



OPINION OF THE EUROPEAN CENTRAL BANK
of 11 May 2009
on the legal relationships applying to Deutsche Bundesbank staff
(CON/2009/45)

Introduction and legal basis

On 30 April 2009, the European Central Bank (ECB) received a request from the Deutsche Bundesbank for an opinion on a draft order regulating the particular legal relationships applying to Deutsche Bundesbank staff (hereinafter the ‘draft order’).

The ECB’s competence 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 provisions¹, as the draft order relates to the Deutsche Bundesbank. 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 order

The draft order regulates certain features of the legal relationships between the Deutsche Bundesbank and its civil servants, employees and workers, and replaces the Deutsche Bundesbank’s existing Staff Regulations².

The draft order is necessary because the power to regulate these issues was transferred to the Federal Government (hereinafter the ‘Government’) as the result of an amendment to § 31 of the Law on the Deutsche Bundesbank made by the Law on the reorganisation and modernisation of Federal civil service law³, on which the ECB gave its views in Opinion CON/2008/9.

Before the abovementioned amendment to § 31 of the Law on the Deutsche Bundesbank was adopted, the Executive Board of the Deutsche Bundesbank (hereinafter the ‘Executive Board’) itself had the power to regulate staff and career matters autonomously, subject to approval or agreement, as applicable, by the Government. Pursuant to the amended § 31(4) and (6) of the Law on the Deutsche Bundesbank, however, the Government is authorised to regulate the legal relationships between the Deutsche Bundesbank and its civil servants, employees and workers either by adopting orders itself, or by delegating the power to adopt orders to the Executive Board.

¹ OJ L 189, 3.7.1998, p. 42.

² [2007] *Bundesanzeiger* p. 2120.

³ [2009] *Bundesgesetzblatt* (BGBl.) I p. 160.

Since adoption of the amendments to § 31 of the Law on the Deutsche Bundesbank, the Government has delegated its power to the Executive Board by means of §§ 1 and 2 of the Order on the transfer of the Federal Government's powers to adopt orders pursuant to § 31 of the Law on the Deutsche Bundesbank⁴.

The Executive Board now intends to make use of the implementing power delegated to it by the Government to adopt the draft order.

2. General observations

- 2.1 The ECB welcomes this consultation request by the Deutsche Bundesbank on the draft order. Bearing in mind the principle of central bank independence and central bank autonomy in staff matters, however, the ECB would like to take this opportunity to express its concerns about the regulatory arrangements that form the basis of the draft order.
- 2.2 In Opinion CON/2008/9, the ECB stated its concerns about the change of regulatory competence in relation to Deutsche Bundesbank staff issues. In particular, it considered that the proposed amendment would increase the Government's discretion in this context, thereby reducing the Deutsche Bundesbank's autonomy to take decisions concerning its staff regulations. Further, the ability of the Government to withdraw the delegation at any moment was considered a potential tool to unduly influence a national central bank (NCB) in fulfilling its tasks and thus limits that NCB's independence⁵. The ECB therefore recommended including sufficient safeguards in the draft law under consideration to ensure that the Deutsche Bundesbank's ability to carry out its tasks would not be affected; moreover, the ECB stated that it considered that the delegation of powers to the Deutsche Bundesbank as provided for in the draft law was insufficient.
- 2.3 The ECB's concerns and recommendations, as expressed in Opinion CON/2008/9, were not taken into account by the national legislator. Against this background, the ECB considers it highly important to restate that an NCB's autonomy in staff matters is a particular aspect of the principle of central bank independence under Article 108 of the Treaty⁶. As has been recently emphasised on several occasions regarding different Member States⁷, 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 seeks to influence it in the performance of its tasks⁸. This stance taken by the ECB with respect to the autonomy of the NCBs in staff matters is well-established practice.
- 2.4 In this context, the ECB once again stresses that, when it comes to the adoption of orders regarding staff matters and the direct regulation of the legal relationships between the Deutsche Bundesbank and all categories of its staff, including the careers of such staff, the amended § 31 of the Law on the Deutsche Bundesbank now authorises the Government both to delegate such power to the

⁴ [2009] BGBl. I p. 813.

⁵ See paragraph 2.4 of Opinion CON/2008/9. All ECB opinions are available on the ECB website at www.ecb.europa.eu/ecb/legal/opinions/html/index.en.html.

⁶ See paragraph 3.2 of Opinion CON/2009/15.

⁷ See ECB Convergence Report 2008, p. 22, and Opinions CON/2008/9 and CON/2008/10.

⁸ See ECB Convergence Report 2007, p. 20, footnote 7, referring, *inter alia*, to Opinion CON/2004/1.

Executive Board and to withdraw such power from the Executive Board. Although it was already the case prior to the amendment of § 31 in 2008 that Government approval was required for the adoption of orders by the Executive Board, the ECB considers that the amended § 31 nonetheless amounts to a withdrawal of the Deutsche Bundesbank's authority to determine the legal relationships and career policies for all categories of its staff. This is a situation which, in comparison with the rules previously in force, is detrimental to the Deutsche Bundesbank's independence.

- 2.5 The ECB therefore reiterates to the national legislator and the Government its recommendation that the Deutsche Bundesbank should be given more autonomy in staff matters, thereby providing for sufficient safeguards to ensure that it can carry out all of its tasks independently, in particular its ESCB-related tasks.

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

Done at Frankfurt am Main, 11 May 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET