. This point has been stressed by the ECB in its recent opinions on draft Irish and German legal acts on matters concerning national central bank staff[7]. In its opinion on draft Italian legislation establishing a threshold for the overall remuneration of the national central bank staff, the ECB also pointed out 'that the ECB defines autonomously its staff's conditions of employment and that this autonomy forms part of the ECB's independence as guaranteed by Article 108 of the Treaty and Article 36 of the Statute [of the ESCB]'[8].

3. Specific observations

Under the Law on Latvijas Banka, the remuneration of the Governor of Latvijas Banka, members of the Council of Latvijas Banka and the Board, as well as Latvijas Banka's employees is determined by the Council of Latvijas Banka. The Council of Latvijas Banka also approves the staff numbers and positions. In order to protect Latvijas Banka's autonomy in staff matters, which is a particular aspect of the principle of central bank independence under Article 108 of the Treaty, the Latvian authorities are under an obligation to ensure that any determination of the remuneration of the employees, members of the Council and of the Board, and the Governor of Latvijas Banka is decided in cooperation with the Council of Latvijas Banka, taking into account its specific central bank tasks and the need to ensure compliance with the prohibition of monetary financing in Article 101 of the Treaty[9]. To this end, such cooperation should take due account of the views of Latvijas Banka.

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4 Article 3(5) of the draft law.

5 'Statute' refers to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

6 ECB Convergence Report of May 2008, p. 22.

7 See paragraph 2.2 of Opinion CON/2009/15 and paragraph 2.2 of Opinion CON/2008/9. All ECB opinions are available on the ECB website at www.ecb.europa.eu/ecb/legal/opinions/html/index.en.html.

8 See paragraph 3.2.2 of Opinion CON/2008/10.

9 As implemented by 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 (OJ L 332, 31.12.1993, p. 1.).

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

Done at Frankfurt am Main, 18 May 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET