

EN ECB-PUBLIC

#### **OPINION OF THE EUROPEAN CENTRAL BANK**

#### of 25 January 2016

# on safeguarding the redemption of coins by the Austrian Mint (CON/2016/4)

### **Introduction and legal basis**

On 23 December 2015 the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft law amending the Federal Act of 1988 on coinage and the Federal Act on the upper limit of the State guarantee (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 on the first, second and third indents of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft law relates to currency matters, means of payment and a national central bank (NCB). 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 Under the Act on coinage, only the Austrian Mint is entitled to mint and issue euro and cent coins in Austria. The Mint was established as a wholly-owned subsidiary of the Oesterreichische Nationalbank (OeNB) in 1989. The Mint emerged from the conversion by the State of the former Austrian Principal Mint Authority, which formed part of the State, into the Mint against payment of ATS (Austrian schilling) 8 billion by the OeNB. This structure was chosen to put the entire monetary policy, including the mint policy, in the OeNB's hands.
- 1.2 The Mint is obliged to take back coins, convert them into banknotes, withdraw them if required by the Council pursuant to Article 128(2) of the Treaty, and replace damaged coins with new ones (hereinafter 'redemption obligations', based on Sections 8(4), 10, 11 and 14 of the Act on coinage). To date, the Mint has established revenue reserves of approximately EUR 437 million to be able to fulfil these redemption obligations.
- 1.3 An amendment to the Act on coinage in 2014, on which the ECB was not consulted, extended an existing prohibition on the Mint establishing provisions regarding its redemption obligations. It also limited the Mint's ability to establish revenue reserves to 30% of the value of coins in circulation. It furthermore required the Mint to distribute 90% of its profits to its sole shareholder, the OeNB.

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).

The ECB notes that due to this amendment the Mint was only allowed to account for revenue reserves of EUR 417.2 million, instead of EUR 510.6 million, for the financial year 2014, which would have been the appropriate reserves according to an expert opinion. Hence, there was an underfunding in the euro coin sector of the Mint amounting to EUR 93.4 million as at 31 December 2014<sup>2</sup>.

- 1.4 The draft law adds a prohibition on establishing provisions regarding the obligations pursuant to Section 14 of the Act on coinage. It also prohibits the Mint from establishing revenue reserves to meet its redemption obligations. Furthermore, it requires the liquidation of the existing revenue reserves. Thus, it is expected that the Mint's existing revenue reserves will be dissolved and distributed to the OeNB. According to the explanatory memorandum to the draft law, this approach of prohibiting and liquidating revenue reserves for redemption obligations is aimed at avoiding excessive committed funds and associated investment risks within the Mint. The ECB understands that after the Mint has distributed these funds to the OeNB, the latter will include them in its own annual accounts and distribute any profit in accordance with the National Bank Act 1984 (hereinafter the 'NBG'). In accordance with Section 69 of the NBG, after deducting certain earnings and allocating up to 10% of the remaining annual profit to the pension reserve until it is adequately funded, the State shall receive 90% of the OeNB's remaining profit. The rest may be partly paid out as a dividend and partly as decided by the General Meeting of the OeNB. The ECB understands that, in connection with producing its annual accounts, the OeNB needs to take into account potential financial risks, in particular its obligation to exchange banknotes against fractional coins, fractional coins against other fractional coins and fractional coins against banknotes (see Section 62(3) of the NBG).
- 1.5 To safeguard the satisfaction of redemption obligations in the future, the State will indemnify the Mint for relevant payments made by it provided they cannot be covered from the Mint's revenues relating to the issuance of coins, taking into account the minting expenses and the proceeds from melting down the coins. According to the draft Section 3a(1) of the Act on coinage, the State will indemnify the Mint for redeeming all kinds of euro coins, whether issued by the Mint or another Member State. In this respect, the draft law limits the amount of indemnification to the value of the amount of coins in circulation that were minted by the Mint. The ECB understands that the Mint will request indemnification once a year after the end of the previous calendar year. For this purpose, the draft law requires the Mint and the Minister of Finance to conclude an agreement within three months after the publication of the adopted law in the Official Gazette.
- 1.6 The draft law also authorises the Minister of Finance to make payments to the Mint up to a total amount of 30% of the value of coins in circulation during the year, if redemptions would otherwise demonstrably endanger the Mint's existence. This provision only authorises the Minister of Finance to make such payments, but does not oblige the Minister to do so. Furthermore, this possibility is subject to the necessary authorisation of the Minister of Finance in the Act on Federal financing. To incorporate this new State guarantee into the State's liability framework, the draft law increases the

<sup>2</sup> See the Annual Report 2014 of the Mint, p. 76.

State's overall liability amount by EUR 2 billion in the Act on the upper limit of the State guarantee.

#### 2. General observations

- 2.1 According to Article 128(2) of the Treaty, the right to issue euro coins rests with the Member States. Therefore, it is up to each euro area Member State to specify the legal issuer of the euro coins. In most euro area Member States issuance of euro coins is undertaken by the State. In five of those States the NCBs act as agents for their treasuries with regard to minting euro coins and putting them into circulation<sup>3</sup>. In five euro area Member States<sup>4</sup> coin issuance is a competence of the NCB.
- 2.2 The Austrian situation is unique insofar as the issuing authority for coins is the Mint, a wholly owned subsidiary of the OeNB. In this respect, the concept of central bank independence, in particular financial independence, and the prohibition on monetary financing, as applicable to the OeNB, are also relevant as far as the Mint is concerned. Therefore, it has to be assessed whether any third party is able to exercise direct or indirect influence not only over an NCB's tasks but also over its ability to fulfil its mandate in terms of having appropriate financial resources<sup>5</sup>. In this respect, the ECB understands that the draft law's indemnification scheme aims at ensuring that the Mint is adequately protected against the risk arising from the Mint's redemption obligations.
- 2.3 In connection with the prohibition on the Mint establishing provisions relating to the obligations pursuant to Sections 8(4), 10, 11 and 14 of the Act on coinage, the ECB notes that, according to generally accepted accounting principles, an entity is required to establish provisions in respect of obligations of uncertain timing or amount.
- 2.4 The ECB understands that the OeNB needs to conduct a valuation of its participating interest in the Mint following the liquidation of the Mint's revenue reserves and the transfer of its profit to the OeNB.
- 2.5 Furthermore, the ECB notes that the retroactive application of the draft law as of 31 December 2015 would have considerable implications for both the Mint's and the OeNB's annual accounts.

# 3. Central bank independence and the prohibition on monetary financing

- 3.1 Central bank independence
- 3.1.1 Article 130 of the Treaty lays down that financial independence is a key aspect of the principle of central bank independence for the members of the European System of Central Banks. The ECB emphasises that any task undertaken by the OeNB, including by the Mint as the OeNB's wholly-

Greece, Finland, Ireland, Luxembourg and Malta. In the Member States where the NCBs act as agents for their treasuries, the NCBs are reimbursed in full for the cost of minting and/or putting euro coins into circulation.

<sup>&</sup>lt;sup>4</sup> Cyprus, Estonia, Latvia, Lithuania and Slovakia.

See the ECB's 2014 Convergence Report, p. 26, available on the ECB's website at www.ecb.europa.eu.

owned subsidiary, must be compatible with the OeNB's institutional and financial independence, to safeguard the proper performance of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), as well as its national tasks. The principle of central bank independence also requires, inter alia, that Member States do not put their NCBs, including their subsidiaries, in a position where they have insufficient financial resources and inadequate net equity to carry out their tasks<sup>6</sup>.

- 3.1.2 While the draft law prohibits the Mint from establishing provisions and revenue reserves to meet its redemption obligations and requires the liquidation of the existing revenue reserves, the ECB understands that the transfer of the liquidated revenue reserve via the OeNB to the State as part of the OeNB's profit distribution will be subject to the rules on profit allocation laid down in the NBG. The ECB also understands that the above-mentioned prohibitions are without prejudice to the OeNB's ability to independently create and build up adequate financial buffers commensurate with the level of risks arising from its activities, including those performed through a wholly-owned subsidiary.
- 3.1.3 While the draft law provides that the State will indemnify the Mint for relevant payments made by it, provided they cannot be covered by the Mint's revenues relating to the issuance of coins, and taking into account the minting expenses and the proceeds from melting down the coins, the ECB emphasises that any indemnification scheme has to ensure that the OeNB's financial independence is not compromised. The OeNB must have at all times sufficient means to fulfil its tasks and, hence, any limitation of the indemnification must not lead to a situation in which the OeNB does not have sufficient means to fulfil its obligations. In this respect, the ECB understands that the draft law's indemnification scheme aims at ensuring that the Mint is adequately protected against the risk arising from the Mint's redemption obligations by extending the amount of indemnification to the value of the amount of coins brought into circulation that were minted by the Mint.
- 3.1.4 While additionally and without prejudice to the Minster of Finance's obligation to indemnify the Mint the draft law enables the Minister of Finance to make immediate payments (up to a limited amount) to the Mint if redemption payments would otherwise endanger the Mint's existence, it does not require the Minister to make such payments, which also depend on the necessary authorisation of the Minister in the Act on Federal financing. Accordingly, it is uncertain whether the Mint will receive the necessary financial support from the State if needed. Also in this context, the OeNB's financial independence has to be preserved. In this respect, the ECB acknowledges that the indemnification arrangements under the draft law, including the increase in the State's overall liability amount by EUR 2 billion, aim at supporting the financial position of the Mint and, thereby, the OeNB.

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See Opinion CON/2014/56. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

- 3.2 Prohibition on monetary financing
- 3.2.1 The monetary financing prohibition is laid down in Article 123(1) of the Treaty and replicated in Article 21.1 of the Statute of the ESCB, and prohibits overdraft facilities or any other type of credit facility with the ECB or the NCBs in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States. The precise scope of application of the monetary financing prohibition is further clarified by Council Regulation (EC) No 3603/93<sup>7</sup>.
- 3.2.2 Against the specific historic background of the Mint, the issuance of euro coins by it has to be considered a State task for the purpose of assessing compliance with the monetary financing prohibition. The OeNB must be fully covered against any potential losses arising from the discharge of such a task. The ECB welcomes the fact that the Mint is entitled to keep the revenues related to the issuance of coins. However, the ECB understands that there is a risk of a loss by the Mint connected to its redemption obligations regarding all euro coins and not only those issued by the Mint. In view of the understanding that the Mint will request indemnification once a year, the agreement to be concluded between the Mint and the Ministry of Finance should provide for the indemnification to be paid in a timely manner and promptly after the establishment of a loss to ensure compliance with the monetary financing prohibition. The ECB understands that the possible immediate payments by the Government in cases where the Mint's existence would otherwise be endangered aim at avoiding that any central bank money is used to cover any losses arising from the redemption obligations.

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

Done at Frankfurt am Main, 25 January 2016.

[signed]

The President of the ECB

Mario DRAGHI

Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ L 332, 31.12.1993, p. 1). See also Opinion CON/2014/56.