



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 11 August 2005

at the request of the Austrian Federal Ministry of Finance

concerning a draft Federal law on the payment of a contribution by Austria to the trust fund administered by the International Monetary Fund for low income developing countries affected by natural disasters

(CON/2005/29)

1. On 25 July 2004 the European Central Bank (ECB) received a request from the Austrian Federal Ministry of Finance for an opinion on a draft Federal law on the payment of a contribution by Austria to the trust fund administered by the International Monetary Fund for low income developing countries affected by natural disasters (hereinafter the 'draft law').
2. The ECB's competence to deliver an opinion is based on 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 contains provisions concerning a national central bank (NCB). In addition, the ECB notes that it is necessary to ascertain whether the draft law complies with the prohibition on monetary financing laid down in Article 101 of the Treaty establishing the European Community, since ensuring compliance with that prohibition is part of the ECB's role under Article 237(d) of the Treaty to ensure that the NCBs fulfil their Treaty obligations². 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.
3. The draft law authorises the Oesterreichische Nationalbank (hereinafter the 'OeNB') to make a deposit on a special account with the International Monetary Fund (IMF) in the amount of up to seven million Special Drawing Rights (SDRs), i.e. EUR 8.4 million. In the wake of the tsunami disaster, on 21 January 2005 the IMF's Executive Board resolved to create a trust fund to be administered by the IMF to aid Poverty Reduction and Growth Facility eligible countries that had been affected by natural disasters by granting them 'soft' loans at below market rates.
4. It is intended that the loan portfolio which the IMF is aiming to raise of around 45 to 65 million SDRs, or approximately EUR 54.4 to 78.6 million, will be raised by capital contributions from IMF

¹ OJ L 189, 3.7.1998, p. 42.

² See also Recital 9 to 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), which provides that notwithstanding the role assigned to the Commission pursuant to Article 169 of the Treaty, it is for the ECB to ensure that the NCBs honour the obligations laid down by the Treaty.

members. These are the amounts calculated on the basis of the demand from countries that have been affected by the tsunami disaster (e.g. the Maldives and Sri Lanka), the debts of countries that have been affected by disasters in recent years and from anticipated natural disasters. The OeNB will contribute to the subsidies by making a deposit on a special IMF account that will invest the funds in the market. The OeNB will in return receive deposit interest of 0.5% per annum and the IMF's Natural Disaster Emergency Assistance subsidy account, which is an extension of the IMF's Emergency Post Conflict Assistance account, will receive any net income from investment of the funds. The deposit will have a maximum term of five years. The costs to Austria will be incurred indirectly due to a reduction in the OeNB's profits as a result of depositing funds with the IMF at a deposit rate which is below the market rate.

5. As mentioned briefly in paragraph 2, the draft law should be examined to determine its conformity with the prohibition on monetary financing contained in Article 101 of the Treaty, which prohibits, *inter alia*, overdraft facilities or any other type of credit facility with the NCBs in favour of central governments. This prohibition is subject to certain limited exemptions contained in Article 101(2) of the Treaty and in Regulation (EC) No 3603/93. In particular, Article 7 of Regulation (EC) No 3603/93 provides that 'The financing by the ... national central banks of obligations falling upon the public sector vis-à-vis the International Monetary Fund ... shall not be regarded as a credit facility within the meaning of Article 104 of the Treaty'. Recital 14 to Regulation (EC) No 3603/93 sets out the rationale behind this exemption, stating that it is appropriate to authorise the financing by the central banks of obligations falling upon the public sector vis-à-vis the IMF as this financing results in foreign claims which have all the characteristics of reserve assets.

The ECB considers that the OeNB's financing of the abovementioned IMF-administered initiative falls within the scope of this exemption, and should not therefore be regarded as a form of monetary financing prohibited by the Treaty.

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

Done at Frankfurt am Main, 11 August 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET