EUROPEAN CENTRAL BANK
EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK
of 11 November 2015
on pay and pension provisions
(CON/2015/44)

Introduction and legal basis

On 23 October 2015 the European Central Bank (ECB) received a request from the Irish Minister for Public Expenditure and Reform for an opinion on the Financial Emergency Measures in the Public Interest Bill 2015 (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 the third indent of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to the Central Bank of Ireland (CBI). 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 draft law amends the five Financial Emergency Measures in the Public Interest (FEMPI) Acts that were adopted between 2009 and 2013 and reduced the remuneration of public servants and pensions payable to former public servants. The draft law amends the previous FEMPI Acts with effect from 1 January 2016 in order to begin a partial and phased reversal of the remuneration reductions made under those Acts and to make provision for the partial reversal of pension reductions imposed on public servants.

1.2 For that purpose, Part 2 of the draft law (Remuneration – Public Servants Generally) amends the Financial Emergency Measures in the Public Interest Act 2009 (hereinafter the '2009 Act'), which was introduced as part of the Government's programme of measures to urgently address the serious position of the public finances, and which provided for deductions to be made from the remuneration of public servants. The draft law provides for the restoration in part or in whole of the basic salary of a public servant, where that reduced basic salary does not exceed EUR 24 000, EUR 31 000 or EUR 65 000 (as further detailed in the draft law). In addition, the draft law provides for the phased restoration of the annual remuneration of a public servant where their reduced annual remuneration is above EUR 65 000 or EUR 110 000. Finally, the draft law provides the Minister with powers to correct anomalies relating to points on the pay scale of the public service that may result from the draft law, by increasing the basic salary applicable. A public servant is defined in the 2009 Act as a person who is employed by, or who holds any office or other position

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).

in, a public service body. The CBI is explicitly defined as coming within the meaning of 'public service body'. It follows, therefore, that the 2009 Act and the draft law apply to both employees and office holders of the CBI.

1.3 Part 3 of the draft law (Pension-related deductions and Pensions) amends the 2009 Act to effect a reduction in the amount deducted from the salaries of persons in the public service who are members of an occupational pension scheme or pension arrangement. The draft law also amends the Financial Emergency Measures in the Public Interest Act 2010 (hereinafter the '2010 Act') to increase the amount of pension and other benefits payable to or in respect of persons that were in the public service under an occupational pension scheme or pension arrangement. To this end, the draft law commences a partial and phased reversal of the reductions applied to public service pensions over the next three years. Public service pensions are defined as including pensions payable to or in respect of a public servant or former public servant under a public service pension scheme. Public servants are defined as persons who are employed by, or who hold any office or other position in a public service body, including the CBI, and include an office holder. Both current and former employees and office holders of the CBI come within the scope of application of the 2010 Act, and thus also the draft law. The Financial Emergency Measures in the Public Interest (Amendment) Act 2011 (hereinafter the '2011 Act') amended the 2010 Act by introducing a provision pursuant to which the 2010 Act applies in respect of employees and office holders of the CBI only with its consent, given in writing to the Minister for Finance by the CBI's Governor, and with the consent of the Minister for Finance.

1.4 Part 4 of the draft law (Miscellaneous) amends the 2009 Act so that the pay of public servants may be adjusted to reflect the terms of a collective agreement (the Haddington Road Agreement).

1.5 Currently, the CBI enjoys statutory autonomy in determining its staff policy, including remuneration, with the CBI's officers and employees subject to individual employment contracts and to collective bargaining agreements entered into between the CBI and staff representative groups. The measures provided for in the draft law, as is the case with the 2009 Act and the 2010 Act, represent a departure from that regime in so far as the provisions proposed are to be imposed unilaterally.

2. Central bank independence

2.1 As the draft law applies to and directly affects the CBI's decision-making bodies and its employees, it should be examined from the perspective of central bank independence, in particular institutional and financial independence, as well as that of the personal independence of the members of the CBI's decision-making bodies. It is worth noting that the draft law commences a partial and phased reversal of the provisions of the five FEMPI Acts introduced between 2009 and 2013, on which the ECB has already issued its opinion[2], by partially reversing the remuneration and pension reductions to public servants. Nevertheless, it is worth restating the principles outlined in the ECB's previous opinions.

2 See Opinions CON/2009/15, CON/2012/6 and CON/2013/46. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

2.2 The principle of central bank independence as enshrined in Article 130 of the Treaty prohibits third parties, including the governments of the Member States, from issuing instructions to the national central banks (NCBs). In addition, the principle of central bank independence means that third parties may not influence, directly or indirectly, an NCB in the performance of its tasks or as regards its ability to fulfil its mandate: both operationally in terms of manpower, and in terms of appropriate financial resources[3].

Financial independence

2.3 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 of the European System of Central Banks and of the European Central Bank. Furthermore, an NCB may not be put into a position where it has limited control or no control over its staff, or where the government of a Member State can influence its policy on staff matters. To protect autonomy in staff matters, the ECB has consistently recommended in previous opinions and in its convergence reports that any amendment to legislation on remuneration for members of an NCB's decision-making bodies and its employees should be decided in close and effective cooperation with the NCB, taking due account of its views, to ensure the ongoing ability of the NCB to independently carry out its tasks. Autonomy in staff matters extends to issues relating to staff pensions[4].

2.4 Given that the CBI's employees are employed under the conditions (including conditions as to remuneration and allowances) set by the Central Bank Commission[5], in order to protect the CBI's autonomy in staff matters legislative provisions affecting the remuneration of members of the CBI's decision-making bodies and employees should be drafted in close and effective cooperation with the CBI[6].

2.5 As regards the provisions on pension-related deductions and pensions applicable to the CBI's officers and employees, the ECB notes that Section 1A of the 2010 Act, as inserted by the 2011 Act, required the Minister to obtain the written consent of the CBI's Governor in respect of reductions to pensions of former CBI employees and office holders, and that this consent was granted.

Personal independence of members of the CBI's decision-making bodies

2.6 Furthermore, Member States may not seek to influence the members of an NCB's decision-making bodies by amending national legislation affecting their remuneration. Such legislation, as a matter of principle, should apply only in respect of future appointments[7]. The draft law applies not only to the CBI's decision-making bodies but also more generally to all public servants in Ireland who come within its scope and, as such, does not seek directly or indirectly to influence the CBI's decision-making bodies in the performance of their tasks. The provisions will therefore be considered compatible with the principle of personal independence, as long as the

3 See, for example, the ECB's Convergence Report 2014, p. 26, and paragraph 6 of Opinion CON/2012/89.

4 See the ECB's Convergence Report June 2014, p. 27 and the reference to ECB opinions made there.

5 See section 6D of the Central Bank of Ireland Act 1942, as inserted by section 7 of the Central Bank and Financial Services Authority of Ireland Act 2003 and as amended.

6 See also Opinion CON/2012/89 and paragraph 2.6 of Opinion CON/2013/41.

7 See the ECB's Convergence Report June 2014, p. 23.

abovementioned requirements in respect of the principle of financial independence are taken into account[8].

This opinion will be published on the ECB's website

Done at Frankfurt am Main, 11 November 2015.

[signed]

The President of the ECB

Mario DRAGHI

8 See also paragraph 3.2.10 of Opinion CON/2010/80.