EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 23 June 2017

on a law on the National Foundation for Research, Technology and Development

(CON/2017/26)

Introduction and legal basis

On 7 June 2017, the European Central Bank (ECB) received a request from the Austrian Federal Ministry of Finance for an opinion on a draft law amending the Federal Act governing the National Foundation for Research, Technology and Development (hereinafter the 'draft law').

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[1], as the draft law relates to the Oesterreichische Nationalbank (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 law

1.1 The purpose of the National Foundation for Research, Technology and Development (hereinafter the 'Foundation') is to finance research, technology and development in Austria, especially research activities that promise to be of long-term benefit, as well as interdisciplinary research. According to the current legal framework governing the Foundation, the Foundation shall be annually endowed with, inter alia, a contribution from the OeNB[2]. In particular, the OeNB is authorised to transfer EUR 1.5 billion from its general reserve fund and its free reserves to a fund established by the OeNB to sponsor scientific research and teaching tasks, and to make a dividend payment of up to EUR 75 million to the Foundation[3].

1.2 In November 2016, the Austrian Federal Government resolved that additional funds should be allocated to the Foundation. To this end, the draft law authorises, but does not require, the OeNB, over and above the existing provisions laid down in the Federal Act governing the National foundation for Research, Technology and Development (hereinafter the 'Federal Act on the Foundation'), to transfer to the Foundation, in the OeNB's name, an additional amount to be taken from the 90 % share of the OeNB's net profits to which the Austrian Federation is entitled by virtue of Section 69(3) of the Law on the Oesterreichische Nationalbank (hereinafter the 'law on the

1 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

2 See Sections 4(1) and 4(2) of the Federal Act on the Foundation.

3 See Section 4(5) of the Federal Act on the Foundation. The ECB has addressed this matter in a previous opinion (see Opinion CON/2003/27). All ECB opinions are published on the ECB's website at www.ecb.europa.eu .

OeNB')[4]. The additional amount that is authorised to be paid, including the dividend payment made to the Foundation by the OeNB under the Federal Act on the Foundation, shall not exceed a total amount of EUR 100 million per annum. The amount to be met from sums paid in under the stability fee (see paragraph 1.3) shall form part of this amount of EUR 100 million. The application of this provision of the draft law shall be restricted to a period of three years, from 2018 to 2020.

1.3 According to the draft law, the Foundation shall be endowed with an amount of EUR 100 million, to be met from sums paid in under the Federal Stability Fee Act (hereinafter the 'Stability Fee Act'), under which a stability fee is paid by credit institutions authorised under the Banking Act as well as by branches of foreign credit institutions providing services in Austria. This endowment related to the stability fee is to be limited to a period of three years and may, therefore, result in the payment of a sum of EUR 33.33 million per year.

1.4 Therefore, during the three-year period from 2018 to 2020, the draft law envisages that only the residual amount of the additional authorised allocation of EUR 100 million to the Foundation that is financed neither by the additional endowment related to the stability fee nor by the dividend payment made by the OeNB to the Foundation under the Federal Act on the Foundation shall be taken from the 90 % share of the OeNB's net profits to which the Austrian Federation is entitled by virtue of Section 69(3) of the law on the OeNB.

1.5 Finally, the draft law provides that the amounts transferred by the OeNB to the Foundation under the draft law shall cause the OeNB's corporate tax base for the assessment periods of 2018 to 2020 to be reduced.

2. Observations

2.1. The ECB understands that although the contribution envisaged by the draft law may be transferred to the Foundation by the OeNB in its own name, this contribution does not reduce the OeNB's total annual income, and does not therefore impact on its profit situation. Rather, the draft law authorises the OeNB to transfer a dedicated contribution that is deducted from its net profit to which the Austrian Federation is entitled by virtue of Section 69(3) of the law on the OeNB. In this respect, it is noted that Section 69(3) of the law on the OeNB explicitly refers to the distribution of the OeNB's net profits and the right of the Austrian Federation to receive a share of 90 % of the OeNB's net profits, while Section 69(1) of the law on the OeNB governs the total annual income of the OeNB[5] and lists specific amounts that have to be deducted from this income[6]. The ECB

4 Under Section 69(3) of the law on the OeNB, the Austrian Federation shall first receive 90 % of the net profits remaining after certain specified deductions have been made. Of the earnings retained after these deductions have been made, the shareholder shall, by decision of the General Meeting, receive a dividend of up to 10 % of its share of the capital. The amount remaining shall be transferred as decided by the General Meeting.

5 Under Section 69(1) of the law on the OeNB, this income is derived pursuant to Articles 32, 33 and 51 of the Statute of the European System of Central Banks and of the European Central Bank.

6 Pursuant to Section 69(1) of the law on the OeNB, the following sums shall, irrespective of the operating profit, be deducted and not recognised as profit: (1) earnings from the assets in which the pension reserve, i.e. the reserve fund serving to meet the pension claims of the OeNB's employees, has been invested, and which shall be paid into that reserve fund; (2) amounts of interest which, pursuant to the agreement between the OeNB and the European Recovery Program Fund concluded in accordance with Section 3(4) of the European Recovery Program Fund Act, were credited during the year to the temporary reserve account for European Recovery Program loans extended by the OeNB; and (3) earnings from the assets in which the fund for the promotion of scientific research and teaching set up by the OeNB is invested, which shall be endowed to this fund.

understands that, in contrast to the amounts listed in Section 69(1) of the law on the OeNB that reduce the annual income of the OeNB, the dedicated contribution envisaged by the draft law is to be made solely from profits which have been fully realised and accounted for, and only insofar as there is in fact a distributable profit of the OeNB within the meaning of Section 69(3) of the law on the OeNB. Furthermore, the profits distributed to the Austrian Federation will thus be reduced only if the OeNB decides, at its discretion, to make use of its authorisation to contribute the Foundation as provided for in the draft law.

2.2 As regards the endowment to the Foundation to be met from the stability fee, the ECB understands that the Stability Fee Act does not provide that the sum of money obtained by levying the stability fee should be used for any specific purpose. It does, however, make explicit reference to a special contribution[7] that credit institutions have to pay in addition to the stability fee. This special contribution is invested in a fund that may only be drawn upon for the purposes of measures set out in the Federal Act on measures for securing the stability of the financial market. This fund was established for a limited period of time, from 2012 until 2017[8]. However, according to the explanatory note to the Stability Fee Act[9], the stability fee shall ensure credit institutions' contribution to the costs of the financial crisis and promote the stability of the financial market. Furthermore, the fee shall constitute a general safeguard for the State's contribution in times of financial crisis. The wording of the Stability Fee Act as well as the explanatory note thereto indicate that the Stability Fee Act does not stipulate the exact use to which the sum of money obtained by levying the stability fee should be put. Therefore, it is assumed that this sum of money does not have to be invested in another specific fund, such as the national resolution fund.

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

Done at Frankfurt am Main, 23 June 2017.

[signed]

The President of the ECB

Mario DRAGHI

7 See Section 7a(1) of the Stability Fee Act.

8 See Section 7a(3) of the Stability Fee Act.

9 See the main remarks on the draft law introducing a stability fee in part I of the explanatory note to the Stability Fee Act (page 7).