



OPINION OF THE EUROPEAN CENTRAL BANK

of 28 June 2013

on pay and pension reforms

(CON/2013/46)

Introduction and legal basis

On 27 May 2013, the European Central Bank (ECB) received a request from the Irish Minister for Public Expenditure and Reform (hereinafter ‘the Minister’) for an opinion on the Financial Emergency Measures in the Public Interest Bill 2013 (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 provisions¹, as the draft law relates to the Central Bank of Ireland (CBI). 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 amends the Financial Emergency Measures in the Public Interest Act 2009 (hereinafter the ‘2009 Act’), which was introduced as part of the Government’s programme of measures to urgently address the serious position of the public finances, and which provided for deductions to be made from the remuneration of public servants. The draft law provides for a further reduction in the remuneration of all public servants earning EUR 65 000 per annum or more. A public servant is defined in the 2009 Act as a person who is employed by, or who holds any office or other position in, a public service body. The CBI is explicitly defined as coming within the meaning of ‘public service body’. It follows, therefore, that the 2009 Act and the draft law apply to both employees and office holders of the CBI.
- 1.2 The draft law also amends the Financial Emergency Measures in the Public Interest Act 2010 (hereinafter the ‘2010 Act’), the purpose of which was to reduce public service pension costs. It introduced the Public Service Pension Reduction (PSPR), under which a progressively structured levy-type is imposed on Irish public service pensions greater than EUR 12 000 per annum. Public service pensions are defined as including pensions payable to or in respect of a public servant or former public servant under a public service pension scheme. Public servants are defined as

¹ OJ L 189, 3.7.1998, p. 42.

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persons who are employed by, or who hold any office or other position in a public service body, including the CBI, and includes an office holder. Both current and former employees and office holders of the CBI come within the scope of application of the 2010 Act. The Financial Emergency Measures in the Public Interest (Amendment) Act 2011 (hereinafter the '2011 Act') amended the 2010 Act by introducing a provision pursuant to which the 2010 Act is to apply in respect of employees and office holders of the CBI only with its consent, given in writing to the Minister for Finance by the Governor, and with the consent of the Minister for Finance. The draft law provides for an increased reduction in respect of the PSPR for all public service pensions in excess of EUR 32 500.

- 1.3 The draft law provides that, for a period of three years from 1 July 2013, increments will not be awarded and pay scales will be suspended in respect of public servants. This particular provision also applies to any pay scale that is applicable after 1 July 2013 in consequence of an appointment or a promotion to a position, but with the substitution for any reference to 1 July 2013 of a reference to the date of the appointment or promotion in question. Groups or grades of public servants may be excluded from the effect of this provision, or have its effects modified, in the event that a collective agreement, which has been registered with the Labour Relations Commission, is reached.
- 1.4 Currently, the CBI enjoys statutory autonomy in determining its staff policy, including remuneration, with the CBI's officers and employees subject to individual employment contracts and to collective bargaining agreements entered into between the CBI and staff representative groups. The measures provided for in the draft law, as is the case with the 2009 Act and the 2010 Act, represent a departure from that regime in so far as the reductions proposed are to be imposed unilaterally.

2. Non-compliance with the consultation obligation

- 2.1 The ECB received the consultation request on 27 May 2013. The Irish Parliament adopted the draft law on 6 June, and it came into force on the same date. The consultation request does not specify a time by which the Irish authorities wished to receive the ECB's opinion, nor does it mention that it is urgent. The consultation request refers to the fact that the draft law was being considered by the Irish Parliament at the time of the request. However, it fails to mention when the Irish Parliament was scheduled to vote on the draft law.
- 2.2 Article 4 of Decision 98/415/EC provides that the ECB must be consulted 'at an appropriate stage' in the legislative process. It follows from this 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 in question and adopt its opinion. Following from the wording of Article 3(4) of Decision 98/415/EC, Member States are obliged to suspend the process for adoption of the draft legislative provisions pending receipt of the ECB's opinion in order to allow the relevant national authorities to meaningfully deliberate the ECB's opinion prior to adoption of the provisions in

question. In this respect, the ECB stresses that the fact that the enactment of a particular draft law is urgent does not relieve national authorities of their obligation to consult the ECB and to allow sufficient time for its views to be taken into account in accordance with Decision 98/415/EC. The Irish Government should have postponed the final vote on the draft law until such time as would have allowed for a proper consultation with the ECB, as well as due consideration of the ECB's Opinion. The ECB would appreciate it if the consulting authority would honour its obligation to consult the ECB in due time in the future.

3. General observations

The ECB welcomes the general aims of the draft law in the context of the ongoing efforts to stabilise public finances.

4. Central bank independence

4.1 As the draft law applies to and directly affects the CBI's decision-making bodies and its employees, it should be examined from the perspective of central bank independence, in particular institutional and financial independence, as well as that of the personal independence of the members of the CBI's decision-making bodies.

4.2 The principle of central bank independence as enshrined in Article 130 of the Treaty prohibits third parties, including the governments of the Member States, from issuing instructions to the national central banks (NCBs). In addition, the principle of central bank independence means that third parties may not influence, directly or indirectly, an NCB in the performance of its tasks or as regards its ability to fulfil its mandate both operationally in terms of manpower, and in terms of appropriate financial resources².

Financial independence

4.3 Member States may not interfere with an NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. To protect autonomy in staff matters, the ECB has consistently recommended in previous opinions 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, taking due account of its views, to ensure the ongoing ability of the NCB to independently carry out its tasks. Autonomy in staff matters extends to issues relating to staff pensions³.

² See, for example, the ECB's Convergence Report 2013, p. 30, and paragraph 6 of Opinion CON/2012/89. All ECB documents are published on the ECB's website at www.ecb.europa.eu.

³ See the ECB's Convergence Report 2013, p. 33 and the reference to ECB opinions made there.

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- 4.4 Given that the CBI's employees are employed under the conditions (including conditions as to remuneration and allowances) set by the Central Bank Commission⁴, in order to protect the CBI's autonomy in staff matters, legislative provisions affecting the remuneration of members of the CBI's decision-making bodies and employees should be drafted in close and effective cooperation with the CBI⁵. The ECB understands that a first step has been made in terms of such cooperation since the CBI's Governor has been consulted on the draft law.
- 4.5 As regards the pension-related deductions applicable to the CBI's officers and employees, the ECB notes that Section 1A of the 2010 Act, as inserted by the 2011 Act, requires the Minister to obtain the written consent of the CBI's Governor in respect of reductions to pensions of former CBI employees and office holders.

Personal independence of members of the CBI's decision-making bodies

- 4.6 Furthermore, Member States may not seek to influence the members of an NCB's decision-making bodies by amending national legislation affecting their remuneration which legislation, as a matter of principle, should apply only in respect of future appointments⁶. The draft law applies not only to the CBI's decision-making bodies but also more generally to all public servants in Ireland who come within its scope and, as such, does not seek directly or indirectly to influence the CBI's decision-making bodies in the performance of their tasks. The provisions will therefore be considered compatible with the principle of personal independence, as long as the abovementioned requirements in respect of the principle of financial independence are taken into account⁷.

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

Done at Frankfurt am Main, 28 June 2013.

[signed]

The President of the ECB

Mario DRAGHI

⁴ See section 6D of the Central Bank of Ireland Act 1942, as inserted by section 7 of the Central Bank and Financial Services Authority of Ireland Act 2003 and as amended.

⁵ See also Opinion CON/2012/89 and paragraph 2.6 of Opinion CON/2013/41.

⁶ ECB Convergence Report June 2013, p. 27.

⁷ See also paragraph 3.2.10 of Opinion CON/2010/80.