



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 June 2016

on the reduction of statutory remuneration for employees in the public and semi-public sector

(CON/2016/32)

Introduction and legal basis

On 17 May 2016 the European Central Bank (ECB) received a request from the Dutch Minister of the Interior and Kingdom Relations for an opinion on a draft law extending the scope of the Law on standards for the remuneration of senior officials in the public and semi-public sector¹ (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/EC², as the draft law relates to De Nederlandsche Bank N.V. (DNB). 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 The Law on standards for the remuneration of senior officials in the public and semi-public sector (hereinafter the 'Law on remuneration'), which entered into force on 1 January 2013³, caps the salaries of top executives in the public and semi-public sector. The salaries for senior officials are limited to 100 % of a minister's remuneration (i.e. EUR 179 000)⁴. The Law on remuneration is already applicable to the members of DNB's decision-making bodies⁵. The draft law extends the statutory maximum of 100 % of a minister's remuneration to the salaries of all employees working in the (semi-)public sector on the basis of an employment contract. DNB's employees would thus fall within the scope of the draft law. The remuneration of a limited number of DNB staff, whose salaries would be reduced in accordance with the transitional regime set out below, would be directly affected⁶.

1 Conceptvoorstel voor de uitbreiding van de Wet normering bezoldiging topfunctionarissen publieke en semipublieke sector naar andere werknemers dan topfunctionarissen (Wet uitbreiding personele reikwijdte WNT).

2 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).

3 Law of 15 November 2012, published in the Staatsblad (Government Gazette) nr. 583 (2012). The ECB opined on this law in Opinion CON/2014/12. This opinion is without prejudice to the findings of the ECB in the aforementioned opinion. All ECB opinions are published on the ECB website at www.ecb.europa.eu.

4 This amount is based on the gross salary of a minister. The other remuneration components are the employer's contribution to social security premiums, taxable expenses and pension entitlements.

5 See Opinion CON/2014/12.

6 Other staff members could be indirectly affected if DNB were to revise its salary structure as a consequence of the (draft) Law.

- 1.2 The draft law lays down a transitional arrangement for employees whose remuneration exceeds the statutory remuneration maximum of 100 % of a minister's salary. Their remuneration will remain unchanged for four years, and will subsequently be reduced over the following three years to the new statutory remuneration maximum of 100 %.
- 1.3 The draft law caters for the possibility of deviating from the maximum salaries for individual persons and specific 'function groups' if exceptional labour market conditions exist, such as certain expert knowledge, international level playing field and sector specific compensation schemes. A decision to deviate from the maximum remuneration must be taken by a Ministerial Decree for any deviation in favour of an individual person. For derogations in favour of certain 'function groups' the adoption of a Ministerial Regulation is required following the consultation of the cabinet of Ministers. The involvement of the respective (semi-)public sector entity is not laid down by law.

2. Specific observations

2.1 *Financial Independence*

The principle of financial independence, which is an aspect of the principle of central bank independence laid down in Article 130 of the Treaty, requires that a national central bank (NCB) should be able to avail itself autonomously of sufficient financial resources to fulfil its mandate⁷, both operationally in terms of manpower, and financially in terms of appropriate financial resources. As a consequence Member States may not impair 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 ESCB⁸. Autonomy in such matters extends to issues relating to staff salaries and pensions⁹.

As set out in past ECB opinions and ECB Convergence Reports, any amendment to the legislative provisions on the remuneration of members of the 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 tasks¹⁰.

In addition, the ECB welcomes the optionality in the draft law to deviate from the statutory cap on the remuneration either on an individual or a 'function group' basis. It is likely that such a deviation would be justified should DNB experience difficulty in recruiting and/or retaining appropriate staff for ESCB-related tasks including for financial and market-related tasks or for supervisory tasks. However, according to the current wording of the draft law, the option of deviating may only be exercised by means of a Ministerial decree or a Ministerial Regulation without any involvement of the respective public sector entity (i.e. DNB)¹¹. In order to be compatible with the principle of

⁷ I.e. to perform the ESCB-related tasks required of it under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute of the ESCB').

⁸ See page 27 of the ECB's 2014 Convergence Report for a general description of the doctrine regarding 'central bank independence' in relation to autonomy in staff matters, which refers to the following Opinions: CON/2010/42, CON/2010/51, CON/2010/56, CON/2010/69, CON/2010/80, CON/2011/104, CON/2011/106, CON/2012/6, CON/2012/86 and CON/2014/7.

⁹ See, for example, paragraph 3.1 of Opinion CON/2012/1.

¹⁰ See page 27 of the ECB's 2014 Convergence Report.

¹¹ See Article 2a.2 and 2a.3 of the draft law.

financial independence the draft law should be amended to provide for a cooperation mechanism with DNB should DNB consider that an exception to the statutory cap on remuneration is required as such a deviation should be decided upon in close and effective cooperation with DNB, taking due account of its views, to ensure the ongoing ability of DNB to independently carry out its tasks.

A good practice for effective cooperation between a government and an NCB relating to remuneration is reflected in Opinion CON/2010/58. The legislation opined upon in the aforementioned opinion exempted the NCB from its scope, while at the same time inviting the NCB to consider, taking into account its own legal order, whether the underlying reasons for the legislative provisions can be achieved without prejudicing the performance of the NCB's tasks under the Treaty, the Statute of the ESCB and national legislation. Another form of effective cooperation which could provide guidance was considered in Opinion CON/2012/6: the draft legislative provisions in question established that the public service pension reduction scheme would only be applicable to the NCB with the consent of its Governor¹². The Dutch government could follow the same or a similar approach in order to achieve effective cooperation and to safeguard central bank independence¹³.

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

Done at Frankfurt am Main, 13 June 2016.

[signed]

The President of the ECB

Mario DRAGHI

¹² See Opinion CON/2012/6 paragraphs 2 and 3. In addition, see Opinion CON/2010/58 and CON/2012/86 paragraph 3.2.

¹³ See the last indent of paragraph 3.2.2 of Opinion CON/2010/80