



EUROPEAN CENTRAL BANK

**OPINION OF THE EUROPEAN CENTRAL BANK****of 4 November 2004****at the request of the Hungarian Ministry of Finance  
on a draft law amending the Law on Magyar Nemzeti Bank****(CON/2004/35)**

1. On 13 October 2004 the European Central Bank (ECB) received a request from the Hungarian Ministry of Finance for an opinion on a draft law (hereinafter the 'draft law') amending Law LVIII of 2001 on Magyar Nemzeti Bank (hereinafter the 'MNB Law').
2. The ECB's competence to deliver an opinion is based on 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 provisions<sup>1</sup>, as the draft law contains provisions concerning 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.
3. The draft law's officially stated intention is to facilitate the achievement and maintenance of price stability by increasing the number of Monetary Council members and by further separating the decision-making and executive tasks. Currently, the Monetary Council consists of nine members. The draft law would introduce nine as a minimum and establish a maximum of 11 members. Articles 2, 3 and 6 of the draft law also significantly change the composition and rules for nominating Monetary Council members. At present, the Governor of Magyar Nemzeti Bank (MNB), as well as the three Deputy Governors, are Monetary Council members *ex officio*. The other five Monetary Council members are nominated by MNB's Governor, and are, on the Prime Minister's consent, appointed by the President of the Republic. In addition the Governor is nominated by the Prime Minister before being appointed by the President. Following the changes, the Governor will continue in the Monetary Council, as will the Deputy Governor responsible for monetary policy. Moreover, four members will continue to be nominated by the Governor, and be appointed by the President upon the consent of the Prime Minister. The remaining three to five members would be nominated by the Prime Minister, with the right of appointment remaining with Hungary's President. Thus, as a result of the amendments, two MNB Deputy Governors would lose their *ex officio* membership of the Monetary Council. It is unclear from the draft law whether they could still be nominated by the Governor as other Monetary Council members.

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

4. The ECB notes that the current Monetary Council rules in force are compatible with central bank independence and provide an appropriate framework for the formulation of monetary policy. This view has been reflected in both the Convergence Report of the European Commission and the ECB's Convergence Report for 2004. From this point of view, there would thus be no need for changes to the Monetary Council's composition.
5. The draft law's statement of reasons indicates that 'the Monetary Council is MNB's supreme decision making body, so it is not justified that the Deputy Governors responsible for executing decisions - except the Deputy Governor responsible for monetary policy – participate in taking this body's decisions'. While, as pointed out in paragraph 3, it is unclear whether this reasoning has actually been transposed into the draft law, there is no convincing need to separate decision-making and executive tasks in the field of monetary policy. By way of example, all ECB Executive Board members are members of the ECB's Governing Council, the Eurosystem's main policy decision-making body.
6. Credibility is the cornerstone of central banking. A credible monetary policy is a key condition for controlling inflationary expectations and promoting sustainable convergence towards price stability. An independent central bank in a stable institutional environment forms the basis for monetary policy's credibility. The Treaty's requirement for central bank independence reflects the generally held view that the primary objective of price stability is best served by a fully independent institution with a precisely defined mandate. It is therefore of utmost importance to design an institutional structure that separates monetary policy from the influence of short-term political interests. The Convergence Reports of the European Monetary Institute (EMI) and of the ECB have, over the years, consistently confirmed the importance of central bank independence. The functional, institutional, personal and financial aspects of independence have also been further refined through ECB opinions.
7. Given the relevance of central bank independence for EMU's proper functioning, this is unambiguously anchored in Article 108 of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank and supported by Article 14.2 of the Statute. Article 14.2 provides for the security of tenure of NCB Governors. The EMI's 1998 Convergence Report pointed out that personal independence would be jeopardised if the same rules for Governors' security of tenure were not also applied to other members of NCB decision-making bodies involved in the performance of ESCB-related tasks. The abovementioned Treaty and Statute provisions require comparable security of tenure, as Article 14.2 of the Statute does not restrict the security of tenure of office to Governors, whilst Article 108 of the Treaty and Article 7 of the Statute refer to any members of NCB decision-making bodies rather than to Governors specifically. This applies in particular where a Governor is *primus inter pares* between colleagues with equivalent voting rights or where such other members may have to deputise for the Governor. This approach, adopted in the EMI's 1998 Convergence Report, was fully shared by the Commission in its 1998 evaluation of the compatibility of NCBs' statutes with the Treaty under Article 121(1)

and (2), and has been accepted by the Council. The ECB has reiterated this principle in its opinions in response to previous consultations.

8. The ECB notes that according to the draft law, two of the Deputy Governors would lose their *ex officio* membership of the Monetary Council. In this context the ECB would like to point out that in order to protect the personal independence of the members of NCB decision-making bodies, any reorganisation of an NCB affecting its Monetary Council members' tenure of office should allow incumbents to continue to perform their duties until the end of their term of office for which they have been appointed, in accordance with Article 14.2 of the Statute. The tenure of the affected two Deputy Governors as Monetary Council members has not expired, and therefore the draft law amounts to an *ex lege* revocation of these two members on grounds other than those foreseen in the abovementioned provision. Such revocation should be avoided in the light of Article 108 of the Treaty and Article 14.2 of the Statute. The ECB therefore objects to the termination of two of the Deputy Governors' membership of the Monetary Council prior to the expiry of their term of office.
9. The ECB notes that the draft law increases the Prime Minister's role and influence in determining the Monetary Council's composition. The argument put forward for this change is enhancement of central bank independence. However, as already mentioned the nomination rules for the Monetary Council's members presently in force are compatible with the Treaty and fully serve the purposes of operational efficiency and of safeguarding MNB's independence from the political sphere.
10. The ECB furthermore notes that it would enhance the long-term independence of the decision-making body if vacancies in the Monetary Council are not filled 'en bloc', but instead there is a system in place whereby members are appointed and their term of office expires at different times, allowing sufficient interim periods between subsequent appointments. This would ensure that membership of the decision-making body is not determined by political cycles. Similarly, a reference may be made to the principle laid down in Article 11.2 of the Statute, so that members of the Monetary Council are 'appointed from among persons of recognised standing and professional experience in monetary or banking matters'.
11. The ECB notes that Article 4 of the draft law intends to amend the rules in Article 53(1) and (7) of the MNB Law relating to the annual adjustment to the remuneration of MNB's Governor. The new provision will link it to planned instead of to actual inflation.
12. The ECB further notes that Article 5 of the draft law intends to amend Article 58/A (1) to (3) of the MNB Law, changing the rules relating to the authority to decide on the publication of wealth declarations to be made by the Governor, Deputy Governors, members of the Monetary Council and members of the Supervisory Board. Although in principle making the Governor and Monetary Council members subject to a wealth declaration requirement is acceptable, it should be fully ensured that the application of these provisions takes full account of Article 108 of the Treaty and Article 7 of the Statute. The ECB welcomes the transfer of the right to make the abovementioned wealth declaration public from Hungary's Prime Minister and President to Parliament's Chair, as this change further enhances the guarantees of personal independence.

13. The ECB's General Council has recently approved the 2004 Convergence Report (available on the ECB's website at [www.ecb.int](http://www.ecb.int)). This report includes an assessment of the compatibility of Hungary's relevant national legislation with the Treaty and indicates the necessary adaptations to the MNB Law. The ECB would recommend that any amendment to the MNB Law should take such assessment into account.
14. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 4 November 2004.

[signed]

*The President of the ECB*

Jean-Claude TRICHET