



OPINION OF THE EUROPEAN CENTRAL BANK

of 15 November 2012

on euro banknotes and coins and amendments to the Banco de España's Statute

(CON/2012/89)

Introduction and legal basis

On 20 September 2012, the European Central Bank (ECB) received a request from the Governor of the Banco de España, on behalf of the Spanish State Secretary for Economic Affairs and Support for Business, for an opinion on a series of draft amendments to Law 10/1975 of 12 March on the regulation of coinage, Law 46/1998 of 17 December on the introduction of the euro, and Law 13/1994 of 1 June, on the autonomy of the Banco de España (hereinafter the 'draft laws').

On 4 October 2012 the European Central Bank (ECB) received a request from the Governor of the Banco de España, on behalf of the Spanish State Secretary for Economic Affairs and Support for Business, for an opinion on draft Article 22 ('Fundamentals and coordination of the general planning for economic activity as regards public sector staff expenses') of the Law on the State General Budget for 2013 and its Third Final Provision ('Amendment to Law 13/1994, of 1 June, on the autonomy of the Banco de España') (hereinafter the 'draft Law on the State General Budget for 2013'). For the purpose of this opinion, the draft laws and the draft Law on the State General Budget of 2013 are referred to collectively as the 'draft provisions'.

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 first, third and sixth indents 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 provisions relate to the Banco de España and to rules applicable to financial institutions that materially influence the stability of financial institutions and markets; also, the draft laws relate to currency matters. 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 provisions

Draft laws

The new Article 8 *bis* in Law 10/1975 entrusts to the Banco de España the functions referred to by Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010

¹ OJ L 189, 3.7.1998, p. 42.

concerning authentication of euro coins and handling of euro coins unfit for circulation². Also, given the amount of time that has passed since the introduction of the euro in Spain, an amendment is proposed to Article 25 of Law 46/1998 of 17 December on the introduction of the euro, to establish 31 December 2020 as the deadline for exchanging pesetas for euro.

The amendment to the Fourth Additional Provision of Law 46/1998 aims to ensure compliance with Article 6(3) of Council Regulation 1338/2001 (EC) No of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting³ and adapting the sanctions regime for breach of Article 6(1) of the Regulation. Likewise, a sanctions regime is introduced for breach of Regulation (EU) No 1210/2010 and Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes⁴.

The amendment to Article 15 of Law 13/1994 of 1 June on the autonomy of the Banco de España adapts the wording to Decision ECB/2010/14.

Finally, the amendments to Article 25 of Law 13/1994 remove the simultaneous nature of the roles of Governor and Deputy Governor and the age limit for members of the governing bodies of the Banco de España.

Draft Law on the State General Budget for 2013

Article 22 freezes increases in salaries and prohibits contributions to pension plans with the aim of reducing public expenditure. This is generally applicable to the public sector and the Banco de España is expressly included, albeit under the terms established in Law 13/1994 of 1 June on the autonomy of the Banco de España.

The amendment introduced by the Third Final Provision in Article 6 bis of Law 13/1994 provides that the Banco de España must adopt measures equivalent to those generally established for public sector staff, expressly prohibiting remuneration increases that overall increase the payroll beyond the limits established in the Draft Law on the State General Budget for 2013.

2. The Banco de España as the competent authority for counterfeit coin authentication and coin recirculation

The ECB welcomes the Banco de España's appointment as the competent authority for counterfeit coin authentication and coin recirculation matters.

3. Redeeming peseta banknotes and coins

Peseta banknotes and coins will cease to be redeemable from 1 January 2021. Article 16 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁵ provides that 'In accordance

² OJ L: 339, 22.12.2010, p. 1.

³ OJ L 181, 4.7.2001, p. 6.

⁴ OJ L 267, 9.10.2010, p. 1.

⁵ OJ L 139, 11.5.1998, p. 1.

with the laws or practices of participating Member States, the respective issuers of banknotes and coins of the Member States shall continue to accept, against euro at the conversion rate, the banknotes and coins previously issued by them'. The ECB takes note of the current draft provision of Article 25 of Law 46/1998, which explicitly clarifies the terms for the lapse of the right of exchange of peseta notes and coins into euro at the Banco de España.

4. Sanctions regime for cash handlers

The ECB welcomes the establishment of a deterrent sanctions regime for non-compliant cash handlers. The ECB emphasises that national law should impose fines that do not go beyond their objective and are proportional.

Sanctions regimes in all Member States that have aligned their laws with Regulation (EC) No 1338/2001 in conjunction with Decision ECB/2010/14 could merit harmonisation insofar as the ECB procedures in the Decision apply equally to all euro area cash handlers. Therefore, the ECB considers it important for national authorities to contribute to establishing a level playing field among cash handlers falling within the scope of Regulation (EC) No 1338/2001, without prejudice to (i) the particularities of the cash cycle and the national organisation of cash handlers, and (ii) the consistency of the levels of fines in their legal orders⁶.

5. References to Union legislation

According to the Fourth Additional Provision, paragraph 4 *in fine* of Law 46/1998, the Banco de España may lay down precise rules for the application of Article 6(1) of Regulation (EC) No 1338/2001. The ECB encourages the Spanish national authorities to insert a provision confirming that any such rules are without prejudice to the ECB procedures for authenticity and fitness checking of euro banknotes in Decision ECB/2010/14.

The reference in Article 15(1) *in fine* to 'the provisions of the Community rules in force' should be replaced with 'the provisions of the European Union rules in force, including the relevant ECB legal acts'. In Article 15(2) *in fine* of Law 13/1994 identical wording should be introduced, ensuring that the mentioned criteria and operating procedures are in line with Union law, including the relevant ECB legal acts.

6. Remuneration of the Banco de España's staff

The principle of central bank independence in Article 130 of the Treaty prohibits third parties, including the governments of the Member States, from issuing instructions to the national central banks (NCBs). Also, the principle of central bank independence means that third parties may not exercise direct or indirect influence over an NCB, whether relating to the performance of its tasks or its financial ability to fulfil its mandate, both operationally in terms of manpower, and financially in terms of appropriate

⁶ See Opinion CON/2010/87, paragraph 3.4. All ECB documents are available on the ECB's website at www.ecb.europa.eu.

financial resources^{7,8}. The ECB has consistently recommended in the past in its opinions and convergence reports (see reference in footnote 8) that any amendment to the legislative provisions on remuneration of members of an NCB's decision-making bodies and staff 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 independently carry out its tasks, and that Member States should not impair the autonomy of their NCBs in staff-related matters. Autonomy in such matters extends to issues relating to staff salaries and pensions⁹. It is therefore essential that measures such as those in the draft law do not prevent the Banco de España or its staff from performing independently the tasks conferred on them 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 Spanish legislation, including Law 13/1994 of 1 June on the autonomy of the Banco de España.

The ECB understands that pursuant to Article 22 and the Third Final Provision of the draft law, the Banco de España is required to apply autonomously measures to save staff costs equivalent to those in the Laws on the State General Budget adopted each year, while ensuring that the Banco de España's institutional and financial independence are respected and to the extent that the Banco de España's ongoing ability to carry out its tasks is not affected. Conversely, the ECB understands that the Banco de España must not take measures to save staff costs equivalent to those established for public service staff that would interfere with the Banco de España's ongoing ability to independently carry out its tasks¹⁰.

In particular, 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 matters¹¹. For instance, a combination of measures to reduce staff costs with a prohibition on recruiting new staff would directly impair the ability of Banco de España to employ and even possibly retain qualified staff and may amount *de jure* to depriving its decision-making bodies of their powers of internal organisation and control over staff, or at least to significantly limiting them¹². In the light of the Banco de España's recently expanded competences in the field of early intervention, restructuring and resolution of credit institutions, the ECB is particularly concerned that qualified and sufficient human resources will be required, in addition to adequate financing. The ECB therefore recommends confirmation in the Third Final Provision that the Banco de España will not be obliged to take measures if these interfere with its ability to independently carry out its tasks. Based on this understanding, Article 22 and the Third Final Provision of the draft law are compatible with the principle of central bank independence.

7. Termination of office of the members of the decision making bodies of Banco de España

⁷ See, for example, the ECB's Convergence Report 2012, p. 26.

⁸ See the latest Opinion CON/2012/6.

⁹ See Opinion CON/2010/80, paragraph 3.2.1 and ECB's Convergence Report 2012, p. 27.

¹⁰ See Opinion CON/2010/80, paragraph 3.2.2.

¹¹ See ECB Convergence Report 2012, p. 27.

¹² See by analogy Opinion CON/2010/80, paragraph 3.2.3.

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The ECB welcomes the amendment to Article 25(4) of the Law on the autonomy of the Banco de España, to the effect that reaching a certain age would no longer be a ground for termination of office of the Governor, the Deputy Governor and the non-ex officio Directors of the Banco de España in line with Article 14.2 of the Statute of the ESCB. The ECB understands that by this amendment no compulsory retirement age would apply to the Governor, the Deputy Governor and the non-ex officio Directors of the Banco de España.

In addition, Article 25(4)(c) of the draft law enumerates grounds for dismissal of the Governor, Deputy Governors and the non-ex officio Directors other than those in Article 14.2 of the Statute of the ESCB. Namely, Article 25(4)(c) provides that the Governor, the Deputy Governor and the non-ex officio Directors may be dismissed 'due to permanent incapacity to exercise his/her role, serious failure to comply with his/her obligations, professional disqualification or proceedings for a wilful offence'. As consistently stated in the ECB's convergence reports, NCB statutes should either contain grounds for dismissal which are compatible with those laid down in Article 14.2 of the Statute, or omit any mention of grounds for dismissal since Article 14.2 is directly applicable¹³ Therefore, Article 25(4)(c) should be aligned with Article 14.2 of the Statute of the ESCB.

The ECB welcomes that Article 25(5) of the draft law provides that any replacement for the Governor, the Deputy Governor or a non-ex officio Director, if their position becomes vacant before expiry of their term of office, will serve for a full term. As regards the appointment process as such, and being aware that appointment to any of these positions has to follow a series of procedural steps involving several public bodies and authorities, the ECB also sees the need to ensure the timely appointment of the new Governor, new Deputy Governors or new non-ex officio Directors, as the case may be, safeguarding the smooth and continuous functioning of the NCBs' decision-making bodies.

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

Done at Frankfurt am Main, 15 November 2012.

[signed]

The President of the ECB

Mario DRAGHI

¹³ See for example the ECB's Convergence Report 2012, p. 24.