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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 September 2008

at the request of the Austrian Federal Ministry of Finance

on a draft Federal law providing for an Austrian contribution to the HIPC-Trust Fund for Liberia's debt relief

(CON/2008/41)

Introduction and legal basis

On 28 July 2008, the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft Federal law providing for an Austrian contribution to the HIPC-Trust Fund for Liberia's debt relief (hereinafter the 'draft law').

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 contains provisions concerning a national central bank (NCB). 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 Pursuant to Article 1 of the draft law, the Oesterreichische Nationalbank (OeNB) is authorised[2] in the process of debt clearance for Liberia to transfer 4.8 million Special Drawing Rights (SDRs) as an Austrian contribution to the trust funds of the International Monetary Fund (IMF) initiative for Heavily Indebted Poor Countries (HIPC).

1.2 The explanatory memorandum accompanying the draft law states that the IMF has lifted the suspension of Liberia's membership, which had been imposed due to arrears of payments. As a precondition for lifting the suspension, and since the IMF was not in a position to advance the loan directly, IMF member countries agreed to provide a temporary IMF loan to Liberia to enable it to pay off its old IMF loans and thereby resume full IMF membership. By 11 March 2008, 102 IMF member countries had promised contributions totalling 547.2 million SDRs. It is understood that, from a procedural point of view, the next step will be actually to grant Liberia the debt relief provided that it satisfies certain conditions.

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1 OJ L 189, 3.7.1998, p. 42.

2 In the context of this opinion, the question of the legal quality of the term 'authorise' (i.e. whether the OeNB has discretion in deciding whether and/or how many SDRs it would transfer or whether it could also decide not to transfer any SDRs) is not considered any further.

1.3 The ECB understands from the explanatory memorandum to the draft law that the OeNB, after the proportionate transfer of the relevant Special Contingent Account – 1 (SCA-1) funds and the proportionate transfer of outstanding charges, is authorised to retransfer these to the Liberia Administered Account established for Liberian debt clearance or the Poverty Reduction and Growth Facility (PRGF)-HIPC trust fund. The SCA-1 is a sub-account of the General Resources Account, which is remunerated by creditors and recipient countries in the context of the Burden Sharing Mechanism. The SCA-1 resources are repayable funds which can be repaid to the member countries following a resolution of the IMF (as has happened in this case), or following cancellation of all arrears due to the IMF. This is intended to ensure that in the event of a debtor country becoming unable to pay, the IMF is in a position to settle the claims of donor countries. The outstanding deferred charges were borne proportionally by creditor and debtor countries in the course of a burden sharing mechanism. After repayment of the debts and accrued charges, they are repaid automatically to the countries participating in this process.

1.4 From the explanatory memorandum the ECB also understands that, thereafter, a transfer to the Liberia administered account or the HIPC-Trust Fund takes place on the basis of the proposal made by the G-8 countries and accepted by the IMF relevant decision-making bodies, to the effect that all member countries which regularly appear in the financial transactions plan should participate in the debt clearance. The financial transactions plan is an integral part of IMF lending. The IMF makes its loans either directly in the form of SDRs or in foreign currency. In the second case, the quota position of the donor countries decreases and their claim against the IMF rises.

1.5 The explanatory memorandum states that Austria agreed to make a contribution of 4.8 million SDRs (EUR 5.025 million) to the financing package. It also states that the cancellation of Liberia's IMF debts will reduce the OeNB's income and that, as a result, lower funds will be transferred to the Ministry of Finance.

2. Specific observations

2.1 The ECB is of the view that an NCB's involvement in financing the IMF's PRGF and PRGF-HIPC Trusts reduces what is in principle government expenditure on development aid, and that the NCB effects this reduction by performing an immediate transfer of funds in lieu of the government. In the present case, the explanatory memorandum states that the participation envisaged by the draft law in respect of Liberia would increase the level of Austria's multilateral official development assistance payments. In view of the involvement of the OeNB in this development assistance, the ECB notes that it is necessary to ascertain whether the draft law complies with the prohibition on monetary financing laid down in Article 101 of the Treaty[3] and Council Regulation (EC)

3 Article 101 of the Treaty prohibits overdraft facilities or any other type of credit facility with the ECB or the NCBs of Member States in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States and the purchase directly from these public sector entities by the ECB or NCBs of debt instruments.

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].

2.2 The draft law covers a situation which is in substance similar to that covered by the Federal Law on the payment of a contribution by Austria to the trust fund administered by the International Monetary Fund for low income developing countries affected by natural disasters, on which the Ministry of Finance consulted the ECB in 2005. In its Opinion[5], the ECB took the view that the OeNB's financing of the relevant IMF-administered initiative fell within the scope of the exemption provided for in Article 7 of Council Regulation (EC) No 3603/93. This exemption relates to the financing by NCBs of obligations falling upon the public sector vis-à-vis the IMF, which are not to be regarded as credit facilities prohibited by Article 101 of the Treaty. Consequently, in this case the ECB considers that the OeNB's financing of the Austrian contribution to the HIPC-Trust Fund for Liberia's debt relief, as provided for in the draft law, falls within the scope of the same exemption and should not therefore be regarded as a form of monetary financing prohibited by the Treaty.

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

Done at Frankfurt am Main, 9 September 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

4 OJ L 332, 31.12.1993, p. 1. Recital 9 to Council Regulation (EC) No 3603/93 provides that, notwithstanding the role assigned to the Commission pursuant to Article 169 of the Treaty, it is for the ECB, pursuant to Article 109f(9) (now Article 117(9)) and Article 180 (now Article 237) of the Treaty, to ensure that NCBs honour the obligations laid down in the Treaty.

5 ECB Opinion CON/2005/29 of 11 August 2005 at the request of the Austrian Federal Ministry of Finance concerning a draft Federal law on the payment of a contribution by Austria to the trust fund administered by the International Monetary Fund for low income developing countries affected by natural disasters.