EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 22 December 2014

on the publication of documents and the use of the pension reserve

(CON/2014/91)

Introduction and legal basis

On 12 November 2014, the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on the draft law on the determination of weighted average yields for federal loans (UDRBG) and amending the Law on the Oesterreichische National Bank, the Law of 2010 on Sanctions and the Law of 2004 on Currency (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 on the third, fourth and fifth indent of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to the Oesterreichische National Bank (OeNB), the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics as well as payment and settlement systems. 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 follows on from a recent draft law opined on by the ECB[2]. Whereas the issues consulted on before remain almost unchanged, the draft law amends further provisions of the Law on the Oesterreichische National Bank, the Law of 2010 on Sanctions and the Law of 2004 on Currency.

1.2 The draft law amends the procedure regarding the publication of OeNB official documents. Under the draft law, ordinances issued by the OeNB will be published in the Federal Law Gazette (*Bundesgesetzblatt*). The same shall apply to ordinances issued by the OeNB under the Law of 2004 on Currency and the Law of 2010 on Sanctions. Furthermore, the draft law entitles the OeNB to publish terms and conditions relating to its area of responsibility on its website.

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1 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

2 See Opinion CON/2014/75. All ECB documents are published on the ECB's website at www.ecb.europa.eu.

1.3 The draft law entitles the central bank to use data it receives in connection with one task for all other tasks assigned to it by federal law, international treaty or directly applicable Union law. However, this right of cross-functional data usage is subject to directly applicable Union law or national law and to the rules concerning Austrian banking secrecy (Section 38 of the Austrian Banking Act). Furthermore, the draft law entitles the OeNB to provide disclosing parties with a data template suitable for providing required information in a standardised, electronic form. The OeNB will publish such data templates and its technical specifications on its website. In the context of its banking supervisory tasks, the OeNB is already entitled to compile data directly from credit institutions if the Financial Market Authority does not have the requested data available. In this context, the draft law introduces an administrative penalty of up to EUR 2000 if a credit institution does not meet an OeNB request for information or knowingly provides false information.

1.4. The draft law also provides for new notification obligations for payment system operators who will have to inform the OeNB within two weeks in the event of starting or suspending operations in connection with a payment system. Furthermore, such operators have to notify the OeNB of the parties that use their payment systems as well as any changes in this regard. The draft law determines that breaches of these new notification requirements will be sanctioned with administrative penalties of up to EUR 2000.

1.5 In addition, the draft law follows up on a Law on the limitation of special pension arrangements[3], which enters into force on 1 January 2015. This law implements certain changes to the pension rights for OeNB employees and retirees, such as a gradual increase of the retirement age and the obligation to pay pension safeguard contributions. It is expected that the OeNB's payment obligations in relation to its pensioners will decline due to these measures. The draft law requires the OeNB to allocate up to 10% of the OeNB's annual profit balance to its pension reserve until it holds sufficient capital in order to ensure respective pension payments to former OeNB employees. However, should the pension reserve exceed the necessary capital on a sustained basis, the draft law suggests to partly release the excess and post the difference to the bank's profit and loss account. The explanatory memorandum to the government bill considers an excess of funds to be sustainable if a surplus is also probable for the following year, thereby taking into account market trends and the OeNB's expected payment obligations.

2. General observations

The draft law further amends a draft law that the ECB has already opined on. The ECB understands that the original draft version has not yet been adopted, but has been amended further during the national legislative process. As the draft law contains provisions regarding the OeNB that have not yet been consulted on, the Austrian authorities have requested a new ECB opinion. As regards the replacement of

3 Law on the limitation of special pension arrangements, BGBl I No 46/2014; see Opinion CON/2014/35.

Austria's current indicator for federal loans with the new indicator, 'circulation weighted average yields of federal bonds' (hereinafter 'UDRB'), the only change in the new draft law in this respect concerns the entry into force. Instead of 1 January 2015, the UDRB will replace the current indicator for federal loans from 1 April 2015. In connection with the update of the OeNB's appointment procedure for external auditors, the ECB notes that the draft law remains unchanged. Accordingly, the ECB comments made in its Opinion CON/2014/75 remain relevant.

3. Specific observations

Publication of documents and data collection

3.1 The ECB welcomes the changes regarding the modernisation of the OeNB's publication procedures for ordinances and terms and conditions relating to its area of responsibility. The ECB expects that this will, inter alia, facilitate the implementation of changes to the monetary policy instruments and procedures of the Eurosystem by the OeNB.

3.2 The ECB also welcomes the enabling clause for the multi-use of the data collected by the OeNB. This is in line with Union requirements to minimise the reporting burden for respondents and facilitates the coherence of information for analysis and decision making. In addition, the draft law makes provisions to ensure the protection of confidential data in line with Union and national requirements.

3.3 The ECB welcomes the OeNB's right to provide data templates to reporting agents. However, in order to ensure consistent application of the data templates, the draft law should clearly state that the OeNB may require reporting agents to use the data templates.

Pension reserve

3.4 In line with the principle of central bank independence, an NCB's decision-making bodies should be able to decide on the calculation of the profits independently and professionally[4]. With regard to profit allocation, an NCB's statute may prescribe how its profits are to be allocated. Profits may be distributed to the State budget only after any accumulated losses from previous years have been covered and financial provisions deemed necessary to safeguard the real value of the NCB's capital and assets have been created. Any amendment to an NCB's profit distribution rules should only be initiated and decided in cooperation with the NCB, which is best placed to assess its required level of reserve capital. As regards financial provisions or buffers, NCBs must be free to independently create financial provisions to safeguard the real value of their capital and assets.

4 See Convergence Report 2014, p. 26.

3.5 Member States may also not prevent NCBs from building up their reserve capital to a level which is necessary for a member of the European System of Central Banks to fulfil its tasks. Additionally, to protect autonomy in staff matters, which is one aspect of the principle of financial independence, the ECB has consistently recommended in its previous opinions[5] and in its convergence reports that any amendment to legislation on remuneration for members of an NCB's decision-making bodies and its employees should be decided in close and effective cooperation with the NCB. This should be achieved by taking due account of the NCB's views, to ensure the ongoing ability of it to independently carry out its tasks. Autonomy in staff matters extends to issues relating to staff pensions.

3.6 Against this background, the ECB notes that the draft law proposes a change to the calculation and profit distribution rules in relation to pension reserves. The ECB understands that a (partial) dissolution of the pension reserve may occur if sufficient funds are held in the pension reserve in compliance with these new calculation and profit distribution rules.

3.7 In line with the principle of central bank independence, the amendment proposed in the draft law should only be initiated and decided in close and effective cooperation with the OeNB, which is best placed to assess the necessary required capital in order to preserve the OeNB's autonomy in issues related to staff pensions. Any (partial) dissolution of the pension reserve should be made with great care because, once the balance of the reserve is reduced, it may only be replenished again with future annual profits of the OeNB. Therefore, while the replenishment of the reserve is restricted to 10% of the annual profits, the release of the reserve appears to be automatic, despite the inherent volatility of the related calculations. This may mean that the speed of replenishment may be slower than needed and therefore a longer-term perspective in evaluating the sufficiency of the reserve than is currently envisaged by the explanatory memorandum to the draft law should be considered. Accordingly, it is recommended that a definition of the term sustainable (*'nachhaltig')* be inserted directly in the draft law rather than in the explanatory memorandum. Furthermore, the explanation provided in the memorandum, whereby overfunding would be sustainable if an excess of the assets over the required capital in the current and following year is probable, does not sufficiently take into account the long-term nature of pension obligations. Thus, the sufficiency of the pension reserve should be assessed over a three to five years perspective as a minimum.

5 See Opinion CON/2014/35.

Finally, this assessment should be carried out by an independent qualified actuary, based on actuarial assumptions that have been drawn up in consultation with the OeNB.

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

Done at Frankfurt am Main, 22 December 2014.

[signed]

The President of the ECB

Mario DRAGHI