



## OPINION OF THE EUROPEAN CENTRAL BANK

of 19 May 2014

on pension restrictions

(CON/2014/35)

### Introduction and legal basis

On 27 March 2014, the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft law on the limitation of special pension arrangements (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<sup>1</sup>, 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 Generally, the draft law aims to secure the long-term stability of pension rules in the public sector where special pension rights exist. It also applies to private entities owned by the State such as the OeNB. It contains provisions reducing emoluments and pension benefits for public office holders, in particular by raising pension safeguard contributions, pension contributions and the pensionable age, including with respect to the OeNB Terms of Service I and II. The draft law also abolishes a currently applicable death grant (*Sterbequartal*), whereby after the death of a pensioner the pension is paid for a further three months. Part of the draft law, i.e. an amendment to the Federal Constitutional Law on limiting the emoluments of public office holders, will be adopted as constitutional law.
- 1.2 With regard to the OeNB, the draft law only applies to pensioners and active officers and employees falling under Terms of Service I and II. The ECB notes that there are currently five different terms of service (i.e. classes I to V). Terms of Service I and II only apply to staff hired before 31 May 1993 and 30 April 1998, respectively. The ECB understands that such staff receive OeNB pensions based on individual agreements with the OeNB and do not fall under the general social

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<sup>1</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

security system.

- 1.3 The draft law obliges former OeNB officers and employees subject to Terms of Service I and II to pay pension safeguard contributions to the OeNB from 1 January 2015. The pension safeguard contributions amount to at least 5.8% of monthly pensions for persons subject to Terms of Service I and at least 3.3% of monthly pensions for persons subject to Terms of Service II. Contributions may amount to up to 25% of payments in the case of higher pensions under both schemes.
- 1.4 Active officers and employees subject to Terms of Service I and II will pay pension contributions from 1 January 2015. The pension contributions for officers and employees under Terms of Service I amount to 5% of monthly emoluments and supplementary payments from 1 January 2015 and are gradually increased to 10.25% from 1 January 2018. Regarding Terms of Service II, the pension contributions amount to at least 10.25% of their monthly emoluments and supplementary payments up to the relevant maximum contribution base under the Law on general social security, and an additional 3% for emoluments in excess of the maximum contribution base, which is gradually increased to 5% from 1 January 2017. The OeNB will have to withhold the relevant amounts from salary or pension payments.
- 1.5 Additionally, the draft law raises the retirement age for active officers and employees subject to Terms of Service I and II. This is gradually increased to 61.5 until 2028 (for employees subject to Terms of Service I) and 65 until 2025 (for employees subject to Terms of Service II). If an employee claims a pension before the pensionable age, the pension will be lowered accordingly.
- 1.6 The draft law also entitles the OeNB's General Council to establish a flexible pension rule for the members of the Governing Council and employees, including reductions in the case of retirement before the age of 65. An officer or employee may claim a flexible pension upon reaching 62, provided that he or she has served at least 40 years. According to the draft law, OeNB pensions are adjusted at the same time and to the same extent as pensions under the statutory pension insurance scheme.

## **2. Central bank independence**

- 2.1 As the draft law applies to and directly affects members of the OeNB's decision-making bodies and its employees, it should be examined from the perspective of central bank independence. This examination is without prejudice to the Member States' competences under Article 153(4) of the Treaty.
- 2.2 The principle of central bank independence as enshrined 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). In addition, this principle means that third parties may not influence, directly or indirectly, an NCB in the performance of its tasks or as regards its ability to fulfil its mandate

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both operationally in terms of manpower, and in terms of appropriate financial resources<sup>2</sup>.

- 2.3 Member States may not interfere with an NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. To protect autonomy in staff matters, the ECB has consistently recommended in its previous opinions and in its convergence reports that any amendment to legislation on 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 independently carry out its tasks<sup>3</sup>. Autonomy in staff matters extends to issues relating to staff pensions<sup>4</sup>.
- 2.4 In order to protect the OeNB's autonomy in staff matters, legislative provisions affecting the remuneration of members of its decision-making bodies and employees should be drafted in close and effective cooperation with the OeNB. Against this background, the OeNB's autonomy in staff matters, which is an aspect of its financial independence, should be respected by taking due account of the internal pension reform adopted by the OeNB on a voluntary basis in January 2014 and of the OeNB's opinion on the draft law.

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

Done at Frankfurt am Main, 19 May 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>2</sup> See, for example, the ECB's Convergence Report 2013, p. 24, paragraph 6 of Opinion CON/2012/89 and paragraph 4 of Opinion CON/2013/46. All ECB documents are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>3</sup> See Opinion CON/2011/106, in particular paragraph 4.3.

<sup>4</sup> See the ECB's Convergence Report 2013, p. 27 and the reference to ECB opinions made there.