



OPINION OF THE EUROPEAN CENTRAL BANK
of 28 January 2014
on remuneration for public servants during periods of sick leave
(CON/2014/7)

Introduction and legal basis

On 6 January 2014, 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 Public Service (Recruitment and Appointments) (Amendment) 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 Public Service Management (Recruitment and Appointments) Act 2004 (hereinafter the ‘2004 Act’). The new Part 7A of the 2004 Act introduces new rules for the remuneration of public servants during periods of sick leave. It empowers the Minister to make regulations providing for the payment of such remuneration to public servants, and it contains provisions that will be applied by ministerial regulation to certain ‘public service bodies’ as defined in the draft law. The CBI is not excluded from the definition of ‘public service bodies’ contained in the draft law.
- 1.2 The new Part 6A of the 2004 Act concerning the redeployment of public servants is also inserted by the draft law. The CBI’s staff are explicitly excluded from its provisions.

2. Appropriate time to consult the ECB

- 2.1 The ECB received the consultation request on 6 January 2014. The ECB notes that the draft law has already progressed through the legislative procedure in the Irish Parliament and no further amendments are possible prior to enactment.

¹ OJ L 189, 3.7.1998, p. 42.

2.2 The ECB reminds the Minister that national authorities are obliged to consult the ECB on draft legislative provisions within its field of competence. 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 and adopt its opinion. Pursuant to 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. The ECB would appreciate it if the Minister would comply in future with the obligation to consult the ECB in due time so as to allow sufficient time for its views to be taken into account in accordance with Decision 98/415/EC.

3. General observations

As noted in paragraph 1.2 above, the CBI’s staff are explicitly excluded from the new provisions concerning the redeployment of public servants, but not from the scope of the new Part 7A of the 2004 Act, on remuneration during periods of sick leave. As the new Part 7A could therefore apply to and directly affect 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. Central bank independence

- 4.1 Member States may not interfere with a national central bank’s (NCB) 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 the NCB’s 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 concerned, taking due account of its views, to ensure the ongoing ability of that NCB to independently carry out its tasks².
- 4.2 Given that the CBI’s employees are employed under the conditions (including conditions as to remuneration and allowances) set by the Central Bank Commission³, 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 its employees should be decided in close and effective cooperation with the CBI, taking due account of its views, to ensure the ongoing ability of the CBI to independently carry out its tasks. Since the new Part 7A of the 2004 Act concerns remuneration

² See the ECB’s Convergence Report 2013, p. 27 and the reference to ECB opinions made there.

³ 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.

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of public servants during periods of sick leave, it constitutes such a legislative provision that would affect the remuneration of members of the CBI's decision-making bodies and its employees⁴. The ECB welcomes the fact that the Minister in the consultation letter to the ECB undertakes to consult with the Governor of the CBI and expects that the Minister will take due account of the Governor's views in this matter.

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

Done at Frankfurt am Main, 28 January 2014.

[signed]

The President of the ECB

Mario DRAGHI

⁴ See paragraph 2.6 of Opinion CON/2013/41 and the ECB's Convergence Report 2013, p. 27. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.