EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 25 June 2021

on Austria's participation in certain initiatives of the International Monetary Fund

(CON/2021/23)

Introduction and legal basis

On 20 May 2021 the European Central Bank (ECB) received a request from the Austrian Federal Ministry of Finance for an opinion on a draft law amending the Federal Law of 23 June 1971 on the increase of Austria's quota in the International Monetary Fund (IMF) and the transfer of the entire quota by the Oesterreichische Nationalbank (hereinafter the 'draft law')[1].

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[2], as the draft law relates to the Oesterreichische Nationalbank (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 make funds available to the IMF from the share of net profit available to the Austrian Federation under Section 69(3) of the Law on the Oesterreichische Nationalbank[3] (hereinafter the 'Law on the OeNB') if the measures financed in this way correspond to the objectives of Austrian or international development cooperation or serve the associated risk provisioning by the IMF. The OeNB may only make such funds available to the IMF with the consent of the Austrian Minister for Finance.

1.2 The explanatory memorandum accompanying the draft law states that the need for ultimate funding from federal resources arises from the fact that the ECB considers the financing of IMF measures by the OeNB that does not result in claims having the characteristics of reserve assets within the meaning of recital 14 of Council Regulation (EU) No 3603/93[4] to be an infringement of the prohibition on monetary financing pursuant to Article 123 of the Treaty. Reference is made in this

1 Bundesgesetz, mit dem das Bundesgesetz vom 23. Juni 1971 über die Erhöhung der Quote Österreichs beim Internationalen Währungsfonds und die Übernahme der gesamten Quote durch die Oesterreichische Nationalbank geändert wird.

2 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).

3 Bundesgesetz über die Oesterreichische Nationalbank, BGBl. Nr. 50/1984 as amended by BGBl. I Nr. 61/2018.

4 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 (OJ L 332, 31.12.1993, p. 1).

respect to Opinion CON/2016/21 on Austria's contribution to the Catastrophe Containment and Relief Trust of the IMF[5].

1.3 According to the explanatory memorandum accompanying the draft law, another reason for the introduction of the draft law arises from the fact that the OeNB cannot participate in the IMF's voluntary initiatives without authorisation under federal law. Pursuant to Section 2(1) of the Law of 23 June 1971 on the increase of Austria's quota in the International Monetary Fund and the transfer of the entire quota by the OeNB[6], only the OeNB is authorised to meet all financial obligations from Austria's membership. Since the IMF's voluntary initiatives do not qualify as obligations arising from membership in the IMF, the draft law aims to create the legal basis for contributions from funds which are available to the Austrian Federation and are only processed via the OeNB. The explanatory memorandum states that this complies with Union law and refers in this respect to the Law on the National Foundation for Research, Technology and Development, to which the ECB did not object in Opinion CON/2017/26.

1.4 The explanatory memorandum notes that in the future, based on the amendments introduced by the draft law, contributions could be made by the OeNB, with the consent of the Austrian Minister of Finance, for example to IMF disaster relief, such as the IMF Catastrophe Containment and Relief Trust (CCRT) and the IMF Poverty Reduction and Growth Trust (PRGT). Furthermore, the draft law simplifies contributing to ongoing debt relief initiatives, such as the soon to be concluded initiative to provide debt relief to heavily indebted poor countries (HIPC initiative) and similar future international initiatives.

1.5 Finally, the draft law stipulates that the funds made available to the IMF shall reduce, for the respective assessment period, the corporate tax base of the OeNB calculated in accordance with Section 72(1) of the Law on the OeNB by the same amount by which the funds are transferred to the IMF.

2. Observations

2.1 The ECB understands that the draft law creates a legal basis for Austria to participate in the financing of what the draft law identifies as *voluntary IMF initiatives*, including those related to disaster relief under the CCRT and the PRGT, as well as the ongoing debt relief HIPC initiative.

2.2 As noted above, the explanatory memorandum accompanying the draft law refers to Opinion CON/2016/21 as regards the compliance of tasks performed by a national central bank (NCB) with the monetary financing prohibition laid down in Article 123(1) of the Treaty. As specified in that opinion, the monetary financing prohibition is subject to certain exemptions laid down in Council Regulation (EC) No 3603/93. In particular, Article 7 of Regulation (EC) No 3603/93 provides that the financing by NCBs of obligations falling upon the public sector in relation to the IMF are not regarded as a credit facility within the meaning of Article 123 of the Treaty. Recital 14 of Regulation (EC) No 3603/93 clarifies the rationale behind this exemption, stating that it is appropriate to

5 All ECB opinions are published on EUR-Lex.

6 Bundesgesetz vom 23. Juni 1971 über die Erhöhung der Quote Österreichs beim Internationalen Währungsfonds und die Übernahme der gesamten Quote durch die Oesterreichische Nationalbank, BGBl. Nr. 309/1971 as amended by BGBl. Nr. 190/1978.

authorise the financing by the central banks of obligations falling upon the public sector in relation to the IMF because such financing 'results in foreign claims which have all the characteristics of reserve assets'. Therefore, the exemption in Article 7 of Regulation (EC) No 3603/93 must be interpreted in line with this rationale[7]. The ECB further notes that, in respect of Opinion CON/2016/21, the explanatory memorandum accompanying the draft legislative provisions on which the ECB was consulted indicated that the OeNB's contribution to the CCRT at the time was to be considered a donation. This led to the view being taken in that opinion that the OeNB's contribution to the CCRT, as set out in draft legislative provisions in question, did not result in foreign claims that have all the characteristics of reserve assets[8].

2.3 By contrast to the draft legislative provisions in respect of which the ECB issued Opinion CON/2016/21, the ECB understands that the purpose of the draft law is that the funds to be provided by the OeNB to the IMF for such *voluntary initiatives* are taken from the funds of the Austrian Federation. In a similar way to the approach taken to contributions that may be transferred by the OeNB in its own name but on behalf of the Austrian Federation in other contexts[9], the draft law authorises the OeNB to make funds available to the IMF from the share of the net profit to which the Austrian Federation is entitled pursuant to Section 69(3) of the Law on the OeNB.

2.4 Against this background, the ECB would like to clarify the following aspects. First, to the extent that the contribution of a Member State to IMF initiatives is transferred by the NCB from funds held by that Member State with the NCB, the conditions specified in paragraph 2.2, and in Opinion CON/2016/21, for the application of the exemption laid down in Article 7 of Regulation (EC) No 3603/93 need not be fulfilled. In such cases, there is no need to rely on this exemption because the financing of the contribution to IMF initiatives is essentially provided by the Member State itself and not by the NCB, which is only executing the transfer of funds on the Member State's behalf. Consequently, the transfer of funds to the IMF by the NCB would, in such cases, not give rise to a credit facility in favour of the Member State with the NCB within the meaning of Article 123(1) of the Treaty and Article 1(1)(b)(ii) of Regulation (EC) No 3603/93.

2.5 Second, in a case such as that envisaged under the draft law in which the provision of funds to the IMF takes place in the context of the distribution of the OeNB's profits, for the contribution of the Austrian Federation to IMF initiatives to be regarded as being financed by the Federation itself, and not by the OeNB, the transfer of funds to the IMF by the OeNB must be distinct from and subsequent to the OeNB's profit disbursement. Otherwise, the financing of the contribution to IMF initiatives could not be construed as provided by the Federation instead of the OeNB. In this respect, it is noted that Section 69(3) of the Law on the OeNB explicitly refers to the distribution of the OeNB's net profits and the right of the Federation to receive a share of 90% of the OeNB's net profits, while Section 69(1) of the Law on the OeNB governs the total annual income of the OeNB[10]

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7 See paragraph 2.1 of Opinion CON/2016/21.

8 See paragraph 2.2 of Opinion CON/2016/21.

9 See paragraph 2.1 of Opinion CON/2017/26.

10 Under Section 69(1) of the Law on the OeNB, this income is derived pursuant to Articles 32, 33 and 51 of the Statute of the European System of Central Banks and of the European Central Bank.

and lists specific amounts that must be deducted from its income[11]. The ECB understands that, in contrast to the amounts listed in Section 69(1) of the Law on the OeNB that reduce the annual income of the OeNB, the funds made available to the IMF under the draft law are to be made solely from profits which have been fully realised, accounted for and audited, and only insofar as there is in fact a distributable profit of the OeNB within the meaning of Section 69(3) of the Law on the OeNB. Furthermore, the profits distributed to the Federation will thus be reduced only if the OeNB decides to make use of its authorisation to provide funds to the IMF, and the Minister of Finance consents, as stated in the draft law.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 25 June 2021.

[signed]

The President of the ECB

Christine LAGARDE

11 Pursuant to Section 69(1) of the Law on the OeNB, the following sums shall, irrespective of the operating profit, be deducted and not recognised as profit: (1) earnings from the assets in which the pension reserve, i.e. the reserve fund serving to meet the pension claims of the OeNB's employees, has been invested, and which shall be paid into that reserve fund; (2) amounts of interest which, pursuant to the agreement between the OeNB and the European Recovery Program Fund concluded in accordance with Section 3(4) of the European Recovery Program Fund Act, were credited during the year to the temporary reserve account for European Recovery Program loans extended by the OeNB; and (3) earnings from the assets in which the fund for the promotion of scientific research and teaching set up by the OeNB is invested, which shall be endowed to this fund.