EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 24 February 2009

on a draft Financial Emergency Measures in the Public Interest Bill 2009

(CON/2009/15)

Introduction and legal basis

On 18 February 2009 a draft 'Financial Emergency Measures in the Public Interest Bill 2009' (hereinafter the 'draft law') was published by the Irish Minister for Finance (hereinafter 'the Minister') for its first stage reading before the *Dáil Éireann*, the lower house of the *Oireachtas* (the National Parliament). The second stage debate on the draft law took place in the *Dáil Éireann* on 19 February 2009. Specific amendments are due to be considered by the relevant committee of the Houses of the *Oireachtas* (*Dáil Éireann* and *Seaned Éireann*) on 24 February 2009 with final adoption expected by both Houses the following day.

The competence of the European Central Bank (ECB) to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 Central Bank and Financial Services Authority of Ireland (hereinafter 'the Central Bank').

In particular, the draft law proposes to deduct up to 10% from the remuneration of public servants accruing from 1 March 2009[2], including employees of the Central Bank. In the light of the above and considering the direct implications of the abovementioned provisions for the Central Bank, the ECB has decided to submit this own-initiative opinion, with a view to assisting in the ongoing legislative procedure by commenting on specific provisions.

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 proposes to deduct up to 10 % from the remuneration of public servants accruing from 1 March 2009. For the purposes of the draft law, a public servant is defined, *inter alia*, as a

1 OJ L 189, 3.7.1998, p. 42.

2 Section 2(3) of the draft law. Where the amount of remuneration of a public servant from 1 March to 31 December 2009 or any year beginning in 2010 is over €20 000, the rate of deduction is 10 %. The rate of deduction is 3 % where the amount of remuneration is up to €15 000 and 6 % where the amount is in excess of €15 000 but not over €20 000.

person who is employed by, or who holds any office or other position in, a public service body[3]. The draft law includes the Central Bank within its list of public service bodies[4]. Under the draft law, the deduction is to be made by the person responsible for, or who authorises, the payment of remuneration[5], which in the case of the Central Bank's officers and employees is the Central Bank. In addition, the deductions are to be made in accordance with regulations to be issued by the Minister for the purposes of the calculation, making, collection, disposal and recovery of such deductions (including, for instance, regulations addressing the manner in which and the periods within which deductions are to be made and paid into or disposed of for the benefit of the Exchequer)[6]. The draft law further requires the deductions made to be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister or otherwise paid or disposed of as the Minister may direct[7].

1.2 The draft law has been introduced in the context of the priority being given to the stabilisation of public finances in Ireland. To that effect, the Minister has announced that the draft law introduces provisions to give effect to a pension related deduction for the public service[8]. The deductions under the draft law therefore apply to public servants who on 1 March 2009 or any time afterwards are a member of a public service pension scheme, are entitled to a benefit under such a scheme, or receive a payment in lieu of membership in such a scheme[9]. For this purpose, a public service pension scheme is defined to include an occupational pension scheme or pension arrangement for any part of the public service which is made by a relevant Minister or has been approved or requires the approval or consent of a relevant Minister[10]. Under the Central Bank Acts, the Central Bank may establish and operate one or more superannuation schemes under which superannuation benefits are payable on the retirement or death of persons. However, such a scheme does not take effect until it has been approved by the Minister[11].

1.3 The draft law exempts from the definition of 'public service bodies' 22 bodies whose officers and employees are subject to the deductions[12]. The Explanatory Memorandum to the draft law indicates

3 Section 1(a) of the draft law.

4 Section 1(d) of the draft law.

5 Section 2(3) of the draft law.

6 Section 2(4) and Section 3 of the draft law.

7 Section 4(1) of the draft law.

8 Available on the Department of Finances' website at www.finance.gov.ie.

9 Section 2(1) of the draft law.

10 Section 1 of the draft law. The Central Bank and Financial Services Authority of Ireland Superannuation Scheme received approval of the Minister on 8 April 2008 under S.I. No. 99 of 2008.

11 Section 33AG(2) of the Central Bank Act 1942. A superannuation scheme established by the Central Bank is required to be embodied in rules made by the Central Bank. Such rules are required to be laid before each House of the *Oireachtas* (National Parliament) as soon as practicable after they are made, and if either House, within the 21 days on which it has sat after the rules are laid before it, passes a resolution annulling the rules, the rules are accordingly annulled, but without affecting the validity of anything previously done under them. See Section 33AG(3) and (7) of the Central Bank Act 1942.

12 See the Schedule to the draft law.

that the public service bodies whose officers and employees are subject to the deductions include non-commercial semi-state bodies where a public service pension scheme exists or may be made[13].

2. General observations

2.1 The ECB recognises the very difficult economic circumstances, both in Ireland and internationally, that have led to the current efforts being made by the Irish Government to stabilise public finances.

2.2 As noted in the ECB Convergence Report 2008 under the sub-chapter ‘Autonomy in staff matters’, ‘Member States may not impair 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 (hereinafter the ‘ESCB Statute’). ‘In addition, an NCB may not be put into a position where it has limited or no control over its staff, or where the government of a Member State is in a position to influence its policy on staff matters’[14]. This point has been stressed in a recent ECB opinion on draft German legislation regulating certain matters concerning the national central bank staff[15]. The ECB also stated in its opinion on draft Italian legislation establishing a threshold for the overall remuneration of the national central bank staff ‘that the ECB defines autonomously its staff’s conditions of employment and that this autonomy forms part of the ECB’s independence as guaranteed by Article 108 of the Treaty and Article 36 of the [ESCB Statute]’[16].

3. Specific observations

3.1 The proposed deductions are conceived as pension-related deductions for the public service. However, while the Minister formally approves the Central Bank’s superannuation scheme, the Central Bank’s scheme is not funded through the Exchequer, but is established, operated and financed by the Central Bank independently. In this regard, the proposed deductions do not appear to reflect the distinctive features of the Central Bank’s superannuation scheme, and might therefore be regarded as a form of taxation on the Central Bank’s officers and employees.

3.2 Under the Central Bank Acts, the employees of the Central Bank are to be employed on such conditions (including conditions as to remuneration and allowances) as the Central Bank’s Board of Directors fixes from time to time[17]. In order to protect the Central Bank’s autonomy in staff matters, which is a particular aspect of the principle of central bank independence under Article 108 of the Treaty, any pension-related deductions applicable to the officers and employees of the Central Bank in view of the current difficult economic circumstances should be decided in

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13 Explanatory Memorandum to Financial Emergency Measures in the Public Interest Bill 2009, p. 1.

14 ECB Convergence Report May 2008, p. 22.

15 See paragraph 2.2 of ECB Opinion CON/2008/9 of 21 February 2008 at the request of the German Ministry of Finance on a draft law amending the Law on the Deutsche Bundesbank.

16 See paragraph 3.2.2 of ECB Opinion CON/2008/10 of 21 February 2008 at the request of the Italian Ministry of Economic Affairs and Finance on some provisions of the Law on the State annual and pluriannual budget (2008 budget law).

17 See Section 6D(5) of the Central Bank Act 1942.

cooperation with the appropriate decision-making bodies of the Central Bank. Such cooperation with the Central Bank should also ensure compliance with the Treaty provisions on the prohibition of monetary financing established by Article 101[18].

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

Done at Frankfurt am Main, 24 February 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

18 Compliance with the monetary financing prohibition requires that, in connection with the way the proposed arrangements between the Central Bank and the Exchequer are legally regulated and executed, no element of provision of Central Bank credit to the Exchequer arises in the form of Central Bank financing of public sector obligations vis-à-vis third parties or otherwise. See Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 [now 101] and 104b(1) [now 103(1)] of the Treaty (OJ L 332, 31.12.1993, p. 1); See also the eleventh recital of Regulation (EC) No 3603/93, indicating the need to ensure that central bank transactions 'do not result overall in a credit for the public sector'.