



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 29 July 2010**  
**on the careers of Deutsche Bundesbank civil servants**  
**(CON/2010/59)**

**Introduction and legal basis**

On 7 July 2010, the European Central Bank (ECB) received a request from the Deutsche Bundesbank for an opinion on a draft regulation on the careers of Deutsche Bundesbank civil servants (hereinafter the ‘draft regulation’).

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 provisions<sup>1</sup>, as the draft regulation 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 regulation**

The draft regulation adopts rules on vocational training and careers for Deutsche Bundesbank civil servants that take special account of the legal relationships at the Deutsche Bundesbank.

The draft regulation 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 law<sup>2</sup>, 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’) 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 regulations itself, or by delegating the power to adopt regulations to the Executive Board.

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> [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 Regulation on the transfer of the Federal Government's powers to adopt regulations pursuant to § 31 of the Law on the Deutsche Bundesbank<sup>3</sup>.

In this context, the ECB has been consulted by the Deutsche Bundesbank in 2009 with regard to a draft regulation on the legal relationships applying to Deutsche Bundesbank staff, which concerned a draft regulation regulating certain features of the legal relationships between the Deutsche Bundesbank and its civil servants, employees and workers, and replacing the Deutsche Bundesbank's Staff Regulations; on 11 May 2009, the ECB adopted Opinion CON/2009/45.

The Executive Board now intends to make use of the power delegated to it by the Government to adopt the second draft regulation, on career matters.

In so far as the draft regulation does not intend to derogate from the more general regulation on the careers of Federal civil servants, its relevant provisions are referred to by the draft regulation. The rules of this draft regulation on banking service careers, as well as on the introduction of preparation for the upper intermediate banking service at the Deutsche Bundesbank's university of applied sciences, derogate from the Federal Regulation on public service careers.

## **2. General observations**

2.1 The ECB welcomes this consultation request by the Deutsche Bundesbank on the draft regulation. 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 reiterate its concerns about the regulatory arrangements that form the basis of the draft regulation.

2.2 In Opinion CON/2008/9, the ECB expressed 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 was considered as limiting that NCB's independence<sup>4</sup>. 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, particularly ESCB-related tasks, would not be affected; moreover, the ECB stated that it considered that the intention to delegate powers to the Deutsche Bundesbank as provided for in the draft law was insufficient. In Opinion CON/2009/45, these concerns were restated.

2.3 The ECB's concerns and recommendations, as expressed in Opinions CON/2008/9 and CON/2009/45, were not taken into account by the national legislator. Against this background, the

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<sup>3</sup> [2009] BGBl. I p. 813.

<sup>4</sup> See paragraph 2.4 of Opinion CON/2008/9. All ECB opinions are available on the ECB website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

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 130 of the Treaty<sup>5</sup>. As has been recently emphasised on several occasions regarding different Member States, an NCB may not be put into a position where it has limited control or no control over its staff, or where the government of a Member State can influence its policy on staff matters<sup>6</sup>. 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 regulations 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 Executive Board and to withdraw such power from the Executive Board. Although it was already the case prior to the amendment of § 31 in 2009 that Government approval was required for the adoption of regulations 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, 29 July 2010.

[signed]

*The Vice-President of the ECB*

Vítor CONSTÂNCIO

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<sup>5</sup> See paragraph 3.2 of Opinion CON/2009/15.

<sup>6</sup> See ECB Convergence Report 2010, p. 23, and Opinions CON/2008/9, CON/2008/10, CON/2009/47, CON/2010/42 and CON/2010/51.