EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 January 2012

on pension reforms in the public sector

(CON/2012/6)

Introduction and legal basis

On 20 December 2011, the European Central Bank (ECB) received a request from the Irish Minister for Public Expenditure and Reform for an opinion on two drafts laws which amend the current and future pension arrangements for public servants in Ireland: the Financial Emergency Measures in the Public Interest (Amendment) Bill 2011 (hereinafter the 'FEMPI draft law') and the Public Service Pensions (Single Scheme) and Remuneration Bill 2011 (hereinafter the 'PSPR 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 provisions[1], as the draft law relates to the Central Bank of Ireland (CBI). 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 laws

1.1 *PSPR draft law*

The PSPR draft law will create a new single public service pension scheme (hereinafter the 'Scheme') for newly recruited public servants. The ECB understands that the Scheme will not affect existing public servants, who will remain members of their current sector-specific schemes. The ECB further understands that the features of the Scheme include a career-based average rather than final salary basis for pension awards[2], the adjustment of accrued benefits and pensions in line with inflation rather than remuneration[3] and a higher minimum pension age[4]. The Scheme is one of the commitments under the financial assistance programme agreed between the Minister for Finance, the European Commission, the ECB and the International Monetary Fund, to implement

1 OJ L 189, 3.7.1998, p. 42.
2 Section 19 of the PSPR draft law.
3 Section 39 of the PSPR draft law.
4 Sections 13 and 14 of the PSPR draft law.

fiscal consolidation and expenditure reduction in public finances[5]. The PSPR draft law provides that the Scheme will apply to newly appointed public servants of 'public service bodies'. The CBI is included in the definition of 'public service body', but the PSPR draft law stipulates that future CBI staff may only be members of the Scheme to the extent provided for in a written consent to the Minister by the CBI's Governor and by the Minister for Finance.

1.2 *FEMPI draft law*

The FEMPI draft law will amend the Financial Emergency Measures in the Public Interest Act 2009 (hereinafter the '2009 Act') and the Financial Emergency Measures in the Public Interest (No 2) Act 2009 (hereinafter the '2009 No 2 Act'), which reduced the remuneration of certain public servants, including CBI staff. These amendments mainly extend the reductions to members of the judiciary, following a recent constitutional referendum. The FEMPI draft law also amends the Financial Emergency Measures in the Public Interest Act 2010 (hereinafter the '2010 Act'), which reduced the pensions of certain public servants. The 2010 Act included the CBI within the definition of 'public service body' to which the pension reductions were to apply. The FEMPI draft law amends the 2010 Act so that the CBI's Governor, along with the Minister for Finance, must consent in writing to the Minister before the pension reduction may be applied to CBI pensioners. The 2009 Act, the 2009 No 2 Act and the 2010 Act were introduced in the context of the stabilisation of public finances in Ireland.

2. Observations on the PSPR draft law

The ECB notes that the PSPR draft law has potential implications for the CBI's financial independence, in particular its autonomy in staff matters, which is part of the principle of central bank independence under Article 130 of the Treaty. Autonomy in staff matters extends to issues relating to staff pensions. As stated in the ECB Convergence Report 2010 and several ECB opinions[6] on issues concerning autonomy in staff matters, the principle of financial independence requires that a Member State does not impair the ability of its central bank to employ and retain the qualified staff necessary to perform independently the tasks conferred on it by the Treaty, the Statute of the European System of Central Banks and of the European Central Bank (hereinafter 'the Statute of the ESCB') and national legislation. In addition, a Member State may not put its NCB in a position where it has limited or no control over its staff, or where the Government of that Member State can influence its policy on staff matters.

As already stated in ECB Opinion CON/2009/15 on the draft 2009 law, the ECB reiterates that to protect the CBI's autonomy in staff matters, the Irish authorities are under an obligation to ensure

5 See Ireland Memorandum of Understanding on specific economic policy conditionality, 28.11.2011, p. 3, available on the Commission's website at www.ec.europa.eu.

6 See Opinions CON/2008/9, CON/2008/10, CON/2009/15, CON/2009/45, CON/2009/47, CON/2010/42, CON/2010/51, CON/2010/56, CON/2010/58, CON/2010/59, CON/2010/69 and CON/2010/80**.** All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

that the Scheme's application to future CBI staff is decided by the Irish authorities in cooperation with the CBI[7], taking due account of the CBI's views, and such cooperation must ensure the ongoing ability of the CBI to perform independently the tasks conferred on it by the Treaty, the Statute of the ESCB and national legislation. The ECB welcomes section 6(1)(a) of the PSPR draft law, which provides that the Scheme will only apply to the CBI 'to the extent provided for in a consent, given in writing to the Minister by the Governor of that Bank'. Such wording would allow the Governor, on behalf of the CBI, to take into account the particularities of the CBI's own legal framework and special legal regime and any other relevant considerations, in particular obligations arising under the Treaty, in formulating the form and extent of the Governor's consent or dissent to the application of the Scheme to future CBI staff. Moreover, assuming that the Governor's consent has been given, the consent should be required also in the future when there is a significant change to the consented Scheme to ensure the ongoing ability of the CBI to perform independently the tasks conferred on it by the Treaty, the Statute of the ESCB and national legislation.

The ECB understands that section 30(1)(a) of the PSPR draft law indicates that the calculation and payment of any pension benefits under the Scheme to future CBI staff will be a function of the CBI on the Governor's consent. The ECB would welcome clarification in the PSPR draft law that, in this context, the term 'function' means that the CBI will in the first instance be responsible for funding, calculating and paying pension benefits to future CBI staff to the extent of the Governor's consent.

The ECB understands that section 16(4) and 16(5) provides that the Minister may require the CBI to make contributions to the Scheme in respect of its Scheme members and that such contributions will be paid, and collected and disposed of for the benefit of the Exchequer, by the CBI in such manner as the Minister may direct. The ECB further understands that the Minister may recover amounts due from the CBI where the CBI fails to dispose of such contributions in accordance with the Minister's directions under section 16(5) and that Minister may apply to the High Court for an order directing the CBI to (i) comply with the Minister's or the Court's directions, and (ii) make good any shortfall in contributions collected. To ensure full compliance with the prohibition on monetary financing under Article 123 of the Treaty[8] and the CBI's financial independence, the ECB would welcome clarification in the PSPR draft law that (i) in no event will CBI resources be applied towards the funding or payment of pension contributions or benefits for future, non-CBI public servants under the Scheme, and (ii) the CBI will in no event assume or finance any obligations of any other public service body or the Minister in relation to such pension contributions or benefits for future, non-CBI public servants under the Scheme.

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7 See also paragraph 3.2.2 of ECB Opinion CON/2010/80 which establishes the parameters of an effective cooperation.

8 Further clarified in Council Regulation EC (No) 3603/93 of 13 December 1993 specifying definitions for the application of prohibitions in Article 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1), according to which overdraft facilities or any other type of credit facility with the ECB or the national central banks of Member States in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States are prohibited, as is any purchase directly from these public sector entities by the ECB or national central banks of debt instruments.

3. Observations on the FEMPI draft law

The 2010 Act aimed at reducing public service pension costs by introducing the Public Service Pension Reduction (hereinafter the ‘PSPR’). It imposed from 1 January 2011 a progressively-structured levy-type imposition on Irish public service pensions greater than EUR 12 000 per annum. The CBI was included within the definition of ‘public service body’ in the 2010 Act and therefore the PSPR was intended to apply to CBI pensioners in the same way as public service pensioners generally. Section 8 of the FEMPI draft law will amend this provision so that the PSPR will only apply to the CBI with the written consent to the Minister by the Governor of CBI and the Minister for Finance. The Minister must then publish a notice that such consents have been given and stating the date from which the 2010 Act (and consequently the PSPR) will apply to CBI pensioners.

As referred to under 2 above, to protect the CBI’s autonomy in staff matters, any pension-related deductions applicable to the officers and employees of the CBI in view of the current difficult economic circumstances should be decided in cooperation with the appropriate decision-making bodies of the CBI taking due account of their views. As in the case of the PSPR draft law, the ECB welcomes the requirement for a specific ‘consent’ from the CBI before the PSPR will apply to CBI pensioners.

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

Done at Frankfurt am Main, 26 January 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO