EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 14 May 2010

on a bilateral loan between the International Monetary Fund and the Oesterreichische Nationalbank

(CON/2010/40)

Introduction and legal basis

On 9 April 2010, the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft Federal law on a bilateral loan agreement between the International Monetary Fund (IMF) and the Oesterreichische Nationalbank (OeNB) (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 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 grant the IMF a loan of up to EUR 2 180 million on behalf of Austria and within the framework of a bilateral agreement. The Minister of Finance is in charge of implementing the law.

1.2 The explanatory memorandum to the draft law refers to the expansion of the IMF's New Arrangements to Borrow (NAB). This expansion, as adopted by the IMF's Executive Board on 12 April 2010, includes both new NAB participant countries and additional payments from existing NAB participants, such as Austria. Under the expanded and more flexible NAB, credit amounts of up to SDR 367 500 million (equivalent to about EUR 429 600 million) will be available. The Member States have agreed to contribute EUR 128 000 million to the expanded NAB. Austria's share of this contribution is EUR 3 714 million, to be funded from the OeNB's resources. Austria currently provides credit arrangements under the NAB for SDR 412 million (equivalent to about EUR 467 million).

1.3 The negotiations with existing and new participants on the expansion of the NAB are not expected to be completed within the next 12 months, and in view of the uncertain economic climate the NAB

1 OJ L 189, 3.7.1998, p. 42.

participants have agreed to make bilateral agreements with the IMF in the interim. The draft law implements such an agreement to provide an interim bilateral loan. The bilateral agreement with the IMF addressed in the draft law can be terminated once the new NAB agreement has been made, and the bilateral loan would be offset against Austria's expanded provision of credit arrangements under the NAB of EUR 3 714 million.

2. General observations

It is necessary to assess whether the draft law complies with the prohibition of monetary financing under Article 123(1) of the Treaty, which prohibits 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 [now Articles 123 and 125(1) of the Treaty][2]. 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 Article 123 of the Treaty[3]. The draft law is similar to that addressed in Opinion CON/1997/16, where the EMI considered that the authorisation of the OeNB to grant a loan to the IMF on behalf of Austria under the NAB scheme was not a credit facility within the meaning of Article 123(1) (then Article 104), but fell within the exception in Article 7 of Regulation (EC) No 3603/93. The ECB came to the same conclusion with regard to a law authorising Banka Slovenije to provide payments to the IMF on the basis of bilateral agreements with the IMF[4]. The OeNB's authority, under the draft law, to grant a bilateral loan to the IMF should also be considered as falling under 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[5].

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

Done at Frankfurt am Main, 14 May 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

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2 OJ L 332, 31.12.1993, p. 1.

3 The fourteenth recital of Regulation (EC) No 3603/93 states: '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 [the Union] results in foreign claims which have all the characteristics of reserve assets; whereas it is, therefore, appropriate to authorize them'.

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

5 See also Opinions CON/2010/22, CON/2009/5, CON/2008/41 and CON/2005/92.