



OPINION OF THE EUROPEAN CENTRAL BANK

of 20 April 2011

**on amendments to the governance structure of the Oesterreichische Nationalbank
(CON/2011/38)**

Introduction and legal basis

On 15 March 2011, the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft law amending the Law on the Oesterreichische Nationalbank and the Law on the Financial Market Supervisory Authority (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 Oesterreichische Nationalbank (OeNB). 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 Recently, the Austrian Federation became the OeNB’s sole shareholder. The draft law therefore amends the Law on the OeNB to reflect its actual ownership structure. The shareholder rights will be exercisable by the Federal Minister for Finance.
- 1.2 As a consequence of the changes to the shareholder structure, the draft law amends the composition and organisation of the OeNB’s General Council² (hereinafter the ‘General Council’). The General Council is charged with the supervision of all business falling outside the remit of the European System of Central Banks. It will advise the OeNB’s Governing Board on the conduct of the OeNB’s business and in matters of monetary policy. The draft law reduces the number of members of the General Council from 14 to 10. In future, all members of the General Council shall be appointed by the Federal Government. At the present time, only the President, the Vice President and six other members of the General Council have been appointed. The remaining six members of the General Council are elected by the General Assembly. Under the draft law, the General Council is not required to include representatives from credit institutions, trade and industry, small businesses, agriculture or salaried employees and wage-earners. The requirement that members

¹ OJ L 189, 3.7.1998, p. 42.

² See draft amendments to Articles 22 and 23 of the Law on the OeNB.

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- should be persons well-known in a certain business sector, lawyers or economists remains unchanged. Furthermore, the draft law reduces from two to one the number of OeNB employee representatives participating in General Council meetings on personnel, social and welfare matters.
- 1.3 The grounds for dismissal of the members of the General Council remain unchanged. Under Article 23 of the Law of the OeNB, a member may only be removed from office by the Federal Government if he/she no longer fulfils the conditions for holding office or if he/she is guilty of serious misconduct.
 - 1.4 The draft law will increase the terms of office of the members of the Governing Board from five to six years³. The Governing Board is responsible for the overall operation and conduct of the OeNB's business.
 - 1.5 Furthermore, the draft law reduces from two to one the required number of external auditors and alternate auditors of the OeNB. The draft law also introduces the principle of external rotation of the external auditors. No auditors or firm of auditors, which have certified the audit of the OeNB's annual accounts during the previous five financial years can be re-elected as an auditor or alternate auditor. These rotation rules do not apply following an audit break of at least two consecutive financial years.
 - 1.6 The draft law enhances transparency as regards the OeNB's direct and indirect shareholdings in undertakings. Under Article 68(4) of the Law on the OeNB, the annual report must include a separate disclosure of any such shareholding of the OeNB, in particular stating the proportion of capital and voting rights held as well as the nominal capital. Transparency of the OeNB will also be increased by introducing the obligation for the Governing Board to draw up a standard cost account and an investment plan before the start of each financial year which has to be approved by the General Council. After the end of each financial year, the Governing Board is also required to produce a comparative analysis of the budgeted figures and the actual costs and investments. The comparative analysis has to be communicated to the General Council, together with the auditor's report⁴.
 - 1.7 The draft law adjusts the references in the Law of the OeNB to the Treaty where necessary. These adjustments are editorial rather than substantive changes.
 - 1.8 The draft amendments to Articles 18 and 19 of the Law on the Financial Market Supervisory Authority increase the annual amount reimbursed by the Financial Market Supervisory Authority for on-site inspections and microeconomic analysis of banks carried out by the OeNB as part of its banking supervisory tasks from EUR 4 million to EUR 8 million.

³ See draft amendments to Article 33 of the Law on the OeNB.

⁴ See draft Article 68a of the Law on the OeNB.

2. Specific Observations

- 2.1 The draft law proposes changes to Article 33 of the Law on the OeNB. However, no changes are proposed to Article 33(4), which contains the grounds for dismissal of the members of the Governing Board. Over the past few years, the analysis of the different aspects of central bank independence has been further refined in the ECB's opinions⁵ and Convergence Reports⁶, *inter alia*, in relation to personal independence and the grounds for dismissal of Governors. Accordingly, the ECB advises the consulting authority to use this opportunity to fully align the wording of Article 33(4) of the Law on OeNB with that of Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). This should be done without setting out national criteria for dismissal, including references to the appointment conditions and conflict of interest rules.
- 2.2 The ECB welcomes the stability in the Governing Board of the OeNB that will result from increasing its members' term of office from five to six years.
- 2.3 Article 27.1 of the Statute of the ESCB provides that, 'The accounts of the ECB and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council.'. The ECB has established 'Good Practices for the selection and mandate of External Auditors according to Article 27.1 of the ESCB/ECB Statute', which was approved by the ECB's Governing Council on 23 October 2008. Although the Good Practices are not binding, the ECB expects that each Eurosystem central bank, when selecting an external auditor pursuant to Article 27.1, and when determining that auditor's mandate thereafter, will apply the Good Practices and/or explain any divergence. Information on the application and/or any divergence from the Good Practices should be provided to the ECB when requesting a Governing Council recommendation for the appointment of a Eurosystem central bank's external auditors to the EU Council.
- 2.4 Good Practice No 3 recommends that the Eurosystem central banks should establish a defined multi-year mandate for the appointment of external auditors or an audit firm. The draft law does not provide for a defined multi-year mandate. Under the draft law, an auditor and an alternate auditor are elected each year. The consulting authority may use this opportunity to change the one-year mandate in the draft law to a multi-year mandate. This will help to enhance overall effectiveness, efficiency and independence of the OeNB's external auditors. The draft law would also benefit from stating explicitly that the auditors are 'external'.
- 2.5 Further, pursuant to Good Practice No 3, the auditors or the key audit partner should be rotated from the external audit engagement at least every seven years. The draft amendments regarding the rotation of the external auditors and alternate auditor every five years comply with the Good Practices. However, the ECB draws attention to the currently on-going approval procedure contained within Article 27.1 of Statute of the ESCB for the upcoming external auditors of the OeNB. In order not to prejudice this procedure, the ECB suggests that the draft law should include

⁵ See, for example, paragraph 3.2.1 of Opinion CON/2008/21.

⁶ See the ECB's Convergence Reports 2008 and 2010 under the heading Central Bank Independence.

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appropriate transitional provisions as regards the proposed reduction in the number of auditors or alternate auditors.

- 2.6 With reference to the view previously expressed by the ECB⁷ in respect of the OeNB bearing any costs for on-site inspections and microeconomic analysis of banks that exceed the cap mentioned in Articles 18 and 19 of the Law on the Financial Market Supervisory Authority, the ECB welcomes the increase of the cap for reimbursement of costs from EUR 4 million to EUR 8 million.

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

Done at Frankfurt am Main, 20 April 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁷ See paragraph 2.3.2 of Opinion CON/2007/33.