



OPINION OF THE EUROPEAN CENTRAL BANK
of 22 December 2011
on the Magyar Nemzeti Bank's independence
(CON/2011/106)

Introduction and legal basis

On 2 November 2011, the European Central Bank (ECB) received a request from the Hungarian Ministry for the National Economy for an opinion on a draft law replacing the Law on the Magyar Nemzeti Bank and, on 14 December 2011, the ECB adopted Opinion CON/2011/104. On 21 December 2011, the ECB received a request, dated 13 December 2011, from the Hungarian Ministry for the National Economy for an opinion on a revised draft law. This version of the draft law, which was submitted to the Parliament on 13 December 2011, contained substantive amendments compared to the version of 2 November 2011. However, the ECB is aware that also other changes have been tabled in the meantime, which it has not yet received. This opinion is based on the latest version of this law¹ (hereinafter the 'revised draft law').

Furthermore, the ECB has also learned that new draft amendments to the Hungarian Constitution have been tabled, which relate to the Magyar Nemzeti Bank (MNB) and would allow for a merger of the central bank with the Financial Supervisory Authority (FSA) into a separate new body (hereinafter the 'draft constitutional law')². The draft constitutional law has not been submitted to the ECB for consultation. This breaches the obligation to consult the ECB.

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions³, as the revised draft law and the draft constitutional law relate to the MNB. 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, which is as regards the draft constitutional law an own-initiative opinion.

1. Purpose of the draft laws

The revised draft law will recast Law LVIII of 2001 on the Magyar Nemzeti Bank (MNB) (hereinafter the 'MNB Law'). The revised draft law submitted to Parliament contains substantive amendments compared to the version submitted to the ECB on 2 November 2011, in particular as regards macroprudential and

¹ Draft law T/5248 on the Magyar Nemzeti Bank, together with the following proposed amendments: 5248/4, 5248/5
² 5005/54 – proposed amendment to draft law T/5005 on the Transitional Measures to the Basic Law of Hungary.
³ OJ L 189, 3.7.1998, p. 42.

remuneration policy. It introduces a general delegation of implementing powers from the Monetary Council to the Executive Board and changes the MNB's sanctioning rules. The macroprudential supervision provisions were missing from the revised draft law, but the tabled amendments reinstated them. A deletion of the general cap on the remuneration of employees below management level is tabled; however, no amendments are proposed to the remuneration of the Governor, the Deputy Governors and the Supervisory Board members.

The draft constitutional law enables a merger between the MNB and the FSA and allows their respective powers to be transferred to a newly created legal successor of both institutions. At the same time, the MNB's Governor and the FSA's President will become Vice-Presidents, under the authority of a new president to be appointed by the President of Hungary. The draft constitutional law does not specify the nature of this new institution.

2. The appropriate time to consult the ECB

The consulting authority submitted the revised draft law to the ECB without requesting an urgent procedure or setting a time limit for the ECB's opinion. On 13 December 2011, the revised draft law was submitted to the Hungarian Parliament under an urgent procedure to enable the new MNB Law to enter into force by 1 January 2012.

The ECB reiterates its position that even cases of particular urgency do not relieve national authorities from their duty to consult the ECB and to allow sufficient time to take into account its views in accordance with Decision 98/415/EC. Any substantive amendments to a draft law have to be submitted to the ECB to allow it to adopt an opinion on the most recent legislative text and the process of adoption of the draft law should be suspended. The ECB's observations on provisions on which it was consulted do not eliminate a breach of the consultation obligation with regard to subsequent substantial amendments. The ECB would appreciate the Ministry for the National Economy giving due consideration to honouring its obligation to consult the ECB in the future

3. Draft constitutional law - proposed merger of the MNB with the FSA

The draft constitutional law amends the Constitution and allows the MNB to be merged with the FSA into a new institution. The ECB understands that the new institution will have legal personality and would qualify as the central bank of Hungary and as a member of the European System of Central Banks (ESCB). It appears that the President of the new institution will be a member of the ECB's General Council and thus replace the current MNB's President in that role. From the perspective of compatibility with the Treaties and the Statute of the European System of Central Banks (hereinafter the 'Statute of the ESCB'), the manner in which this merger is implemented is crucial, and this is not clear from the draft constitutional law.

In particular, the new institution should be fully independent with a precise definition of its mandate in compliance with the central bank independence principle, including functional, institutional, financial and personal independence, and with the role of the central bank as part of the ESCB. The new institution's

primary objective must be price stability and any other tasks with which it is entrusted must not interfere with ESCB-related tasks. The financing and management of the new institution's financial and human resources must comply with central bank financial independence. Moreover, in order to comply with the monetary financing prohibition, the national central bank (NCB) must be insulated from financial obligations resulting from the FSA's prior activities⁴.

The draft constitutional law also raises concerns as regards the personal independence of the MNB's Governor in office. By appointing a new president with authority over the two institutions, once they are merged, and over the current MNB's Governor, once he becomes Vice-President of the new institution, the personal independence of the MNB's Governor would be impaired and Article 14.2 of the Statute of the ESCB concerning the possible reasons for dismissing an NCB governor would be breached.

It is important that the ECB is consulted on the law establishing the new institution in good time to allow the Hungarian authorities to take the ECB's opinion into account in the legislative process in accordance with Decision 98/415/EC.

4. Revised draft law

4.1 The number of Monetary Council members and decision-making

The ECB reiterates its observations in Opinion CON/2011/104 on the composition of the MNB's decision-making bodies, as well as the observations in connection with the adverse effect of the frequent changes to the institutional framework. Against the backdrop of the constant changes in the composition of the MNB's decision-making bodies, the increase in the number of Monetary Council members, together with the possibility of increasing the number of deputy governors – without due consideration of the MNB's needs – gives rise to concerns whether this could be used to influence the decision-making process to the detriment of central bank independence.

Moreover, the revised draft law needs to provide for a smooth transition in the decision-making process and to ensure the MNB's operational continuity⁵.

4.2 Governor's reporting obligations

The ECB reiterates its observations in Opinion CON/2011/104 that the purpose of the obligation to forward the agenda of the meetings of the Executive Board to the Government⁶ is unclear. The Government representative participates without voting rights in the Monetary Council and not in Executive Board meetings. This obligation should be clarified to avoid the impression that the Government actively takes part in Executive Board decision-making.

⁴ See ECB's Convergence Report, May 2010, p. 25.

⁵ See paragraph 5.2 of Opinion CON/2011/104. All ECB Opinions are available on the ECB's website at www.ecb.europa.eu.

⁶ See Article 34(1) of the revised draft law.

4.3 *Changes in the salary structure - financial and personal independence*

The ECB's Convergence Reports in 2008 and 2010, and several ECB opinions⁷ on autonomy in staff matters, stressed that Member States may not impair an NCB's ability to recruit and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty, the Statute of the ESCB and national legislation. Furthermore, an NCB may not be put into a position where it has limited or no control over its staff, or where a Member State's government is in a position to influence the NCB's policy on staff matters.

To protect the MNB's autonomy in staff matters, in accordance with the principle of central bank independence under Article 130 of the Treaty, the Hungarian authorities must ensure that any amendment to the legislation on the remuneration of the MNB's staff is decided in close cooperation with the MNB, taking due account of the MNB's views⁸ regarding the impact of such legislative amendments on its ongoing ability to carry out its tasks. The concern remains that the repeated amendments to the legislation during the last 18 months on salaries of the members of the MNB's decision-making have been implemented without taking into account the above aspects of the MNB's financial independence addressed in previous opinions⁹. Therefore, the observations in CON/2011/104 are still valid.

4.4 *MNB role in macroprudential supervision*

The ECB understands that the MNB's new macroprudential mandate to identify, monitor and assess risks to financial stability and take on macroprudential policy in Hungary had been deleted in one of the amendments re-submitted for consultation, but has since been reinserted in the revised draft law. Central banks are natural candidates to be assigned a formal macroprudential mandate, given the potential synergies with traditional central bank functions relating to promoting financial stability. Furthermore, independence – which is an essential element in central banking – is also a necessary precondition for macroprudential supervision. Moreover, the revised draft law should ensure that the MNB's macroprudential mandate does not interfere with the effective fulfilment of its monetary policy mandate, in particular with its primary objective of maintaining price stability, and that it does not restrict the Eurosystem's contribution to the stability of the financial system under Article 127(5) of the Treaty.

The MNB needs to be equipped with tools and powers to efficiently fulfil all the tasks attributed to it. In this respect, the ECB notes that the only tool mentioned in the revised draft law is the adoption of a decree by the Governor to prevent the build-up of system risks or to reduce such risks in areas not regulated in law or government decrees.

The ECB also notes that, as the general rules allow the MNB to collect data in the central banking information system, these provisions of the revised draft law would enable the MNB to collect data specifically in respect of its macroprudential mandate. In this respect, it is of crucial importance, if

⁷ ECB Opinions CON/2008/9, CON/2009/45, CON/2009/47, CON/2010/42, CON/2010/51 and CON/2010/56.

⁸ See for example paragraph 4.3 of ECB Opinion CON/2010/42 and Opinion CON/2010/56.

⁹ See CON/2010/56 and CON/2010/91.

the MNB is to effectively fulfil its new macroprudential mandate, that it receives in a timely manner all necessary data and information, including information specific to supervised institutions, and that it may designate – in cooperation with the micro-prudential supervisor – systemically relevant financial structures and institutions.

4.5 *Establishment of the balance sheet and the decision on the payment of dividends*

The ECB reiterates its observations in Opinion CON/2011/104 on the transfer of these functions from the shareholder to the Executive Board. The affirmative decision by the shareholder in Article 43(2) of the revised draft law leaves room for doubts over whether profit distribution decisions will continue to be subject to the shareholder's resolutions¹⁰. Hence, this provision, in conjunction with Article 49(4) and Article 64 of the revised draft law, should be clarified so as to comply with the financial independence of the MNB.

4.6 *Prohibition on monetary financing*

The ECB reiterates its observations in Opinion CON/2011/104 on the monetary financing prohibition. In particular, the ECB notes that Article 13 of the revised draft law still needs to expressly include also the condition that loans to the National Deposit Insurance Fund are granted at the full discretion of the MNB¹¹.

4.7 *Central banking information system*

The ECB notes that the revised draft law still lacks clarity and leaves the rules on code generation used for anonymised data unchanged¹². Article 21(6) and (13) of the revised draft law still contains contradictory provisions on the deadline for the destruction of the linking codes used in handling anonymised data.

4.8 *Legal integration of the MNB into the Eurosystem*

The ECB reiterates its observations in Opinion CON/2011/104 on Hungary being a Member State with a derogation and therefore obliged to comply with all adaptation requirements under the Treaties. The Hungarian authorities should take this opportunity offered by the recast to make the necessary adjustments to ensure the MNB's full integration into the Eurosystem when Hungary adopts the euro¹³.

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

Done at Frankfurt am Main, 22 December 2011.

[signed]

The President of the ECB

Mario DRAGHI

¹⁰ See also ECB Convergence Report May 2010, p. 249.

¹¹ See paragraph 9.3 of Opinion CON/2011/104.

¹² See paragraph 10 of Opinion CON/2011/104.

¹³ For more detail, see paragraph 13 of Opinion CON/2011/104.