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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 February 2010

on Ireland's bilateral borrowing agreement with the International Monetary Fund

(CON/2010/15)

Introduction and legal basis

On 27 January 2010, the European Central Bank (ECB) received a request from the Irish Department of Finance for an opinion on a draft law amending the law on Ireland's membership of the International Monetary Fund (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 has implications for the Central Bank and Financial Services Authority of Ireland (hereinafter the 'CBFSAI'). 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

The main purpose of the draft law is to amend the law on Ireland's membership of the International Monetary Fund[2] (hereinafter the 'Law'), to adopt and approve a bilateral borrowing agreement (hereinafter the 'Borrowing Agreement') between Ireland and the International Monetary Fund (IMF). The Borrowing Agreement will be entered into in line with Ireland's commitment to comply with the Presidency conclusions of the European Council meeting of 19 and 20 March 2009 under which the Member States will provide temporary bilateral loans of EUR 75 billion to the IMF to deal with the international financial crisis**.**

As the provision of such additional funds to the IMF is not part of the regular IMF quota, and the Member States will provide these funds on the basis of bilateral borrowing agreements with the IMF, new legislation is needed for Ireland's provision of additional funds for the IMF's activities and to define the scope and content of the obligations of the CBFSAI and of Ireland towards the IMF.

1 OJ L 189, 3.7.1998, p. 42.

2 Bretton Woods Agreements Act 1957 to 1999, published in *Iris Oifigiuil* Nos 18/1957, 10/1969, 19/1977 and 4/1999.

Section 1(b) of the draft law inserts the Borrowing Agreement as a new Schedule 2 to the Law. Section 1(a) of the draft law inserts a new Section 3A to the Law, pursuant to which the terms of the Borrowing Agreement are approved. Under the terms of the Borrowing Agreement, Ireland agrees to lend to the IMF on request an SDR-denominated amount up to the equivalent of EUR 1.3 billion on the terms and conditions set out in the Borrowing Agreement. Unless otherwise agreed between the IMF and the CBFSAI, the loan will be made by way of payments to the IMF by the CBFSAI.

Section 1(a) of the draft law also inserts a new Section 3B in the Law, pursuant to which the Minister for Finance may guarantee, in such form and manner and on such terms and conditions as he or she thinks fit, either or both the payment to the CBFSAI of the principal of and any interest on, any money advanced by the CBFSAI under the terms of the Borrowing Agreement.

2. General observations

2.1 On 27 January 2010, the Department of Finance informed the ECB that the draft law was intended to be adopted as a matter of urgency and, pursuant to Article 3(2) of Decision 98/415/EC which allows for a reduction of the minimum time limit of one month for the submission of the ECB's opinion in case of extreme urgency, the Department of Finance requested the opinion of the ECB on the draft law. Notwithstanding Article 3(2) of Decision 98/415/EC, the ECB draws the Department of Finance's attention to the fact that the second sentence of Article 4 of Decision 98/415/EC states that the ECB must be consulted 'at an appropriate stage' in the legislative process. This implies that the consultation should take place at a point in the legislative process that affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in the required language versions and which also enables the relevant national authorities to take the ECB's opinion into consideration before the legislative provisions are adopted.

2.2 As recently expressed in other opinions[3], the ECB reminds the Department that the tasks performed by the CBFSAI must comply with the monetary financing prohibition under Article 123(1) of the Treaty which prohibits, among other things, overdraft facilities or any other type of credit facility with the national central banks in favour of central governments. However, Article 7 of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 [now Article 123] and 104b(1) [now Article 125(1)] of the Treaty[4] provides that the financing by the 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 104 [now Article 123] of the Treaty. Any payment by the CBFSAI of Ireland's additional obligations to the IMF provided for in the Borrowing Agreement inserted into the Law by Section 1(b) of the draft law falls within the scope of Article 7 of Regulation (EC) No 3603/93.

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3 See ECB Opinions CON/2009/100 and CON/2009/41. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

4 OJ L 332, 31.12.1993, p. 1.

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

Done at Frankfurt am Main, 9 February 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET