EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 November 2012

on the Banco de Portugal's staff remuneration and the budget

(CON/2012/86)

Introduction and legal basis

On 23 October 2012, the European Central Bank (ECB) received a request from the President of the Portuguese Parliament for an opinion on several provisions contained in the draft law on the 2013 state budget proposed by the Government (hereinafter the '2013 draft budget 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 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 provisions[1], as Chapter III of the 2013 draft budget law may have implications for the Banco de Portugal (BdP). 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 2013 draft budget law

1.1 The 2013 draft budget law contains exceptional austerity measures aimed at restoring the budgetary balance, mainly by way of tax increases and public spending cuts.

1.2 Once approved, the planned measures will apply to the public sector generally and supersede all currently applicable *lex specialis* regimes, collective bargaining agreements and individual employment contracts.

1.3 One provision of the 2013 draft budget law refers specifically to the BdP. Article 28(8) expressly provides that the BdP shall 'take into account the efforts to generally contain costs in the public sector, as reflected in the [draft] law' and authorises it to decide, 'as an alternative to measures with equivalent effect that have already been decided', to suspend payment of the holiday allowance or any other 14th month equivalent payment to its workers in 2013, in derogation from its obligations under labour law and from the relevant collective bargaining instruments.

2. General observations

2.1 The ECB understands and welcomes that the 2013 draft budget law is intended to reduce public expenditure.

1 OJ L 189, 3.7.1998, p. 42.

2.2 The ECB already commented on a similar draft law in 2010 in Opinion CON/2010/80. The comments made in that Opinion remain valid and are hereby referred to, while the present opinion concentrates on some particularly relevant aspects.

3. Central bank independence

3.1 To the extent that it applies to the BdP, the 2013 draft budget law has implications as regards the principle of central bank independence, in particular for the financial and institutional independence of the BdP, as well as for the personal independence of the members of the BdP's decision-making bodies.

3.2 As regards the principle of financial independence, and in addition to the remarks made in CON/2010/80, the ECB understands that during the parliamentary procedure the BdP shall still be given the opportunity to express its opinion, with a view to reaching a solution which gives proper consideration to the requirements for the BdP's financial independence[2], including issues relating to staff remuneration and staff pensions. Opinion CON/2012/6 recently considered one form of effective cooperation between a government and an NCB: the draft legislative provisions in question established that the public service pension reduction scheme would only be applicable to the Central Bank of Ireland with the consent of its Governor[3].

3.3 As regards the BdP's institutional independence and the personal independence of the members of the BdP's decision-making bodies, the ECB refers to the comments made in CON/2010/80, in particular paragraphs 3.2.7 to 3.2.10.

4. Prohibition of monetary financing

The provisions in the 2013 draft budget law must comply with the monetary financing prohibition laid down in Article 123 of the Treaty, as further clarified in Council Regulation (EC) No 3603/93 of 13 December 1993 specifying the definitions for the application of the prohibitions referred to in Articles 104 and 104b(1)(1) of the Treaty[4]. In addition to the remarks already made in paragraph 3.3 of Opinion CON/2010/80 in that respect, the ECB would like to comment on the newly introduced Article 31 of the 2013 draft budget law. This Article provides that the entities referred to in Article 26(9)(q) which are responsible for processing the remuneration of workers 'shall hand over to the Treasury those amounts of the allowance whose payment is suspended pursuant to Article 28'. To the extent that this provision applies to BdP, the ECB emphasises that any direct financial transfer of this nature from the BdP to the State budget, without the opportunity

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2 As stated in the ECB's convergence reports and in several of its opinions, any amendment to the legislative provisions on the remuneration for members of an NCB's decision-making bodies and its employees should be decided in close and effective cooperation with the NCB, taking due account of its views, to ensure the ongoing ability of the NCB to carry out its tasks independently. Autonomy in staff matters extends to issues relating to staff pensions. See Opinion CON/2012/6. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

3 See Opinion CON/2012/6 paragraphs 2 and 3. In addition, see Opinion CON/2010/58.

4 OJ L 332, 31.12.1993, p. 1. Articles 104 and 104b(1) of the Treaty establishing the European Community are now Articles 123 and 125(1) of the Treaty (on the Functioning of the European Union).

on the part of the BdP to use the resources in question as it sees fit for the fulfilment of its tasks, represents an increase in the funding of the Portuguese State at the BdP's expense and could be considered monetary financing under Article 123 of the Treaty.

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

Done at Frankfurt am Main, 9 November 2012.

[signed]

The President of the ECB

Mario DRAGHI