



OPINION OF THE EUROPEAN CENTRAL BANK
of 24 May 2007
at the request of the Hungarian Ministry of Finance
on a draft law amending the Law on the Magyar Nemzeti Bank
(CON/2007/14)

Introduction and legal basis

On 27 April 2007 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 the Magyar Nemzeti Bank (hereinafter the ‘MNB Law’).

The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 provisions¹, as the draft law relates to the Magyar Nemzeti Bank. 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

The Ministry of Finance has indicated that the purpose of the draft law is to facilitate the efficient and economical functioning of the Magyar Nemzeti Bank by changing its governance structure. The draft law would abolish the Board of Directors and transfer most of its functions to the Magyar Nemzeti Bank’s Governor. In addition, the draft law would decrease the number of Monetary Council members. Currently, the Monetary Council consists of a minimum of nine and a maximum of 11 members. The draft law would reduce the number of members to a minimum of five and a maximum of seven members. The terms of office for the current members would remain unaffected. Finally, the draft law would also modify the scope of the Magyar Nemzeti Bank’s obligation to provide information to the Ministry of Finance.

¹ OJ L 189, 3.7.1998, p. 42.

2. General observations

- 2.1 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. Over the years the convergence reports of the European Monetary Institute (EMI) and of the ECB have 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.
- 2.2 One consideration in the context of central bank independence is the need for a central bank legal framework that provides a stable and long-term basis for the central bank's functioning. With regard to the Hungarian central bank, the ECB notes that the Law on the Magyar Nemzeti Bank has been amended on several occasions in recent years, often substantially changing the central bank's legal framework, and finds that the introduction of different legal concepts within such a relatively short time has adversely affected the Magyar Nemzeti Bank's stability. In addition, the ECB notes that the draft law still does not address all the issues highlighted in the ECB's Convergence Report from December 2006.

3. Specific observations

Changes in the Magyar Nemzeti Bank's governance structure

- 3.1 According to the draft law, the Magyar Nemzeti Bank's Board of Directors, which is in charge of the implementation of monetary policy and the running of the Magyar Nemzeti Bank, would be abolished. Its powers would be transferred to the Magyar Nemzeti Bank's Governor, who would be entrusted to carry out these functions as an individual. The ECB understands that the objective for introducing this change is efficiency and has no objections to this institutional set-up as such.

Membership in the Monetary Council

- 3.2 With regard to the draft law's transitional measures on membership in the Magyar Nemzeti Bank's Monetary Council, the ECB notes, as in its earlier opinions², that they should be compatible with Article 14.2 of the Statute of the European System of Central Banks and the ECB.
- 3.3 In general, the principle of personal independence, as laid down in Article 14.2 of the Statute requires that the same rules for the security of tenure of office of Governor apply to other members of NCB decision making-bodies involved in the performance of ESCB-related tasks. This applies, in particular, where a governor is first among equals between colleagues with equivalent voting rights. Thus, any NCB reorganisation measure affecting the tenure of office of the members of its decision-making bodies involved in the performance of ESCB-related tasks should ensure that they continue to perform their duties until the end of their appointed term, in accordance with Article 14.2 of the Statute³. In this respect the draft law specifically provides that the term of office of the current members of the Monetary Council should remain unaffected by the foreseen amendments. In this context, the ECB notes that the effects of the expiration of the mandates for the current individual members of the Monetary Council, in the event that the euro is introduced during their mandates, should be clarified in a manner respecting the principle of personal independence.
- 3.4 In line with its previous opinions the ECB would also emphasise that not filling vacancies in the Monetary Council *en bloc* enhances the long-term independence of the decision-making body. Instead members' appointments and expiry of their term of office should be at different times, allowing sufficient interim periods between subsequent appointments. This ensures that political cycles do not determine membership. Similarly, Article 112(2)(b) of the Treaty establishes the principle that members of the ECB's Executive Board are 'appointed from among persons of recognised standing and professional experience in monetary or banking matters'. This principle should also apply to Monetary Council members.

Information sharing with the Minister for Finance

- 3.5 A new provision of the draft law would require the Magyar Nemzeti Bank's Governor to inform the Minister for Finance of all important decisions regarding the Magyar Nemzeti Bank's operations, together with the documents these decisions are based on. The proposed amendment would broaden the scope of the Magyar Nemzeti Bank's obligation to provide information to the Government.

² See ECB Opinion CON/2007/6 of 7 March 2007 at the request of the German Ministry of Finance on a draft Eighth Law amending the Law on the Deutsche Bundesbank, ECB Opinion CON/2006/44 of 25 August 2006 at the request of the Banca d'Italia on the amended Statute of the Banca d'Italia, ECB Opinion CON/2006/32 of 22 June 2006 at the request of the French Senate on draft law on the Banque de France, ECB Opinion CON/2004/35 of 4 November 2004 at the request of the Hungarian Ministry of Finance on a draft law amending the Law on Magyar Nemzeti Bank and ECB Opinion CON/2004/16 of 11 May 2004 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law on the protection of savings.

³ See the abovementioned opinions.

3.6 Currently the Magyar Nemzeti Bank is obliged to provide the Government with information on monetary developments and other important issues relating to its basic tasks on an ad hoc basis, and on foreign exchange transactions and gold and foreign exchange reserves on a weekly basis. The scope of obligation currently in force appears adequate to satisfy the Government's information needs. Any obligation imposed on the Magyar Nemzeti Bank to provide information to the Government must be within the limits of central bank independence. As a minimum, therefore, the draft law (i) should clarify that there is no obligation to consult or inform the Government ex ante, i.e. in advance of the decisions being taken; (ii) should not contain a requirement to submit to the Government the documents that the decisions are based on; and (iii) should ensure that the provision of information under the new Article 41 (3) of the Law on the Magyar Nemzeti Bank complies with the principles set out below. The ECB's Convergence Reports in May and December 2006 described the prohibition on ex ante consultation relating to national central banks' (NCBs) decisions as 'An express statutory obligation for an NCB to consult third parties ex ante provides the latter with a formal mechanism to influence the final decision and is therefore incompatible with the Treaty and the Statute. However, dialogue between NCBs and third parties, even when based on statutory obligations to provide information and exchange views, is compatible with central bank independence provided that:

- this does not result in interference with the independence of the members of the NCB's decision-making bodies;
- the special status of Governors in their capacity as members of the ECB's General Council is fully respected; and
- confidentiality requirements resulting from the Statute are observed.'

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

Done at Frankfurt am Main, 24 May 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET