EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 5 December 2011

on representation and the payment of quota shares in the International Monetary Fund

(CON/2011/97)

Introduction and legal basis

On 22 November 2011, the European Central Bank (ECB) received a request from Riigikogu (the Parliament of Estonia) for an opinion on a draft law on amendments to legislation governing aspects of International Monetary Fund (IMF) membership[1] (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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[2], as the draft law relates to Eesti Pank. 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

The draft law regulates Eesti Pank's role in relation to Estonia's IMF membership. Eesti Pank was involved in the legislative process and agrees with the transfer of Estonia's IMF-related responsibilities from the Estonian Government to Eesti Pank. According to the draft law, among other things, Eesti Pank will represent Estonia in the IMF and be responsible for paying Estonia's quota share in the IMF and any quota increases.

2. General observations

2.1 As regards representation under the draft law, the ECB notes that Eesti Pank will be authorised to represent Estonia in the IMF subject to coordination with the Ministry of Finance and in other international organisations upon governmental authorisation. Pursuant to Articles 23 and 31.1 of the Statute of the European System of Central Banks and of the European Central Bank, the national central banks are allowed to establish relations with international organisations and perform transactions in fulfilment of their obligations towards international organisations.

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1 The Law on incurring and implementing proprietary obligations related to the membership of the Republic of Estonia in international organisations (*Riigi Teataja* I 2002, 11, 58), Decision of the Parliament 'Consent given to accession of the Republic of Estonia to the IMF, IBRD and their affiliated organisations' (*Riigi Teataja* 1992, 18, 258; *Riigi Teataja* I 2002, 11, 58) and the Law on Eesti Pank (*Riigi Teataja* I 1993, 28, 498).

2 OJ L 189, 3.7.1998, p. 42.

2.2 As regards financial obligations, the draft law provides the legal basis for Eesti Pank to act in accordance with Article V of the Articles of Agreement of the International Monetary Fund and Article III, Section 2, of the Articles of Agreement of the International Bank for Reconstruction and Development and to execute all operations and transactions provided for by these Articles of Agreement in Estonia's name. Accordingly, Eesti Pank will make payments related to Estonia's IMF membership and any additional quota increase. The ECB notes that any quota increase will be subject to the consent of Riigikogu.

2.3 Several opinions[3] have stated that the tasks performed by a national central bank must comply with the monetary financing prohibition under Article 123 of the Treaty and with 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[4]. 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. Recital 14 of Regulation 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. Therefore, the ECB finds that the obligations assumed by Eesti Pank in relation to Estonia's IMF membership comply with Article 7 of Regulation (EC) No 3603/93 and do not infringe the monetary financing prohibition.

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

Done at Frankfurt am Main, 5 December 2011.

[signed]

The President of the ECB

Mario DRAGHI

3 See the most recent opinions, CON/2011/68 and CON/2011/89. All opinions are published on the ECB's website at www.ecb.europa.eu.

4 OJ L 332, 31.12.1993, p. 1.