EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 18 October 2010

on an increase of the New Arrangements to Borrow with the International Monetary Fund

(CON/2010/74)

Introduction and legal basis

On 9 September 2010, the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft Federal law on an increase of the New Arrangements to Borrow (NAB) with the International Monetary Fund (IMF) (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[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 draft law authorises the OeNB to increase on behalf of Austria, the credit limits for the NAB with the IMF to a maximum of SDR 3 600 million. The Minister for Finance will be in charge of implementing the law.

1.2 The draft law will enter into force on the date on which the NAB enters into force. At the same time, the Federal Law on a bilateral loan between the International Monetary Fund and the Oesterreichische Nationalbank[2] and the Federal Law on Austria's participation in the new arrangements to borrow with the International Monetary Fund[3] will cease to apply. These laws will apply, for the last time, to loans granted before the draft law enters into force.

1.3 The increase in the NAB, as approved by the IMF's Executive Board on 12 April 2010, includes both credit lines from new NAB participant countries and additional credit lines from existing NAB participants, such as Austria. Under the expanded and more flexible NAB, credit amounts of up to SDR 367 470 million (approximately EUR 436 720 million) will be available. The EU Member States have agreed to contribute approximately EUR 128 000 million to the expanded NAB. Austria's share of this contribution is SDR 3 600 million and this is to be funded from the OeNB's

1 OJ L 189, 3.7.1998, p. 42.

2 BGBl. I No 70/2010.

3 BGBl. No 64/1998.

resources. Since 1998, Austria has participated in the NAB with a current amount of SDR 408 million (approximately EUR 485 million).

2. General observations

It is necessary to assess whether the draft law complies with the prohibition on monetary financing under Article 123(1) of the Treaty, which prohibits, *inter alia*, overdraft facilities or any other type of credit facility with national central banks in favour of central governments. This prohibition is subject to certain exceptions contained in Article 123(2) of the Treaty and in 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]. In particular, Article 7 of Regulation (EC) No 3603/93 provides that 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 the Treaty[5]. The draft law is similar to that addressed in Opinion CON/1997/16, where the EMI considered that the OeNB's authorisation to grant a loan to the IMF on behalf of Austria under the NAB scheme was not a credit facility within the meaning of the Treaty, but fell within the exception in Article 7 of Regulation (EC) No 3603/93. The ECB came to the same conclusion with regard to laws authorising Banka Slovenije[6] and the OeNB[7], respectively, to provide payments to the IMF on the basis of bilateral agreements with the IMF. The OeNB's authority, under the draft law, to increase the credit limits for the NAB should also be considered to be within the exception in Article 7 of Regulation (EC) No 3603/93 and should therefore not be regarded as a form of monetary financing prohibited by the Treaty[8].

It is also necessary to ensure that the possible euro liquidity injections under the NAB do not interfere with the implementation of the single monetary policy. Under paragraph 23 of the IMF's Proposed Decision to Modify the New Arrangements to Borrow, there is a presumption that the IMF will notify the respective central bank at least five business days prior to the settlement of a possible drawing. This will allow for possible euro liquidity injections under the NAB to be taken into account when implementing the single monetary policy.

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4 OJ L 332, 31.12.1993, p. l.

5 The 14th recital of Regulation (EC) No 3603/93 provides: 'Whereas the financing by the central banks of obligations falling upon the public sector vis-à-vis the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up within the Community results in foreign claims which have all the characteristics of reserve assets; whereas it is, therefore, appropriate to authorise them'.

6 See Opinion CON/2009/100. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

7 See Opinion CON/2010/40.

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

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

Done at Frankfurt am Main, 18 October 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET